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**CONDOMINIUM OFFERING PLAN**

**THE 40 DOUGLASS STREET CONDOMINIUM  
40 DOUGLASS STREET  
BROOKLYN, KINGS COUNTY, NEW YORK 11231**

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|---------------------------------|-----------------------|
| <b>Residential Units.....3</b>  | <b>\$8,575,000.00</b> |
| <b>Total Amount of Offering</b> | <b>\$8,575,000.00</b> |

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**SPONSOR AND SELLING AGENT:**

**40 DOUGLASS LLC  
284 PRESIDENT STREET  
BROOKLYN, NEW YORK 11231**

**Date of acceptance for filing of this Offering Plan is  
This plan may not be used after                      unless extended by a duly filed amendment.**

**THIS PLAN CONTAINS SPECIAL RISKS TO THE PURCHASER. SEE PAGE 1.**

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

**BECAUSE THE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER  
THAN SELL UNITS AFTER CONSUMMATION OF THE PLAN, THIS PLAN MAY NOT RESULT  
IN THE CREATION OF A CONDOMINIUM IN WHICH A MAJORITY OF THE UNITS ARE  
OWNED BY OWNER-OCCUPANTS OR INVESTORS UNRELATED TO THE SPONSOR. (SEE  
SPECIAL RISKS SECTION OF THE PLAN.)**

**PURCHASERS FOR THEIR OWN OCCUPANCY MAY NEVER GAIN CONTROL OF THE  
BOARD OF MANAGERS UNDER THE TERMS OF THIS PLAN. (SEE SPECIAL RISKS  
SECTION OF THE PLAN.)**

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## **DEFINITIONS**

For convenience of presentation general definitions of key terms used in Part I of the Plan are set forth below, which definitions are subject to the more particular definitions of such terms set forth in the DECLARATION and BYLAWS included in Part II of this Plan.

**Board of Managers:** The executive and administrative entity designated to act on behalf of the Unit Owners in governing the Condominium.

**Building:** The building that is the subject of this Offering Plan, which is constructed on the Land and in which the units of the condominium will be located.

**Bylaws:** The Bylaws governing the operation of the Condominium, the form of which are set forth in Part II of this Plan.

**Common Charges:** Monthly payments made to the Board of Managers in proportion to each Unit Owner's Common Interest for the purpose of meeting the Common Expenses.

**Common Elements:** The Land and all parts of the Building other than the Units, including the foundations, windows, roof, and supports of the Building and all areas or facilities therein for the common use of the Units and the Unit Owners.

**Common Expenses:** The cost and expenses associated with the repair, maintenance, replacement, restoration, operation of, and any alteration, addition to, or improvement of, the Common Elements.

**Common Interest:** The proportionate interest of each Unit Owner as expressed in a numerical percentage in the Common Elements as determined in accordance with the Declaration. The total of all Common Interests of all Unit Owners equals 100%.

**Consummation of the Plan:** The filing of the Declaration of the condominium and the first transfer of title to a condominium Unit to at least one purchaser under the Plan following a declaration of effectiveness by the Sponsor.

**Declaration of Condominium:** The instrument creating the Condominium, the form of which is set forth in Part II of this Plan.

**Equal to or Better Quality:** Comparable or better quality as recognized by industry standards for performance, efficiency, longevity, and/or classifications, as applicable.

**Filing:** The issuance of a letter or writing, including electronic, from the New York State Department of Law evidencing that an offering plan or amendment has been accepted for filing.

**General Common Elements:** All of the Common Elements that are not Limited Common Elements.

**Land:** The land referred to and more particularly described in the Declaration.

**Limited Common Elements:** Those Common Elements that serve or benefit a single Unit and the use of which is restricted to said Unit.

**Property:** The Land, the Building, and the appurtenances thereto.

**Purchase Agreement:** The agreement to purchase a Unit offered for sale pursuant to the Plan, the form of which is set forth in Part II of this Plan.

**Purchaser:** A purchaser of a Unit pursuant to a Purchase Agreement.

**Sponsor:** 40 Douglass LLC, 284 President Street, Brooklyn, NY 11231.

**Unit:** Any space designated as a Unit in the Declaration, consisting of a specific apartment in the Building and an appurtenant undivided fee interest in the Common Elements. All of such units are collectively referred to as “**Units**.”

**Unit Owner:** Any owner of any Unit. All of such owners are collectively referred to as the “**Unit Owners**.”

## **SPECIAL RISKS**

The following is a summary of certain special risk considerations in connection with the Plan but is not intended to summarize all major features of the Plan. Prospective Purchasers are urged to read the following special risk factors in conjunction with the Plan for a discussion of these and other important aspects of this Condominium offering.

- 1) The Sponsor is not limiting the conditions under which it will rent rather than sell units after consummation of the Offering Plan. There is no commitment to sell more than one (1) residential unit in this Condominium, which is the minimum necessary to declare the plan effective. Owner-Occupants, therefore, may never gain effective control and management of the condominium. There are no requirements or restrictions on renting imposed by a construction lender. Please see the INTRODUCTION, RIGHTS AND OBLIGATIONS OF THE SPONSOR, CONTROL BY SPONSOR, and BOARD OF MANAGERS sections of this Offering Plan for a more complete explanation.
- 2) The By-Laws do not include a provision that, after the initial Sponsor control period, a majority of the Board of Managers must be Owner-Occupants or members of an Owner-Occupant's household who are unrelated to the Sponsor and its Principals. Owner-Occupants and non-resident owners, including the Sponsor, may have inherent conflicts on how the Condominium should be managed because of their different reasons for purchasing, i.e., purchase as a home, as opposed to purchase as an investment. Please see the INTRODUCTION, RIGHTS AND OBLIGATIONS OF THE SPONSOR, CONTROL BY SPONSOR, and RIGHTS AND OBLIGATIONS OF UNIT OWNERS AND BOARD OF MANAGERS sections of this Offering Plan for a more complete explanation.
- 3) There are numerous time constraints imposed in the Purchase Agreement set forth in Part II of this Offering Plan. **TIME IS OF THE ESSENCE** as to all such time constraints. This means that if the Purchaser fails to perform within the applicable time frame, s/he may waive substantive rights, or incur a forfeiture of substantial sums of money. Thus, a purchaser who fails to cure a default within thirty (30) days after receipt of written notice of said default will both have the Purchase Agreement canceled and lose his/her down payment. In the event of a default by Purchaser: (i) the apportionment of those items set forth in the Purchase Agreement shall be made as of the originally established Closing Date rather than as of the date the Closing actually occurs, and; (ii) Purchaser shall pay Sponsor at Closing interest on the unpaid balance of the purchase price from the originally established Closing Date to the actual Closing Date an amount equal to 12% per annum; and (iii) Purchaser shall pay Sponsor's counsel

\$350.00 for each adjournment of a Closing; and (iv) Purchaser shall pay Sponsor's counsel \$350.00 for preparation of a notice of default. The rate of interest herein will not exceed New York State usury laws. Similarly, a Purchaser who fails to notify the Sponsor in the event s/he has failed to obtain mortgage financing within forty (40) days after receipt of a fully executed Purchase Agreement will be required to proceed to closing notwithstanding the fact that purchaser has failed to obtain mortgage financing; if such purchaser fails to proceed to closing, the down payment may be retained by the Sponsor. Purchasers are advised to consult with their attorneys concerning all terms of this offering. Please see the section of this Plan entitled PROCEDURE TO PURCHASE, and the PURCHASE AGREEMENT set forth in Part II, for a statement of all applicable time limitations.

4) New York State Documentary Stamp taxes, presently \$4.00 per \$1,000.00 of the Purchase Price of a Unit less existing and continuing mortgage, will be the sole responsibility of the Purchaser. Although usually the Seller's statutory obligation, the terms of this Offering Plan transfer the statutory obligation to pay New York City Real Property transfer taxes (1.425% of purchase price for residential units), and New York State Documentary Stamp Taxes (\$4.00 per thousand) to the Purchaser; therefore, the costs of such taxes represent an additional closing cost to the Purchaser, as well as an additional item of consideration on which transfer taxes must be paid. Please see the CLOSING COSTS AND ADJUSTMENTS section of this Offering Plan.

5) At closing each Purchaser is responsible for paying to the Sponsor a reimbursement fee of \$2,500.00 for the costs associated with preparing and filing the Offering Plan, for paying to the Sponsor's attorney a document preparation fee of \$3,000.00, plus \$150 for the preparation of ACRIS documents, \$250.00 to fill out and forward an appraisal and lender questionnaire, and may be responsible for certain other fees such as travel fees and default fees. All closings will occur in Kings County at a location designated by the Sponsor's Attorney. Under no circumstances will Sponsor or its Attorney be required to close at any place other than a location designated by Sponsor's Attorney. In the event that Sponsor consents to a closing outside of a location designated by Sponsor's Attorney, there will be an attendance fee of \$500.00 for closings in Kings or New York counties or \$1,000.00 for closings in any other location. Please see the section of the Offering Plan entitled CLOSING COSTS AND ADJUSTMENTS.

6) Transfer of control of the Condominium Board of Managers shall pass to unit owners other than the Sponsor at the earlier of: 1) sixty (60) days after the date by which 75% of the units have been conveyed to unit purchasers, or 2) three (3) years after the first conveyance of a unit to a unit purchaser. Sponsor will not hold control of the condominium board after the sponsor control period. Notwithstanding the foregoing,

Sponsor may vote for unit owners of its choice. Prior to that time, the Condominium will be controlled by a Board of Managers elected by the Sponsor. There are certain limitations on actions that can be taken by the Board of Managers while the Sponsor remains in control of the Board of Managers. Such limitations are set forth in the CONTROL BY THE SPONSOR of this Offering Plan.

Until the earlier of five (5) years from the date of closing, or at the time at which the Sponsor or other Holder of Unsold Units owns units consisting of less than 25% of the common interest of the Condominium, Sponsor may exercise veto power over any expenses other than those expenses described in Schedule B or expenses required to comply with applicable laws or regulations, to remedy any notice of violation, or for any repair or replacement necessary for the preservation or safety of the Building or for the safety of occupants of the Building or to remedy any work order by an insurer. Additionally, so long as the Sponsor retains ownership of at least one unit in the building, the By-Laws, Declaration, and Rules and Regulations of the Condominium may not be amended or modified in any way so as to adversely affect the Sponsor without written consent by the Sponsor.

Please see the section of the Offering Plan entitled CONTROL BY THE SPONSOR for a more complete explanation.

7) The Sponsor is liable for all common charges, special assessments, and real estate taxes with respect to unsold units, and represents that Sponsor has financial resources to meet these obligations. However, no bond, escrow deposit, or other security has been furnished to secure the Sponsor's obligations. Please see the section of the Offering Plan entitled RIGHTS AND OBLIGATIONS OF THE SPONSOR for a more detailed explanation.

8) Pursuant to existing law and regulation, the Sponsor may declare the plan effective by selling a minimum of fifteen (15%) percent of the residential units in the building, which in the case of this Plan is one (1) unit. If the Plan is declared effective with a minimum number of sales, it is possible that Sponsor may be able to create a Condominium even though there is no guarantee that all of the purchasers counted towards effectiveness will ultimately purchase their units. The Plan would have to be re-declared effective in the event that purchasers counted towards effectiveness failed to close their sales. Please see the EFFECTIVE DATE section of this Offering Plan.

9) Purchasers should note that in the current real estate market, banks and other lenders are imposing various restrictions on purchase financing. Such restrictions include requiring that a certain percentage of apartments in a building or group of

buildings be sold before a lender will consider making a loan. Thus, it may be possible for a Purchaser to experience difficulty obtaining a loan in a building or group of buildings where the Sponsor or holder of unsold shares has not sold a substantial percentage of the apartments in a building or group of buildings, which in some cases may be as high as 70%. Moreover, some lenders will not provide financing in a building or group of buildings where an investor other than the original Sponsor has an ownership interest of 10% or more. It also may be difficult for a purchaser to resell an apartment if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions.

Even after a building undergoes conversion, lenders may still impose minimum sales requirements before granting a loan. It then may be difficult for a Purchaser to resell an apartment if prospective buyers are unable to obtain a loan due to such minimum sales requirements. Please see the PROCEDURE TO PURCHASE section of this Offering Plan.

10) All down payments will be placed in an IOLA account. IOLA stands for “interest on lawyer accounts,” and is a special type of account maintained by an attorney for the purpose of holding escrow funds. The escrow account is federally insured by the FDIC at the maximum amount of \$250,000. If Purchasers have accounts at the same bank that holds Sponsor’s escrowed funds, Purchasers’ funds at the escrow bank factor into the \$250,000 insurance limit. To the extent that the total contract deposits exceed \$250,000, they will not be federally insured. Interest earned on IOLA accounts is paid over to the state of New York. No interest is credited to either the purchaser or the seller. Please see the PROCEDURE TO PURCHASE section of this Offering Plan.

11) All funds received by the Sponsor for upgrades or extras must initially be placed in the escrow account set forth herein. However, the Purchaser should note that such funds may be released from the escrow account by the escrow agent as long as the Sponsor uses the funds for such upgrades or extras. As a result, in the event the Purchaser is entitled to a rescission, the Purchaser will not receive a refund of any funds used for upgrades or extras. A Purchaser will receive a refund of funds used for upgrades if the Plan is abandoned. Please see the PROCEDURE TO PURCHASE Section of this Offering Plan.

12) The cost of providing heat and hot water for individual units is not included in the monthly Common Charges. Heat and hot water are separately provided to each unit, and the cost of utilities for providing such heat and hot water will be separately billed for each unit. Thus, the cost of heat and hot water represents a cost in addition to the

monthly Common Charges. Please see FOOTNOTES TO SCHEDULE B and SCHEDULE B1.

13) Sponsor has obtained construction financing from Ontario Wealth Management Corporation, having an office at 2950 Keele Street, Suite 201, Toronto, Ontario (Canada) M3M 2H2 (the “Mortgage Lender”). Sponsor will satisfy this loan at the time of the first unit closing. The Mortgage Lender has set no limits or requirements for Sponsor to sell rather than rent Units. See the INTRODUCTION and TERMS OF SALE sections in Part I of the Plan.

14) At each unit closing the Sponsor will transfer maintenance manuals and warranties for said Unit, as applicable, to the Purchaser. At the meeting of the Board of Managers to be convened within sixty (60) days after the closing of the first unit, or whenever the unsold units constitute less than 25 percent of the common interests, whichever is sooner, the Sponsor will transfer construction documents, including “as-built” materials, maintenance manuals, and warranties, as applicable, to the Condominium. Please see the CONTROL BY THE SPONSOR section in Part I and the ARCHITECT’S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION located in Part II of this Offering Plan.

15) The obligations of a Purchaser under a Purchase Agreement are conditioned on the Purchaser obtaining financing. If a Purchaser intends to obtain mortgage financing, such Purchaser shall apply for said loan within five (5) days after receipt of a fully executed copy of the PURCHASE AGREEMENT, and shall have forty (40) days from receipt of a fully executed copy of said PURCHASE AGREEMENT to obtain said mortgage commitment. Purchaser agrees to accept any commitment offered by the lending institution applied to, provided that the loan offered by the lending institution is for at least the amount of the loan contemplated in the PURCHASE AGREEMENT. In the event Purchaser obtains a firm written commitment for financing and the terms of such commitment are changed prior to closing, such change in terms shall not be an allowable reason for Purchaser to cancel the contract. Similarly, if the commitment expires prior to closing, Purchaser shall be under a good faith duty to take all required actions necessary to extend such commitment, including the payment of any extension fee required by the lending institution; however, in the event Purchaser has made such good faith effort to extend the commitment on the same terms and is unable to do so, then, provided that Purchaser notifies Sponsor within 10 days after receipt of a notice from a lending institution that it will not under any circumstances extend the commitment, and that Purchaser is exercising his right to rescind the contract, then Sponsor will return the down payment. Please see PROCEDURE TO PURCHASE in Part I, and PURCHASE AGREEMENT located in Part II of this Offering Plan.

16) In the event a child under eleven (11) years old resides in a unit or visits a unit for an extended period of time, the owner of that unit will be required, at his/her own cost and expense, to install child safety window guards on all windows in conformity with applicable New York City Administrative Code sections, and shall not remove them until permitted by applicable law. Failure to do so may create great risk to the life and health of such child, and result in the imposition of a violation against the building, which would be the responsibility of the unit owner to cure. Please see the DESCRIPTION OF PROPERTY AND IMPROVEMENTS and RIGHTS AND OBLIGATIONS OF UNIT OWNERS AND BOARD OF MANAGERS in Part I, and ARCHITECT'S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION in Part II for a more complete explanation.

17) The units are duplex units. Unit A occupies the first and cellar floors of the Building; Unit B occupies the second floor and a portion of the third floor; Unit C occupies the balance of the third floor and the fourth floor of the Building. Unit A will have the rear yard measuring approximately 787 square feet allocated as a limited common element. Unit B will have a balcony measuring approximately 64 square feet located at the second floor, a cellar storage closet measuring approximately 60 square feet, and a rooftop terrace of approximately 300 square feet, allocated a limited common elements. Unit C will have a balcony located at the third floor and measuring approximately 64 square feet, as well as a cellar storage closet measuring approximately 60 square feet, allocated as limited common elements. Unit C will also have a fourth floor terrace and a rooftop terrace, together totaling approximately 619 square feet, allocated as limited common elements. These limited common elements are uninhabitable spaces. No structures of any kind may be built in or on these limited common elements except for temporary structures such as fencing, screen tents, tool sheds, sukkots, etc. No noxious or flammable materials can be stored in these cellar storage closets. Limited common elements and cellar spaces may not be used as a bedroom, living room, or dining room, or for any other use construed as "habitable space" as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove. The existence of violations on the building may result in fines and prevent the Residential Unit Owners, though not responsible for the violations, being unable to sell or refinance their Units. The right to use and occupancy is subject to the right of the Condominium to enter into said areas for the purpose of inspection and/or building repairs. Please see INTRODUCTION, DESCRIPTION OF PROPERTY AND IMPROVEMENTS and SCHEDULE A in Part I, and the ARCHITECT'S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION included in Part II of this Offering Plan for

a more complete explanation.

18) Unit A includes recreational space at the cellar of the Building. This space may not be used as a bedroom, living room, or dining room, or for any other use construed as “habitable space” as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove. The existence of violations on the building may result in fines and prevent the Residential Unit Owners from being able to sell or refinance their Units. Please see the sections of the Plan entitled INTRODUCTION, DESCRIPTION OF PROPERTY AND IMPROVEMENTS and SCHEDULE A in Part I, and DESCRIPTION OF PROPERTY AND BUILDING CONDITION and FLOOR PLANS in Part II.

19) The Sponsor will install in each residential unit a refrigerator, Liebherr model HC2082 or equivalent, range, Bertazzoni model MAST305GASXE or equivalent, hood, Bertazzoni model KTV30PR01X or equivalent, dishwasher, Bosch model SHVM63W53N or equivalent, and microwave, Bosch model HMC54151UC or equivalent. Sponsor will also install in each unit a front loading washer and dryer, LG models WM3700HVA and DLEX3700V, respectively, or their equivalents. To the extent the Purchaser elects to install other appliances in the unit, same will represent an additional cost of purchasing the unit. Please see the DESCRIPTION OF PROPERTY AND IMPROVEMENTS in Part I and ARCHITECT’S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION included in Part II of this Offering Plan.

20) With regard to the roof, no permanent structures may be built on the roof without a permit from the Building Department, and the Board of Managers. The Board of Managers will have access for inspection and repair and may regulate any one or more of the following aspects of construction:

1. Time periods during which work is permitted;
2. The manner in which construction degree will be handled;
3. Measures which must be taken to prevent compromising the security of the building during construction;
4. Interruption of services during construction;
5. Liability insurance for contractors during construction.

The building Certificate of Occupancy and applicable zoning rules will not allow the construction of anything on the roof. Any damage occurring to the roof shall be the sole responsibility of the Condominium and/or any such Unit Owner causing such damage, and will need to be repaired at the Condominium or such Unit Owner’s sole cost and

expense as determined by the Condominium Board of Managers. Additionally, any warranty described in Part II may be voided by improper use of the roof. Please see DESCRIPTION OF PROPERTY AND IMPROVEMENTS, RIGHTS AND OBLIGATIONS OF UNIT OWNERS AND BOARD OF MANAGERS, and the ARCHITECT'S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION included in this Offering Plan.

21) The unit owner is responsible for keeping safety warning devices (i.e., smoke detector and carbon monoxide detector) operational. Please see the DESCRIPTION OF PROPERTY AND IMPROVEMENTS, RIGHTS AND OBLIGATIONS OF UNIT OWNERS AND BOARD OF MANAGERS in Part I, and the ARCHITECT'S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION located in Part II of the Offering Plan.

22) The Sponsor anticipates that the first closing of a unit will occur by July 1, 2021. Purchasers will be offered a right of rescission if: (i) the actual date of closing of title to the first unit; or (ii) the projected date of closing of title to the first unit occurs later than June 30, 2022, twelve months after the projected date for the first closing. If the Plan is amended to provide for a later projected date for the first closing, purchasers will be entitled to an offer of rescission if the first closing occurs more than 12 months beyond that amended, later date.

Purchasers should note that even if the first closing occurs on or before July 1, 2021 (or such other date projected as the date of commencement of the operation at the time the Purchase Agreement was entered into) or within the twelve month period thereafter, the closing of subsequent units may be substantially delayed beyond such dates if a TCO has not been issued for such units or for the floor on which such units are located. In such case, provided Sponsor is diligently pursuing completion of construction and the issuance of a certificate of occupancy and is otherwise in compliance with its obligations under the Plan, Purchaser will not be entitled to a right of rescission or to make claims against the Sponsor for damages or losses as a result of such delays and will not be excused from paying the full purchase price for the unit. Sponsor may schedule the closings of title to other units significantly later than such date. Unless your Purchase Agreement contains an outside closing date, the Sponsor is not obligated to schedule your closing within any specified time frame or to ensure that closing of title to your Unit will occur by any date certain. PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER SUCH RISKS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A UNIT. In the event, however, that Sponsor cannot convey title to the unit on or before twelve (12) months from the

date of the Purchase Agreement, affected Purchasers will be offered a right of rescission.

Purchasers will have at least fifteen (15) days from presentation of an offer of rescission within which to elect to rescind. Please see the PROCEDURE TO PURCHASE section of this Offering Plan.

23) Purchasers are advised that in New York City, 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 ("DOB"). A TCO is intended to indicate that the "property conforms substantially to the DOB approved plans and specifications, and to the requirements of all applicable laws, rules, and regulations for the uses and occupancies specified in the TCO. No change of use or occupancy shall be made unless a new certificate of occupancy is issued." All TCOs have an expiration date. A TCO typically expires 90 days after the date of issuance. When a TCO expires and is not renewed, it may be difficult or impossible to buy insurance, refinance, or sell units. In New York City, it is common for Sponsors to commence unit closings when some or all units are covered by a TCO rather than a 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 DOB will issue the PCO within such two year period. NOTWITHSTANDING THE FOREGOING, SPONSOR AND ITS PRINCIPALS ARE OBLIGATED TO PROCURE THE PERMANENT CERTIFICATE OF OCCUPANCY FOR THE ENTIRE BUILDING, AND SHALL EXERCISE BEST EFFORTS TO OBTAIN THE PCO WITHIN SUCH TWO YEAR PERIOD WHILE KEEPING THE TCO CURRENT. Unit Owners and the Board of Managers shall be obligated to cooperate with and refrain from obstructing Sponsor in these undertakings.

Furthermore, because Sponsor and the By-Laws of the Condominium may permit unit owners to undertake renovations to individual units prior to the procurement of a PCO, such renovations may cause additional delays in the issuance thereof. Notwithstanding the foregoing, Sponsor and its principals are obligated to procure the PCO. Please see the RIGHTS AND OBLIGATIONS OF THE SPONSOR section of this Offering Plan.

24) Individual unit owners are responsible for repairs to and maintenance within their own condominium units and will be required to obtain HO-6 (wall-to-wall) insurance coverage at their own cost and expense to insure them for such risks as fire and casualty losses in their apartments to their personal contents therein, as well as liability insurance for each occurrence that might occur within their respective apartments. Otherwise, unit owners would not be covered for risks such as fire and casualty losses within their apartments. The condominium Board of Managers is not obligated to repair and maintain individual apartments, nor provide casualty and/or liability insurance for occurrences that may occur in individual apartments. Please see RIGHTS AND OBLIGATIONS OF UNIT OWNERS / BOARD OF MANAGERS included herein.

25) The Condominium Board does not have the right to approve or disapprove Purchasers, so there is no limit on the number of owners who may purchase for investment rather than personal occupancy. There may always be a substantial percentage of owners who are non-residents. See BOARD OF MANAGERS section of this Offering Plan.

26) New York City Local Law 147 went into effect on August 28, 2018 and requires buildings with three or more residential units to adopt written smoking policies. For condominiums such as the subject premises, the Board of Managers must adopt such a policy; the policy for this condominium is as follows: Pursuant to Local Law 147, the subject premises' smoking policy is consistent with the Smoke Free Air Act ("SFAA"), which is the current law governing smoking in class A multiple dwellings. This building prohibits smoking or using electronic cigarettes in common indoor areas of the building. Smoking and electronic cigarette usage is permitted in private apartments, outdoor common areas, and outdoor limited common elements. Please see the RIGHTS AND OBLIGATIONS OF UNIT OWNERS / BOARD OF MANAGERS section of this Offering Plan.

27) Sponsor is not creating a fund on closing to be used as a reserve for capital expenditures. However, the budget for the first year of condominium operation in SCHEDULE B includes a budgeted yearly Capital Reserve Fund for repair and replacement of major systems or structural elements of the building. This budgeted item will start the gradual creation of a reserve fund. Unit owners will therefore be contributing to the yearly Capital Reserve Fund through their common charges, beginning with common charge adjustments paid at the closings of their individual condominium units. (Unit owners will also, at closing, pay their contributions to the building's Working Capital Fund.) In the event a need arises for capital expenditures such as renewal or replacement of building components or systems, or to remedy major building defects, and the reserve fund is inadequate to pay for those expenditures, it

will be necessary to raise needed capital either by assessing individual units or owners for the cost of such expenditures. See the RESERVE FUND section of this Offering Plan.

28) Sponsor is reserving the right to delay the collection of Common Charges until such time into the future. During any such period of delay, the Sponsor will timely pay all expenses of the Condominium, including, but not limited to, insurance premiums and any reserve fund payments. Such expenses shall not include individual unit owner expenses such as real estate taxes, utility charges, etc. Upon commencement of collection of Common Charges, there will not be an assessment for any item in the approved budget for the Condominium. Regardless of the delay in collection of Common Charges, Sponsor shall remain obligated to update the budget for the Condominium as required by Department of Law governing regulations. In the event Sponsor elects to delay the collection of Common Charges, Sponsor shall disclose such fact in the closing notice or statement to Purchasers. Thereafter, Sponsor shall also disclose such fact in the post-closing amendment to the Offering Plan as a benefit to subsequent purchasers. Such amendment shall also disclose the anticipated period of delay. Prior to commencing the collection of Common Charges, Sponsor will notify all unit owners by written notice of the expiration of the delay period. Notice shall be given to owners in writing at least thirty (30) days prior to the commencement of collection of Common Charges. Thereafter, Sponsor will disclose such fact in the next substantive amendment to the Offering Plan as a benefit to subsequent Purchasers. See the section of the Plan entitled RIGHTS AND OBLIGATIONS OF THE SPONSOR.

29) If a Purchaser takes possession of a Unit prior to closing title, such as through an Interim Lease or by any other means, he or she will assume the risk of loss and the obligation to repair damage not covered by insurance already in place; therefore it is advisable that Purchasers obtain casualty insurance at such time. See the section of the Plan entitled RIGHTS AND OBLIGATIONS OF THE SPONSOR.

30) In the event a Purchaser takes possession of a Unit prior to Closing pursuant to an Interim Lease, upon a non-monetary default by Purchaser under the terms of the Interim Lease which is not cured within 30 days after notice thereof, or immediately after Purchaser exercises any right of rescission with respect to the Purchase Agreement, Purchaser's right to occupy the apartment will terminate, and PURCHASER must vacate the Apartment. Purchaser shall pay to Sponsor \$500.00 per day for each day he remains in possession following the periods set forth above. Nothing contained herein shall be construed so as to limit Sponsor's ability to have Purchaser evicted from the premises and to pursue any other legal remedy available to Sponsor, nor shall anything herein be construed as a waiver by the Sponsor of his right to retain, as liquidated damages, the down payment deposited upon execution of the

Purchase Agreement. Sponsor shall not seek or accept release of any portion of a Purchaser's down payment until the offering plan has been consummated. See the INTERIM LEASE set forth in Part II of the Plan.

31) It is expected that the building will be self-managing. Therefore, no amount has been included in the projected budget for the first year of Condominium operation for a management fee. During the Sponsor control period, the Sponsor controlled Board will manage the Condominium at no cost to the Condominium. After Sponsor transfers control of the Condominium to unit owners, should the Board of Managers at any time thereafter elect to employ the services of a managing agent, this will represent an additional cost of approximately 10% to 15% of the annual operating budget, which would require a concomitant increase in the monthly Common Charges. In addition, no amount is budgeted for a superintendent or custodian and, again, in the event the Board of Managers determines that it is in the best interest of the Condominium to employ a superintendent or custodian, this will result in an increase in common charges. Typical custodial activities which the unit owners will need to perform include trash removal, general cleaning, bulb replacement, touch-up painting and minor repairs. See the section in Part I of the Plan entitled MANAGEMENT AGREEMENT, CONTRACTS AND LICENSES.

The activities which the Board of Managers, on behalf of Unit Owners, will need to perform since no managing agent will be employed include maintenance of checking and savings accounts for the Condominium; collection of monthly common charges; payment of all Condominium common expenses; processing of all individual unit sales; supervision and payment of building employees; building maintenance; review and resolution of any problems arising in the day-to-day operation of the building; compliance with all government laws and regulations affecting building operation, ownership and maintenance; filing of annual tax returns; enforcement of Condominium adopted rules and regulations, including enforcement of maintenance obligations; seizure and sale of delinquent units; and response to individual Unit Owner complaints, questions or issues. In addition to the foregoing, any additional issues or problems arising out of the operation, maintenance, ownership, or occupancy of the building will need to be dealt with by the Board of Managers. See the section in Part I of the Plan entitled MANAGEMENT AGREEMENT, CONTRACTS AND LICENSES.

32) Principals of Sponsor have executed the Certification of Sponsor and Principals set forth in Part II of the Plan solely for Martin Act purposes. Consistent with a First Department decision in Board of Managers of 184 Thompson Street Condominium v. 184 Thompson Street Owner LLC, *et.al.*, 2013 N.Y. Slip Op 03574 (1st Dept. May 16, 2013), the Principals of Sponsor expressly disclaim the existence of any private right of

action for contract claims by individual unit owners (or a board on their behalf) in connection with or arising solely from their execution of the Certification of Sponsor and Principals, absent liability under another statute or under an alter-ego or other veil-piercing theory. Please see CERTIFICATION OF SPONSOR AND PRINCIPALS located in Part II of this offering plan.

33) On November 15, 2018, the Financial Crimes Enforcement Network (“FinCEN”) announced the issuance of a revised Geographic Targeting Order (“GTO”). This revised GTO requires U.S. title insurance companies to identify and report to FinCEN the natural persons behind companies making certain “all-cash” purchases of residential real property located within New York City where the purchase price exceeds \$300,000.00. Virtual currency, as well as other forms of payment aside from “all-cash,” are also governed by this order. The subject premises are located within this GTO. All-cash purchasers closing after November 17, 2018 will be subject to the reporting requirements of this GTO. Purchasers are advised to confer with their own counsel regarding the effects of the GTO on their real estate purchases. Please see CLOSING COSTS & ADJUSTMENTS section of this offering plan.

34) On March 31, 2019, New York State announced additions to the base real estate transfer tax (“transfer tax”) and established a new supplemental tax (“supplemental tax”) on certain conveyances of real property within New York State occurring after July 1, 2019. These amended tax rates apply only to conveyances of real property in cities with a population of 1 million or more (which includes only New York City as of this date). The additional transfer tax applies only to conveyances of residential real property when the consideration for the conveyance is \$3 million or more, and conveyances of any other property when the consideration for the conveyance is \$2 million or more. The new supplemental tax applies only to conveyances of residential real property when the consideration for the conveyance is \$2 million or more. Purchasers shall be responsible for paying the base transfer tax and supplemental tax. The purchaser’s payment of the base transfer tax will itself be deemed additional consideration, resulting in a “tax on a tax” effect. Purchasers are advised to consult with their own counsel concerning transfer taxes and other closing costs. Please see CLOSING COSTS AND ADJUSTMENTS section of the Offering Plan for a more complete explanation.

35) The square footage in SCHEDULE A is calculated by the standard mathematical formula of multiplying the length of an area by the width of an area and adding together for each apartment all of the areas contained therein. The square footage of each unit is based upon a “gross” square footage calculation that is calculated as follows: horizontally, approximately to the outside face of the exterior walls of the

building. Dimensions shall be to the centerline of demising walls dividing units from each other. Dimensions shall be to the property line at lot line walls. Stairs internal to the units shall be included in the area calculations. As a result, the actual area comprising the condominium unit is significantly less than listed in Schedule A. The estimated square footage of each unit is based on the FLOOR PLANS and ARCHITECT'S DESCRIPTION OF PROPERTY set forth in Part II of this Offering Plan and may vary within reasonable tolerances from the "as-built" square footage as subsequently described in the condominium Declaration.

36) No change will be made in the size or number or layout of 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 Plan and, when applicable, to the Declaration. A decrease in area of less than 5% or less could be deemed material and could thus trigger purchaser's consent right. However, there is a rebuttable presumption that an area that is diminished by 5% or less is not material. Please see CHANGES IN PRICES OF UNITS section of the Offering Plan for a more complete explanation.

37) This Offering Plan is subject to The New York State Housing Merchant Implied Warranty (General Business Law Article 36-B) which applies to new single family homes or new for-sale units in a multi-unit residential structure of 5 stories or less in which title is transferred to Owners under a condominium or cooperative regime. The Sponsor makes no representation or warranty as to the work, materials, appliances, equipment or fixtures other than as set forth in this Plan, nor will the Sponsor indemnify the Board of Managers or defend lawsuits that arise which are not the result of the Sponsor's acts or omissions. Each prospective Purchaser may have the Building and apartments therein inspected by an architect or engineer of his or her own choosing to determine the quality of materials and workmanship. Any and all representations and obligations, which are imposed by the Sponsor by virtue of this Offering Plan or the General Business Law, the performance of which shall occur after the transfer of title shall survive delivery of the deed. However, nothing herein is intended to abrogate the responsibility of the Sponsor under the General Obligations Law, the General Business Law and the Regulations promulgated by the Department of Law. See section entitled RIGHTS AND OBLIGATIONS OF THE SPONSOR. A copy of the Housing Merchant Implied Warranty Law is included in Part II of this Offering Plan.

38) The By-Laws provide that any matter required or permitted to be determined by arbitration shall be submitted for resolution by a single arbitrator in a proceeding held in New York in accordance with the then existing rules of the American Arbitration Association, or before an arbitrator appointed by the Real Estate Board of New York if

the American Arbitration Association or successor organization shall not then be in existence. Said single arbitrator shall be an independent third party unrelated to either party to the dispute. The fees, costs and expenses of the arbitrator shall be borne by the losing party in the arbitration or, if the position of neither party to the dispute shall be substantially upheld by the arbitrator, such fees, costs and expenses shall be borne equally by the disputants. Please see BY-LAWS located in Part II of this Offering Plan.

39) The projected real estate taxes for the first year of condominium operation are provided in SCHEDULE A. The figures are post-completion estimates based on an estimate of the assessed valuation of the building following the completion of rehabilitation and construction. Purchasers should be aware that 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. Thus, actual real estate taxes may vary from the calculations included herein. See SCHEDULE A, FOOTNOTES TO SCHEDULE A AND REAL ESTATE TAXES sections in Part I of the Plan for a more complete explanation.

## INTRODUCTION

This is an Offering Plan for the sale of condominium apartments at 40 Douglass Street, Brooklyn, New York. The purpose of this plan is to set forth fully all material terms of the offer. This plan may be amended from time to time if such amendment is filed with the New York State Department of Law. Any such amendments will be served on all prospective Purchasers who have executed a Purchase Agreement for any apartment, all Unit Owners, and all other persons entitled to service pursuant to 13 N.Y.C.R.R. § 20.3(d)(1).

The Sponsor of this offering is 40 Douglass LLC, a New York limited liability company formed on October 30, 2017 with offices located at 284 President Street, Brooklyn, New York 11231. The principals of the Sponsor are Jamie Grady, Joseph Calabrese, Joanne Mercaldi, Roger Mercaldi, Laura Boyd, and Joseph Boyd, of the same address. The Sponsor acquired title to the property on January 9, 2018 from Brian M. McDonald. Units will be conveyed free and clear of any mortgages, liens, or other encumbrances other than the easements disclosed in the Terms of Sale section of this Offering Plan. Units will be conveyed by delivery of a UNIT DEED as set forth in Part II of this Offering Plan.

The prices contained in this offering as set forth in SCHEDULE A are set by the Sponsor and are not subject to approval by the New York State Department of Law or any other governmental agency.

This Condominium will be subject to, and in compliance with, the New York State Condominium Act, Article 9-B of the New York Real Property Law.

This plan, including all schedules and exhibits submitted herewith, constitutes the entire Offering Plan. Copies of the plan and Parts A, B, C, and D of the exhibits will be available for inspection to potential purchasers and their attorneys at the office of the Sponsor indicated on the front cover of this Offering Plan, and the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, 21st Floor, New York, New York, without charge, and for copying, at a reasonable charge.

The Building will be constructed by Sponsor within the requirements of all applicable federal, state, and local codes and regulations governing accessibility to the disabled

including the ADAAG standard and Local Law 58/87. The Sponsor expects that construction will be complete on or before December 2020. The premises consist of a single four-story building with a below-grade cellar and containing, in aggregate, three (3) residential units. The units are duplex units. Unit A occupies the first and cellar floors of the Building; Unit B occupies the second floor and a portion of the third floor; Unit C occupies the balance of the third floor and the fourth floor of the Building. This is a new building. The property is located in the Cobble Hill section of Brooklyn.

Sponsor has obtained construction financing from Ontario Wealth Management Corporation, having an office at 2950 Keele Street, Suite 201, Toronto, Ontario (Canada) M3M 2H2 (hereinafter "Mortgagee"), to construct the Building. Sponsor will satisfy this loan at the time of the first unit closing. The Mortgagee has set no limits or requirements for Sponsor to sell rather than rent Units.

Sponsor is retaining the unconditional right to rent rather than sell Units after the Plan has been declared effective and the First Unit Closing has occurred. Until this Plan is abandoned, Sponsor will endeavor in good faith to sell, but makes no representation that it will execute Purchase Agreements to sell fifteen percent (15%) of the Units, which in this Plan constitutes one (1) Unit. In the event Sponsor has rented a Unit and, subsequently, sells the Unit pursuant to this Plan, such sale of the Unit will provide that it will be sold in "as is" condition, except for any applicable warranties expressly provided in this Plan.

On the Effective Date of this Offering Plan as hereinafter described, Sponsor will by Declaration of Condominium recorded in the Office of the City Register of the City of New York submit the Property to Article 9-B of the Real Property Law of the State of New York (as amended, the "Condominium Act"). The proposed Declaration is set forth in Part II of this Plan. The Declaration, together with the By-Laws of the Condominium, will be recorded by Sponsor at its sole cost and expense prior to its conveyance of title to the first Unit.

This offering is made only to individuals over the age of 18.

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

owners have an unrestricted right to lease, sell or mortgage units. Use of units is limited to residential use and appurtenant home office use.

The Plan delivered to prospective purchasers contains all the material terms of the transaction, and is presented in two Parts in one volume. Part I sets forth a general description of the Plan, including the relevant provisions of various agreements known as the Project Documents. Part II contains a detailed physical description of the Condominium, together with copies of the forms of many of the documents that will affect the use, resale, or mortgaging of each Unit. Both Parts, including all schedules and exhibits, constitute the entire offer of Sponsor. These documents should be reviewed carefully by each prospective Purchaser and his or her attorney prior to signing a Purchase Agreement. Copies of the Plan, all exhibits to the Plan, and Project Documents are available for inspection by prospective purchasers and their attorneys at the on-site offices of the Sponsor, and are also available for inspection and copying at a reasonable fee at the New York State Department of Law, 28 Liberty Street, New York, New York.

Ownership of a Condominium Unit resembles in many ways ownership of a private home. Basic aspects of condominium ownership include:

- (1) Each purchaser owns his/her unit outright and is entitled to exclusive possession of such unit. Each purchaser also has an interest in, and a right to use, common elements and exclusive right to use limited common elements of the building. However, each unit owner is obligated to comply with the Declaration, By Laws, rules and regulations, and any other requirements of the Board of Managers.
- (2) Common elements are parts of the Property which, in addition to his/her own Unit, a Unit Owner owns in common with the owners of all other Units, such as entryways, stairways, hallways, utility areas, and similar elements of the building that serve all Unit Owners. A Unit Owner will share the non-exclusive right to use the Common Elements with all other unit owners.

Limited Common Elements are those areas appurtenant to a particular Unit or Units, the use of which is restricted to the owner(s) of such Unit or Units, but which are not owned by such unit owner(s). Thus, in this condominium, Unit A will have the rear yard measuring approximately 787 square feet allocated as a limited common element. Unit B will have a balcony measuring approximately 64 square feet located at the second floor, a cellar storage closet measuring approximately 60

square feet, and a rooftop terrace of approximately 300 square feet, allocated a limited common elements. Unit C will have a balcony located at the third floor and measuring approximately 64 square feet and a cellar storage closet measuring approximately 60 square feet allocated as limited common elements. Unit C will also have a fourth floor terrace and a rooftop terrace, together totaling approximately 619 square feet, allocated as limited common elements. No noxious or flammable materials can be stored in these cellar storage closets. Limited common elements and cellar spaces may not be used as a bedroom, living room, or dining room, or for any other use construed as “habitable space” as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove. The existence of violations on the building may result in fines and prevent the Residential Unit Owners from being unable to sell or refinance their Units.

Unit A is a duplex unit that includes recreational space at the cellar of the Building. As with other uninhabitable spaces, this cellar space may not be used as a bedroom, living room, or dining room, or for any other use construed as “habitable space” as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove. The existence of violations on the building may result in fines and prevent the Residential Unit Owners from being unable to sell or refinance their Units.

(3) After filing of the Declaration, each unit will be separately taxed and may be separately mortgaged; each unit owner may deduct from adjusted gross income for income tax purposes real estate taxes and mortgage interest. No unit owner will be responsible for payment of, or any lien arising out of nonpayment of, real estate taxes assessed against any other unit in the building.

(4) Each Unit Owner may vote for the members of the Board of Managers, which is the group elected by unit owners to operate the Condominium. The Board of Managers will set common charges based on cash needs of building operation, decide on special assessments, and, in general, make all decisions necessary to run the building.

(5) Each unit owner must pay common charges in accordance with the New York Condominium Act (Real Property Law Sections 339 (i) and (m)), and any

applicable state or local law. The common charges payable under the By-Laws will be based strictly on the projected cash requirements of ownership and operation of the Property and may include an allowance for contingencies, replacements, and/or repairs. Furthermore, the Board of Managers may impose special assessments in order to meet emergencies, contingencies, or other unforeseen events, which will become the financial obligation of each purchaser of a Condominium Apartment. These assessments will be levied in direct proportion to the percentage of common interest allocated to each apartment.

(6) Individual unit owners are responsible for repairs to and maintenance within their own condominium units. Individual purchasers should explore obtaining insurance coverage, which would be at their own cost and expense, to insure them for such risks as fire and casualty losses in their apartments to their personal contents therein, as well as liability insurance for each occurrence that might occur within their respective apartments. Otherwise, unit owners will not be covered for risks such as fire and casualty losses within their apartments. The condominium Board of Managers is not obligated to repair and maintain individual apartments, nor provide casualty and/or liability insurance for occurrences that may occur in individual apartments.

(7) Unit owners are responsible for maintenance and repairs to their individual units.

(8) The condominium Board does not have the right to approve or disapprove Purchasers, so there is no limit on the number of owners who may purchase for investment rather than personal occupancy. There may always be a substantial percentage of owners who are non-residents.

(9) Each unit owner is obligated to comply with the DECLARATION, the BY-LAWS, rules and regulations, and any other requirements of the Board of Managers.

The purchase prices, estimated common charges, and estimated real estate taxes for the first year of Condominium operation are set forth in SCHEDULE A. The projected budget for the first year of Condominium operation is set forth in SCHEDULE B.

While the Sponsor will endeavor in good faith to sell all units, Sponsor is not limiting the conditions under which it will rent rather than sell units. There is no commitment

to sell more units than the 15% necessary to declare the plan effective, which in this Plan constitutes one (1) unit. Owner-Occupants, therefore, may never gain effective control and management of the condominium. There are no requirements or restrictions on renting imposed by a construction lender. Additionally, the By-Laws do not include a provision that after expiration of the initial Sponsor Control period, a majority of the Board of Managers must be Owner-Occupants or member of an owner occupant's household who are unrelated to the Sponsor and its Principals. Owner-Occupants and non-resident owners, including the Sponsor, may have inherent conflicts on how the Condominium should be managed because of their different reasons for purchasing, i.e., purchase as a home, as opposed to purchase as an investment.

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

## **DESCRIPTION OF PROPERTY AND IMPROVEMENTS**

The structure which is the subject of this Offering Plan will consist of a single building composed of four stories and a cellar, and containing, in aggregate, three (3) residential units. This project is located in the Cobble Hill section of the Borough of Brooklyn, New York. The property is located on the south side of Douglass Street between Smith Street and Court Street, and has a land area of approximately 2,500 square feet. The street address of the Property is 40 Douglass Street. The entrance to the Building is through the ground floor fronting on Douglass Street. The Building is not a designated landmark nor is it located in a landmark district.

This is a new building constructed in compliance with Class I-B non-combustible construction classification. After completion of construction, the Sponsor will apply for a temporary or final Certificate of Occupancy from the New York City Department of Buildings. The Sponsor and its principals will obtain a temporary Certificate of Occupancy prior to the First Unit Closing and will seek to obtain a final Certificate of Occupancy within two (2) years of the issuance of the first temporary Certificate of Occupancy for the Building, barring delays caused by *force majeure* or other reasons beyond the control of Sponsor. The Building is expected to be substantially completed on or before December of 2020.

All cabinetry and fixtures in kitchens and baths in the units will be new. Sponsor will install in each residential unit a refrigerator, Liebherr model HC2082 or equivalent, range, Bertazzoni model MAST305GASXE or equivalent, hood, Bertazzoni model KTV30PR01X or equivalent, dishwasher, Bosch model SHVM63W53N or equivalent, and microwave, Bosch model HMC54151UC or equivalent. Sponsor will also install in each unit a front loading washer and dryer, LG models WM3700HVA and DLEX3700V, respectively, or their equivalents. The Sponsor reserves the right to provide fixtures and appliances by a variety of manufacturers of equal or better quality. "Equal or better quality" shall mean comparable or better quality as recognized by industry standards for performance, efficiency, longevity, and/or classifications, as applicable. To the extent the Purchaser elects to install other appliances in the unit, same will represent an additional cost of purchasing the unit. There will be no common storage space or recreational facilities. Please see ARCHITECT'S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION located in Part II of this Offering Plan.

Unit Owners, subject to any rules which the Board may promulgate, will have use of the bicycle room located in the cellar of the Building as a Common Element. The

mechanical room located in the cellar is accessible to service all units in the Building. Please see ARCHITECT'S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION located in Part II of this Offering Plan.

Limited Common Elements are those areas appurtenant to a particular Unit or Units, the use of which is restricted to the owner(s) of such Unit or Units, but which are not owned by such unit owner(s). Thus, in this condominium, the Units will have the following areas allocated as Limited Common Elements:

- Unit A: the rear yard of the premises;
- Unit B: a second floor balcony, a cellar storage closet;
- Unit C: a third floor balcony, a cellar storage closet; a fourth floor terrace, a rooftop terrace.

Limited common elements and cellar spaces, whether designated for storage or for recreational use, may not be used as a bedroom, living room, or dining room, or for any other use construed as "habitable space" as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove. The existence of violations on the building may result in fines and prevent the Residential Unit Owners from being able to sell or refinance their Units.

Unit A includes recreational space at the cellar of the Building. This space may not be used as a bedroom, living room, or dining room, or for any other use construed as "habitable space" as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove.

The unit owner is responsible for keeping safety warning devices (i.e., smoke detector and carbon monoxide detector) operational. Unit owners may perform all standard repair and maintenance items within their apartments and standard home improvement items without permission of the Board of Managers. Unit owners may also repair or replace fixtures, equipment, cabinetry, flooring, sheetrock, etc., without permission of the Board of Managers.

If a child under eleven (11) years old resides in a unit or visits a unit for an extended period of time, the owner of that unit will be required, at his/her own cost and expense,

to install child safety window guards on all windows in conformity with applicable New York City Administrative Code sections, and shall not remove them until permitted by applicable law. Failure to do so may create great risk to the life and health of such child, and result in the imposition of a violation against the building, which would be the responsibility of the unit owner to cure.

The Board of Managers will have access for inspection and repair and may regulate any one or more of the following aspects of construction:

1. Time periods during which work is permitted;
2. The manner in which construction degree will be handled;
3. Measures which must be taken to prevent compromising the security of the building during construction;
4. Interruption of services during construction;
5. Liability insurance for contractors during construction.

The building Certificate of Occupancy and applicable zoning rules do not allow the construction of anything on the roof. Any roof warranty may be voided by improper use of the roof. Any damage occurring to the roof shall be the sole responsibility of the Condominium and/or any such Unit Owner causing such damage, and will need to be repaired at the Condominium or such Unit Owner's sole cost and expense as determined by the Board of Managers.

The Sponsor will complete the work set forth in this plan relating to the building, and the apartments contained therein, in accordance with all applicable zoning and building laws, including, but not limited to, the Building Code of the City of New York, the New York City Administrative Code and the Zoning Resolution of 1961 as amended, and subject to procurement of all applicable and proper permits which are required, if any. All residential units will be equipped with operable smoke and carbon monoxide detectors as required by the New York City Administrative Code.

The Sponsor hereby adopts the detailed description of property and building condition set forth in the section entitled ARCHITECT'S REPORT/DESCRIPTION OF PROPERTY AND BUILDING CONDITION in Part II of this Offering Plan. With reference to such material, a licensed architect or engineer prepared the description of property and building condition contained therein. Prospective purchasers are urged to refer to said section for a more complete understanding of the physical condition of the subject property and building.

Sponsor reserves the right to amend or modify, in any way, the Plans and Specifications (including without limitation, changing materials, appliances, equipment, fixtures and other construction details) and to substitute in place of any materials, appliances, equipment, and fixtures as set forth, materials, appliances, equipment and of equal or better quality, provided that any necessary approval of any governmental authority having jurisdiction is first obtained.

## LOCATION AND AREA INFORMATION

The premises are located in the residential neighborhood of Cobble Hill in the northwestern portion of Brooklyn. The Building is located on the south side of Douglass Street between Smith Street and Court Street. Cobble Hill is adjacent to Brooklyn Heights to the north, Boerum Hill to the east, Carroll Gardens to the south, and the Columbia Street Waterfront District to the west. The small neighborhood is bounded by Atlantic Avenue to the north, Smith Street to the east, and the Brooklyn Queens Expressway to the west. The Building is not a designated landmark. Much of the neighborhood features nineteenth-century houses, including Greek and Romanesque Revival and Italianate style row houses, built along 19th-century brick-and-stone tree-lined streets.

Court Street and Smith Street are Cobble Hill's two main commercial streets. Both still feature generations-old family-run stores and businesses such as Italian meat markets and barber shops, side-by-side with new stores, restaurants and cafes. The northern part of Smith Street is known as Brooklyn's "Restaurant Row" due to the large number of bars and cafes that opened on the street during the late 1990s and early 2000s. Atlantic Avenue to the north features one of New York City's largest collections of Middle-Eastern shops, some of which have been there for decades.

The premises are served principally by the F and G subway lines via the Bergen Street and Carroll Street stations one-quarter mile from the premises. The Hoyt & Schermerhorn Street station for the A, C and G subway lines is one-half mile away. The 2, 3, 4 and 5 subway lines may be accessed at the Borough Hall station slightly more than one-half mile distant. Local bus service is provided by the B61 bus, which runs east and west along Atlantic Avenue, the B57 bus running south along Court Street and north along Smith Street, and the B65 at Bergen Street.

The property is situated in City Council District 33 and Community District 306. The designated school district for the subject premises is District 15. Students living at the subject premises will be eligible to attend elementary school PS 029, John M. Harrigan, located one-quarter mile from the premises, which serves pre-K through elementary grades, and/or other District 15 schools, or students may choose among the area's independent schools. The Carroll Gardens Branch of the Brooklyn Public Library is located at 396 Clinton Street one-quarter mile from the premises. The post office servicing the property is the Times Plaza Station located at Atlantic Avenue, Brooklyn, New York 11217.

Police, Fire, Water, Sanitation, snow removal, and road maintenance are provided by the City of New York, and all charges (except water) are incorporated into City taxes. The property is located within the 76th Police Precinct located at 191 Union Street, Brooklyn, New York 11231. The property is equidistant from Engine 226 located at 409 State Street, Engine 224 located at 274 Hicks Street, and Battalion 32, Engine 202, Ladder 101 located at 31 Richards Street. Each fire house is slightly more than one-half mile from the premises. Nearby local medical centers include the Brooklyn Hospital Center – Downtown Campus located at 121 Dekalb Avenue located approximately one mile from the premises, and New York Methodist Hospital located at 506 Sixth Street in Park Slope Brooklyn. There are houses of worship of most major denominations within walking distance of the premises, a few of which include St. Agnes Roman Catholic Church, St. Paul's Episcopal Church, Congregation Baith Israel Anshei Emes, and Christ Church Cobble Hill.

The Building is located in Zoning District R6B which permits residential use as-of-right. R6B districts are often traditional row house districts, which preserve the scale and streetscape of neighborhoods of four-story attached buildings developed during the 19th century. Many of these houses are set back from the street with stoops and small front yards that are typical of Brooklyn's "brownstone" neighborhoods, such as Park Slope, Boerum Hill and Bedford Stuyvesant ne. The subject building complies with all zoning and use requirements for residential uses.

Neither the Sponsor nor principals of the Sponsor own any undeveloped areas adjacent to or directly across the street from the property.

After the date of submission of this Offering Plan to the Department of Law, Sponsor makes no guarantee or representation as to the continued operation of any of the services or amenities disclosed in this section of the Plan.

Any changes in the aforementioned information that occurs while sales are continuing must be disclosed in an amendment with 30 days after the information becomes known to the Sponsor.

**SCHEDULE A**  
**PURCHASE PRICES AND ALLOCATION OF COMMON INTEREST**

40 Douglass Street, Brooklyn, New York

First Year of Operation

July 1, 2021 - June 30, 2022

| <u>Unit</u> | Habitable<br>Sq.<br><u>Ftg.</u><br>(1A) | Uninhab.<br>Sq.<br><u>Ftg.</u><br>(1B) | Bdms/<br><u>Bths</u><br>(2) | % of<br>Common<br><u>Interest</u><br>(3) | Offering<br><u>Price</u><br>(4) | Estimated<br>Monthly<br>Common<br><u>Charges</u><br>(5) | Estimated<br>Annual<br>Common<br><u>Charges</u><br>(6) | Estimated<br>Monthly<br>Real Estate<br><u>Taxes</u><br>(7) | Estimated<br>Annual<br>Real Estate<br><u>Taxes</u><br>(8) | Estimated<br>Monthly<br>Carrying<br><u>Charges</u><br>(9) |
|-------------|-----------------------------------------|----------------------------------------|-----------------------------|------------------------------------------|---------------------------------|---------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------|
| A           | 1,294.00                                | 1,921.00                               | 2/3                         | 29.63%                                   | \$2,825,000.00                  | \$318.13                                                | \$3,817.52                                             | \$756.83                                                   | \$9,082.00                                                | \$1,074.96                                                |
| B           | 2,017.00                                | 424.00                                 | 3/3                         | 35.45%                                   | \$2,800,000.00                  | \$380.66                                                | \$4,567.90                                             | \$578.83                                                   | \$6,946.00                                                | \$959.49                                                  |
| C           | 1,865.00                                | 905.00                                 | 3/2.5                       | 34.92%                                   | \$2,950,000.00                  | \$374.97                                                | \$4,499.58                                             | \$639.83                                                   | \$7,678.00                                                | \$1,014.80                                                |
| TOTALS      | 5,176.00                                | 3,250.00                               |                             | 100.00%                                  | \$8,575,000.00                  | \$1,167.00                                              | \$12,885.00                                            | \$1,975.50                                                 | \$23,706.00                                               | \$3,049.25                                                |

Notes:

- 1) Unit A includes approximately 1,134 square feet of recreational space at the cellar of the building, which is included in the "uninhabitable square footage" measurement above. This space may not be used as a bedroom, living room, or dining room, or for any other use construed as "habitable space" as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove.
- 2) Limited Common Elements for each unit are included in the "uninhabitable square footage" measurements above. Unit A will have the rear yard measuring approximately 787 square feet allocated as a Limited Common Element. Unit B will have a balcony measuring approximately 64 square feet located at the second floor, a cellar storage closet of approximately 60 square feet, and a rooftop terrace of approximately 300 square feet allocated as limited common elements. Unit C will have a balcony located at the third floor measuring approximately 64 square feet, a cellar storage closet of approximately 60 square feet, and a fourth floor terrace and a rooftop terrace, together totaling approximately 619 square feet, allocated as limited common elements. For Unit C the "uninhabitable square footage" listed in SCHEDULE A also includes a bulkhead of approximately 162 square feet. Cellar space, roof top and balconies and terraces may not legally be used as a bedroom living room, or dining room, or for any other use construed as "habitable space" as defined by the New York City Building Code. To do so may result in a violation being placed against the building which would be the obligation of the Unit Owner to remove.
- 3) In addition to the offering prices above, there are additional closing costs assessed against each unit, such document preparation fees, payment of transfer taxes, reimbursement fee, working capital fund contribution equal to two months' common charges, etc. Additionally, Purchasers will pay their own title insurance costs, recording charges, and mortgage recording taxes. Please see the CLOSING COSTS AND ADJUSTMENTS section of this Offering Plan for a more complete explanation.
- 4) The estimates of real estate taxes stated above are based on the projected assessed value of the property following the completion of construction.

This post-completion assessment is based on current New York City Tax rates and assessment procedures. Purchasers should be aware that 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. Thus, actual real estate taxes may vary from the calculations included herein.

## FOOTNOTES TO SCHEDULE A

1A. The square footage in SCHEDULE A is calculated by the standard mathematical formula of multiplying the length of an area by the width of an area and adding together for each apartment all of the areas contained therein. The square footage of each unit is based upon a “gross” square footage calculation that is calculated as follows: horizontally, approximately to the outside face of the exterior walls of the building. Dimensions shall be to the centerline of demising walls dividing units from each other. Dimensions shall be to the property line at lot line walls. Stairs internal to the units shall be included in the area calculations. As a result, the actual area comprising the condominium unit is significantly less than listed in Schedule A. The estimated square footage of each unit is based on the FLOOR PLANS and ARCHITECT'S DESCRIPTION OF PROPERTY set forth in Part II of this Offering Plan and may vary within reasonable tolerances from the “as-built” square footage as subsequently described in the condominium Declaration.

1B. The uninhabitable square footage listed for each unit is the aggregate footage of Limited Common Elements, such as balconies and terraces, if any, and cellar floor spaces. These spaces may not be used as a bedroom, living room, or dining room, or for any other use construed as “habitable space” as defined by the New York City Building Code, nor may this space be rented out. Doing so may result in a violation being issued against the Building and a fine imposed, which will be the responsibility of the Unit Owner to correct and remove.

2. The room count is based on the method suggested by the Real Estate Board of New York. This method counts each fully partitioned room as one room, and each bathroom containing a sink, toilet, and shower or bath as a full bathroom. Multi-use rooms, such as living/dining rooms are counted as a single room. Baths that do not include a tub or shower are counted as half baths. See the section entitled DESCRIPTION OF PROPERTY AND BUILDING CONDITION, and FLOOR PLANS, both of which are included in Part II of this Offering Plan, for a more complete description of each apartment. Additionally, the square footage set forth in SCHEDULE A is approximate, and may differ, from the square footage specified for this unit in Schedule B to the Condominium Declaration.

3. The determination of percentages of Common Interest allocated to each unit is based upon floor area, subject to such other items of relative value as the location of the apartment within the building; uniqueness of the apartment; the availability of common

elements for exclusive or shared use; and the overall dimensions of a particular unit, as per Section 339(i)(1)(iv) of the New York State Real Property Law.

4. Across-the-board changes in unit prices, advertised price changes, and increases in individual unit prices may be made only by an amendment duly filed with the New York State Department of Law; however, individually negotiated reductions in the purchase price of a unit may be made without prior amendment. Purchasers will also incur certain closing costs in connection with the purchase of their unit. See CHANGES IN PRICES AND UNITS and CLOSING COSTS AND ADJUSTMENTS sections of this Offering Plan.

5. Projected Common Charges for the first year of operation include only those expenses which are enumerated in SCHEDULE B. Common Charges do not include such expenses as repairs to the interior of the owner's unit, and the owner's individual gas, electricity, cable, Internet service, air conditioning, and telephone expenses; individual costs for heat and hot water for each apartment are set forth in SCHEDULE B1 of this Offering Plan. Moreover, if the purchaser should obtain financing for the purchase, the debt service on that loan will be an additional expense not covered by the Common Charges. Common Charges are arrived at by allocating to each unit a share of the Monthly Charges proportionate to the Common Interest that such unit bears in the condominium.

6. Annual common charges are calculated based on the monthly common charges projected against each unit.

7. After the condominium is divided into individual tax lots, each lot will be separately taxed for New York City property tax purposes. A unit owner will not be responsible for the payment of, nor will the unit be subject to, any lien arising from the nonpayment of taxes on other units.

The anticipated date of completion of construction is December of 2020.

Calculations of Real Estate Taxes are arrived at by applying the current tax rate to the assessed value, and then allocating the resulting taxes in direct proportion to the allocation of common interest. Sponsor has obtained an estimate of post-completion assessed value of the property for real estate tax purposes from SJP Tax Consultants Inc. ("SJP"), 149-41 14 Avenue, Whitestone, New York 11357, who has rendered an opinion letter included in this Plan. SJP is of the opinion that the property will be designated by the New York City Department of Finance as a Tax Class 2 property upon completion of construction and will pay taxes based on the Tax Class 2 tax rate. Accordingly, SJP has provided projections of

the resulting estimated real estate taxes for the first post-construction tax year of 2021/22 as provided in SCHEDULE A. For Tax Class 2, the post-completion assessed value set forth by Sponsor's expert and used for calculations is the \$190,061.00, resulting in an estimated tax liability of \$23,706.00. The tax rate used for the calculation is 12.473%, which is the 2019/20 tax rate for Class 2 properties. Unit owners shall be entitled to deduct real property taxes paid on the unit for income tax purposes subject to the limits imposed by the Tax Cuts and Jobs Act of 2017. This federal law limits the itemized deduction to \$10,000.00 for the total of state and local property taxes and income or sales taxes. This maximum applies to both single and married filers. See REAL ESTATE TAX PROJECTION LETTER hereinafter set forth for a more complete discussion.

The real estate taxes for the first year of condominium operation are provided in SCHEDULE A. All figures are post-completion estimates based on the projected assessed value of the property following the completion of construction. No guarantee or warranty is or can be made that the tax rates will not change in the future, or that the assessed value of the property, when determined, will not rise or fall due to changes in assessment practices and policies, or changes in market value that are reflected in the assessed value. Prospective Purchasers should also note that the taxes listed for each unit in Schedule A are allocated in proportion to the allocation of Common Interest that each unit bears in relation to all other units of its type, and are proportional to said unit's Common Interest in the whole condominium. The DOF is not bound by this method of allocation, and may allocate on a different basis.

Until the units are separately assessed for real estate taxes, real estate taxes for the property shall be paid by the condominium (although no such payment is provided for in Schedule B) as a general common expense and each unit owner shall pay additional common charges (which are not reflected in the estimated common charges for the unit as set forth in Schedule A) equal to the applicable unit's pro rata share, based upon the common interest of the applicable unit, of such real estate taxes for the property for such period. If real estate taxes are charged to unit owners as additional common charges for any period with respect to which the units shall not have been separately assessed, then a unit owner's payment of such additional common charges shall be in lieu of payment by such unit owner to the city of real estate taxes (which otherwise might have been assessed against the unit as a separate tax lot) for such period. As set forth in the By-laws, after the units are separately assessed for real estate tax purposes, the Board of Managers as agent of the unit owners shall promptly assess any unit owners who have underpaid real estate taxes with respect to their units based on the assessed valuation of such units and shall likewise reimburse any unit owners for overpayment of taxes. Although the condominium will be obligated to pay

the real estate taxes for the property until the units are separately assessed, it is possible that Purchaser's lender may, nevertheless, require that Purchaser escrow with such lender for real estate taxes for such period.

8. Annual real estate taxes are calculated based on the monthly real estate taxes projected against each unit.

Residential unit owners who itemize their deductions should, for federal income tax purposes, be entitled to a deduction for real estate taxes in the year in which same are paid or accrued subject to the limits imposed by the Tax Cuts and Jobs Act of 2017. This federal law limits the itemized deduction to \$10,000.00 for the total of state and local property taxes and income or sales taxes. This maximum applies to both single and married filers. Potential purchasers are strongly advised to consult with their own tax experts with regard to deductibility of their real estate taxes. The projected tax deduction may vary in future years due to changes in the interest rate on the 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, tax rates, or the method of assessing real property; or from changes in the tax laws governing deductibility of mortgage interest and real estate taxes. Please see the TAX OPINION LETTER set forth in this Offering Plan for a more complete explanation. Carrying charges do not include certain costs for which the unit owner is responsible, such as repairs to the interior of the unit, separate metered gas, electricity, hot water, heat, air conditioning, and cable television service. Please see SCHEDULE B-1 for estimates of individual utility charges.

9. Estimated monthly carrying charges are composed of the monthly common charges and the monthly real estate taxes projected against each unit.

## **SCHEDULE B**

### **BUDGET FOR FIRST YEAR OF CONDOMINIUM OPERATION**

July 1, 2021 – June 30, 2022

#### **INCOME (1)**

|                |           |
|----------------|-----------|
| Common Charges | \$ 13,994 |
|----------------|-----------|

#### **EXPENSES**

|                        |        |
|------------------------|--------|
| Heat and Hot Water (1) | \$ -0- |
|------------------------|--------|

|                 |        |
|-----------------|--------|
| Electricity (2) | \$ 812 |
|-----------------|--------|

|                     |          |
|---------------------|----------|
| Water and Sewer (3) | \$ 4,182 |
|---------------------|----------|

|               |          |
|---------------|----------|
| Insurance (4) | \$ 3,100 |
|---------------|----------|

|                               |          |
|-------------------------------|----------|
| Legal and Accounting Fees (5) | \$ 2,500 |
|-------------------------------|----------|

|                |        |
|----------------|--------|
| Management (6) | \$ -0- |
|----------------|--------|

|           |        |
|-----------|--------|
| Labor (7) | \$ -0- |
|-----------|--------|

|                                              |          |
|----------------------------------------------|----------|
| Repairs, Maintenance, Services, Supplies (8) | \$ 1,500 |
|----------------------------------------------|----------|

|                           |        |
|---------------------------|--------|
| Miscellaneous Reserve (9) | \$ 500 |
|---------------------------|--------|

|                           |                 |
|---------------------------|-----------------|
| Capital Reserve Fund (10) | <u>\$ 1,400</u> |
|---------------------------|-----------------|

|       |           |
|-------|-----------|
| Total | \$ 13,994 |
|-------|-----------|

Note: All figures are rounded to the nearest dollar.

IF THE ACTUAL OR ANTICIPATED DATE OF COMMENCEMENT OF CONDOMINIUM OPERATION IS TO BE DELAYED MORE THAN SIX (6) MONTHS BEYOND THE BUDGET YEAR PROJECTED IN THE OFFERING PLAN, THE PLAN WILL BE AMENDED TO INCLUDE A REVISED BUDGET DISCLOSING CURRENT PROJECTIONS. IF SUCH AMENDED PROJECTION EXCEEDS ORIGINAL PROJECTIONS BY 25% OR MORE, THE SPONSORS MUST OFFER ALL PURCHASERS THE RIGHT TO RESCIND. SUCH PURCHASERS SHALL EXERCISE SAID RIGHT OF RESCISSION IN A REASONABLE PERIOD OF TIME THAT IS NOT LESS THAN 15 DAYS AFTER THE DATE OF PRESENTATION OF SAID AMENDED BUDGET, WHETHER OR NOT SPONSOR OFFERS TO GUARANTEE THE PREVIOUS BUDGET PROJECTION. SPONSORS MUST RETURN ANY DEPOSIT OR DOWN-PAYMENT TO A PURCHASER WHO RESCINDS WITHIN 10 DAYS AFTER RECEIPT OF NOTICE OF RESCISSION.

THE SPONSORS MAY NOT DECLARE THE PLAN EFFECTIVE WHERE THERE ARE MATERIAL CHANGES TO THE BUDGET IF THESE CHANGES HAVE NOT BEEN DISCLOSED IN A DULY FILED AMENDMENT TO THE PLAN.

ADDITIONALLY, PURCHASERS WILL BE OFFERED THE OPPORTUNITY TO RESCIND THEIR PURCHASE AGREEMENT IN THE EVENT CLOSING DOES NOT OCCUR WITHIN 12 MONTHS FROM THE COMMENCEMENT DATE OF THE PROJECTED BUDGET.

PURCHASERS SHOULD NOTE THAT EVEN IF THE FIRST UNIT CLOSING OCCURS ON OR BEFORE THE DATE PROJECTED AS THE DATE OF COMMENCEMENT OF THE OPERATION AT THE TIME THE PURCHASE AGREEMENT WAS ENTERED INTO OR WITHIN THE TWELVE MONTH PERIOD THEREAFTER, THE CLOSING OF SUBSEQUENT UNITS MAY BE SUBSTANTIALLY DELAYED BEYOND SUCH DATES IF A TCO HAS NOT BEEN ISSUED FOR SUCH UNITS OR FOR THE FLOOR ON WHICH SUCH UNITS ARE LOCATED. IN SUCH CASE, PROVIDED THAT SPONSOR IS DILIGENTLY PURSUING COMPLETION OF CONSTRUCTION AND THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY AND IS OTHERWISE IN COMPLIANCE WITH ITS OBLIGATIONS UNDER THE PLAN, PURCHASER WILL NOT BE ENTITLED TO A RIGHT OF RESCISSION OR TO MAKE CLAIMS AGAINST THE SPONSOR FOR DAMAGES OR LOSSES AS A RESULT OF SUCH DELAYS AND WILL NOT BE EXCUSED FROM PAYING THE FULL PURCHASE PRICE FOR THE UNIT. PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER SUCH RISKS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A UNIT. IN THE EVENT, HOWEVER, THAT SPONSOR CANNOT CONVEY TITLE TO THE UNIT ON OR BEFORE TWELVE (12) MONTHS FROM THE DATE OF THE PURCHASE AGREEMENT, AFFECTED PURCHASERS WILL BE OFFERED A RIGHT OF RESCISSION.

## FOOTNOTES TO SCHEDULE B

1. Heat and hot water for each unit are provided by separate systems serving each unit. Each purchaser will pay separately for the heat and hot water supplied to his/her unit. No gas heat is provided to the common areas of the building. See SCHEDULE B1 hereinafter set forth for an estimate of individual heat and hot water charges.

2. Electricity: The Sponsor has obtained an estimate, dated April 21, 2020, from Concord Consulting Engineering PC, 12 Tree Top Terrace, Morristown, New Jersey 07960, of approximately 2,850 kilowatt hours per year of electrical usage for the common areas. The projection in SCHEDULE B is based on a rate of approximately 0.24 cents per kilowatt hour, and includes a 10% allowance for inflation, and the cost of all applicable state and local taxes. Purchasers shall be responsible for individual utility costs for their own apartments.

3. Water and Sewer: Water is supplied to the building by the City of New York through a single water meter serving the entire building. Concord Consulting Engineering PC projects annual water and sewer costs based on estimated usage of 350 hundred cubic feet per year, at the combined rate of \$10.86 per 100 cubic feet of water consumed. The projected annual cost for water and sewer service in SCHEDULE B includes a 10% allowance for inflation.

4. Insurance: Sponsor has received a letter dated April 29, 2020 from McMan Price Agency, Inc., 828 Front Street, P.O. Box 2065, Greenport, New York 11944 estimating the cost of coverage for the building via a package policy through Erie Insurance Co. in the following coverage amounts:

|                 |                                                           |
|-----------------|-----------------------------------------------------------|
| Building.....   | \$1,600,000 "All Risk" agreed amount<br>Replacement Value |
| Liability.....  | \$1,000,000 Per Occurrence<br>\$2,000,000 Aggregate       |
| Deductible..... | \$2,500                                                   |

The foregoing insurance, including the public liability coverage included therein, will be in effect at the time of closing. Such insurance coverage meets the requirements of the Sponsor's mortgage lender. The insurance company has advised the Sponsor via letter that in its opinion, the amount of coverage is adequate to rebuild the building structure if totally destroyed by any insured peril; however, the policy does not guaranty the replacement of individual fixture and improvements installed by individual unit owners. This policy waives a standard co-insurance clause, so that no insured thereunder shall be a co-insurer. The policy will:

- (i) provide that each unit owner will be an additional insured;
- (ii) provide that there will be no cancellation without notice to the Board of Managers and individual unit owners;
- (iii) will waive subrogation;
- (iv) will waive invalidity because of the acts of the insured and individual unit owners; and
- (v) will waive pro rata reduction if individual unit owners obtain additional individual coverage.

The policy does not include fidelity bond or flood insurance, or officers and directors liability coverage which can be provided at extra cost. Purchasers are advised of the desirability of obtaining additional insurance, at their own cost and expense, to cover such risk as fire and casualty losses to unit contents, replacements, additions, up-graded fixtures and improvements, and liability coverage for occurrences within the unit or, where applicable, on the limited common elements pertinent to the units.

5. Legal and Accounting Fees: This figure is based on an estimate dated November 11, 2019 from Thomas J. Salvato, CPA PLLC, 34 Brompton Road, Garden City, New York 11530, for preparation of a certified financial statement for the first year of operation and City, State and Federal tax returns, which estimate was \$2,500.00. No legal services are anticipated during the first year of operation. In the event legal services are required, same will represent an additional cost that would result in a concomitant increase in common charges.

6. Due to the size of the building, it is expected that no superintendent will be employed. Should the Board of Managers elect at any time to employ the services of a superintendent, this will represent an additional cost, which would require a concomitant increase in the common charges of approximately 2% to 3%. Activities which the unit

owners will need to perform in the event no superintendent is employed include trash removal, general cleaning, bulb replacement, touch-up painting and minor repairs. .

7. Due to the size of the building, it is expected that the building will be self-managing. During the Sponsor control period, the Sponsor controlled Board will manage the Condominium at no cost to the Condominium. After Sponsor transfers control of the Condominium to unit owners, should the Board of Managers elect at any time to employ the services of a managing agent, this will represent an additional cost of approximately 6%-10% of the annual operating budget, which would require a concomitant increase in the common charges.

Activities which the unit owners will need to perform in the event no managing agent is employed include maintenance of checking and savings accounts for the condominium; collection of monthly common charges; payment of all condominium common charges; processing of all individual unit sales; supervision and payment of building employees; building maintenance; review and resolution of any problems arising in the day-to-day operation of the building; compliance with all government laws and regulations affecting building operation, ownership and maintenance; filing of annual tax returns; enforcement of condominium-adopted rules and regulations including enforcement of maintenance obligations; seizure and sale of delinquent units; and response to individual unit owner complaints, questions or issues. In addition to the foregoing, any additional issues or problems arising out of the operation, maintenance, ownership, or occupancy of the building, will need to be dealt with by the Board of Managers.

8. Repairs, maintenance, services, supplies: The budgeted figure is based on normal maintenance and repairs to the common elements of the building and its systems and equipment, and includes items such as landscaping, garbage and recycling, snow removal, sprinkler inspection, fire alarm monitoring, inspections and testing. Insofar as this is a new building it is not anticipated that any major repairs will be required. Individual unit owners will be responsible for the cost of interior repairs, and decorations, and painting of their respective apartments.

9. The miscellaneous budgeted item is intended to provide a cushion for unforeseen costs and an opportunity for the condominium to accrue a reserve for future expense.

10. The projected item represents a reserve for capital expenditures for repair or replacement of major mechanical systems or structural elements of the building. The

capital reserve fund may not be used for regular operating expenses or to reduce the monthly common charges, in the event a need arises for capital expenditures such as renewal or replacement of building components or systems, or to remedy major building defects, and the reserve fund is inadequate to pay for those expenditures, it will be necessary to raise needed capital either by assessing individual units or owners for the cost of such expenditures. However, in the Sponsors' estimation, and in view of the fact that all major building systems and components are new, it is anticipated that there will be no needed capital expenditures within the five (5) years immediately following the first closing of a condominium unit under the Offering Plan.

10. Sponsor is not creating a fund on closing to be used as a reserve for capital expenditures. In the Sponsors' estimation, and in view of the fact that all major building systems and components are new, it is anticipated that there will be no needed capital expenditures within the five (5) years immediately following the first closing of a condominium unit under the Offering Plan. However, in the event a need arises for capital expenditures such as renewal or replacement of building components or systems, or to remedy major building defects, and the reserve fund is inadequate to pay for those expenditures, it will be necessary to raise needed capital either by assessing individual units or owners for the cost of such expenditures.

**SCHEDULE B1**

July 1, 2021 – June 30, 2022

Electricity is individually metered to each residential unit for heat, hot water, and cooking, as well as for the operation of kitchen appliances, home electronics, lighting, air conditioning and laundry equipment. Concord Consulting Engineering PC, 12 Tree Top Terrace, Morristown, New Jersey 07960, provided the estimates below for the projected cost of providing electricity for each residential unit. Electricity costs are based on a rate of approximately \$0.24 per kilowatt hour, and assume a total cost of \$2.00 per square feet for 1,500 square feet of living space.

| <u>Unit</u> | <u>Sq. Ft.</u> | <u>\$/Sq. Ft.</u> | <u>Annual<br/>Cost</u> | <u>Monthly<br/>Cost</u> |
|-------------|----------------|-------------------|------------------------|-------------------------|
| A           | 1,600          | \$2.00            | \$3,200                | \$266.67                |
| B           | 1,150          | \$2.00            | \$2,300                | \$191.67                |
| C           | 1,300          | \$2.00            | \$2,600                | \$216.67                |

Taxes have been included.

The cost of providing electricity is merely an estimate. Electricity usage is highly variable, and is dependent both on the number of people located in the apartment and their pattern of usage.

## **CHANGES IN PRICES AND UNITS**

Across-the-board increases or decreases in unit prices, advertised price changes, and increases in individual unit prices may be made only by an amendment duly filed with the New York State Department of Law. However, prices are negotiable, and Sponsor may enter into an agreement with a Purchaser to sell one or more units at prices lower than those set forth in SCHEDULE A without filing an amendment prior to entering such agreement, as per FOOTNOTES TO SCHEDULE A. Sponsor must file an amendment to the Plan if Sponsor intends to decrease prices affecting one or more lines of units or models of units, of if Sponsor plans to advertise the prices of units, or if Sponsor increases the price of any unit prior to sale to a purchaser.

No change will be made in the size or number of 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 Plan and, when applicable, to the Declaration. A decrease in area of less than 5% or less could be deemed material and could thus trigger purchaser's consent right. However, there is a rebuttable presumption that an area that is diminished by 5% or less is not material. If a Purchase Agreement has been executed and delivered to the Sponsor for that unit and the Purchaser is not in default, then no material change will be made in unit size, layout, or percentage of common interest unless the affected Purchaser consents. No material change will be made in the size, and no material adverse change will be made in the quality, of common elements unless all purchasers consent. No change of any type set forth in this paragraph shall be made except by amendment duly filed with the New York State Department of Law.



**6/30/2020**

**COMPLIANCE WITH REAL PROPERTY LAW 339(i)(1)**

40 Douglass LLC  
located at 284 President Street  
Brooklyn, NY 11231.

Dear Sir or Madam:

You have requested an opinion from us with regards to your allocation of common interest to units in your proposed condominium at 284 President Street, Brooklyn, New York, with Section 339-(i)(1) of the New York Real Property Law. You have informed us that the method of allocation chosen is based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the condominium, the uniqueness of the unit, the availability of common elements for exclusive or shared use, and the overall dimensions of the particular unit. Based on our review of the foregoing factors, we have concluded that the proposed allocation of common interest to individual units is in compliance with Section 339(i)(1)(iv) of the New York State Real Property Law.

I have been a licensed real estate broker for in excess of twenty years and have managed approximately eleven total buildings in this area over ten years with extensive experience in the sale, management, and rental of cooperative and condominium units in Kings County. We have previously participated in the preparation of individual unit value appraisals for the purpose of inclusion in offering plans for the sales thereof. We are not, in any way, associated with you or any other participant in the project, and have no beneficial interest in your business, or in profitability of the project. This is an opinion only as to the relative value of each unit in relation to the value of the project as a whole; is strictly based on the information provided to us in such reasonable inquiries as to the validity thereof as we deemed appropriate under the circumstances; and, is not intended as a guarantee of the actual value of any individual unit. We consent to the inclusion of this letter in your Offering Plan.

Sincerely,

Hal Lehrman  
Licensed Real Estate Broker

## INTERIM LEASE

The Sponsor may, at Sponsor's option, extend an interim lease to any purchaser who has executed a contract of sale for a unit at the subject premises and is not in default thereon. It shall be in the Sponsor's sole and exclusive discretion as to whether or not to offer an interim lease. The Sponsor may, for any or for no reason, refuse to offer an interim lease to any purchaser. The Sponsor and its agents will not discriminate against any person on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability, marital status, or any other grounds prohibited by law. Interim leases or short term leases shall not be offered to any party who has not executed a Purchase Agreement for a unit. The interim lease shall not create a landlord-tenant relationship but shall be deemed the use and occupancy agreement and part of the contract. No rental protection laws are applicable to the interim leases. The interim lease will provide that in the event the contract is cancelled or the Plan is abandoned the Interim Lessee will move out on 30 days written notice. The interim lease will further provide that an uncured default under the Purchase Agreement is a default under the interim lease, and that an uncured default under the interim lease is a default under the Purchase Agreement. Notwithstanding the foregoing, before the Sponsor can utilize a default under the interim lease to declare a default under the Purchase Agreement, the Sponsor must either obtain an order of eviction or other judgment or order from a court or agency of competent jurisdiction against the interim lessee, unless the interim lessee has vacated the unit. The Sponsor must make a written demand for payment after default at least 30 days before forfeiture of the deposit may be declared. Interim lessee has 30 days to vacate the unit after receipt of written notice of a default, after delivery to the Sponsor of written notice of exercise of right of rescission, or after delivery to the purchaser of written notice that the Plan has been abandoned.

A person who takes possession of a unit prior to closing assumes the risk of losses not covered by insurance. Such person is also subject to the condominium smoking policy. New York City Local Law 147 went into effect on August 28, 2018 and requires buildings with three or more residential units to adopt written smoking policies. For condominiums such as the subject premises, the Board of Managers must adopt such a policy; the policy for this condominium is as follows: Pursuant to Local Law 147, the subject premises' smoking policy is consistent with the Smoke Free Air Act ("SFAA"), which is the current law governing smoking in class A multiple dwellings. This building prohibits smoking or using electronic cigarettes in common indoor areas of the

building. Smoking and electronic cigarette usage is permitted in private apartments, outdoor common areas, and outdoor limited common elements.

Any conflict between the Plan and the Interim Lease will be resolved in favor of the Plan. A SAMPLE INTERIM LEASE is located in Part II of this Offering Plan.

## **PROCEDURE TO PURCHASE**

Persons desiring to purchase condominium units will be required to execute a Purchase Agreement in the form contained in Part II of this Plan and return it to the selling agent, together with a check in the amount of 10% of the purchase price as a contract deposit, drawn to the order of BRICKNER MAKOW, LLP IOLA ACCOUNT. Sponsors reserve the right to accept a lesser contract deposit to accommodate Purchasers, but in no case will the contract deposit be less than 5% of the purchase price as set forth in Schedule A.

The prospective purchaser must have the Offering Plan and all filed amendments in his/her possession at least three (3) business days prior to executing the Purchase Agreement. In the event Purchaser has not had said Offering Plan in his possession for at least three (3) business days prior to execution, Purchaser may rescind the Purchase Agreement by mailing Notice of Rescission to Sponsors or selling agent, or by hand delivering notice, within seven (7) days after executing same. Notice by mail will be effective if it is postmarked within seven (7) days of executing Purchase Agreement. Purchase Agreements shall not be binding on any party until accepted by the Sponsors. Within twenty (20) days after the prospective purchaser has delivered to the selling agent a signed Purchase Agreement together with the required contract deposit, the Sponsors must either accept the Purchase Agreement and return a fully executed counterpart, or reject the Purchase Agreement and refund in full any contract deposit taken. If the Sponsors take no action, the Purchase Agreement will be deemed rejected. This Offering Plan will expire twelve (12) months from the date on which it is accepted by the New York State Department of Law, unless extended by a duly filed amendment hereto.

All down payments will be placed in an account in conformity with the disclosures contained in this Plan.

The Sponsors will comply with the escrow and trust fund requirements of General Business Law Sections 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto.

Any provision of any contract or agreement, whether oral or in writing, by which a purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of the Attorney General's regulations concerning escrow/trust funds shall prevail over any purchase. Purchasers shall not be

obligated to pay any legal or other expenses of the Sponsors in connection with the establishment, maintenance, or defense of obligations arising from the handling or disposition of trust funds.

The law firm of Brickner Makow LLP, with an address at 292 Warren Street, Brooklyn, New York, New York 11201, telephone number 718-624-1550, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated the following attorneys to serve as signatories Tracy E. Makow and Howard M. Brickner. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

The Escrow Agent has established the Escrow Account at JPMorgan Chase Bank, located at 192 Smith Street, in the State of New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled Brickner Makow LLP IOLA Trust Account ("Escrow Account"). The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured. If Purchasers have accounts at the same bank that holds Sponsor's escrowed funds, Purchasers' funds at the escrow bank factor into the \$250,000 insurance limit.

All Deposits made by 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 BRICKNER MAKOW, LLP IOLA ACCOUNT.

All deposits made by Purchaser prior to closing will be placed, within five (5) business days after the Agreement is signed by all necessary parties, in a segregated special Escrow Account. Any Deposits made for upgrades, extras, or custom work shall be initially deposited into the Escrow Account, and released in accordance with the Escrow Agreement.

The interest rate for all Deposits made into the Escrow Account (if the Escrow Account is interest-bearing) shall be the prevailing rate for such accounts. Interest shall begin to accrue upon placing the Deposit into the Escrow Account. Since the escrow account is an IOLA account, all interest earned thereon shall be paid to or credited to the State of New York. No fees of any kind may be deducted from the Escrow Account, and the Sponsors shall bear all costs associated with the maintenance of the Escrow Account.

The Purchase Agreement is attached hereto in Part II of the Offering Plan. The relevant escrow trust fund provisions are included in Section 5 of the Purchase Agreement, which incorporates all of the provision of the Escrow Agreement set forth in Part II of this Offering Plan. The Purchase Agreement must be executed by the Purchaser, Seller, and the Escrow Agent.

Within five (5) business days after the Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Purchase Agreement and place the Deposit into the Escrow Account. Within ten (10) days of placing the Deposit in the escrow account, the Escrow Agent shall notify the Purchaser that such funds have been placed in the Bank by providing written notice to Purchaser and Sponsor, confirming the Deposit. The notice shall provide the account number and the name and address of the bank where the account is located..

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the Deposit, he or she may cancel the Purchase Agreement within ninety (90) days after tender of the Purchase Agreement and Deposit to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, 21st Floor, New York, NY 10005. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser.

Nothing contained herein shall diminish or impair the Sponsor's statutory obligation to each Purchaser pursuant to GBL section 352-h to hold in trust all deposits, advances or payments made in connection with the offer until consummation of the transaction with such Purchaser. Consummation of the Plan does not relieve Sponsor of its obligations pursuant to GBL section 352-h. All Deposits to the Escrow Account, except for advances made for upgrades, extras, or custom work received in connection with the Purchase Agreement, are and shall continue to be the Purchaser's money, and may not be comingled with any other money or pledged or hypothecated by Sponsors, as per GBL section 352-h, nor shall such funds become a part of the estate of the Sponsor or the escrow agent upon any bankruptcy, incapacity or death.

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

The escrow agent shall release the Deposit if so directed:

- (a) pursuant to terms and conditions set forth in the Escrow Agreement and Purchase Agreement upon closing of title to the unit; or
- (b) in a subsequent writing signed by both Sponsors and Purchaser; or
- (c) by a final, non-appealable judgment or order of a court of competent jurisdiction.

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

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

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

The Department of Law may perform random reviews and audits of any records involving the Escrow Account to determine compliance with all applicable statutes and regulations. The Escrow Agent will maintain all records concerning the escrow account for seven years after the release of funds. Upon the dissolution of any law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of them or by the successor firm and shall notify the Department of Law of such transfer. Before funds are transferred to a new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to the new account, the escrow agent, and the escrow agreement as was originally provided. Set forth in Part II of this Offering Plan is a copy of the Escrow Agreement between the Sponsors and the Escrowee that incorporates the terms of the Attorney General's regulations.

Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

Sponsor agrees to defend, indemnify and hold Escrow Agent harmless from and against all costs, claims, expenses and damages incurred in connection with or arising out of this Agreement or the performance or non-performance of Escrow Agent's duties under this Agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of this Agreement or involving gross negligence of Escrow Agent. This indemnity includes, without limitation, disbursements and attorneys' fees either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by Escrow Agent to itself. ESCROW AGENT shall have the right to represent the Sponsor in any lawsuit. The Sponsor is not compensating the depository bank. The Sponsor is not compensating the ESCROW AGENT for acting as such.

The Sponsor may apply to the Attorney General to use security in the form of surety bonds or a letter of credit, in accordance with the regulations of the New York State Department of Law, in lieu of escrow of such funds. In the event the Sponsors elect to use such alternative security, an amendment to that effect will be filed in the Offering Plan fully complying with all provisions of the Department of Law for proof of satisfactory insurance of said funds.

Risk of loss from fire or other casualty remains with the Sponsors until title has passed unless and until the purchaser is given the right of possession of that unit pursuant to a written agreement with the Sponsors. The Sponsors will restore the damaged unit to conditions represented in the Offering Plan before a purchaser will be obligated to close the sale of the unit. The Sponsors will notify a purchaser whether or not they (the Sponsors) will repair any damage resulting from a casualty prior to the closing of a unit within 15 days of said casualty. If Sponsors decide to restore the unit, the Sponsors shall have 15 days in which to restore the unit or such longer time as is required to accommodate the delivery of materials that must be ordered to complete any such repairs. If the Sponsors decide not to restore the unit, the purchaser in such case would have the right to rescind. An interim lessee assumes the risk of loss to his/her personal property that is not covered by the condominium's insurance, and, unless the casualty resulted from the act of the Sponsors or those acting under the Sponsors, the interim lessee would be obligated to close the sale of the unit despite such damage to the personal property. Purchasers and interim lessees are advised to confer with an insurance adviser regarding obtaining property and liability insurance.

Purchase Agreements will be contingent on Purchaser obtaining a firm written commitment for financing. Purchaser shall have 40 days from the date on which a signed and executed Purchase Agreement is delivered to such Purchaser within which to obtain such financing. If a Purchaser fails to obtain a firm written commitment for financing within such 40 day period, and fails to notify Sponsors' attorney within five days thereafter, **TIME BEING OF THE ESSENCE THERETO**, Purchaser shall conclusively be deemed to have waived the financing contingency and will be required to proceed to closing, or forfeit his/her down payment, whether or not a mortgage commitment is obtained. If Purchaser, after a good faith attempt to do so, fails to obtain a firm written commitment for financing, and notifies Sponsors within the prescribed time period, then Sponsors will return the down payment or deposit within 10 days after receipt of such notice. In the event Purchaser obtains a firm written commitment for financing, and the terms of such commitment are changed prior to closing, such change in terms shall not be an allowable reason for Purchaser to cancel the contract. Similarly, if the commitment expires prior to closing, Purchaser shall be under a good faith duty to take all required actions necessary to extend such commitment, including the payment of any extension fee required by the lending institution. However, in the event Purchaser has made such good faith effort to extend the commitment and is unable to do so, then, provided that Purchaser notifies Sponsors within 10 days after receipt of a notice from a lending institution that it will not under any circumstances extend the commitment, and that Purchaser is exercising his right to rescind the

contract, Sponsors will return the down payment within 10 days of Sponsors' receipt of Purchaser's notification of exercise of right to rescind.

Certain provisions of the Purchase Agreement are "**time of the essence**." This means that failure strictly to comply with the time requirements of said provisions may result in the Purchaser losing his right to complete the purchase, and forfeiting their contract deposit hereunder. Thus, a Purchaser who fails to cure a default within thirty (30) days after receipt of written notice of said default will both have the Purchase Agreement canceled and lose their contract deposit; however, Sponsor must make written demand for payment after default at least 30 days before forfeiture the deposit may be declared. In the event of a default by Purchaser: (i) the apportionment of those items set forth in the Purchase Agreement shall be made as of the originally established Closing Date rather than as of the date the Closing actually occurs, and; (ii) Purchaser shall pay Sponsor at Closing interest on the unpaid balance of the purchase price from the originally established Closing Date to the actual Closing Date an amount equal to 12% per annum; and (iii) Purchaser shall pay Sponsor's counsel \$350.00 for each adjournment of a Closing; and (iv) Purchaser shall pay Sponsor's counsel \$350.00 for preparation of a notice of default. The rate of interest herein will not exceed New York State usury laws. Similarly, a Purchaser who fails to notify the Sponsor in the event he has failed to obtain mortgage financing within forty (40) days after executing the Purchase Agreement will be required to proceed to closing, notwithstanding the fact that purchaser has failed to obtain mortgage financing, and if such purchaser fails to proceed to closing, the down payment may be retained by the Sponsor.

After the Plan has been declared effective, the Sponsor will fix dates for closing title to all 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. Such notice will be served in compliance with the Attorney General's rules no less than 30 days prior to the closing date set therein. Sponsor will permit Purchasers to waive this 30 day provision by delivering to Sponsor's attorney written notice that Purchaser wishes to close prior to the expiration of the 30 day notice period. While no such waiver is included herein, Sponsor reserves the right to include such waiver in a subsequent amendment.

The first closing of a Unit is expected to occur on or about July 1, 2021. Purchasers will be offered a right of rescission if: (i) the actual date of closing of title to the first unit; or (ii) the projected date of closing of title to the first unit occurs later than June 30, 2022, twelve months after the projected date for the first closing. If the Plan is amended to

provide for a later projected date for the first closing, purchasers will be entitled to an offer of rescission if the first closing occurs more than 12 months beyond that amended, later date.

On closing, purchaser will be required to sign a Power of Attorney in favor of the Board of Managers as otherwise set forth in this Offering Plan. If Purchaser refuses at closing to sign such a Power of Attorney, the Purchase Agreement shall be deemed canceled and all rights of the parties thereunder shall terminate except that the amount of the purchaser's contract deposit shall be paid over to the Sponsors as liquidated damages.

Purchasers should note that even if the first closing occurs on or before the date projected as the date of commencement of operation at the time the purchase agreement was entered into or within the twelve (12) month period thereafter, the closing of subsequent units may be substantially delayed beyond such dates if a temporary certificate of occupancy has not been issued for such units or for the floor on which such units are located. In such case, provided that the Sponsors are diligently pursuing completion of construction and issuance of a certificate of occupancy and is otherwise in compliance with its obligations under the plan, a purchaser will not be entitled to a right of rescission or to make claims against the Sponsors for damages or losses as a result of such delays and will not be excused from paying the full purchase price for the unit. **PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER THE POSSIBILITY OF SUCH DELAYS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A UNIT.** In the event, however, that Sponsors cannot convey title to the unit on or before twelve (12) months from the date of the purchase agreement, affected purchasers will be offered a right of rescission.

The Purchase Agreement may not contain, or be modified to contain, a provision waiving Purchaser's rights or abrogating Sponsors' obligations under the Offering Plan or Article 23-A of the General Business Law. Any conflict between the Purchase Agreement and the Offering Plan shall be resolved in favor of the Offering Plan. Sponsors will not permit the assignment or transfer of Purchase Agreements.

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

### **EFFECTIVE DATE**

The offer to sell embodied in this Offering Plan is contingent upon the Plan being declared effective in accord with its terms and conditions, and the terms and conditions imposed by law.

For offerings of five or fewer combined residential and commercial units, the Plan shall be declared effective by personal service of notice on each Purchaser, or by commencement of service by mail stating that the Plan was declared effective on a particular date, the percentage used to declare the Plan effective, and a list of units being counted to meet the minimum percentage under the terms of the Plan to declare it effective. To clarify, for offerings of five or fewer units, a closing may occur without the Sponsor submitting an amendment to the Department of Law to declare the Plan effective; however, Sponsor must comply with 13 NYCRR §20.5(e) when submitting a post-closing amendment pursuant to 13 NYCRR §20.5(f). This Offering Plan may be declared effective by notice, as the Condominium consists of a total of three (3) residential units.

The Plan may be declared effective upon the execution of Purchase Agreements for 15% (in number, not common interest) of the residential units in the building to bona fide purchasers, including investors. A minimum of one (1) residential unit must be sold to declare the Plan effective. The count of Purchase Agreements towards the minimum number for effectiveness shall not include those: signed by Purchasers granted a right of rescission which has neither expired nor been waived; a Purchaser who has not had at least three (3) business days to review the Offering Plan and all filed amendments prior to executing a Purchase Agreement or had less than seven (7) days after delivering an executed Purchase Agreement together with the required deposit to rescind the Purchase Agreement and have the full deposit refunded immediately; with any Purchaser who is the Sponsor, the selling agent, or the managing agent, or is a principal for 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, employee, 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.

Notwithstanding the fact that not all Purchasers used for purposes of declaring the Plan effective may actually close, Sponsor must re-declare the Plan effective in order to consummate the Offering Plan in accordance with 13 N.Y.C.R.R. § 20.1(c)(6). If all Purchase

Agreements are either rescinded or terminated prior to the date of first unit closing, regardless of whether the condominium declaration has been recorded, then Sponsor must re-declare the Offering Plan effective.

The Plan must be declared effective upon the execution of Purchase Agreements for 80% (in number, not common interest) of the residential units, which, in the case of this Plan means three (3) residential units. Prior to the sale of 80% of such Units, or prior to being declared effective, the Plan may be abandoned by the Sponsor at its option. The Sponsor cannot abandon the plan for any judgments or liens against the property resulting from acts of the Sponsor or any of its principals or which are known to the Sponsor on the date of the plan. If the Sponsor abandons the plan, the Sponsor will return all monies paid by Purchasers, including down payments and the cost of custom work, if any, together with interest earned, if any, within ten business days. The Sponsor will also file with the New York State Department of Law an amendment abandoning the Plan and form RS-3, detailing why the Plan was abandoned, and explaining all disbursements of funds. If payments under Purchase Agreements have been received, the amount of such funds and the manner and time when these funds will be returned to purchasers must be disclosed. The funds must be returned within five (5) days after the amendment abandoning the Plan has been accepted for filing.

The Sponsor may not abandon the Plan after it has been declared effective for any reason other than: a defect in title which cannot be cured without litigation, or expenditure of an amount in excess of one-half (1/2) of one percent (1%) of the total offering price, or substantial damage or destruction of the building by fire or other casualty which cannot be cured for less than one-half (1/2) of one percent (1%) of the total offering price, or the taking of any material portion of the property by condemnation or eminent domain; however, any stated dollar amount relied upon as a basis for abandonment after effectiveness must exclude any attorney's fees. Such title defects, violations, or substantial damage or destruction of the building by fire or other casualty, or determinations of any authority or regulatory association, which exist on the date of the presentation of the Plan, and are either known to the Sponsor, or are a matter of public record, shall be excluded from calculations under this section. Additionally, any dollar amount relied on as a basis for abandonment after effectiveness must exclude any attorney's fees. The Sponsor may also not abandon the plan on account of any judgments or liens against the property resulting from the acts of the Sponsor or any of its Principals, or which are known to the Sponsor or any of its Principals on the date of presentation of the Plan.

## TERMS OF SALE

Upon closing, Sponsor will deliver to Purchaser a Bargain and Sale Deed with Covenants Against Grantor's Acts in the proper form for recording, as set forth in Part II of this Offering Plan. Title, together with the appurtenant interest in the Common Elements, will be conveyed at closing free and clear of all liens, encumbrances, and title exceptions other than the easement set forth in the aforementioned Deed, the Condominium Declaration, and any state of facts an accurate survey may show, provided same does not render title unmarketable.

Risk of loss from fire or other casualty remains with the Sponsor until title is passed, unless and until the Purchaser is given the right of possession of a unit pursuant to a written agreement with the Sponsor. Upon Purchaser acquiring the right of possession of the unit, all risk of loss to the unit and its contents, to the extent not covered by building insurance, passes to Purchaser, and Sponsor shall not thereafter be responsible for repairing any damage. No closing will occur unless and until a partial, temporary, or permanent Certificate of Occupancy for the unit to be closed has been issued.

All personal property owned by the Sponsor or Owner of the property that is located within the unit on the date the Purchase Agreement is signed, or located within the Common Elements on the date the Declaration is filed, is included in the conveyance unless specifically excepted elsewhere in this Offering Plan.

A closing will take place only concurrently with the issuance of a temporary or permanent Certificate of Occupancy for the entire project, or issuance of a partial, temporary, or permanent Certificate of Occupancy for the unit closed or the building in which the unit is located.

The Declaration, By-Laws and Floor Plans for the Condominium, and such other documents as are required by law, will be recorded with the Office of the City Register of the City of New York in accordance with the New York Condominium Act prior to the first conveyance of title to a unit.

Sponsor has obtained construction financing from Ontario Wealth Management Corporation, having an office at 2950 Keele Street, Suite 201, Toronto, Ontario (Canada) M3M 2H2 (the "Mortgage Lender"). Sponsor will satisfy this loan at the time of the first unit closing. The Mortgage Lender has set no limits or requirements for Sponsor to sell rather than rent Units.

## CLOSING COSTS AND ADJUSTMENTS

As set forth in the Purchase Agreement, the purchaser will pay the following estimated closing costs at the time of Closing of Title for the purchaser's Unit. These estimates are based on current costs and charges, which are subject to change:

(a) If a purchaser elects to obtain fee title insurance, the purchaser will pay the premium thereof which will vary depending upon the Purchase Price of the Unit. Purchasers are free to utilize the title insurance company of their choice without incurring any Sponsor-imposed additional fees. Rates set by the New York Board of Title Underwriters are currently \$3,155.00 on a Purchase Price of \$1,000,000.00 and approximately \$2.57 for each additional thousand dollars or fraction thereof. Mortgage title insurance is currently \$445.00 on a mortgage of \$500,001.00 and \$0.70 for each additional thousand dollars or fraction thereof. Where mortgage and fee title are obtained simultaneously the charge for mortgage insurance is reduced to 30% of the usual applicable rate, up to the amount of the fee insurance; the amounts provided reflect this.

(b) Fees for recording the Deed and Power of Attorney are \$42.00 for the first two pages, plus \$5.00 per page for every page thereafter, and a \$50.00 service charge per instrument. Additionally, there is a \$25.00 charge for recording the Real Property Transfer Tax Return along with the deed. General fees for recording the mortgage include a base charge of \$42.00, plus \$5.00 per page, and therefore may vary in accordance with the instrument to be recorded. A general sample estimate is provided for illustrative purposes.

(c) If the purchaser obtains a mortgage loan, the purchaser will pay a mortgage tax of 2.05% of the principal amount of the mortgage if the mortgage is under \$500,000.00; under New York State Law the lending institution is required to pay 0.25%, so the effective rate of a residential mortgage under \$500,000.00 will be 1.8%. If the residential mortgage is \$500,000.00 or over the rate will be 2.175%, minus the 0.25% lending institution's contribution, for a mortgage tax rate of 1.925%. If a mortgage tax credit is or becomes available pursuant to Section 339-ee(2) of the Condominium Act, such credit will inure to the benefit of the Sponsor. Accordingly, at closing, the Purchaser will reimburse the Sponsor for any mortgage tax credit allowed, and will pay the balance of the mortgage recording tax as provided by law.

- (d) All legal costs, fees, and expenses charged by the purchaser's attorney will be the sole responsibility of each purchaser.
- (e) New York City Real Property Transfer taxes, currently one (1%) percent of the Purchase Price of up to \$499,999, and 1.425% for those priced \$500,000 or above, will be the sole responsibility of the purchaser. Sellers in general are obligated to pay the New York City Real Property transfer tax; however, the Purchaser will be obligated here to pay the New York City Real Property transfer tax, and therefore such payment by the Purchaser is deemed an additional consideration to the Seller, and so is in and of itself taxable, which will result in a "tax on a tax" effect.
- (f) New York State Documentary Stamp taxes, presently \$4.00 per \$1,000.00 of the Purchase Price of a Unit less existing and continuing mortgage, will be the sole responsibility of the purchaser. Sellers in general are obligated to pay the New York State Documentary Stamp tax; however, the Purchaser here will be obligated to pay the New York City Documentary Stamp tax, and therefore such payment by the Purchaser is deemed additional consideration to the Seller, and so is in and of itself taxable, which will result in a "tax on a tax" effect.
- (g) At closing, each purchaser will be required to make a contribution to the Working Capital Fund in an amount equal to two months' common charges for the Unit purchased.
- (h) All costs with regard to any mortgage that the purchaser places on his/her Unit (i.e., loan origination fees, commitment fees, application fees, appraisal fees, credit reports, survey fees, bank attorney fees, tax service fees, bank document preparation fees, etc.) will be the purchaser's own and sole responsibility.
- (i) All closings will occur in Kings County at a location designated by the Sponsor's Attorney. Under no circumstances will Sponsor be required to close at any place other than a location designated by Sponsor's Attorney. In the event that the Purchaser requests and the Sponsor consents to a closing outside of a location designated by Sponsor's Attorney, there will be an attendance fee of \$500.00 for closings in Kings or New York counties or \$1,000 for closings in any other location.
- (j) Purchasers of an apartment with a purchase price of \$1,000,000.00 or higher will be required to pay the New York State Mansion Tax. Effective July 1, 2019, conveyances of

residential real property with a consideration of two million (\$2,000,000.00) dollars or more will be subject to a supplemental Mansion Tax. Below is a table showing the break-down of the supplemental Mansion Tax charges for residential real property with considerations up to \$9,999,999.99:

| Consideration                  | New York Mansion Tax (including supplemental Mansion Tax) |
|--------------------------------|-----------------------------------------------------------|
| \$1,000,000.00 or less         | Not subject to tax                                        |
| \$1,000,000.00 to 1,999,999.99 | 1%                                                        |
| \$2,000,000.00 to 2,999,999.99 | 1.25%                                                     |
| \$3,000,000.00 to 4,999,999.99 | 1.5%                                                      |
| \$5,000,000.00 to 9,999,999.99 | 2.25%                                                     |

(k) On March 31, 2019, New York State announced additions to the base real estate transfer tax (“transfer tax”) and established a new supplemental tax (“supplemental tax”) on certain conveyances of real property within New York State occurring after July 1, 2019. These amended tax rates apply only to conveyances of real property in cities with a population of 1 million or more (which includes only New York City as of this date). The additional transfer tax applies only to conveyances of residential real property when the consideration for the conveyance is \$3 million or more, and conveyances of any other property when the consideration for the conveyance is \$2 million or more. For conveyances of residential real property where the consideration for the entire conveyance is \$3 million or more, the new base tax rate is \$1.25 for each \$500 or fractional part thereof. The new supplemental tax applies only to conveyances of residential real property when the consideration for the conveyance is \$2 million or more. For conveyances of residential real property where the entire conveyance amount is at least \$2 million but less than \$3 million, the new supplemental tax is one-quarter of one percent (0.25%). For conveyances of residential real property where the entire conveyance amount is at least \$3 million but less than \$5 million, the new supplemental tax is one-half of one percent (0.5%). Purchasers shall be responsible for paying the base transfer tax and supplemental tax. The purchaser’s payment of the base transfer tax will itself be deemed additional consideration, resulting in a “tax on a tax” effect. Purchasers are advised to consult with their own counsel concerning transfer taxes and other closing costs.

**ALL COSTS FOR RECORDING CHARGES, MORTGAGE, TRANSFER, AND OTHER TAXES ARE SUBJECT TO CHANGE. THESE CHARGES ARE NOT SET BY**

**THE SPONSOR, AND SPONSOR SHALL NOT BE LIABLE ON ACCOUNT OF ANY INCREASE IN SUCH CHARGES.**

Purchasers of a Residential Unit shall pay to the Sponsor's Attorney at closing a fee of \$3,000.00 for the preparation of closing documents, plus \$150 for the preparation of ACRIS documents, \$250 to fill out and forward an appraisal and lender questionnaire. Additionally, in the event that the Sponsor, in its sole and absolute discretion, grants its consent to a request by a Purchaser to assign a Purchase Agreement, the Purchaser shall pay an additional fee of \$1,500 to Sponsor's counsel for preparation and processing of the assignment. In the event the Sponsor shall enter into an Interim Lease with the purchaser, there will be an additional fee of \$750.00 per unit. In the event that a purchaser defaults, a fee of \$350 will be charged for each default letter. The above closing fees are cumulative to the extent applicable to an individual closing.

If the Units have not been separately assessed for real estate tax purposes prior to the Closing of Title to the first Unit, the Sponsor will place in escrow, in the name of the Board of Managers, an amount equal to the unpaid real estate taxes (or estimates thereof based on current assessments) due for the next ensuing six months (or until the Units are separately assessed, whichever is shorter), provided, however, that as closings occur, the portion of such funds held in escrow that represent the portion allocable to the Unit being sold shall be released, and interest accrued on such escrow, if any, shall inure to the benefit of, and belong to, the Sponsor. The Board of Managers will pay the real estate taxes from the escrow account when taxes are due and payable. The Sponsor shall be entitled to reimbursement from unit owners for any taxes paid on their behalf.

At closing, each purchaser will pay to the Sponsor a reimbursement fee of \$2,500.00 towards the costs of preparing and filing the Offering Plan.

Except as specifically set forth herein, the Sponsor will pay all costs and expenses incurred in connection with this Plan, the creation of the Condominium, and the initial sale of Units.

A numerical example of closing costs allocable to a typical Unit is set forth on the next page. Said example is for illustrative purposes only and is not intended to be comprehensive.

## SAMPLE CLOSING COSTS

\$2,800,000.00 Purchase Price

\$2,240,000.00 Mortgage

|                                           |              |
|-------------------------------------------|--------------|
| Mortgage and Fee Title Insurance          | \$ 7,781.00  |
| Deed and Unit Power of Attorney Recording | \$ 1,663.00  |
| Mortgage Recording Fee                    | \$ 350.00    |
| Mortgage Recording Tax                    | \$ 43,090.00 |
| New York City Transfer Tax                | \$ 40,628.18 |
| New York State Documentary Stamp Tax      | \$ 11,404.40 |
| "Mansion" Tax                             | \$ 35,638.75 |
| Working Capital Fund Contribution         | \$ 723.88    |
| Reimbursement Fee                         | \$ 2,500.00  |
| Appraisal and Lender Questionnaire Fee    | \$ 250.00    |
| ACRIS Preparation Fee                     | \$ 150.00    |
| Document Preparation Fee                  | \$ 3,000.00  |

TOTAL: \$147,179.21

In addition to the foregoing, the purchaser will, of course, be responsible for any fees charged by his/her own bank and his/her own Attorney, and any additional fees incurred because of Default or failure to close at the scheduled time or place. Purchaser will also be responsible for the mortgage recording charge which is calculated on the basis of \$42.00 for the first two pages, plus \$5.00 per page for every page thereafter, and a \$50.00 service charge.

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

The Sponsor will complete the work set forth in this Plan relating to the building and the apartments contained therein in conformity with and in accordance with the Building Plans and Specifications, and all applicable New York City Administrative Code requirements, and subject to procurement of all applicable and proper permits required, if any. Insofar as this is a newly constructed building, there are currently no housing, building, or fire department violations; however, in the event any housing, building, or fire department violations arise prior to closing, all such violations, if any, will be cured prior to closing. The Sponsor may substitute equipment and materials, as long as substitutions are for "Equal or better quality," which shall mean comparable or better quality as recognized by industry standards for performance, efficiency, longevity and/or classifications, as applicable. The Sponsor may make changes in design, layout, size and arrangement of apartments, location of buildings or units, other improvements, or common elements, so long as such changes do not adversely affect the public areas, or affect the percentage of common interest, or adversely affect the value of, any unit to which title has been closed, or for which a Purchase Agreement has been fully executed and is in effect, unless all affected purchasers consent in writing to such change, and all affected purchasers are given the opportunity to rescind their contracts and receive a refund of the deposit or down payment given to the Sponsor. All representations under the Offering Plan, and all obligations pursuant to the GBL, and any additional obligations under the Offering Plan that are to be performed subsequent to the closing date, will survive delivery of the Deed.

The Sponsor shall obtain a Temporary or Permanent Certificate of Occupancy prior to the closing of the first unit. If Temporary, the Sponsor shall continue to renew the Temporary Certificate of Occupancy until it procures the Permanent Certificate of Occupancy. If the first unit closing takes place prior to issuance of the Permanent Certificate of Occupancy, the Sponsor is required to maintain all deposits and funds in the special escrow account required by GBL section 352-e(2-b) unless the Sponsor's engineer, architect, or other qualified expert certifies that a lesser amount will reasonably be necessary to complete the work needed to obtain a Permanent Certificate of Occupancy, in which case the sum exceeding the amount so certified by the Sponsor's engineer, architect, or other qualified expert may be released from the special escrow account. Alternatively, the Sponsor must deposit with an escrow agent an

unconditional, irrevocable letter of credit, post a surety bond in the amount so certified, or provide other collateral acceptable to the Department of Law.

While the Sponsor will endeavor in good faith to sell all units, the Sponsor is retaining the unconditional right to rent rather than sell units after consummation of the Offering Plan. Thus, Sponsor may never sell more than the 15% of units required to declare the plan effective, which in this condominium is one (1) unit. As a result of this, the Plan may not result in the creation of a condominium in which a majority of the units are owned by owner-occupants or investors unrelated to the Sponsor. The condominium Board does not have the right to approve or disapprove Purchasers, so there is no limit on the number of owners who may purchase for investment rather than personal occupancy. There may always be a substantial percentage of owners who are non-residents. Owner-occupants and non-resident owners, including Sponsor or purchasers for investment, may have inherent conflict on how the condominium should be managed because of their different reasons for purchasing (i.e., purchase as home as opposed to purchase as investment).

The Sponsor gives no warranty as to materials or workmanship that shall survive sale of a unit, except as required by the New York State Housing Merchant Implied Warranty Law, located in Part II of this Offering Plan at pages HM1-HM7. New York State General Business Law requires the builder of new dwelling consisting of five stories or less to provide a warranty to the Purchaser as follows:

- (a) For one year, the home must be free from defects caused by workmanship or materials that do not meet the standards of the applicable building code; for the items not covered by code, the construction must be in accordance with locally accepted building practices.
- (b) For two years, the plumbing, electrical, heating, cooling and ventilation systems must be free from defects caused by unskillful installation.
- (c) For six years, the home must be free from physical defects in the structural elements (foundations, floors, walls, roof framing) which make it unsafe or unlivable.

The Housing Merchant Implied Warranty is also applicable to the common elements. In addition to, and notwithstanding any limitations set forth in the Housing Merchant Implied Warranty Law, Sponsor remains under a duty to construct the premises in

accordance with all applicable codes, filed plans, and specifications, and, for items not covered by local building codes, locally accepted building practices for such items. The Sponsor's obligation, regardless of any limitations in the warranty or in this offering plan, is to construct the premises in accordance with all applicable codes and filed plans and specifications, 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 representations under this Offering Plan, all obligations pursuant to the General Business Law, and such additional obligations under the Offering Plan that are specifically to be performed subsequent to the closing date, shall survive delivery of the deed.

Each prospective purchaser may have the building and apartments therein inspected by an architect or engineer of their own choosing, and at their own expense, to determine the quality of materials and workmanship.

Unless the Plan has been abandoned pursuant to the EFFECTIVE DATE section of this Offering Plan, Sponsor will repair any damage from casualty or other cause that occurs prior to the closing of a unit. A Purchaser is under the obligation to inspect the unit prior to closing. Sponsor will have no liability of any kind for any damage to a unit not reported prior to closing; except that Sponsor will continue to be liable for disclosures made in the Offering Plan, and has an ongoing obligation to build in accordance with the plans and specifications identified in the Offering Plan, and to perform any obligation imposed by applicable statute or regulation. There is no financial limitation on Sponsor's liability to perform its obligations under the Offering Plan. . With regard to damage to a unit which is reported prior to closing, Sponsor will, as set forth above, repair all such damage within thirty (30) days after closing (or such longer time as is required to accommodate the delivery of materials which must be ordered to complete any such repairs; such longer time must be within a reasonable period of time). In the event Sponsor fails to perform such obligation, Purchaser may enforce same in a court of competent jurisdiction.

The Sponsor will pay for the authorized and proper work involved in the conversion of the property that the Sponsor is obligated to complete under the Plan. All mechanics' liens that are lodged against the property by virtue of work done by the Sponsor, or on the Sponsor's behalf, will be promptly discharged or appropriately bonded. Sponsor guarantees payment of all common charges and assessments with respect to unsold units. Such guarantees will remain in effect until all units are sold. Sponsor warrants

and represents that it has adequate financial resources to meet its obligations with respect to any unsold unit.

The Sponsor agrees to pay all common charges, special assessments, and real estate taxes with regards to unsold units, and has financial resources to meet its obligations with respect to such unsold units, which source of funding includes both proceeds of the sale of units and existing financial resources of the Sponsor. No bond or other security has been furnished to secure Sponsor's obligations. In the event of dissolution or liquidation of the Sponsor, or transfer of 10 or more units or 20% or more of the total number of residential units in the condominium, the principals of the Sponsor will provide financially responsible entities or individuals who will assume the status and all of the obligations of the Sponsor for those units under the Offering Plan, applicable laws, or regulations.

The Sponsor will defend any suits or proceedings against the condominium arising out of the Sponsor's acts or omissions, and the Sponsor does hereby indemnify the condominium, the Board of Managers, and individual unit owners therefore. Nothing contained herein shall limit the rights of the condominium that are granted pursuant to law and statute.

Sponsor has obtained construction financing from Ontario Wealth Management Corporation, having an office at 2950 Keele Street, Suite 201, Toronto, Ontario (Canada) M3M 2H2 (the "Mortgage Lender"). Sponsor will satisfy this loan at the time of the first unit closing. The Mortgage Lender has set no limits or requirements for Sponsor to sell rather than rent Units.

In the event the work on the building as set forth herein is not fully completed at the time the building becomes occupied, the Sponsor will have the right to enter the premises to complete its obligations under this Plan. Such entry shall be conducted with 24 hours' advance notice as to scheduling, and in such a manner so as to produce a minimum of discomfort to those purchasers already in possession.

In the event the Sponsor finds it necessary to enter the property after closing of title to complete work, then such work will be performed between 8 A.M. and 6 P.M. on weekdays and non-holiday weekends, after having provided the unit owner with 24 hours' advance notice. Damage caused by such work will be repaired in a good and workmanlike manner at Sponsor's sole discretion.

Sponsor will secure, and provide at closing, an agreed amount replacement value multi-peril hazard policy which will prevent the Condominium from being a co-insurer. The cost of such policy will be paid by the Condominium and is provided for in SCHEDULE B. Sponsor also agrees to deliver a set of "as built" plans to the Board of Managers upon election of the first Board of Managers after closing of the first unit. Sponsor will assign any manufacturer's warranties with respective equipment and appliances installed in any individual unit to the unit owner, and with respect to equipment and appliances installed in the common elements, same will be assigned to the Board of Managers.

The property will be conveyed free and clear of all liens. Copies of the plans, exhibits and documents referred to herein shall be kept on file at the office of the Attorney for the sponsor for a period of six (6) years after filing of the Declaration of Condominium. No bond or other security has been furnished to secure Sponsor's obligations hereunder. The Sponsor will repair any damage from a casualty or other cause that occurs prior to the closing of any unit within reasonable time, and no Purchaser shall be required to accept a damaged unit.

Purchasers are advised that in New York City, 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 TCOs. 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 ("DOB"). A TCO is intended to indicate that the property conforms substantially to the DOB approved plans and specifications, and to the requirements of all applicable laws, rules, and regulations for the uses and occupancies specified in the TCO. No change of use or occupancy shall be made unless a new certificate of occupancy is issued. All TCOs have an expiration date. A TCO typically expires 90 days after the date of issuance. When a TCO expires and is not renewed, it may be difficult or impossible to buy insurance, refinance, or sell units. In New York City, it is common for sponsors to commence unit closings when some or all units are covered by a TCO rather than an 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 an PCO covering the entire building within two years from the date of the issuance of the first TCO. However, Sponsor and its Principals make no representations or guarantee that DOB will issue the PCO within such two year period. NOTWITHSTANDING THE

FOREGOING, SPONSOR AND ITS PRINCIPALS ARE OBLIGATED TO PROCURE THE PCO FOR THE ENTIRE BUILDING, AND SHALL EXERCISE BEST EFFORTS TO OBTAIN THE PCO WITHIN SUCH TWO YEAR PERIOD WHILE KEEPING THE TCO CURRENT. Unit owners and the Board of Managers shall be obligated to cooperate with and refrain from obstructing Sponsor in these undertakings.

Furthermore, because Sponsor and the By-laws of the Condominium may permit unit owners to undertake renovations to individual units prior to the procurement of an PCO, such renovations may cause additional delays in the issuance thereof. Notwithstanding the foregoing, Sponsor and its Principals are obligated to procure the PCO.

It is the obligation of the Sponsor and its principals to procure the TCO. As described in greater detail in the Plan, Sponsor will maintain sufficient funds in escrow to cover the anticipated costs of obtaining a PCO. Sponsor will also use best efforts to extend the TCO; however, the TCO may lapse for reasons outside the Sponsor's control. Procuring an PCO is the obligation of the Sponsor and its principals. In the absence of a PCO or TCO it is unlawful to reside in or rent a unit and will be difficult for owners or purchasers to obtain financing and pass clear title.

Buyers are advised to visit the DOB website for further recommendations when purchasing a unit in a building that does not have an PCO. A Factsheet on Certificates of Occupancy is available on the DOB website at: [http://www.nyc.gov/html/dob/downloads/pdf/co\\_factsheet.pdf](http://www.nyc.gov/html/dob/downloads/pdf/co_factsheet.pdf). Please see the ARCHITECT'S REPORT located in Part II of this Offering Plan.

## **CONTROL BY THE SPONSOR**

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

The By-Laws are reproduced in Part II, beginning on page CBL1. A summary of certain pertinent provisions of these By-Laws is set forth below. The By-Laws limit the number of Managers on the Board of Managers (hereinafter called "Managers") to not less than three (3). The first Board of Managers to be elected by the Unit Owners shall consist of three (3) members.

At the time of the First Closing there will be three Managers designated by the Sponsor. However, the Managers will resign in favor of Managers who will be elected by the purchasers at a meeting to be convened within 60 days after First Closing. If the Sponsor still owns 50% or more of the units in the building at this time, a majority of the new Board of Managers may be Sponsor-appointees.

Transfer of control of the Condominium Board of Managers shall pass to Unit Owners other than the Sponsor at the earlier of the following:

- a) Sixty (60) days after the date by which 75% of the units have been conveyed to unit purchasers; or
- b) Three (3) years after the first conveyance of a unit to a unit purchaser.

Within thirty (30) days after transfer of control, a meeting will be held to elect new Managers unrelated to the Sponsor. Notwithstanding the foregoing, even after control is surrendered to a Board elected by Unit Owners, the Sponsor may vote for the unit owner of its choice at an election of Managers. The Sponsor will not hold control of the Condominium Board after the Sponsor control period.

So long as a majority of the Board of Managers consists of managers elected by the Sponsor or holders of unsold units, the Board:

1. Shall not eliminate or reduce the number of employees, insurance coverages, or any service to a level less than that provided in Schedule B unless a majority of Board members elected by bona fide unit purchasers vote in favor thereof.
2. Shall, to the extent of their authority as Board members, use all reasonable efforts to cause the Building (including its equipment, services, and installations) to be kept operational, clean, and in a good state of repair and condition;
3. Shall not veto expenditures required to comply with applicable laws or regulations and/or expenses necessary to remedy notice of violations of law, or order of an insurance carrier.

The Sponsor may exercise veto power over other expenses for a period ending not more than five (5) years after the closing of the first unit, or whenever the unsold units constitute less than 25% of the common interest, whichever is sooner. Additionally, the By-Laws do not include a provision that a majority of the Board of Managers must be owner-occupants or members of an owner-occupant's household that are unrelated to the Sponsor and its principals after the end of the initial Sponsor control period.

Until the earlier of five years from the date of closing, or at the time at which the Sponsor or other Holder of Unsold Units owns units consisting of less than 25% of the common interest of the Condominium, Sponsor may exercise veto power over any expenses other than those described in SCHEDULE B, or which are required to comply with applicable laws or regulations, remedy any notice of a violation, or remedy any work order from an insurer. Additionally, so long as the Sponsor retains ownership of at least one unit in the building, the By-Laws, Declaration, and Rules and Regulations of the Condominium may not be amended or modified in any way so as to adversely affect the Sponsor without written consent by the Sponsor.

All Board members shall serve without compensation. Any member of the Board of Managers who is a designee of the Sponsor may contract or deal with Sponsor or a partner, affiliate, or entity controlled by the Sponsor; however, such Board members shall remain under a fiduciary duty to act in the best interest of the Condominium. Additionally, such Board Members shall be required to disclose the nature of their relationship(s) in dealing with the Sponsor to all Unit Owners.

## **BOARD OF MANAGERS**

The Condominium shall be governed according to the By-Laws in Part II, beginning on page CBL1.

The By-Laws limit the number of Managers to not less than three (3) members. The first Board of Managers shall consist of three (3) members designated by the Sponsor. They will be Joseph Calabrese, Jamie Grady and Joanne Mercaldi, who are three of the principals of the Sponsor. However, these Officers and Managers will resign in favor of Officers and Managers which will be elected by the Unit Owners at a meeting to be convened within sixty (60) days after the First Closing; they may, however, be re-elected at such time. Transfer of control of the Condominium Board of Managers shall pass to unit owners other than the Sponsor at the earlier of the following:

- a) Sixty (60) days after the date by which 75% of the units have been conveyed to unit purchasers; or
- b) Three (3) years after the first conveyance of a unit to a unit purchaser.

Within thirty (30) days after transfer of control, a meeting will be held to elect new Managers unrelated to the Sponsor. The By-Laws do not include a provision that a majority of the Board of Managers must be owner-occupants or members of an owner-occupant's household who are unrelated to the Sponsor and its Principals after the end of the initial Sponsor control period. Purchasers who are owner-occupants, therefore, may never gain effective control of the Board of Managers, and owner-occupants and non-resident owners, such as Sponsor, may have inherent conflicts on the management of the condominium. However, Board members shall remain under a fiduciary duty to act in the best interest of the condominium, even during the Sponsor control period.

Managers shall be elected by a plurality of the votes at a meeting at which a quorum shall be present. When voting for Managers, each Residential Unit Owner shall be entitled to elect one member of the Board of Managers. At such time as the Unsold Units constitute less than twenty-five (25) percent of the Condominium, but in no event later than the third anniversary of the Closing Date, not less than a majority of Managers shall be unit owners other than, and unrelated to, the Sponsor. Notwithstanding the foregoing, Sponsor may vote for Unit Owners from among the non-Sponsor related persons seeking election to the Board of Managers. Members of the Board of Managers shall serve without compensation, except for reimbursement for

expenses actually incurred in the course of any furtherance of business for the Board of Managers.

The Board of Managers shall meet at least annually in March of each year, and at such regularly scheduled times as shall be adopted by resolution by the Board. Special meetings may be called on five (5) days written notice by any two Managers.

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

Any Manager may be removed from office at any time with or without cause upon the affirmative vote of the Unit Owners whose aggregate votes are at least 51% of the votes of the Condominium at a Unit Owner's meeting duly called for the purpose, provided, however, that the Manager(s) elected by the Holder(s) of Unsold Units can be removed only for cause by vote of a majority of the Unit Owners or without cause by the Holders of the Unsold Units.

The members of the Board of Managers shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for willful misconduct or bad faith. The Unit Owners shall severally indemnify the members of the Board of Managers against any liability or claims except those arising out of the bad faith or willful misconduct of a member or members of the Board of Managers. It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers, or out of the aforesaid indemnity in favor of the members of the Board of Managers, shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements of all Unit Owners.

The principal officers of the Condominium shall be the President, Vice-President, Secretary, and Treasurer, all of whom shall be elected by the Board of Managers. The President and Vice-President (but no other officers) need be members of the Board of Managers. All officers shall serve without compensation or remuneration. The officers

shall be elected annually by the Board of Managers, and each officer shall hold office at the pleasure of the Board of Managers or until succession, resignation, or death. Upon the vote of a majority of the Board of Managers, any officer may be removed with or without cause.

The President shall be the chief executive officer of the Condominium, and shall have all of the general powers and duties which are incident to the office of a President pursuant to Section 9B of the Real Property Law of the state of New York (New York's Condominium Act).

The Vice-President shall take the place of the President and perform his/her duties whenever the President shall be absent or unable to act. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him/her by the Board of Managers or by the President.

The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Managers, shall have charge of such books and papers as the Board of Managers may direct, and shall, in general, perform all the duties incident to the office of a secretary pursuant to Section 9B of the Real Property Law of the state of New York (New York's Condominium Act).

The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account, and deposit of all moneys and other valuable effects in the name of the Board of Managers, or the Managing Agent, in such depositories as may from time to time be designated by the Board of Managers.

The Board of Managers, or the Secretary, shall keep detailed records of the actions and minutes of the meetings of the Board of Managers, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium. In addition, an annual audited financial statement of the Condominium and an income tax deduction statement certified by an independent Certified Public Accountant shall be rendered by the Board of Managers to all Unit Owners on March 1 of each calendar year.

The Secretary shall mail a notice of each annual or special meeting to all Unit Owners of record. The notice shall state the purpose of the meeting as well as the time and place where it is to be held, and the notice will be given at least ten (10), but not more than forty (40) days prior to such meeting.

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

Both the Declaration and the By-Laws may be modified or amended by the vote of two-thirds (2/3) of the Unit Owners, as that term is defined in Article II, Section 8 of the By-Laws, at a meeting of Unit Owners duly held for such purpose. Anything herein contained to the contrary notwithstanding, so long as the Sponsor is the owner of one or more Unsold Units, the By-Laws may not be altered, amended, repealed, or added to without the consent of the Sponsor.

The Board of Managers shall be required to maintain hazard and casualty insurance on the building in an amount sufficient to ensure that the condominium shall not be a co-insurer (which generally means that the policy must be retained at replacement value), and it shall also maintain liability insurance in an amount which it deems appropriate. The proceeds of the hazard and fire insurance policy shall be payable to the condominium Board in the event of a loss amounting to \$100,000 or less and to the insurance trustee if the loss exceeds \$100,000. Such proceeds shall be applied to the repairing, restoring, or rebuilding of the building unless otherwise determined by unit owners. In no event shall the proceeds of any such insurance policy be paid to the holder of any mortgage on a unit unless there has been a determination by Unit Owners not to rebuild the building. The insurance trustee, if any, shall be a bank or trust company having an office in the city and state of New York.

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

Copies of the Declaration and By-Laws are set forth in Part II of the Plan.

Any provisions that give the Sponsor control of the enforcement of the Sponsor's obligations are not lawful. If there are non-Sponsor members of the board, and there is a vote on whether to sue the Sponsor, the Sponsor's representatives cannot lawfully vote on that issue.

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

The headings used in this Section are inserted only as a matter of convenience and in no way define or limit the scope of the information contained within this Section.

### *1. Sale, lease, and mortgaging of units by Unit Owners.*

Unit Owners will have the right to sell, lease, or mortgage their units, without restriction, except as set forth herein, subject to the requirements that all Common Charges are current. A Unit Owner may only sell or lease the entire Unit. A Unit Owner may not sell or rent only a portion of a Unit. While lease of a condominium unit, like any other contract, is subject to regulation by certain state laws (General Obligations Law, Multiple Dwelling Law, etc.), the terms of the lease (including rent) will not be subject to any state or local rent regulatory laws.

### *2. No right of first refusal.*

The Board of Managers does not have a right of first refusal with regards to the sale or lease of any unit.

### *3. Common charges and assessments.*

The Board of Managers shall from time to time, but at least annually, prepare a budget for the Condominium determining the amount of the Common Charges payable by the Unit Owners. Common Charges will be established by determining the operating budget for the coming year of condominium operation and allocating to each unit owner a percentage of that budget in accordance with their percentage of ownership for common interest in the condominium. The Common Expenses include, among other things, the cost of all insurance premiums on all policies of insurance required to be, or which have been, obtained by the Board of Managers. The Common Expenses may also include such amounts as the Board of Managers may deem proper for the operation and maintenance of the Property, including, without limitation, an amount of working capital and a general operating reserve. The Board of Managers shall advise all Unit Owners promptly, in writing, of the amount of Common Charges payable by each of them, and shall furnish copies of each budget on which such Common Charges are based to all Unit Owners and to their mortgagees of record, if requested.

Under the provisions of Section 339-z of the Real Property Law, the Board of Managers on behalf of the Unit Owners shall have a lien on each Unit for unpaid Common Charges assessed against such Unit by the Board of Managers, together with interest thereon. Such lien shall be subordinate only to liens for real estate taxes on the Unit and to any sums unpaid on the first mortgage or record of such Unit. Any lien for unpaid Common Charges against a Unit shall be effective from and after the filing of a notice thereof in the Office of the City Register of the City of New York, and until all sums secured thereby with the interest thereon shall have been fully paid, or until six years from the date of filing (unless foreclosure of such lien is started within such six year period), whichever may be earlier. Such lien may be foreclosed by a suit brought in the name of the Board of Managers acting on behalf of the Unit Owners in like manner as the foreclosure of a mortgage on real property, or an action may be brought by the Board of Managers to recover the Unpaid Common Charges without foreclosing the lien. In the event the Sponsor is more than thirty (30) days in arrears on Common Charges for any unsold Unit during the time the Sponsor is in control of the Board of Managers, Sponsor will cause the Board of Managers to file a lien as provided for in section 339-aa of the Real Property law.

Under section 339-kk of the Real Property Law, the Board of Managers has the right to require the tenant in an apartment owned by a non-occupying owner to make rental payments directly to the Board of Managers where such non-occupying owner is in default on payments of common charges, assessments, or late fees for such unit for a period of 60 days after the expiration of any grace period after they are due. Payments by such rental tenant to the condominium pursuant to this statute relieves such rental tenant from the obligation to pay such rent to such non-occupying owner, and is an absolute defense in any nonpayment proceeding commenced by such non-occupying owner. The procedures by which the Board of Managers may enforce this right, including required notice, means of protest, and termination are set forth in the aforementioned section which is recited at Page RP1 of this Offering Plan.

No Unit Owner may exempt himself from liability for Common Charges or Expenses by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of his Unit. The liability of each Unit Owner for the payment of the Common Charges and Expenses thereafter assessed or becoming due against the Unit shall terminate upon a permissible sale, transfer, or other conveyance of such Unit and the appurtenant interests in the Common Elements. In addition, any Unit Owner may, subject to the terms and conditions specified in the By-Laws, convey his/her Unit together with the said appurtenant interests to the Board of Managers or its nominee on behalf of all other

Unit Owners, and in such event, be exempt from all Common Charges and Expenses thereafter assessed.

#### *4. Repairs and Maintenance.*

All maintenance or any repair to any Unit, ordinary or extraordinary, and to the doors and windows (except the painting and decoration of the side of the stairwell doors which do not face into a Unit), electrical (except Common Elements) within the Unit or belonging to the Unit Owner, shall be at the Unit Owner's expense, except for structural elements as specifically required herein. All maintenance, repairs, and replacements to the Common Elements (including the exterior walls of the Building) and the painting and decorating of the side of the stairwell doors which do not face into a Unit shall be made at the direction of the Board of Managers, and be proportionately charged to all the Unit Owners as a Common Expense, except to the extent that the same are necessitated by the negligence, misuse, or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner. Unit Owners who enjoy use of a limited common element are responsible for regular repair and maintenance of such limited common element such as cleaning, painting, repair to surface damage, etc. Damage to the structural or mechanical systems serving such limited common element (except where directly caused by act or omission of the unit owner, their agents, employees, or invitees) are the responsibility of the condominium through the Board of Managers.

No permanent structures may be built on the roof without a permit from the Department of Buildings, and the Board of Managers. The Board of Managers will have access for inspection and repair and may regulate any one or more of the following aspects of construction:

1. Time periods during which work is permitted;
2. The manner in which construction degree will be handled;
3. Measures which must be taken to prevent compromising the security of the building during construction;
4. Interruption of services during construction;
5. Liability insurance for contractors during construction.

The building Certificate of Occupancy and applicable zoning rules do not allow the construction of anything on the roof. Any roof warranty may be voided by improper use of the roof. Any damage occurring to the roof shall be the sole responsibility of the Condominium and/or any such Unit Owner causing such damage, and will need to be

repaired at the Condominium or such Unit Owner's sole cost and expense as determined by the Board of Managers.

*5. Additions, alterations, and improvements.*

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

Unit owners may perform all standard repair and maintenance items within their apartments and standard home improvement items without permission of the Board of Managers. Thus, unit owners may repair or replace fixtures, equipment, cabinetry, flooring, sheetrock, etc., without permission of the Board of Managers. Unit owners are also responsible for keeping safety warning devices (i.e., smoke detector and carbon monoxide detector) operational. However, unit owners may not relocate plumbing, heating, electric, or other service lines affecting other units in the building during the course of such repairs or improvements without receiving Board permission.

In the event a child under eleven (11) years old resides in a unit or visits a unit for an extended period of time, the owner of that unit will be required, at his/her own cost and expense, to install child safety window guards on all windows in conformity with applicable New York City Administrative Code sections, and shall not remove them until permitted by applicable law. Failure to do so may create great risk to the life and

health of such child, and result in the imposition of a violation against the building, which would be the responsibility of the unit owner to cure.

#### *6. Insurance.*

The Board of Managers shall obtain and maintain: (1) hazard insurance with extended coverage, insuring the Building and Units (but not including furniture, furnishings, or other personal property supplied to, or installed by, Unit Owners), together with all service machinery contained therein covering the interests of the Condominium, The Board of Managers, and all Unit Owners and their mortgagees, as their interest may appear, in an amount equal to the full replacement value of the insured property without deduction for depreciation; (2) liability insurance for personal injury or property damage in an amount not less than one million dollars; and (3) such other insurance as the Board of Managers may determine. Each of the policies shall contain a New York standard mortgage clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interests may appear, subject, however, to the loss payment provisions in favor of the Board of Managers in the event of casualty or condemnation. Unit Owners shall be entitled to carry casualty insurance protection for their furniture and the interiors of their Units and for personal liability coverage for their own benefit at their own expense provided that such policies contain waivers of subrogation, and further provided that the liability of the carriers issuing insurance procured by the Board of Managers shall not be affected or diminished by reason of any other insurance carried by a Unit Owner. Please see SCHEDULE B for details of insurance coverage.

The proceeds of the hazard and fire insurance policy shall be payable to the condominium Board in the event of a loss amounting to \$100,000.00 or less and to the insurance trustee if the loss exceeds \$100,000.00. Such proceeds shall be applied to the repairing, restoring, or rebuilding of the subject premises unless otherwise determined by unit owners. In no event shall the proceeds of any insurance policy be paid to the holder of any mortgage on a unit unless there has been a determination by unit owners not to rebuild the building. The insurance trustee, if any, shall be a bank or trust company having an office in the City and State of New York.

#### *7. Restrictions on occupancy and use.*

The By-Laws provide that the use of the Units shall be restricted to and be in accordance with the following provisions:

(a) A Unit Owner may only use his/her Unit for a purpose consistent with any applicable ordinance or statute, or regulation of a government authority that has jurisdiction over the Condominium, but in no event for a use that violates the By-Laws of the Condominium.

(b) The Common Elements shall be used for the furnishing of services and facilities for which they are reasonably suited and capable, and which are incident to the use and occupancy of Units.

(c) No nuisances shall be allowed on the Property, nor shall any use or practice be allowed that interferes with the peaceful possession or use of the Property by its residents or occupants.

(d) No improper, offensive, or unlawful use shall be made of the Property nor any part thereof. Violations of laws, orders, rules, regulations, or requirements, of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be eliminated by, and at the sole expense of, the respective Unit Owners or by the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property or comply with such laws.

(e) Each Unit Owner shall keep his Unit in a good state of cleanliness and repair in accordance with the provisions of the By-Laws and the rules and regulations of municipal departments or agencies having jurisdiction thereof.

Each Unit Owner will have an undivided interest in the Common Elements in the respective percentages set forth in SCHEDULE A in Part I. Subject to the provisions of the By-Laws and Rules and Regulations, the Common Elements are appurtenant to, serve, and benefit each Unit to the extent of such Unit's percentage share of the Common Elements, and the Common Elements are for the common use of all Unit Owners.

Further restrictions on the use of Units are set forth in the By-Laws, which are set forth in Part II of the Plan, and in Rules and Regulations made in accordance with the By-Laws. Current restrictions include a restriction that the units shall be used for private residence only, or any home occupation use permitted under applicable zoning law, ordinances, building codes, or other governmental regulations. However, the Sponsor or Sponsor-Designee has the right, without charge, (i) to maintain general and sales offices in one or more Units or elsewhere on the Property, to use one or more Units as models and for other promotional purposes and to erect and maintain signs on

the Property; (ii) to have its employees, contractors and sales agents present on the Property; (iii) to do all things necessary or appropriate, including the use of the Common Elements, to sell or lease Units and to complete construction of the Building and to comply with its obligations. Units may not be used for any unlawful purpose, and any use which amounts to a violation of law or to rules, regulations, or requirements of any governmental agency having jurisdiction thereover shall be eliminated at the sole expense of the unit owner. No nuisances shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful possession or proper use of the Property by its residents. The Common Elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. A Unit Owner shall not place or cause to be placed in the lobby, public halls, stairways or other common areas or common facilities, any furniture, packages or objects of any kind. The public halls and stairways shall be used for no purpose other than for normal transit through them. There are currently no limitations on pets; aesthetic controls; restrictions on occupancy of units owned by corporations, partnerships or fiduciaries; limitations on the use of parking units. Rules and Regulations concerning the use of the Units may be promulgated and amended from time to time by the Board of Managers as provided in the By-Laws. Residential use of the premises is consistent with the zoning regulations and the anticipated certificate of occupancy.

*8. Other material rights and obligations.*

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

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

At the time of closing, Purchaser will be required to execute a broad Power of Attorney in favor of the Board of Managers of the Condominium. This Power of Attorney will give the Board of Managers the right to acquire and otherwise administer defaulted, abandoned, or foreclosed units in the name of the condominium. It will also give the Board of Managers the right to execute amendments to the Condominium Declaration, Deeds conveying condominium property, filing for severance of tax lots, and other functions reasonable or necessary to effectuate the purposes set forth in the Condominium Declaration, on behalf of all of the Unit Owners. Purchaser must sign the Power of Attorney at closing; failure to sign the Power of Attorney will be deemed a default and will result in cancellation of the transaction and possible loss of the down payment. Please see the POWER OF ATTORNEY set forth in Part II of this Offering Plan.

#### *9. Smoking Policy.*

New York City Local Law 147 went into effect on August 28, 2018 and requires buildings with three or more residential units to adopt written smoking policies. For condominiums such as the subject premises, the Board of Managers must adopt such a policy; the policy for this condominium is as follows: Pursuant to Local Law 147, the subject premises' smoking policy is consistent with the Smoke Free Air Act ("SFAA"), which is the current law governing smoking in class A multiple dwellings. This building prohibits smoking or using electronic cigarettes in common indoor areas of the building. Smoking and electronic cigarette usage is permitted in private apartments, outdoor common areas, and outdoor limited common elements.

## **REAL ESTATE TAXES**

After the units are separately assessed, each Unit Owner will be taxed as a separate tax lot for real estate tax purposes, and no Unit Owner will be responsible for the payment of, nor subject to, any lien for non-payment of taxes on any other unit. While there is no anticipated reason for delay in obtaining separate assessments by the New York City Department of Finance, which is the assessing authority, it is anticipated that units will not be separately assessed for the first year of condominium operation. On closing, Sponsor shall deposit with the Board of Managers a sum sufficient to pay all taxes due for the balance of the 2021/2022 tax year. The Board of Managers shall be authorized to pay such taxes as and when due from such escrow fund. As each subsequent individual condominium Unit is sold, the purchasers thereof, as a standard closing adjustment, shall reimburse the Sponsor for the portion of their tax liability paid by the Sponsor from the date of closing through the end of the 2021/2022 tax year. It is anticipated that Units will be separately assessed for the 2022/2023 tax year, and that individual Unit Owners (whether purchasers, holders of unsold shares, or the Sponsor) will pay the taxes thereof as set forth in the attached SCHEDULE A. The amount of the taxes deposited with the Board of the condominium will be disclosed in the post closing amendments until the units are separately assessed.

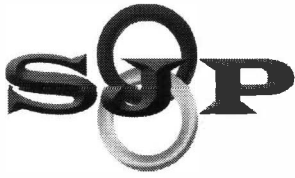
The property is assessed by New York City through the assessing authority of the Department of Finance. Calculations of Real Estate Taxes are arrived at by applying the current tax rate to the assessed value, and then allocating the resulting taxes in direct proportion to the allocation of common interest. Sponsor has obtained an estimate of post-completion assessed value of the property for real estate tax purposes from SJP Tax Consultants Inc. ("SJP"), 149-41 14 Avenue, Whitestone, New York 11357, who rendered an opinion letter included in this Plan. SJP is of the opinion that the property designated by the New York City Department of Finance as a Tax Class 2 property upon completion of construction, and will pay taxes based on the Tax Class 2 tax rate. Accordingly, SJP has provided projections of the resulting estimated real estate taxes for the first post-construction tax year of 2021/22 as provided in SCHEDULE A. For Tax Class 2, the post-completion assessed value set forth by Sponsor's expert and used for calculations is the \$190,061.00, resulting in an estimated tax liability of \$23,706.00. The tax rate used for the calculation is 12.473%, which is the current tax rate for Class 2 properties. Unit owners shall be entitled to deduct real property taxes paid on the unit for income tax purposes subject to the limits imposed by the Tax Cuts and Jobs Act of 2017. See TAX OPINION hereinafter set forth for a more complete discussion.

Until the units are separately assessed for real estate taxes, real estate taxes for the property shall be paid by the condominium (although no such payment is provided for in Schedule B) as a general common expense and each unit owner shall pay additional common charges (which are not reflected in the estimated common charges for the unit as set forth in Schedule A) equal to the applicable unit's pro rata share, based upon the common interest of the applicable unit, of such real estate taxes for the property for such period. If real estate taxes are charged to unit owners as additional common charges for any period with respect to which the units shall not have been separately assessed, then a unit owner's payment of such additional common charges shall be in lieu of payment by such unit owner to the city of real estate taxes (which otherwise might have been assessed against the unit as a separate tax lot) for such period. As set forth in the By-laws, after the units are separately assessed for real estate tax purposes, the Board of Managers as agent of the unit owners shall promptly assess any unit owners who have underpaid real estate taxes with respect to their units based on the assessed valuation of such units and shall likewise reimburse any unit owners for overpayment of taxes. Although the condominium will be obligated to pay the real estate taxes for the property until the units are separately assessed, it is possible that Purchaser's lender may, nevertheless, require that Purchaser escrow with such lender for real estate taxes for such period.

*The City of New York is not bound by the allocation of Common Interest, and may allocate on a different basis. All figures are estimates.*

There are no tax certiorari proceedings currently pending. Individual owners may challenge the assessment of their property by filing a tax protest in accord with the rules of the New York City Tax Commission. The Board of Managers may also file a protest on behalf of all Unit Owners. While there is no specific section of the By-Laws dealing with review of real estate tax assessment, the general grant of power in the Board of Managers to operate the property in the best interest of unit owners is sufficient to delegate to the Board of Managers a right to file tax protests on behalf of all unit owners. The Building benefits from the limitations imposed by Sections 581 (which prevents a building from being assessed at a higher level than similarly situated rental properties merely because of its status) and 1805 (which limits the annual increases due to changes in market value) of the Real Property Tax Law.

The projections set forth herein are based on current New York City Tax rates and assessment procedures. All figures are post-completion estimates based on the projected assessed value of the property following the completion of construction. No guarantee or warranty is or can be made that the tax rates will not change in the future, or that the assessed value of the property, when determined, will not rise or fall due to changes in assessment practices and policies or changes in market value that are reflected in the assessed value. Thus, actual real estate taxes may vary from the calculations included herein.



**SJP TAX CONSULTANTS INC.**  
**John A. Pappalardo and Stephen L. Pappalardo**  
**149-41 14 Avenue**  
**Whitestone, NY 11357**  
**Tel: (718) 767.8216; Fax: (718) 357-9041**

April 24, 2020

40 Douglass LLC  
284 President Street  
Brooklyn, NY 11231

RE: 40 Douglass Condominiums – 40 Douglass Street, King County (“The Property”)

To whom it may concern:

40 Douglass LLC (the “Sponsor”), intends to erect a housing development project on the Property and to submit same to the provisions of the New York Condominium Act. In that regard, Sponsor has submitted an offering plan to the Attorney General of the State of New York and has requested that our office project the real estate tax liability of proposed units to be constructed at the Property.

Please be advised that although the estimate of the assessed valuation upon completion of construction is a good faith estimate, such assessed valuation, when actually made, may be less or greater than as estimated below.

The Residential Units will be classified as tax class 2 properties. Tax class 2 properties are primarily residential (rentals, cooperatives and condominiums) which include Sub-Classes. The applicable sub-class for this property is Class 2c (2 - 10 unit cooperative or condominium). A 2019/2020 tax class rate of 12.473% was used in our calculations. Estimates will change to the extent that these rates increase or decrease.

The assessing authority for this condominium is the NYC, Department of Finance (“Finance”). Finance assesses all properties within the boundaries of New York City.

Based on comparables and opinion, the total assessed valuation (“AV”) of this property containing all Residential Units upon the fully completed value of the Property, which is proposed to be in the 2021/2022 tax year will be as follows:

The assessed valuation of the Residential Units will be approximately 190,061. (\$23,706<sup>1</sup>)

Breakdown of each individual unit’s real estate projections is as follows:

| <b>Unit #</b> | <b>Projected Assessed Valuation</b> | <b>Projected Annual Real Estate Tax in Dollars</b> |
|---------------|-------------------------------------|----------------------------------------------------|
| Unit 1        | 72,812                              | \$9,082                                            |
| Unit 2        | 55,690                              | \$6,946                                            |
| Unit 3        | 61,559                              | \$7,678                                            |

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<sup>1</sup> 190,061 AV \* 12.473%.

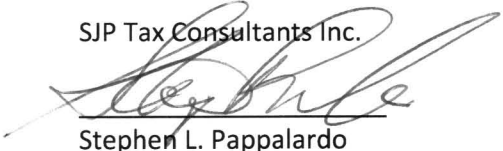
Estimates do not include (1) added value factors for location premiums or optional extras for which the taxes could increase to the extent of such premiums or extras and (2) any abatement and or exemptions other than the basic STAR that might be granted to individual unit owners such as enhanced STAR, veterans, senior citizen, etc.

We have written over thirty (30) real estate tax opinion letters that have been submitted to the Department of Law as exhibits to the plan. We have represented real estate developers, builders, charitable organizations, and homeowners for over 45 years in numerous tax exemption matters with the NYC Department of Housing and Preservation and Development and NYC, Department of Finance. We specialize in obtaining §421-a, §421-a 16 and ICIP/ICAP tax exemptions for our clients.

We consent to the inclusion of this letter in any Offering Plan with respect to the Property.

BY:

SJP Tax Consultants Inc.



Stephen L. Pappalardo

Vice President

4/24/2020

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

Unit Owners who itemize their deductions should, for Federal Income Tax purposes, be entitled to a deduction for mortgage interest and real estate taxes in the year paid, or accrued, under Sections 163 and 164 of the IRS Code. These deductions are subject, however, to certain exceptions and limitations that are more particularly discussed in the COUNSEL'S TAX OPINION LETTER, including the Tax Cuts and Jobs Act of 2017. This federal law limits the itemized deduction to \$10,000.00 for the total of state and local property taxes and income or sales taxes. This maximum applies to both single and married filers. With regard to the deductibility of mortgage interest, the law limits deductible mortgage debt to \$750,000.00 for new loans taken out after 12/14/17, and interest paid on home equity debt is no longer deductible through 12/31/25; interest is still deductible on home equity loans (or second mortgages) if the proceeds are used for substantial improvement of the residence. Each individual Unit Owner should, for New York State and New York City Income Tax purposes, be entitled to similar deductions for the mortgage interest and real estate taxes paid, or accrued, during the taxable year. Potential purchasers are strongly advised to consult with their own tax experts with regard to deductibility of their real estate taxes and mortgage interest.

The Condominium will be governed by a Board of Managers. The Board of Managers will assess and collect Common Charges from the Unit Owners and will have certain discretionary powers over the operating expenses and the application of the assessments. While there is presently no direct authority as to the tax status of the Condominium for Federal Income Tax purposes, Sponsor's Counsel is of the opinion that the Condominium will not be treated as an association taxable as a corporation, due to the fact that it will qualify as an exempt homeowner's association under section 528(c)(1) of the IRS code. As a result, the Condominium may not be subject to Federal corporate income tax on its taxable income, if any.

The statements set forth herein are based upon an analysis of the Internal Revenue Code of 1986, as amended (the "Code") and modified by the Tax Cuts and Jobs Act of 2017, New York State Tax Law, the Administrative Code of the City of New York, the applicable regulations promulgated or proposed thereunder, the current position of applicable administrative agency, in particular, the position of the IRS stated in published Revenue Rulings and Revenue Procedures, and judicial decisions. No warranty is or can be made by Sponsor or any other person that the United States Treasury Department or the New York State Department of Taxation will allow the

aforementioned deductions and no representation or warranty is or can be made that the tax law or the regulations or rulings issued thereunder, or any judicial interpretation thereof, may not change so as to disallow the deductions in whole or in part. Neither Sponsor nor its counsel shall be liable if it is held that the Unit Owners are not entitled to such income tax deductions or to special exemptions as aforesaid due to changes in applicable law, regulation or decisional law. Neither counsel nor Sponsor shall have any liability should Unit Owners not be entitled to deductions if facts represented by Sponsor are not true.

A more detailed statement of the tax factors involved may be found in the COUNSEL'S TAX OPINION; however, each purchaser should consult with his or her own attorney with regard to tax consequences of this transaction.



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### OPINION OF COUNSEL REGARDING TAX STATUS OF THE 40 DOUGLASS STREET CONDOMINIUM PURSUANT TO TITLE 13 NYCRR § 20.3(y)

The purpose of this document is to render an opinion with regard to 1) the availability of tax deductions for real estate taxes and mortgage interest under current federal, state, and city law; 2) the income tax status of the condominium; and 3) the condominium's compliance with New York State Real Property Law Section 339-(i).

This discussion assumes that the condominium in question, The 40 Douglass Street Condominium, is a validly-formed condominium under New York's Condominium Act (Article 9B of the New York State Real Property Law) consisting of three (3) residential units.

#### 1. Availability of Tax Deductions

##### *A. Tax Deductions for Real Estate Taxes*

Section 164(a) of the Internal Revenue Code has traditionally spoken to the issue of deductibility of real estate taxes: "Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued: (1) State and local, and foreign, real property taxes." I.R.C. § 164(a). The section further defines a State or local tax as "includ[ing] only a tax imposed by a State, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia." I.R.C. § 164(b)(2). Indeed, the IRS's 2012 Instructions for Schedule A Itemized Deductions (Form 1040) specifically instructs at page A-6 that taxpayers may include state and local real estate taxes paid.

New York, as one of the original 13 states, arguably traces its statehood back to 1776, and ratified the present United States Constitution in 1788. Clearly, its statehood is well-established. New York's 1964 Condominium Act clearly establishes the conceptualization of condominium units as real property, stating, "each unit and its common interest, not including any personal property, shall be deemed to be a parcel

and shall be subject to separate assessment and taxation.” N.Y. REAL PROP. LAW § 339-y. Each condominium unit is accordingly assigned its own block and lot; purchasers of condominium units take ownership of their units pursuant to real property deeds. Furthermore, the Condominium Act explicitly states, “each unit, together with its common interest, shall for all purposes constitute real property.” N.Y. REAL PROP. LAW § 339-g. Therefore, New York state and city property taxes on condominium units constitute potentially deductible real property taxes for federal income tax purposes.

With regard to deductions, New York tax law generally follows the federal system: “If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his New York itemized deduction in lieu of his standard New York deduction.” N.Y. TAX LAW § 615(a). (Indeed, New York State’s 2012 Resident Itemized Deduction Schedule includes a line item for interest paid as reflected in the taxpayer’s federal Schedule A.)

On January 1, 2018, the new federal Tax Cuts and Jobs Act of 2017 went into effect. This federal law significantly changes the previously existing Internal Revenue Code, including the taxes and deductions related to home ownership. The Federal Tax Cuts and Jobs Act of 2017 allows an itemized deduction of up to \$10,000.00 for the total of state and local property taxes and income or sales taxes. This maximum applies to both single and married filers.

It is therefore my opinion that owners of residential units in this condominium who itemize their deductions will be eligible to deduct real estate taxes paid on said units for federal income tax purposes as well as New York state and city income tax purposes, subject to the limits imposed by the Internal Revenue Code, the New York tax law, and the specific taxpayer’s personal situation. Each potential purchaser is strongly encouraged to consult with his or her own tax advisor concerning the deductibility of real estate taxes in his or her specific situation.

#### *B. Tax Deductions for Mortgage Interest*

Prior to January 1, 2018, the general Internal Revenue Code rule concerning interest has been, “There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.” I.R.C. § 163(a). While subsection (h) disallowed deductions for personal interest (I.R.C. § 163(h)(1)), it also clarified, “For purposes of this subsection, the term ‘personal interest’ means any interest allowable as a deduction under this chapter *other than* (D) any qualified residence interest (within the meaning of paragraph (3))” (emphasis mine). I.R.C. § 163(h)(2). Paragraph (3) stated, “The term ‘qualified residence interest’ means any interest which is paid or

accrued during the taxable year on (i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or (ii) home equity indebtedness with respect to any qualified residence of the taxpayer.” I.R.C. § 163(h)(3). “Acquisition indebtedness” is further defined as “any indebtedness which (I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and (II) is secured by such residence.” I.R.C. § 163(h)(3)(B)(i). The subsection limited acquisition indebtedness to \$1,000,000.00. I.R.C. § 163(h)(3)(B)(ii). “Home equity indebtedness” was defined as “any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed (I) the fair market value of such qualified residence, reduced by (II) the amount of acquisition indebtedness with respect to such residence.” I.R.C. § 163(h)(3)(C)(i). The subsection limited home equity indebtedness to \$100,000.00. I.R.C. § 163(h)(3)(C)(ii).

The Tax Cuts and Jobs Act of 2017 limits deductible mortgage debt to \$750,000.00 for new loans taken out after 12/14/17, and interest paid on home equity debt is no longer deductible through 12/31/25; interest is still deductible on home equity loans (or second mortgages) if the proceeds are used for substantial improvement of the residence.

Again, here, New York tax law allows individuals who itemize their deductions for federal income tax purposes to elect to deduct their New York itemized deductions in lieu of their standard New York deduction. N.Y. TAX LAW § 615(a).

Given the provisions above, it is my opinion that purchasers who intend to use their units in this condominium for residential purposes and who itemize their deductions will generally be able to deduct their home mortgage interest for federal and New York State income tax purposes subject to the limits imposed by § 163 of the Internal Revenue Code as modified by the Tax Cuts and Jobs Act of 2017. Unit owners are strongly advised to consult with their own tax advisors regarding the effects of the Tax Cuts and Jobs Act of 2017 on their tax burdens and their prospective real estate purchases. I express no opinion with regard to mortgage interest deductibility for purchasers of non-residential units or purchasers of units for non-residential reasons, such as investment or resale. Such purchasers are also strongly advised to consult with tax professionals to see if mortgage interest may be deductible for them and their purposes under other provisions of the Internal Revenue Code.

These materials are difficult even for practitioners to comprehend, as is evidenced by the plethora of clarifying Revenue Rulings and discussions surrounding the pertinent provisions of the Internal Revenue Code. Potential purchasers are *strongly* advised to consult with their own tax experts with regard to deductibility of

mortgage interest, as § 163 contains several limitations on deductibility that may or may not apply to a given taxpayer's specific situation. This opinion is only intended to render a general opinion; purchasers' or owners' specific situations are well beyond the scope of this document and require a far more tailored analysis.

## 2. Income Tax Status of the Condominium

The Internal Revenue Code exempts "homeowners associations" from income taxes, and defines a "homeowners association" as "an organization which is a condominium management association. . . if (A) such organization is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property; (B) 60 percent or more of the gross income of such organization for the taxable year consists solely of amounts received as membership dues, fees, or assessments from (i) owners of residential units in the case of a condominium management association. . . (C) 90 percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property. . . (D) no part of the net earnings of such organization inures. . . to the benefit of any private shareholder or individual, and (E) such organization elects (at such time and in such manner as the Secretary by regulations prescribes) to have this section apply for the taxable year." I.R.C. § 528. Additionally, the section states that, "the term 'condominium management association' means any organization meeting the requirements of subparagraph (A) of paragraph (1) with respect to a condominium project substantially all of the units of which are used by individuals for residences." I.R.C. § 528(c)(2).

Given that this condominium consists solely of residential units and contains no commercial units, it is my opinion that this condominium as managed by its Board of Managers will qualify as a homeowners association within the meaning of I.R.C. § 528 and will therefore be exempt from income taxes, provided, of course, that the Board of Managers properly elects to file under § 528.

## 3. Discussion Regarding the Condominium's Compliance with New York State Real Property Law § 339-(i)

Real Property Law § 339-(i) governs allocation of common interest and provides four acceptable methods for allocating common interest among condominium units. The allocation of common interest to the units in this condominium has been made pursuant to Real Property Law § 339-(i)(1)(iv), which allows for common interest to be "based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the

condominium, the uniqueness of the unit, the availability of common elements for exclusive or shared use, and the overall dimensions of the particular unit.” N.Y. REAL PROP. LAW § 339-(i)(1)(iv). It is my opinion that this condominium’s allocation of common interest complies with Real Property Law § 339-(i)(1)(iv). This opinion is also based on expert factual determinations as required by § 20.3(i) of Title 13 NYCRR; specifically, Sponsor’s expert’s opinion included in the Offering Plan at the section entitled COMPLIANCE WITH REAL PROPERTY LAW 339-(i)(1)(iv).

### Conclusion

In my opinion, the condominium will potentially be eligible for tax-exempt status under I.R.C. § 528, if it elects such status, and unit owners will potentially be eligible for the real estate tax deductions and benefits described above. However, this opinion is not a guarantee; it is based on existing rules of law applied to the 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, the selling agent, or any other person be liable if there are changes in the facts on which counsel relied in issuing this opinion or if there are changes in the applicable statutes, regulations, decisional law, or Internal Revenue Service rulings, or the New York State tax law, as amended, and cause the unit owners not to be entitled to income tax deductions or the benefits described above.

Sincerely,

*Claudia V. Murdoch*

Claudia V. Murdoch

May 7, 2020

## **RESERVE FUND**

Sponsor is not creating a fund on closing to be used as a reserve for capital expenditures. However, the budget for the first year of condominium operation in SCHEDULE B includes a budgeted yearly Capital Reserve Fund for repair and replacement of major systems or structural elements of the building. This budgeted item will start the gradual creation of a reserve fund. Unit Owners will therefore be contributing to the Capital Reserve Fund through their common charges, beginning with common charge adjustments paid at the closings of their individual condominium units. (Unit Owners will also, at closing, pay their contributions to the building's Working Capital Fund.) In the event a need arises for capital expenditures such as renewal or replacement of building components or systems, or to remedy major building defects, and the reserve fund is inadequate to pay for those expenditures, it will be necessary to raise needed capital either by assessing individual units or owners for the cost of such expenditures. However, in the Sponsor's estimation, and in view of the fact that all major building systems and components are new, it is anticipated that there will be no needed capital expenditures within the five (5) years immediately following the first closing of a condominium unit under the Offering Plan. While the Sponsor is in control of the Board of Managers, the Reserve Fund may not be used to reduce projected common charges in the Plan. Neither the Department of Law nor any other government agency has passed upon the adequacy of the fund.

### **WORKING CAPITAL FUND**

At closing of title to each unit, the Unit Owner for such unit will contribute to the Working Capital Fund of the Condominium an amount equal to two months' Common Charges (see CLOSING COSTS AND ADJUSTMENTS). This Working Capital Fund will be used to make repairs and improvements and for other appropriate purposes as determined by the Board of Managers, particularly to meet emergencies not budgeted for in SCHEDULE B. While the Sponsor controls the Board of Managers (see CONTROL BY THE SPONSOR), the Working Capital Fund will not be used to reduce estimated Common Charges.

The Working Capital Fund will not be reduced by any closing adjustments to the Sponsor. All closing adjustments to the Sponsor will be paid in equal monthly installments over the twelve (12) month period following closing. All adjustments represent reimbursement for prepayment of expenses already included in the budget set forth herein, and therefore do not represent an additional expense to Condominium Purchasers.

No representation is made that the Working Capital Fund will be adequate to cover current or future expenses. If additional funds are required over and above the Working Capital Fund, it may be necessary to increase Common Charges or separately assess all Unit Owners. Neither the Department of Law nor any other government agency has passed upon the adequacy of the Working Capital Fund.

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

Sponsor is not entering into any service contracts that will be binding on the condominium. Sponsor is not entering into any management agreement with a managing agent. Sponsor will serve as the managing agent for the first year of condominium operation, and anticipates continuing to do so while Sponsor controls the Board of Managers at no cost to the Condominium. Should the Board of Managers decide at any point thereafter to retain the services of a managing agent of the Board's own choosing, same may represent an additional cost to the condominium which might result in a concomitant increase in common charges. The Board of Managers has the right to cancel the management agreement with or without cause.

Activities typically performed by the managing agent include maintenance of checking and savings accounts for the condominium, collection of monthly common charges, payment of all condominium common charges, processing of all individual unit sales, supervision and payment of building employees, building maintenance; review and resolution of any problems arising in the day-to-day operation of the building, compliance with all government laws and regulations affecting building operation, ownership, and maintenance, filing of annual tax returns, enforcement of condominium-adopted rules and regulations, seizure and sale of delinquent units, and response to individual unit owner complaints, questions, or issues. In addition to the foregoing, any additional issues or problems arising out of the operation, maintenance, ownership, or occupancy of the building will need to be dealt with by the Board of Managers.

## **IDENTITY OF PARTIES**

**SPONSOR:** The Sponsor of this offering is 40 Douglass LLC, a New York limited liability company formed on October 30, 2017, with offices located at 284 President Street, Brooklyn, New York 11231. The principals of the Sponsor are Jamie Grady, Joseph Calabrese, Joanne Mercaldi, Roger Mercaldi, Laura Boyd, and Joseph Boyd, of the same business address. Jamie Grady and Joseph Calabrese are a married couple who are both real estate managers and developers. Joanne Mercaldi and Roger Mercaldi are each involved in the health care industry and allied medical fields. Joanne Mercaldi is an executive for an organization specializing in providing home health care to the elderly. Roger Mercaldi is a chiropractor. Laura Boyd and Joseph Boyd are both creative directors for advertising and media companies. Other than Jamie Grady and Joseph Calabrese, none of the other principals of the Sponsor has real estate experience.

None of the principals of the Sponsor has previously been a Sponsor or principal of a Sponsor of a private or public offering of cooperative interest in realty including condominiums in or from the state of New York during the preceding five years except as noted below.

Jamie Grady has been principal of the Sponsor of the offering plan for the following condominium:

- 351 Union Street, Brooklyn, NY CD19-0081

Joseph Calabrese has been a Sponsor or principal of the Sponsor of the offering plans for the following condominiums:

- 434 Prospect Place, Brooklyn, NY CD15-0272
- 815 Prospect Place, Brooklyn, NY CD17-0229
- 351 Union Street, Brooklyn, NY CD19-0081

Neither the Sponsor nor the principals of the aforementioned offering plans own any remaining shares in the condominiums that are the subjects of these plans, nor do these or any principals own 10% or more of unsold shares or units in any other condominiums, HOA's, or cooperatives. Sponsor and principals have sold all condominium units, satisfied all mortgages and loans for which units had been pledged, and transferred management of these condominiums to their respective

Boards of Managers. There are no convictions, felony convictions, bankruptcies, judgments or injunctions against the Sponsors or principals.

COUNSEL: Sponsor has engaged Claudia V. Murdoch, Esq. of the Law Office of Claudia V. Murdoch, P.C., 117 Seventh Avenue, Brooklyn, New York 11215, to represent it in the conversion of the premises to condominium ownership. The law firm of Brickner Makow, LLP, will act as the Sponsor's closing attorney, and will be the escrow agent for purchasers' down payments. Ms. Murdoch and Brickner Makow, LLP represent the Sponsor, not the Condominium, which is not represented by counsel.

ARCHITECT: The architect, James Cleary, R.A., Principal of James Cleary Architecture (JCA), with offices at 68 35th Street, Building No. 4, Suite C652, Brooklyn, New York 11232, has examined the physical condition of the property and has rendered his report thereof as set forth in Part II starting at Page AR1. Mr. Cleary was licensed to practice architecture in New York in 1996 and established his firm shortly thereafter. JCA is a full service architectural firm experienced in the design and construction of new and rehabilitated residential buildings in urban, suburban and rural settings. In addition to directing his firm, Mr. Cleary has also been a teacher of architecture and jury panelist for competitions at several architecture schools. The architect has no relationship with or financial interest in the property, Sponsor, condominium, selling agent, or any other party interested in this transaction except for his fee for services rendered in connection with his report.

SELLING AGENT: The Sponsor is currently the selling agent for the plan. The Sponsor has not previously been the selling agent for any offering of condominium or cooperative interests in real property in or from the State of New York.

MANAGING AGENT: During the Sponsor control period, the Sponsor controlled Board will serve as the managing agent for the condominium at no cost to the Condominium. Principals of the Sponsor Jamie Grady and Joseph Calabrese have prior management experience in their prior capacities as principals of Sponsors who have served as Managing Agents.

## GENERAL

The Plan does not knowingly omit any material fact or contain any untrue statement of any material fact. Copies are contained in Part II hereof of the Condominium Declaration, Purchase Agreement, Condominium By-Laws and form of Unit Deed.

There are no lawsuits or other proceedings now pending, or any judgments outstanding, either against the Sponsor or any other person or persons that might become a lien against the Property or that may materially affect this offering, the Property, Sponsor's capacity to perform all obligations under the Plan, the Condominium, or the operation of the Condominium.

No units in this building are occupied by residential or commercial tenants. No contracts or agreements, written or oral, have been entered into for the sale or transfer of any of the units offered pursuant to the Offering Plan. No deposits or advances of funds have been taken by, or on behalf of, the Sponsor in connection with the reservation, sale, or transfer of any units offered pursuant to this Offering Plan.

The Property has not been the subject of any prior cooperative or condominium offerings. There are no preliminary binding agreements entered with any purchasers, nor has any money been collected from any prospective purchasers. There has been no market test pursuant to Cooperative Policy Statement No. 1.

In accordance with the provisions of the laws of the State and City of New York, the Sponsor represents that the Sponsor, and the Selling Agent, will not discriminate against any person because of race, creed, color, sex, sexual orientation, disability, age, marital status, national origin, or ancestry in the sale of the units offered by the Plan, or in the leasing of any apartment in the building.

Operable smoke detectors and carbon monoxide detectors will be installed in all apartments as per the New York City Administrative Code.

If there is a material amendment to the Offering Plan that adversely affects a purchaser, such purchaser shall have the right to rescind his/her purchase agreement within fifteen (15) days after the date of presentation by the Sponsor, which rescission shall be made by CERTIFIED MAIL - RETURN RECEIPT REQUESTED, and shall be deemed made on the date when notice of rescission is deposited with the United States Post Office.

Sponsor shall promptly return the deposit on contract to any purchaser who validly rescinds.

No person has been authorized to make a representation that is not expressly contained herein. This Plan may not be changed or modified orally.

### **DOCUMENTS ON FILE**

Sponsor shall keep copies of the Offering Plan, all documents referred to in the Offering Plan, and all exhibits submitted to the Department of Law in connection with the Offering Plan on file and available for inspection without charge, and for copying at a reasonable charge, at the Sponsor's office as set forth in this Offering Plan, or at the office of the Sponsor's attorney, for a period of six (6) years from the date of first closing. The Sponsor shall deliver to the Board of Managers of the Condominium a copy of all documents filed with the appropriate recording office at the time of the first closing of a Condominium unit.

### **REPORT TO UNIT OWNERS**

The Board of Managers of the Condominium shall give annually to each and every Unit Owner:

- 1) Within four (4) months from the end of each fiscal year a financial statement. During the period the Sponsor is in control of the Board of Managers, there shall be a certified financial statement prepared by a certified public accountant or public accountant.
- 2) Prior notice of the annual Unit Owners meeting, which shall occur in March, and which notice shall be no less than thirty (30) days prior to the scheduled meeting.
- 3) A copy of the proposed annual budget of the Condominium no less than thirty (30) days prior to the date set for adoption thereof by the Board of Managers. During the time the Board is controlled by the Sponsors, this budget shall be certified by a qualified budget expert.

### **SPONSOR'S STATEMENT OF BUILDING CONDITION**

The Sponsor hereby adopts the DESCRIPTION OF THE PROPERTY AND SPECIFICATIONS set forth in Part II of this Offering Plan. With reference to such material, a licensed architect or engineer prepared the description of property and building conditions contained therein.

The Sponsor represents that it does not know of any defect or need for major repairs except as hereinafter set forth, and that, to the best of the Sponsor's knowledge, the following description accurately states the condition of the building and its equipment (see DESCRIPTION OF THE PROPERTY AND SPECIFICATIONS in Part II of the Plan).

The Property will be offered in its condition as described in this plan. Neither the Sponsor nor its Principals will have any obligation to make repairs or improvements except to the extent that the building or its systems do not conform to the conditions as described in the Plan. The Sponsor will cure, or cause to be cured, all violations of record against the Property on the closing date, eliminate all known dangerous or hazardous conditions, and comply with all work orders from mortgagees.

# PART II

## **PURCHASE AGREEMENT**

The 40 Douglass Street Condominium  
40 Douglass Street  
Brooklyn, New York

Condominium Unit No. \_\_\_\_

Agreement, dated \_\_\_\_\_, 20\_\_\_\_, between is 40 DOUGLASS LLC, a New York Limited Liability Company, with offices at 284 President Street, Brooklyn, New York 11231 (the "Sponsor") and \_\_\_\_\_ residing at \_\_\_\_\_ the "Purchaser").

1. *Agreement to Purchase.* Purchaser agrees to purchase from Sponsor, who agrees to sell to Purchaser, the Condominium Unit in The 40 Douglass Street Condominium, located at 40 Douglass Street, Brooklyn, New York, designated as Unit No. \_\_\_\_ together with a \_\_\_\_ undivided interest in the Common Elements of the Condominium.

The Purchase Price is \$ \_\_\_\_\_ payable as follows:

1. Down Payment, paid simultaneously herewith: \$ \_\_\_\_\_
2. Balance, due at closing: \$ \_\_\_\_\_

This Purchase Agreement is made pursuant to the terms of a condominium offering plan covering The 40 Douglass Street Condominium (the "Plan").

Purchaser has delivered to Sponsor his check for the Down Payment shown above, made payable to "Brickner Makow, LLP IOLA Account". This check is accepted by Sponsor subject to collection. Purchaser will pay the above-stated Balance, by cash or by mortgage, at the Closing of Title as discussed in paragraph 2 hereof.

2. *Delivery of the Deed.* The closing of title shall occur on or about 30 calendar days after the date of this Agreement at the offices of Brickner Makow LLP 292 Warren Street, Brooklyn, NY 11201. Sponsor shall have the right, from time to time, to adjourn such time and date for closing on written notice to Purchaser. If adjourned, Sponsor shall fix a new date and time for title closing and shall give Purchaser not less than ten (10) business days-prior written notice of the new scheduled date and time for closing. In the event that a Purchaser does not close on the Closing Date set forth herein, the Sponsor elects not to cancel the Purchase Agreement or if the Sponsor approves the Purchaser's request to adjourn the Purchaser's Closing to his apartment, interest shall accrue on the unpaid amount of the purchase price from the Closing Date until such amount is paid. The interest rate shall be twelve percent (12%) per annum. This rate shall be in effect for as long as there is any unpaid amounts owing towards the full purchase price. At Closing, Purchaser shall pay Sponsor the Balance due by certified check or official bank check drawn on a New York bank payable to the order

of Sponsor (or such other payee as Sponsor may designate - PLEASE NOTE - NO THIRD-PARTY CHECKS WILL BE ACCEPTED- and Sponsor shall deliver to Purchaser the deed to the Unit. The deed delivered to Purchaser shall be a standard type of deed known as a bargain and sale deed with covenant against grantor's acts. Purchaser shall pay the New York State and New York City transfer taxes on such deed. When Sponsor delivers the deed, Purchaser shall sign it and the power of attorney in favor of the Board of Managers of the Condominium in the form set forth in the Plan.

3. *Receipt of Documents.* Sponsor has delivered to Purchaser at least three (3) full business days prior to his signing this Agreement, the proposed Declaration, By-Laws, Schedules, Plans and Exhibits contained in the Plan, as amended, all of which are made part of this Agreement as if they were set forth in full in this Agreement. Purchaser has read the Plan and agrees to be bound by the Plan. If Purchaser has not received the Plan at least three (3) full business days before signing this Agreement, Purchaser has seven (7) days, after delivering this Purchase Agreement and Down Payment, to rescind this Purchase Agreement and have the Down Payment promptly refunded. In order to rescind, a written notice of rescission must be delivered to Brickner Makow LLP Attn: Howard M. Brickner, Esq., 292 Warren Street, Brooklyn, New York 11201, personally or by mail (facsimiles are not acceptable). If personally delivered, the notice must be received by 5:00 p.m. on the seventh (7<sup>th</sup>) day after delivery of the Purchase Agreement. If mailed, the notice must be postmarked by midnight of the seventh (7<sup>th</sup>) day after delivery of the Purchase Agreement. Delivery of the Purchase Agreement will be deemed to have occurred on the date of personal delivery or, if mailed, on the fifth day after the date of mailing. Purchaser acknowledges that except as stated in this Agreement (and as set forth in the Declaration, By-Laws, and Plan), Purchaser has not relied on any representations or other statements of any kind or nature made by Sponsor or any other persons or entities, written or oral, including but not limited to, any representations relating to the description, size or dimensions of the Unit or rooms or any amenities contained in the Unit or the Building, and the estimated common charges, real estate taxes or other expenses of the Condominium.

4. *Marketable Title.* Sponsor shall convey to Purchaser such good and marketable title as any reputable title company licensed in the State of New York shall approve and insure for fee title insurance and mortgage title insurance, if any (subject to the terms of the Plan and of the Declaration and By-Laws as filed) and free and clear of all liens and encumbrances except (i) the lien of the mortgage, if any, applied for by Purchaser and (ii) those liens and encumbrances set forth in the Plan and on Exhibit A annexed hereto. If Purchaser shall order fee title insurance, it shall be purchased at his own cost and expense. If Purchaser orders title insurance from any company other than the one which Sponsor selects, and such title company raises any exception to title which Sponsor's company is willing to omit without any additional premium or cost, then such exception shall not, in any event, constitute an objection to Closing. Sponsor shall have no obligation whatsoever to provide additional information, affidavits, undertakings or any other thing requested by any title company other than Sponsor's title company in order to omit any exception, which has not been raised or has been omitted by Sponsor's title company.

5. *Inspection; Condition of Units.* At least one (1) day before Closing, a representative of the Sponsor and Purchaser shall inspect the Unit. At the conclusion of the inspection, Purchaser will complete and sign a "punch list". Purchaser's signing of this Purchase Agreement shall constitute his acceptance of the Unit and the Building in the condition in which it shall be at the time of Closing, subject to any items to be corrected which are noted on the punch list, without any abatement or credit against the Purchase Price or any provision for escrow deposits at closing.

Except for the items set forth on the punch list, Sponsor will have no obligation to repair or correct Minor Imperfections (as that term is defined in the Plan.).

6. *Effectiveness of Offering Plan.* It is agreed that this Purchase Agreement is contingent upon the Plan being declared effective and that the Plan shall not be declared effective except as provided by the Plan. The Sponsor may abandon the Plan at any time prior to declaring it effective. If the Plan is abandoned, does not become effective, or is not consummated for any reason after being declared effective within the time prescribed by the Plan, this Purchase Agreement shall be deemed cancelled and the Plan terminated. Within ten (10) days thereafter, Purchaser will receive back the Down Payment paid by Purchaser hereunder together with interest, if any, earned thereon. Upon repayment, no party shall have any claim against any other party or person, including but not limited to, the Sponsor, the Escrow Agent or the Selling Agent and all parties shall be released *in accordance with the terms of the Escrow Agreement*.

7. *Closing Expenses and Adjustments.* At the closing of title, Purchaser shall pay, in addition to any other fees disclosed and provided for in the Offering Plan and any amendments thereto, the following, by Purchaser's unendorsed certified check or official bank check:

(i) Any charges for the cost of title examination and fee insurance, the New York State (TP-584), New York City (RPT) Real Estate Transfer Taxes and the NYS mansion Tax and recording charges for the deed and power of attorney in favor of the Board of Managers; (ii) an amount equal to two (2) months' common charges, representing Purchaser's share of initial working capital for the Condominium; (iii) Sponsor's counsel, Brickner Makow LLP, a fee of \$3,000 for services in connection with preparing various closing documents and for coordinating and attending the closing. If the closing takes place anywhere other than at the office of Sponsor's counsel, an additional fee of \$850 will be charged for attending the closing. If the closing is adjourned at Purchaser's request, an additional fee of \$350.00 will be charged for each adjournment. Additionally, in the event that the Sponsor, in its sole and absolute discretion, grants its consent to a request by a Purchaser to assign a Purchase Agreement, the Purchaser shall pay an additional of \$1,250.00 to Sponsor's counsel for preparation and processing of the assignment. In the event the Sponsor shall enter into an Interim Lease with the purchaser, there will be an additional fee of \$750.00 per Unit. In the event that a purchaser defaults, a fee of \$350.00 will be charged for each default letter. The foregoing fees shall be cumulative. Such fees shall be payable at or prior to closing by Purchaser's unendorsed certified check or official bank check made payable directly to Brickner Makow LLP; and (iv) in the event that Purchaser obtains a mortgage loan for the Unit, Purchaser shall also pay the cost of the mortgage recording tax, premium for mortgage title insurance (if required by the Lender), mortgage recording fees, all of the Lender's charges and, to the Sponsor, an amount equal to the credit to which Purchaser would be entitled under Section 339-ee(2) of the New York Condominium Act by reason of mortgage taxes previously paid. Adjustments (as of the Closing Date) shall be made for real estate taxes and common charges assessed during the month in which title closes or established as a reserve based upon the last bill received. If the Unit has not been separately assessed on the closing date for the then current fiscal tax year, taxes shall be apportioned based upon the assessment of the Condominium and the percentage interest in the Common Elements appurtenant to the Unit. No adjournment of Closing by Purchaser shall be permitted; however, in the event that the Closing Date set by Sponsor shall be adjourned at the Purchaser's request (or at the request of Purchaser's attorney, lender or representative) (1) all adjustments shall be made as of the original Closing Date and (2) Purchaser shall pay interest on the unpaid balance of the total purchase price to Sponsor from the originally

scheduled Closing Date until the actual date of Closing at the rate of 12% per annum. If the Units have not been separately assessed prior to the Closing, Purchaser shall reimburse Sponsor for unpaid real estate taxes levied against the Unit until the Units are separately assessed. Sponsor shall pay the real estate taxes from an escrow account when such taxes are due and payable. Purchaser shall promptly reimburse Sponsor for such payments even if they become due and are paid after Closing. Any errors or omissions in computing apportionments shall be corrected and payment made to the proper party promptly after discovery. The provisions of this paragraph shall survive Closing.

8. *Escrow of Down Payment.*

8.1. The law firm of Brickner Makow LLP , with an address at 292 Warren Street, Brooklyn, New York, New York 11201, telephone number 718-624-1550, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated the following attorneys to serve as signatories Tracy E. Makow and Howard M. Brickner. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

8.2. Escrow Agent and all authorized signatories hereby submit to the jurisdiction of the State of New York and its Courts for any cause of action arising out of the Purchase Agreement or otherwise concerning the maintenance of release of the Deposit from escrow.

8.3. The Escrow Agent has established the escrow account at JPMorgan Chase Bank, located at 192 Smith Street, in the State of New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled Brickner Makow LLP IOLA Trust Account ("Escrow Account"). The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured, unless Escrow Agent has established multiple accounts on behalf of Purchaser at various institutions.

8.4. 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 Brickner Makow LLP IOLA Trust Account, as Escrow Agent.

8.5. The Escrow Account shall be an IOLA account and all interest earned thereon shall inure and be payable to the State of New York. No fees of any kind may be deducted from the Escrow Account, and the Sponsor shall bear all costs associated with the maintenance of the Escrow Account.

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

8.7. The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the Deposit, he or she may cancel the Purchase Agreement within

ninety (90) days after tender of the Purchase Agreement and Deposit to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, N.Y. 10001. 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.

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

8.9. Under no circumstances shall Sponsor seek or accept release of the Deposit of a defaulting Purchaser until after consummation of the Plan, as evidenced by the acceptance of an effectiveness amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL §§ 352-3(2-b) and 352-h.

8.10. The Escrow Agent shall release the Deposit if so directed:

(a) pursuant to terms and conditions set forth in the Purchase Agreement in Paragraph 8 upon closing of title to the Unit; or

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

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

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

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

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

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

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

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

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

8.13. 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).

8.14. 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.

8.15. Sponsor agrees that Sponsor and its agents, including any selling agents, shall deliver the Deposit received by them prior to closing of the [unit/shares/membership interest/fractional interest] to a designated attorney who is a member of or employed by Escrow Agent, within two (2) business days of tender of the Deposit by Purchaser.

8.16. Sponsor agrees that it shall not interfere with Escrow Agent's performance of its fiduciary duties and statutory obligations as set forth in GBL §§ 352-(e)(2-b) and 352-(h) and the New York State Department of Law's regulations.

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

8.18. Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

8.19. Sponsor agrees to defend, indemnify and hold Escrow Agent harmless from and against all costs, claims, expenses and damages incurred in connection with or arising out of Escrow Agent's responsibilities arising in connection with this Purchase Agreement or the performance or non-performance of Escrow Agent's duties under this Purchase Agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of the obligations set forth in this Purchase Agreement or involving gross negligence of Escrow Agent. This indemnity includes, without limitation, disbursements and attorneys' fees either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by Escrow Agent to itself.

9. *Sponsor's Rights if Purchaser Fails to Keep His Promises and Agreements.* All sums Purchaser pays to Sponsor on account of this Agreement and the reasonable expenses of the examination of title to the Unit shall constitute liens on the Unit. However, these liens shall not continue after default by Purchaser under this Agreement. Subject to provisions of Paragraph 8 hereof, Sponsor shall have the right to keep the Down Payment and any interest earned thereon if (a) Purchaser does not pay the Total Purchase Price for his Unit or any part of the Total Purchase Price when due; (b) Purchaser does not sign any of the documents referred to in the Plan which Purchaser is required to sign when Sponsor offers to deliver to Purchaser the deed to his Unit; or (c) Purchaser fails to keep any other promise contained in this Agreement.

Before Sponsor shall have the right to keep the Down Payment and the interest earned thereon, Sponsor must first send Purchaser a notice stating that Sponsor intends to cancel this Agreement describing each promise which Sponsor thinks Purchaser did not keep under this Agreement. If Purchaser does not cause each of these promises to be kept within thirty (30) days after Sponsor's notice is sent, Sponsor may keep the Down Payment and all interest earned thereon. After such time period expires, neither Sponsor nor Purchaser shall have any further obligations under this Agreement, this Agreement shall be considered cancelled without any further action by either party, and Sponsor shall have the right to sell the Unit to any other person or entity whatsoever. THIS PROVISION IS OF THE ESSENCE AND NO EXTENSION OF THE CURE PERIOD WILL BE GRANTED.

10. *Sponsor's Inability to Deliver Deed; Cancellation of the Purchase Agreement.* If Sponsor is unable to deliver to Purchaser a deed to the Unit in accordance with this Agreement because of Sponsor's inability to complete the filing of the Plan in accordance with the Plan, as it may be amended, Sponsor shall immediately notify Purchaser in writing and this Agreement will terminate. In that case, the sole obligation of Sponsor shall be to return to Purchaser the Down Payment together with interest, if any, earned thereon.

11. *Recording of Condominium Declaration.* Purchaser understands that the Declaration and By-Laws establishing the Condominium shall be recorded by Sponsor in the Office of the New York City Register in the County of New York prior to the closing of title to the first Unit as set forth in the Plan. Sponsor shall file with the Declaration when it is recorded or shall amend the Declaration prior to the Closing Date and file at such time a verified statement of a registered architect or licensed professional engineer certifying that the floor plans being filed fully and fairly depict the layout, location, Unit designation and approximate dimensions of the Unit. The Declaration and By-Laws, when recorded by Sponsor, shall be substantially in the form of the Declaration and By-Laws set forth in the Plan and no changes in those documents shall have a material adverse effect upon Purchaser. Sponsor shall not record the Declaration until the Plan has been declared effective in the manner provided therein.

12. *Personal Property Included in Sale; Excluded Items.* All articles of personal property, fixtures and equipment described in the Plan for the Unit being purchased by Purchaser are included in this sale. They shall be delivered free and clear of all liens and encumbrances except the lien of the mortgage, if any, applied for by Purchaser.

13. *Risk of Loss.* The risk of loss or damage to the Unit by fire or any other cause until the delivery of the deed or until Purchaser enters into possession of the Unit, whichever is earlier, is assumed by Sponsor.

14. *Existence of Liens - Not Objection to Title.* The existence of unpaid taxes or liens of any kind at the time of title closing shall not constitute an objection to title, provided Sponsor shall deposit a sufficient amount of money with its title company so that the company shall be willing to insure against collection of the taxes or liens from the Unit. Purchaser agrees that Sponsor may pay and discharge any liens and encumbrances upon any unit not provided for in this Agreement out of the monies to be paid by Purchaser at the time of closing title to the Unit.

15. *Execution of Required Documents, etc.* Purchaser agrees to deliver to Sponsor all documents and to perform all acts required by Sponsor or by any governmental authority to carry out the provisions and intent of the Plan, establish the Condominium and conform to the provisions of all applicable laws and regulations. This Paragraph 15 shall survive delivery of the deed. Purchaser specifically agrees to execute any such documents or perform any such acts after Closing promptly upon request at no cost or expense to either party.

16. *Binding Nature of Purchase Agreement, Assignability, Use.* This Agreement is binding upon the Purchaser, Sponsor and their respective heirs, executors, administrators and assigns. Purchaser will not record this Agreement, nor give, sell or assign his rights in this Agreement without Sponsor's prior written consent which may be arbitrarily refused. Additionally, if and only if the Sponsor, in its sole and absolute discretion, grants its consent to a request by a Purchaser to assign this Agreement, Purchaser shall pay Sponsor a fee of \$1,500 to Sponsor's counsel for preparation and processing of the assignment. Purchaser hereby represents that the Unit is being purchased for residential use or a use permitted by the Declaration and By-Laws and for no other purpose.

17. *Notice.* Unless another method is provided for in this Agreement, any notice to be given to either party shall be in writing and sent by hand, certified mail (return receipt requested) or by nationally recognized overnight courier to the address shown on page one of this Agreement or to such address as either party may later designate to the other in writing in the manner described in this Paragraph 17. A copy of any notice sent to Sponsor shall also be sent in the same manner to Brickner Makow LLP Attn: Howard M. Brickner, Esq., 292 Warren Street, Brooklyn, New York 11201.

18. *Acceptance of Agreement.* This Agreement shall not be binding on Purchaser or the Sponsor until this Purchase Agreement shall be accepted, by endorsement by the Sponsor, and a fully signed copy of this Agreement shall have been delivered or mailed to Purchaser. Within twenty (20) days after receipt of the Purchase Agreement from a prospective Purchaser, the Sponsor will either accept the Purchase Agreement or reject it, in which latter case, the Down Payment will be refunded to Purchaser without interest. The failure of the Sponsor to act within the twenty (20) day period shall be deemed a rejection of the Purchase Agreement. If the Purchase Agreement is accepted, a counterpart thereof, signed by the Sponsor or the Selling Agent on behalf of the Sponsor, will be returned to the prospective Purchaser. Notwithstanding the date which shall appear hereon, such twenty (20) day period shall not commence until Purchaser has delivered good funds for the Down Payment.

19. *No Discriminatory Inducement.* Purchaser represents that he is over eighteen (18) years of age, and the sale of the designated Unit was made to Purchaser in good faith pursuant to the terms set forth in the Plan, without fraud or duress.

20. *Broker.* Sponsor and Purchaser agree that no broker other than \_\_\_\_\_ brought

about this sale. Sponsor agrees to pay the commission due such broker on the sale and Purchaser agrees to indemnify and hold harmless the Sponsor from and against any and all claims, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by the Sponsor by reason of any claim arising out of any conversations or negotiations had by Purchaser with any broker, finder or like person claiming to have dealt with Purchaser in connection with the sale of the Unit other than the broker set forth in this Paragraph 20. The representations and indemnities set forth in this Paragraph 20 shall survive the Closing hereunder.

21. *Definitions.* All defined terms contained in the Plan will have the same meaning ascribed to them in this Agreement. The term "Purchaser" shall be read as "Purchasers" if more than one person signs this Agreement. In that case, the obligations of all purchasers shall be considered joint and several.

22. *Entire Agreement; Plan Controls; Governing Law.* This Agreement states the entire understanding between the parties hereto. Neither party shall be bound by any oral representations or agreements. All of the terms of the Plan are incorporated in this Agreement as though fully contained herein. In the event of any discrepancy between this Agreement and the Plan, the Plan shall control. The laws of the State of New York shall govern this Agreement without regard to any principles of conflicts of law.

23. *Waiver.* Purchaser waives any right to trial by jury in any action, proceeding or counterclaim in any way connected with this Agreement or the Plan. The failure of the Sponsor to insist upon strict performance of any of the terms or conditions of this Agreement shall not be deemed a waiver of any subsequent breach or default in the terms and conditions of this Agreement.

24. *Survival of Seller's and Purchaser's Obligations.* Sponsor shall have no obligations under this Agreement or the Plan after Sponsor delivers to Purchaser the deed to the Unit unless this Agreement or the Plan specifically gives Sponsor an obligation after that time. All representations made by Purchaser in this Agreement shall expressly survive the closing of title.

25. *Agreement Contingent Upon Financing.* A. Contingency Period and Terms of Loan. The obligations of Purchaser hereunder are conditioned upon issuance on a date which is on or before thirty (30) days from date the Purchaser receives an executed Purchase Agreement ("Mortgage Contingency Expiration Date"), of a written commitment from any Institutional Lender (which shall include a mortgage banker and broker) pursuant to which such Institutional Lender agrees to make a first mortgage loan to Purchaser, at Purchaser's sole cost and expense, of an amount equal to \$ \_\_\_\_\_ or such lesser sum as Purchaser shall be willing to accept, or such other sum as to which the parties may agree, at prevailing interest rates for a term of at least thirty (30) years and on other customary commitment terms, whether or not conditional upon any factors other than an appraisal satisfactory to the Institutional Lender.

B. Application Procedure. Within 5 business days of receipt of the fully executed Purchase Agreement, Purchaser must make a mortgage application. Within seven (7) business days, Purchaser must provide Seller and/or Seller's attorney with the name and address of the bank or mortgage broker to which application has been made. Purchaser shall authorize the mortgage broker or lending institution to talk directly to Seller's attorney regarding the status of the mortgage application. Failure

to send such notice, after receiving written notice from the Seller, will be considered to be a waiver of the mortgage contingency.

C. Purchaser's Responsibilities. Upon making an application pursuant to this section, Purchaser shall: (1) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (2) pay all fees, points and charges required in connection with such application and loan, which may include the appraisal, credit checks, and origination fees, (3) pursue such application with diligence, and (4) cooperate in good faith with such Institutional Lender to obtain such commitment. Purchaser shall comply with all requirements of such commitment (or of any other commitment accepted by Purchaser) and shall furnish Seller with a copy thereof promptly after receipt.

D. Failure to Obtain Commitment. The purchaser will have the right to terminate the Purchase Agreement and be refunded all monies deposited thereunder, without interest, and unexpended sums for special work ordered in the event:

(1) an institutional lender fails, through no fault of the purchaser, to issue its commitment on the terms described above within 30 days (or such other period as the Sponsor may permit, in Sponsor's sole discretion), provided the purchaser gives notice of termination not later than five (5) business days after the expiration of the aforementioned period. In such event, if Seller has reasonably determined there is a high probability that Purchaser will be approved for a mortgage commitment with equal or better terms than those applied for under the original commitment, the Seller may, at its option within fifteen (15) days after receipt of the notice of rejection or expiration of the contingency period, whichever the case may be, cause Purchaser to submit an application together with the required fees to another Institutional Lender and Purchaser shall be required to accept the commitment under the same terms and conditions as stated above. The terms of such commitment will be equal to or better than the terms originally sought by the purchaser; or

(2) the commitment issued by the lender is not funded by the closing through no reason related to the purchaser, provided the purchaser gives notice of termination no later than ten (10) days before the scheduled closing. In such event, if Seller has reasonably determined there is a high probability that Purchaser will be approved for a mortgage commitment with equal or better terms than those applied for under the original commitment, the Seller may, at its option within fifteen (15) days after receipt of the notice of rejection or expiration of the contingency period, whichever the case may be, cause Purchaser to submit an application together with the required fees to another Institutional Lender and Purchaser shall be required to accept the commitment under the same terms and conditions as stated above. The terms of such commitment will be equal to or better than the terms originally sought by the purchaser

E. Failure to Notify. If Purchaser fails to give timely notice of cancellation in accordance with paragraph D above then Purchaser shall be deemed to have waived the right to cancel the contract and to receive a refund of the Deposit and unexpended sums for special work ordered by reason of the contingency contained in this Rider. The contract will remain in full force and effect and the mortgage contingency will no longer apply. In addition, Seller may, at its option, cancel the contract and thereafter neither party shall have any further rights against or obligations or liabilities to, the other by reason of this contract, and upon cancellation the down payment and unexpended sums for special work ordered shall be promptly refunded to Purchaser.

F. Lapse in Commitment. Provided that the purchaser complies with all of the terms of this section, if the financing commitment lapses or expires prior to closing and the purchaser has made a good faith effort to extend the commitment, the Sponsor will grant to purchaser a right of rescission and a reasonable period of time to exercise such right.

26. *Amendments to Offering Plan.* Purchaser understands that the Unit Purchaser is purchasing is covered by a Condominium Offering Plan and that the terms of the Plan may be amended from time to time to, among other things, increase or decrease the prices at which all of the Units are being offered or in such other respects as the Sponsor sees fit. No such amendment shall increase the sales price of the Unit Purchaser is purchasing hereunder so long as Purchaser is not in default. In the event any amendment to the Plan, whether made before or after the Plan is declared effective, materially alters the Plan in a manner which adversely affects Purchaser, he will be afforded a fifteen (15) day period within which to rescind this Agreement following delivery to him of such a copy of such amendment to the Plan. Should Purchaser then elect to rescind, Purchaser will receive back his Down Payment, together with interest, if any, earned thereon and Purchaser shall have no other rights or remedies against the Sponsor. In no event shall such amendment excuse Purchaser's performance hereunder (unless Purchaser rescinds as set forth above) nor entitle Purchaser to any offset or credit against the Purchase Price.

27. *Captions.* The captions in this Agreement are for convenience only and are not part of this Agreement.

28. *Plain Language.* Purchaser has read this Agreement and Purchaser understands it. Under New York law (General Obligations Law Section 5-702), Purchaser knows that as a consumer, Purchaser has a right to an agreement written in clear and simple language. Sponsor and Purchaser both believe this is such an agreement.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

Accepted and agreed to by:

40 DOUGLASS LLC

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

As to Paragraph 8 of the Purchase Agreement:

ESCROW AGENT: Brickner Makow LLP

---

By:

## EXHIBIT A

### Permitted Encumbrances

- a. The terms, burdens, conditions, covenants, restrictions, easements and provisions, all as set forth in the Declaration, the By-Laws and the Rules and Regulations made thereunder; the Power of Attorney from Purchaser to the Board of Managers; and Floor Plans, all as may be amended from time to time;
- b. Any state of facts which an accurate survey or inspection of the Unit would show provided such facts do not render title unmarketable and would not prevent the use of the Unit for dwelling purposes;
- c. Covenants, restrictions, easements and agreements of record if any, provided the same do not prevent the use and maintenance of the structure;
- d. Zoning regulations and ordinances which are not violated by the existing structures;
- e. Consents by the Seller or any former owner of the premises for the erection of any structure or structures on, under or above any street or streets on which any premises may abut;
- f. Beams and beam rights, and party wall and party wall agreements, if any;
- g. Possible lack of right to maintain vault or vaulted areas under and coal chutes in the sidewalks;
- h. Projections and encroachments, if any, or retaining walls, doors, ledges, water tables, standpipes, chimneys, lintels, coal chutes, windows, bay windows, trim, coping, cornices, ornamental projections, fences and retaining walls;
- i. Mechanics' liens, if any, provided that any reputable title company licensed to do business in the State of New York agrees to insure the Purchaser against the collection thereof out of the Unit but not against the Property;
- j. Rights, if any, acquired by any utility or licensed public service company to maintain and operate lines, wires, cables, poles and distribution boxes in, over and upon said Property;
- k. Variations if any, between tax lot and lines of record title;
- l. Existing Interim Leases between Sponsor and Purchaser;
- m. Party wall agreements;
- n. Legislative restrictions, if any;
- o. Standard printed exceptions contained in the form of title insurance to be issued by the title insurance company insuring the Purchaser's title to the Property, included but not limited to:

(i) Defects and encumbrances arising or becoming a lien after the date of the title policy, except as therein provided;

(ii) Consequences of the exercise and enforcement or attempted enforcement of any governmental war or police powers over the Property;

(iii) Any laws, regulations or ordinances (including, but not limited to zoning, building, environmental protection) as to the use, occupancy, sub-division or improvement of the premises; adopted or imposed by any governmental body, or the effect of any non-compliance with, or any violation thereof;

(iv) Judgments against the insured or estates, interests, defects, objections, liens or encumbrances created, suffered, assumed or agreed to by or with the privity of the insured;

(v) Title to any property beyond the lines of the premises or to areas within or rights or easements in any abutting streets, roads, avenues, lanes, ways or waterways, with a right to maintain train vaults, tunnels, ramps or any other structure or improvement, unless the policy specifically provides that such titles, rights or easements are insured. Notwithstanding any provision in this paragraph to the contrary, the policy, unless otherwise excepted, shall insure the ordinary rights of access and egress belonging to the abutting owners;

(vi) Title to any personal property, whether the same be attached to or used in connection with said premises or otherwise.

p. Service, maintenance and license agreements, if any, of other Units or portions of Common and Limited Common Elements;

q. The lien of any unpaid Common Charges, real estate tax, water and sewer charges provided the same are adjusted at the Closing;

r. The lien of any unpaid assessment payable in installments (other than assessments levied by the Board of Managers) except that the Sponsor shall pay all such assessments due prior to the Closing Date and the Purchaser shall pay all assessments from and after such date (however, the then current installment shall be adjusted at Closing);

s. Any other Declaration or other instrument affecting the Property which the Sponsor deems necessary or appropriate to comply with any law, ordinance, regulation, zoning, resolution or requirement of the Department of Buildings, the City Planning Commission, the Board of Standards and Appeals, or any other public authority, applicable to the demolition, construction, alteration, repair or restoration of the Building;

t. Certificate of Occupancy or evidence that the building pre-dates the requirement of a certificate of occupancy as is the case here;

u. Violations noted or issued of record after the First Closing by any governmental authority. Any violations which the Sponsor is obligated to remove will not be an objection to the closing of Units after the date of First Closing, provided Sponsor agrees in writing with Board of Managers to remove same of record.

The 40 Douglass Street Condominium  
40 Douglass Street  
Brooklyn, New York

INFORMATION SHEET

Unit No. \_\_\_\_

PLEASE PRINT CLEARLY  
ALL NAMES WILL APPEAR ON THE DEED EXACTLY AS ENTERED HERE

Name of  
Purchaser: \_\_\_\_\_  
\_\_\_\_\_

Address of  
Purchaser: \_\_\_\_\_

Telephone Number: (home) \_\_\_\_\_  
(office) \_\_\_\_\_

Social Security No: \_\_\_\_\_

Attorney: \_\_\_\_\_  
\_\_\_\_\_

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

Phone & Fax: \_\_\_\_\_  
\_\_\_\_\_

**UNIT DEED**

Title No. \_\_\_\_\_

40 DOUGLASS LLC

TO

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BLOCK

LOT

KINGS COUNTY

RECORD AND RETURN BY MAIL TO:

## **UNIT DEED**

THIS INDENTURE, made the     day of     , 20\_\_ , between 40 Douglass LLC, a New York Limited Liability Company, with offices at 284 President Street, Brooklyn, NY 11231 (collectively, the "Grantor"), and \_\_\_\_\_ residing at \_\_\_\_\_ ("Grantee").

WTINESSETH, that the Grantor, in consideration of Ten (\$10.00) Dollars, lawful money of the United States, and other valuable consideration paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee, the Condominium Unit known as Unit \_ and more particularly described on Schedule A annexed hereto.

TOGETHER with the benefits, rights, privileges, easements and subject to the burdens, covenants, restrictions, By-Laws, rules, regulations and easements set forth in the Condominium Documents, filed and recorded as described in Schedule A annexed hereto.

TOGETHER with all right, title and interest, if any, of the Grantor in and to any streets and roads abutting the above-described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee forever.

AND the Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the Grantor, in compliance with Section 13 of the Lien Law, covenants that it 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 the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The term "Unit" as used in this Deed has the same meaning as the term "Unit" as defined in Article 9-B of the Real Property Law of the State of New York.

Except as otherwise specifically permitted by the Board of Managers, or provided in the Declaration or By-Laws, the Unit is intended for residential use or, in the event that the Unit conveyed hereby is a parking space Unit, for use as a parking space.

By accepting this Deed, the Grantee accepts and ratifies the provisions of the Declaration and the By-Laws (and any Rules and Regulations adopted under the By-Laws) and agrees to comply with all the terms and provisions thereof.

The term "Grantee" shall be read as "Grantees" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the Grantor and the Grantee have duly executed this indenture as of the day and year first above written.

IN PRESENCE OF:

GRANTORS:

40 DOUGLASS LLC

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

GRANTEE(S):

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

[illegible]

On the       day of       in the year 20\_\_, before me, the undersigned, a Notary Public in and for the State of New York, personally appeared       personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/ they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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NOTARY PUBLIC

[illegible]

On the       day of       in the year 20\_\_, before me, the undersigned, a Notary Public in and  
for the State of New York, personally appeared                          personally known to me or proved to  
me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed  
to the within instrument and acknowledged to me that he/she/ they executed the same in  
his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the  
individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC



## **POWER OF ATTORNEY**

The undersigned, \_\_\_\_\_, residing at 40 Douglass Street, Brooklyn, NY 11231, owner of the Condominium Unit \_\_\_\_ (hereinafter referred to as the "Undersigned's Unit") known as Unit No. \_\_\_\_ at 40 Douglass Street, Brooklyn, New York, said Unit being designated and described as Unit No. \_\_\_\_ in the Declaration and also designated as Tax Lot \_\_\_\_ in Tax Block \_\_\_\_ of the Borough of Brooklyn on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans, (does) (do) hereby irrevocably nominate, constitute and appoint the persons who may from time to time constitute the Board of Managers, true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, in their own names, as members of the Condominium Board or in the name of their designee (corporate or otherwise), in accordance with the Unit Owners' respective Common Interests, on behalf of all Unit Owners, subject to the provisions of the By-Laws then in effect, to acquire or lease any Unit, together with its Common Interest, from any Unit Owner desiring to sell, convey, transfer, assign, or lease the same; to acquire any Unit, together with its Common Interest, that becomes the subject of a foreclosure or other similar sale, on such terms and at such price or at such rental, as the case may be, as said attorneys-in fact shall deem proper, and thereafter to convey, sell, lease, mortgage, or otherwise deal with (but not vote the interest appurtenant to) any such Unit so acquired by them or to sublease any Unit so leased by them, on such terms as said attorneys-in-fact may determine, granting to said attorney-in-fact the power to do all things in said premises that the undersigned could do if the undersigned were personally present; and to execute, acknowledge and deliver (a) any Declaration or other instrument affecting the Condominium that the Board of Managers deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution or requirement of the Department of Buildings, the City Planning Commission, the Board of Standards and Appeals, or any other public authority, applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Condominium or (b) any consent, covenant, restriction, easement, or declaration, or any amendment thereto, affecting the Condominium or the Common Elements, that the Board of Managers deems necessary or appropriate.

The acts of a majority of such persons constituting the Board of Managers or such other number as may be required by the By-Laws, shall constitute the acts of said attorneys-in-fact.

The undersigned (does) (do) hereby irrevocably nominate, constitute and appoint Bergen Green LLC or their respective designees (hereinafter collectively referred to as "Sponsor") as attorney-in-fact for the undersigned, coupled with an interest, with power of substitution, to amend from time to time said Declaration, By-Laws and the Rules and Regulations of the said Condominium, or any of said documents, when such amendment (1) shall be required to reflect any changes in Unsold Units and/or the reapportionment of the Common Interests of the affected Unsold Units resulting therefrom made by Sponsor or its designee in accordance with the Declaration or (2) shall be required by (a) an Institutional Lender designated by Sponsor to make a mortgage loan secured by a mortgage on any Unit, (b) any governmental agency having regulatory jurisdiction over the Condominium, or (c) any title insurance company selected by Sponsor to insure title to any Unit; provided, however, that any amendment made pursuant to the terms of subdivisions (1) or (2) of this paragraph shall not (i) change the Common Interest of the Undersigned's Unit, (ii) require a physical modification to the Undersigned's Unit, or (iii) adversely

affect the mortgage held by an Institutional Lender covering the Undersigned's Unit unless the undersigned [in the event of a matter described in subdivision (i) or (ii) of this paragraph] or the holder of such mortgage [in the event described in subdivision (iii) of this paragraph] shall consent thereto by joining in the execution of such amendment. The terms, covenants and conditions contained in, and the powers granted pursuant to, this paragraph shall remain in full force and effect until such time as the Sponsor or its designees shall cease to own any of the Units in The Bergen Green Condominium.

IN WITNESS WHEREOF, the undersigned (has) (have) executed this Unit Owner's Power of Attorney as of the       day of       , 20\_\_\_\_.

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

On the       day of       in the year 20\_\_, before me, the undersigned, a Notary Public in and for the State of New York, personally appeared  
personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**UNIT OWNER'S POWER OF ATTORNEY**

Title No. \_\_\_\_\_

BLOCK

LOT

KINGS COUNTY

RECORD AND RETURN BY MAIL TO:

BRICKNER MAKOW LLP  
292 Warren Street  
Brooklyn, New York 11201  
Attention: Howard M. Brickner, Esq.

## FORM OF INTERIM LEASE

**AGREEMENT** made this       day of       , 20       , between 40 DOUGLASS LLC, (hereafter SPONSOR) and       , (hereinafter PURCHASER);

### WITNESSETH:

WHEREAS, SPONSOR is the Sponsor of a condominium conversion of premises located at 40 Douglass Street, Brooklyn, New York; and,

WHEREAS, PURCHASER has executed a Purchase Agreement for Unit \_\_\_\_\_ at said premises; and,

WHEREAS, PURCHASER wishes to occupy said apartment prior to the closing of the transaction;

NOW, THEREFORE, in conformity with the terms and conditions of the Offering Plan filed with the Attorney General of the State of New York, the parties agree as follows:

- 1) Commencing on \_\_\_\_\_, and terminating as hereinafter specified, PURCHASER shall have the right to use and occupy the aforementioned apartment.
- 2) PURCHASER shall pay a fee for use and occupancy of the apartment of \$\_\_\_\_\_ per month. It is understood that this use and occupancy fee is not rent, and that no landlord-tenant relationship has been created between the parties, and that this agreement is not governed or subject to any rent regulatory laws.
- 3) The use and occupancy fee for the month in which closing occurs shall be adjusted at closing. No portion of the use and occupancy fee will be applied to the purchase price of the apartment.
- 4) The terms of the Offering Plan, and all related documents in effect as of the date hereof are incorporated in and made a part of this agreement.
- 5) As of the date of this Agreement, risk of loss to the apartment and its contents by fire or other hazard shall be determined pursuant to the terms of the Offering Plan.

- 6) PURCHASER shall pay all utility costs and make any repairs to the apartment for which s/he would be obligated as owner. SPONSOR will not be responsible for ordinary wear and tear to the apartment during the PURCHASER'S occupancy.
- 7) PURCHASER may not make any alterations to the apartment without SPONSOR'S written consent.
- 8) This lease will terminate on the happening of the earliest of the following:
- a) Closing;
  - b) Rescission of the Purchase Agreement by PURCHASER;
  - c) Default by PURCHASER.
- 9) Upon a default by PURCHASER of the Purchase Agreement that is not cured within 15 days after notice thereof, or rescission by PURCHASER, PURCHASER'S right to occupy the apartment will terminate, and PURCHASER must vacate the apartment within thirty (30) days after mailing of Notice to Vacate by the SPONSOR. Such notice must be by certified mail, return receipt requested, to the apartment. PURCHASER agrees to pay SPONSOR \$\_\_\_\_\_ per day for each day s/he remains in possession beyond the 30th day following mailing of the Notice to Vacate in conformity with this section. SPONSOR is hereby irrevocably authorized to deduct said per diem sum directly from any amounts being held as a security deposit hereunder. Nothing contained herein shall be construed so as to limit SPONSOR's ability to have PURCHASER evicted from the premises and to pursue any other legal remedy available to SPONSOR; nor shall anything herein be construed as a waiver by the SPONSOR of his right to retain, as liquidated damages, the down payment deposited upon execution of the Purchase Agreement.
- 10) Any default under this agreement will be a default under the Purchase Agreement, and any default under the Purchase Agreement will be a default under this agreement. Any such default will terminate PURCHASER'S right to use and occupancy, and will also terminate PURCHASER'S right to purchase the apartment, and may result in loss of the down payment.
- 11) This agreement may not be assigned, and may not be changed, except by signed, written instrument. This agreement is the entire agreement between the parties as regards use and occupancy of the apartment pending closing.

13) Pursuant to Local Law 147, the subject premises' smoking policy is consistent with the Smoke Free Air Act ("SFAA"), which is the current law governing smoking in class A multiple dwellings. This building prohibits smoking or using electronic cigarettes in common indoor areas of the building. Smoking and electronic cigarette usage is permitted in private apartments, outdoor common areas, and outdoor limited common elements. Purchaser acknowledges and agrees to abide by this policy.

**SPONSOR**  
40 DOUGLASS LLC

PURCHASER

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## TAX ESCROW AGREEMENT

AGREEMENT made this 1st day of July, 2020, by and between 40 DOUGLASS LLC (hereinafter "Sponsor"), and THE BOARD OF MANAGERS OF THE 40 DOUGLASS STREET CONDOMINIUM (hereinafter "The Board");

### WITNESSETH:

WHEREAS, Sponsor is the Sponsor of the Offering Plan for the conversion to condominium ownership of the land and building located at 40 Douglass Street, Brooklyn, New York; and,

WHEREAS, The Board is The Board of Managers charged with governing the operation of said condominium; and,

WHEREAS, the individual condominium units located at the aforementioned property have not been separately assessed for real estate tax purposes prior to the closing of the first unit located thereat; and,

WHEREAS, pursuant to the terms of the Offering Plan for said condominium conversion Sponsor desires to secure their obligation to pay real estate taxes for the unsold units;

NOW, THEREFORE, the parties agree as follows:

1. On the first closing of a unit at the premises, Sponsor will deposit in escrow with The Board in a special segregated escrow account to be maintained by The Board in The Board's own name, an amount equal to real estate taxes attributable to the unsold units for the six month period immediately following such closing.
2. The Board is irrevocably authorized to pay such real estate taxes as are assessed against the premises from the escrow account when such taxes are due and payable.
3. The funder of the escrow account will be entitled to reimbursement from unit owners to the extent of the actual assessment.

4. Upon each subsequent closing of the units, the Sponsor may collect the estimated amount of taxes attributable to such unit for the balance of the six month period from the purchaser thereof.

5. If the escrow was kept in an interest-bearing account, the interest earned thereon belongs to the Sponsor.

6. The escrow account shall be maintained in accord with all laws, rules, and regulations of the State of New York, specifically including, but not limited to, the General Business Law, and shall be deemed held for the benefit of the condominium.

IN WITNESS WHEREOF, the parties set their hands the date above first written.

40 DOUGLASS LLC

By:   
Name: JOSEPH CALABRESE

THE BOARD OF MANAGERS OF THE  
40 DOUGLASS STREET CONDOMINIUM

By:   
Name: JOSEPH CALABRESE

# **Attorney General's Report**

## **PREMISES KNOWN AS THE 40 DOUGLASS STREET CONDOMINIUM**

**40 Douglass Street  
Brooklyn, New York 11231  
Tax Block No. 414  
Tax Lot No. 26**

**Prepared By:  
James Cleary Architecture  
68 35th Street, Suite C652  
Brooklyn, NY 11232  
718-858-1730**



**01 September 2020**

## 40 DOUGLASS STREET

Brooklyn, New York

### A. LOCATION AND USE OF PROPERTY:

- (1) Address: 40 Douglass Street, Brooklyn, NY 11231
- (2) Block and lot number: Block 414, Lot 26
- (3) Zoning: Residential District: R6B. The project complies with all as-of-right zoning and use requirements.
- (4) Permissible use: Use Group 2 - Residential Use
- (5) This Job is **NOT** Self Certified. All plans were reviewed and approved by the Department of Buildings.
- (6) This is a Quality Housing project, and is in compliance with all relevant sections of The Zoning Resolution of The City of New York, Article II, Chapter 8 – The Quality Housing Program.

### B. STATUS OF CONSTRUCTION: NEW CONSTRUCTION

- (1) Year built: The project's date of substantial completion is anticipated to be on or about December 2020 unless delayed by weather, strikes, lockouts, acts of God, shortages of, or inability to obtain materials, equipment or labor, governmental restrictions or preemption, damage by fire or the elements or any other cause over which the Sponsor has no control.
- (2) Class of construction: The building will be classified as I-B, and will conform to all applicable regulations of the 2014 NYC Construction Codes. The fire ratings of the building's elements are:

|                                                              |             |
|--------------------------------------------------------------|-------------|
| Primary structural frame:                                    | 2 Hours     |
| Exterior bearing walls:                                      | 2 Hours     |
| Interior bearing walls:                                      | 2 Hours     |
| Exterior non-bearing walls with fire separation distance of: |             |
| Less than five feet:                                         | 1 Hour      |
| Five feet to ten feet:                                       | 1 Hour      |
| Ten feet to thirty feet:                                     | 1 Hour      |
| Greater than thirty feet:                                    | 0 Hours     |
| Interior non-bearing walls and partitions:                   | 0 Hours     |
| Floor construction & secondary members:                      | 2 Hours     |
| Roof construction & secondary members:                       | 1 Hour      |
| Fire barriers between fire areas:                            | 2 Hours     |
| Shaft enclosures:                                            | 2 Hours     |
| Fire doors:                                                  | 1 1/2 Hours |
| Public corridors:                                            | 1 Hour      |
| Exit enclosures:                                             | 2 Hours     |

- (3) The building plans have been filed with the New York City Department of Buildings, BIN# 3006658, JOB#'s 321383454, 340650897, and 321820892. The project was originally approved on 04/11/2019.
- (4) Certificate of occupancy: As of the date of this report, no Certificate of Occupancy has been issued for the building. After completion of construction, the Sponsor will apply for a Certificate of Occupancy for the building from the Department of Buildings of the City of New York. The Sponsor makes no representation as to the exact time of the delivery of the Certificate of Occupancy. The Sponsor will obtain a Temporary Certificate of Occupancy prior to the first unit closing. The Sponsor will obtain a Permanent certificate of occupancy within 2 years of the first unit closing.

## 40 DOUGLASS STREET

Brooklyn, New York

As stated on the DOB website: “A Temporary Certificate of Occupancy – or TCO – indicates the property is safe for occupancy but it has an expiration date. TCO’s typically expire 90 days after they are issued. When a TCO expires and is not renewed, it may be difficult or impossible to buy insurance or sell or refinance the property. Buyers should seriously consider negotiating a closing based upon a Final Certificate of Occupancy, not a TCO. If the property has a TCO, consult with a New York State licensed professional engineer or registered architect to determine the outstanding issues – and speak with an attorney regarding TCO status.”

**Buyers are advised to visit the DOB website for further recommendations when purchasing units in a building that does not have a Final C of O.**

- (5) Alteration permit numbers and description of work done:

321383454-01-NB – Construction of a four story multi-family residential building

321383454-03-PL – Filing for mechanical and plumbing work

T.B.D. – Sprinkler work

B00273887-I1-SF – Supported scaffold

B00118659-I1-SH – Sidewalk shed

B00070305-I1-SH – Sidewalk shed

B00097103-I1-FN – Construction fence

B00070322-I1-EL – Electrical (sidewalk shed wiring & lighting)

B00118586-I1-EL – Electrical (sidewalk shed wiring & lighting)

B00251731-I1-EL – Electrical (sidewalk shed wiring & lighting)

B00258242-I1-EL – Electrical (Temporary light & power)

B00306483-I1-EL – Electrical (general wiring)

B00306536-I1-EL – Electrical (HVAC wiring)

### C. SITE

- (1) Size: The zoning lot is 2,500 s.f. and rectangular, located on the Southern side of Douglass Street, 200'-0" west of Smith Street, with a frontage of 25'-0" on Douglass Street, and a depth of 100'-0".
- (2) Number of buildings and use: One (1) building, on Douglass Street is a 3-unit, 4-story residential building with cellar.
- (3) Streets owned or maintained adjacent to project: Douglass Street, Brooklyn, NY.
- (i) Paving: Asphalt, existing, off-site, owned and maintained by the City of New York
  - (ii) Curbing: Bluestone
  - (iii) Catch basins, drainage: existing, off-site, owned and maintained by the City of New York
  - (iv) Street lighting: existing, off-site, owned and maintained by the City of New York
  - (v) Curbing is in conformity with local fire district, town, and municipal codes. Paving, catch basins, and street lighting are not located on the property, and their maintenance is the responsibility of the City of New York.
- (4) Drives, sidewalks and ramps:
- (i) Paving: Cement
  - (ii) Curbing : Bluestone

## 40 DOUGLASS STREET

Brooklyn, New York

- (iii) Catch basins, drainage: None
- (iv) Street lighting: None
- (v) All new construction will be in conformity with all agencies having jurisdiction.
  - (a) The sidewalks, curb cuts and ramps are ADA compliant and will be free of tripping hazards or ponding.
  - (b) There will not be any sidewalk vaults
  - (c) Handicap Access – There is compliance with handicapped access law.
  - (d) The condominium will be responsible for maintaining the sidewalks in accordance with NYC DOT requirements.

### D. UTILITIES:

- (1) Electricity: Electricity will be provided by Con Edison. Each residential unit will be directly metered & billed by the utility. Further, the house charges (i.e common fans, corridor lighting, cellar and first floor ventilation, pumps, elevators etc.) will be separately metered and billed to the Condominium and in turn will be incorporated into the common charges for the unit owners.
- (2) Gas: Natural gas will be provided by National Grid for cooking and hot water. Each residential unit will be directly metered & billed by the utility.
- (3) Water and Sewer: The source of water will be the City of New York. There will be one meter for the entire building. Water and sewer will be collectively metered and billed to the unit owners as a common charge.
- (4) Telephone: Telephone service will be provided by Verizon or other private telephone service providers. Each unit will have a separate connection and will be billed directly.
- (5) Television: Cable television service will be provided by Verizon FIOS or other private service providers. Each unit will have a separate connection and will be billed directly.

### E. SUB-SOIL CONDITIONS:

The building is located outside of any area designated by FEMA as a flood hazard zone. Borings indicate soil of good bearing capacity to support mat slab foundations approximately 5'-6" below the existing grade. Bearing is at 5'-6" feet below grade.

- (1) No uneven foundation movement or settling has been observed.
- (2) No unusual water conditions such as flooding, wetness or ponding were observed on the site and no water was apparent on the surface.
- (3) There is no known danger of flooding, and no evidence of moisture or seepage or groundwater infiltration.
- (4) There are no bodies of water, lakes, streams, or rivers adjacent to the building, and there is no potential for mudslides or erosion
- (5) To negate ad-freezing stresses at the building's foundation, the foundation's perimeter is lined with a continuous layer of rigid insulation installed against the outside face of the foundation, and extending below the frost line, which will inhibit the formation of ice or freezing of soil against the face of the foundation, and will prevent any potential ice/freezing soil from bonding to the face of the foundation.
- (6) No land subsidence, expansive soils, hazardous materials, or environmental restrictions are present on the property.

## 40 DOUGLASS STREET

Brooklyn, New York

### F. LANDSCAPING AND ENCLOSURES

- (1) Grass cover: rear yard
- (2) Plantings: rear yard
- (3) Trees: As per NYC Parks Department regulations a new street tree isn't required.
- (4) Fencing:
  - (i) 6'-0" high cedar fence at the open perimeter of the rear of the property, atop the concrete retaining wall.
  - (ii) 3'-6" high painted steel fence at the front property line.
- (5) Gates: 3'-6" high painted steel gate at the front property line.
- (6) Garden Walls: None
- (7) Retaining walls enclose the rear yard along the side and rear property lines, and are constructed of new 12" thick steel reinforced concrete. The retaining walls height varies from approximately 5'-0" at the rear of the property, to 7'-0" adjacent to the rear wall of the building. The top of the walls are pitched to prevent water from ponding on top of the walls.
- (8) Display pools and fountains: None
- (9) Open recreation space and/or sitting areas
  - (i) Unit A shall have access to a private yard at the cellar level.
  - (ii) Unit B shall have access to a private terrace at the roof level.
  - (iii) Unit C shall have access to private terraces at the 4th floor level and the roof level.

### G. BUILDING SIZE:

- (1) Height:
  - (i) Legal height of 49'-0" from the base plane to the top of the roof deck.
  - (ii) Total height of approximately 59'-8" from the base plane to the top of the stair bulkhead roof deck.
- (2) Crawl spaces: There will be no crawl space
- (3) Number of sub-cellars and cellars: There will be 1 cellar level
- (4) Number of floors: 4 stories, plus cellar
- (5) Equipment Rooms: The following equipment rooms are located in the cellar:
  - (i) An under-stoop electrical closet room that contains the building's service end box and electric meters.
  - (ii) Mechanical room that contains the building's sump pump.
  - (iii) Mechanical closets that contain the building's gas meters, sprinkler control valves, backflow prevention devices, and water meter.
- (6) Parapet: Approximately 9" above the roofing membrane.

### H. STRUCTURAL SYSTEM:

- (1) Exterior of Building:
  - (i) Walls & Floors:
    - (a) All walls are less than 6 stories above grade, and are not required to comply with NYC Local Law 11.
  - (b) Front wall:
    - a. Brick cladding
    - b. 2" thick rigid EPS insulation (R-8)
    - c. Continuous self-adhering sheet waterproofing membrane
    - d. 5/8" thick exterior grade g.w.b. sheathing
    - e. 6" wide light gauge steel studs

## 40 DOUGLASS STREET

Brooklyn, New York

- f. 5 1/2" thick batt insulation (R-21)
  - g. 5/8" thick g.w.b.
  - h. 0 hr. fire rating
  - (c) Rear walls:
    - a. EIFS cladding consisting of:
      - i. Waterproof stucco facing
      - ii. 2" thick rigid EPS insulation (R-8)
    - b. Continuous self-adhering sheet waterproofing membrane
    - c. 5/8" thick exterior grade g.w.b. sheathing
    - d. 6" wide (min.) light gauge steel studs
    - e. 5 1/2" thick batt insulation (R-19)
    - f. 5/8" thick g.w.b.
    - g. 0 hr. fire rating
  - (d) Side walls:
    - a. 20 mil thick waterproof elastomeric coating
    - b. 8" thick concrete masonry units
    - c. 3 1/2" thick continuous open cell spray in insulation (R-11.4)
    - d. 3 5/8" deep light gauge steel studs
    - e. 5/8" thick g.w.b.
    - f. 2 hr. fire rating
  - (e) NYC Energy Code:
    - a. All exterior walls have insulation as required by the 2014 NYC Energy Code.
  - (f) Interior Walls:
    - a. Interior walls are of non-combustible light gauge steel studs and 5/8" thick sheetrock. Walls between dwelling units and common areas shall be constructed with acoustical batt insulation, and shall have a minimum STC rating of 55.
- Note: acoustical insulation complies with the requirements of the 2014 NYC Construction Codes for sound transmission.
- (g) Cellar floor construction:
    - a. 3/4" thick engineered, pre-finished white oak, 5" wide planks select grade installed over red rosin paper underlay
    - b. 3/4" plywood subfloor
    - c. 12" thick reinforced concrete floor slab over 6 mil polyethylene vapor varied, and 6" compacted gravel base.
  - (h) 1st through 4th floor construction:
    - a. 3/4" thick engineered, pre-finished white oak, 5" wide planks select grade installed over red rosin paper underlay
    - b. 3/4" cement board subfloor
    - c. 12" deep light gauge steel joists
    - d. 9 1/2" deep sound attenuating acoustical batt insulation
    - e. 7/8" light gauge steel hat channels

## 40 DOUGLASS STREET

Brooklyn, New York

f. 5/8" thick g.w.b.

Note: acoustical insulation complies with the requirements of the 2014 NYC Construction Codes for sound transmission.

- (i) Underpinning
  - a. None
- (ii) Windows:
  - (a) Manufacturer: The windows at all floors are manufactured by Marvin Windows Inc.
  - (b) Type: Windows are fixed or outswing casement windows.
  - (c) Materials: Wood with extruded aluminum exterior cladding and double glazed 3/4" thick low-e insulated glass. Glass to be tempered where required by the 2014 NYC Building Code.
  - (d) Warrantee: 20 years for glazing up to 60 s.f., 10 years for glazing greater than 60 s.f., 10 years for hardware and non-glass components, 5 years for interior finish.
  - (e) All windows comply with the requirements of the 2014 NYC Building Code for natural light and ventilation for habitable rooms.
- (iii) Landmark status:
  - (a) No landmark status is applicable for this building.
- (2) Parapets and copings:
  - (i) Parapets: Concrete masonry units or light gauge steel studs with stucco finish. Top of all parapets to be approximately 9" above the roof membrane.
  - (ii) Copings: Brake formed aluminum with a factory applied finish. All copings will be installed using non-corrosive hardware.
  - (iii) Flashing: Flashing materials including counter flashing: Soprema Alsan liquid applied flashing with Alsan polyfleece reinforcement strips.
- (3) Chimneys and caps:
  - (i) The building has 2 double walled metal gas fireplace chimneys, 2 kitchen exhausts with rooftop fans, 2 toilet exhausts with rooftop fans, 3 dryer vents, and 3 hot water heater exhausts. All of these items shall terminate above the roof structure as required by the Building Code of New York City, All will be constructed of galvanized steel or aluminum. There will be no visible chimney liners, and all chimneys will have galvanized steel or aluminum chimney caps.
- (4) Balconies and terraces:
  - (i) Deck finish: 36"x24x1 1/4" thick concrete roof pavers.
  - (ii) Balustrade: None
  - (iii) Railings: 3'-6" high painted steel balusters & guardrails. Horizontal railings shall be protected so as not to be used as a ladder by children. All railings shall be constructed so as to be able to withstand a 200 pound lateral force applied at any point along the top of the railing.
  - (iv) Copings: None
  - (v) Soffits: 1/4" thick cement board panels.
  - (vi) Doors to balconies and terraces will be manufactured by Marvin. Wood with extruded aluminum exterior cladding and double glazed 3/4" thick low-e insulated glass. Glass to be tempered where required by the 2014 NYC Building Code.

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- (5) Exterior entrances:
  - (i) Exterior doors and frames:
    - (a) The 1st floor entry door shall be a wood and tempered glass swing door in a wood frame, constructed to visually match the adjacent windows. The door shall have an entry lockset and deadbolt.
    - (b) The cellar entry doors shall be a painted, thermally broken, aluminum swing door in a painted aluminum frame. The door shall have an entry lockset and deadbolt.
    - (c) The rear cellar doors will be manufactured by Marvin. Wood with extruded aluminum exterior cladding and double glazed 3/4" thick low-e insulated glass. Glass to be tempered where required by the 2014 NYC Building Code.
  - (ii) Vestibule doors and frames: None
  - (iii) Exterior Stairs: Concrete masonry unit stoop, clad w/ stone treads/risers and stucco facing at stoop sides.
  - (iv) Railings: 3'-6" high painted steel balusters & guardrails. Horizontal railings shall be protected so as not to be used as a ladder by children. All railings shall be constructed so as to be able to withstand a 200 pound lateral force applied at any point along the top of the railing.
  - (v) Mail boxes: NYC & USPS approved, located at 1<sup>st</sup> floor lobby.  
Manufacturer: Salsbury 3500 series with black anodized finish or equal
  - (vi) Lighting: 1 surface mounted wall sconce above the 1st floor entry door, 1 surface mounted ceiling fixture above the cellar entry door, 3 surface mounted wall sconces at the rear of the cellar level. The exterior entrances are adequately lighted in compliance with the requirements of the 20014 NYC Construction Codes.
- (6) Service Entrances:
  - (i) The building does not have any service entrances.
- (7) Roof and roof structures:
  - (i) Type roofs for all areas:
    - (a) Material: Soprema Flam 180 base ply roofing membrane with Soprema Flam 180 FR GR cap sheet, Soprema Duotack 365 adhesive, and Soprema Sopraboard protection boards.
    - (b) Insulation: 9 1/2" thick batt insulation (R-39)
    - (c) Surface finish: At roof with pavers 24"x24"x1 1/4" thick concrete pavers shall be supported on a pedestal roof deck system on top of the roof assembly. At bulkhead roof, painted.
    - (d) Bond or guarantee: 20 year manufacturer's warranty for materials and labor. Anticipated warrantee commencement date of roof membrane: November 1st 2020. The roof pedestal/paver system is acceptable to the roofing manufacturer, and does not impact the length or validity of the roof's warrantee.
    - (e) Flashing materials including counter flashing: Soprema Alsan liquid applied flashing with Alsan polyfleece reinforcement strips.
    - (f) Roof ladders are required to comply with FDNY fire code, and were approved by the NYC Department of Buildings.
  - (ii) Drains
    - (a) Cast iron flow control drains on the main roof. Standard cast iron roof drains at the 4th floor front terrace.

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- (b) All outside leaders will be Aluminum. The building does not have any gutters.
- (iii) Skylights:
  - (a) Bulkhead skylight is a custom fabricated thermal fixed rectangular skylight, approximately 102" x 38", and constructed of galvanized steel, with wire glass glazing as required by the 2014 NYC Construction Codes.
  - (b) Unit C skylights are fixed rectangular skylights, each approximately 36" x 24", and are to be Velux model FCM fixed skylights or equal, with a thermally broken aluminum frame, and laminated low-e insulating glass, and a maximum U-value of 0.48.
- (iv) Bulkheads:
  - (a) Stair bulkhead:
    - a. EIFS cladding consisting of:
      - i. Waterproof stucco facing
      - ii. 2" thick rigid EPS insulation (R-8)
    - b. Continuous self-adhering sheet waterproofing membrane
    - c. 5/8" thick exterior grade g.w.b. sheathing
    - d. 6" wide (min.) light gauge steel studs
    - e. 5 1/2" thick batt insulation (R-19)
    - f. 5/8" thick g.w.b.
  - (b) Roof Access
    - a. Stair access via the bulkhead complies with the requirements of the NYC Fire Code.
- (v) Metal work at roof levels
  - (a) Exterior metal stairs: None at roof.
  - (b) Vertical Ladders, including gooseneck: Painted steel bulkhead ladder & FDNY access ladders.
  - (c) Railings: Painted steel bulkhead guard rail.
  - (d) Hatches to roof: None
  - (e) Other: All exterior metals, including fasteners, shall be corrosion resistant.
- (vi) Rooftop Facilities
  - (a) All rooftop mounted mechanical equipment shall be installed with vibration isolation roof curbs and/or pads.
  - (b) All rooftop dunnage shall be primed for paint and have two finished coats of paint.
- (vii) Roof Terraces
  - (a) As is indicated on the certificate of occupancy for the building, the building's roof terraces are accessory to the residential spaces in the building.
  - (b) The maximum occupancy of each terrace is:

|                          |              |
|--------------------------|--------------|
| Front 4th floor terrace: | 20 Occupants |
| Front roof terrace:      | 30 Occupants |
| Rear roof terrace:       | 30 Occupants |
  - (c) Surface finish: 24" x 24" x 1 1/4" thick concrete pavers supported on a pedestal roof deck system on top of the roof assembly. The pavers are appropriate for daily foot traffic.

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- (d)      Warrant
- (8)      Fire Escapes: None

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- (9) Yards and courts:
- (i) Paving:
    - (a) 24" x 24" x 1 3/4" concrete pavers at lower portion of rear yard
    - (b) Artificial turf at upper portion of rear yard.
    - (c) Stone tile at front yard under-stoop area.
  - (ii) Drainage:
    - (a) 1 area yard drain and 1 linear trench drain at the rear yard, both draining into a dry well beneath the rear yard.
    - (b) 1 area yard drain and 1 linear trench drain under the stoop at the front yard, both draining into a sump pump, and pumped into the dry well beneath the rear yard
  - (iii) Railings: 3'-6" high painted steel balusters & guardrails. Horizontal railings shall be protected so as not to be used as a ladder by children. All railings shall be constructed so as to be able to withstand a 200 pound lateral force applied at any point along the top of the railing.
  - (iv) Stairs: Concrete stair with stone cladding at front yard
  - (v) Fencing:
    - (a) 3'-6" high painted steel railing & gate at front yard. All railings shall be constructed so as to be able to withstand a 200 pound lateral force applied at any point along the top of the railing.
    - (b) New 6'-0" wood fence atop reinforced concrete retaining wall at perimeter of rear yard.
  - (vi) Walls: Retaining walls enclose the rear yard along the side and rear property lines, and are constructed of new 12" thick steel reinforced concrete. The retaining walls height varies from approximately 5'-0" at the rear of the property, to 7'-0" adjacent to the rear wall of the building. The top of the walls are pitched to prevent water from ponding on top of the walls.
  - (vii) Lighting: The rear yard is adequately lighted in compliance with the requirements of the 2008 NYC Building Code.
  - (viii) Drainage at adjacent properties: the existing grades and slopes of adjacent properties are pitched away from the building's rear yard.
  - (ix) DOB Requirements: The rear yard meets or exceeds all requirements for rear yards in the 2014 NYC Building Code, and in the Zoning Resolution of The City of New York.
- (10) Interior stairs:
- (i) Number of stairs per building: One (1) interior egress stair, and three (3) interior convenience stairs within units A, B, & C. All interior stairs comply with the requirements of the 2014 NYC Construction Codes.
  - (ii) Enclosure: Interior egress stair is enclosed in 2 hour rated painted g.w.b. & light gauge steel stud walls. Interior convenience stairs are unenclosed.
  - (iii) Stair construction: Interior egress stair is constructed with painted steel pans with poured concrete topping & painted steel stringers. Interior convenience stairs are constructed with wood treads & risers, and steel stringers.
  - (iv) Stringers: Painted steel.
  - (v) Treads: Treads at interior egress stair are painted steel pans with poured concrete topping or porcelain tiles. Treads at interior convenience stairs are wood.
  - (vi) Risers: Interior egress stair risers are painted steel. Interior convenience stair risers are wood.

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- (vii) Guard rails: 3'-6" high painted steel balusters & guardrails. Horizontal railings shall be protected so as not to be used as a ladder by children. All railings shall be constructed so as to be able to withstand a 200 pound lateral force applied at any point along the top of the railing.
- (viii) Balustrade: 3'-6" high painted steel balusters & guardrails. Horizontal railings shall be protected so as not to be used as a ladder by children. All railings shall be constructed so as to be able to withstand a 200 pound lateral force applied at any point along the top of the railing.
- (11) Interior doors and frames
  - (i) Unit entrance doors and frames: 1 1/2 hour fire rated hollow metal door and steel frame. Painted.
  - (ii) Unit interior doors to be solid core wood rail and stile type doors with solid wood frames. Painted, veneer or similar.
  - (iii) Stair hall doors and frames: 1 1/2 fire rated hollow metal door and steel frame.
  - (iv) Roof doors, cellar doors and frames. 1 1/2 fire rated hollow metal doors and steel frames.
- (12) Elevators: The building has no elevator.
- (13) Elevator Cabs: The building has no elevator.

### I. AUXILIARY FACILITIES

- (1) Laundry Rooms
  - (i) Location and number of rooms: Each unit will be delivered with an electric washer and gas dryer.
  - (ii) Clothes washers, number and type: 1 per unit, 3 total in building. LG 27" front loading washer model #WM3700HVA or equal.
  - (iii) Clothes dryers, number and type: 1 per unit, 2 total in building. LG 27" front loading model #DLEX3700V or equal, gas.
  - (iv) Room ventilation: None.
  - (v) Dryer ventilation: Dryers are directly vented to the roof in compliance with the requirements of the NYC DOB and the dryer manufacturer's installation instructions.
- (2) Refuse Disposal
  - (i) Incinerator: None
  - (ii) Compactor: None
  - (iii) Approvals by authority having jurisdiction: Not applicable.
  - (iv) Refuse disposal is the responsibility of each individual unit's occupant. Refuse and recycling will be placed at the sidewalk, close to the curb at grade level. Between designated pickup days, refuse shall be stored in trash containers at the front yard, inside the wall. Refuse and recycling should be put out for pickup not earlier than the night before the scheduled collection day in accordance with DSNY rules.
  - (v) Garbage will be collected by the New York City Sanitation Department on days designated for garbage removal from the sidewalk near the curb at grade level.
- (3) Package Room
  - (i) None
- (4) Storage Rooms
  - (i) The building has two storage rooms at the cellar level, both accessible via the public corridor in the cellar.

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- (ii) Walls: 2 hour rated partitions constructed of 3 5/8" steel studs with two layers of 5/8" thick g.w.b. at each face.
- (iii) Doors: 1 1/2 hour fire rated self closing hollow steel doors with steel frames.
- (iv) Security: Keyed locksets.
- (5) Bicycle Storage
  - (i) There is an unenclosed bicycle storage area in the cellar with a wall mounted rack that can accommodate 4 bicycles.

### J. PLUMBING AND DRAINAGE

- (1) Water supply:
  - (i) The 2" size combined domestic & sprinkler water service is adequate for the building of this size.
  - (ii) The service will be metered and a double check valve assembly will be installed on the water service, to protect public water main, as required by the Building Code.
  - (iii) Backflow prevention devices and main water supply shut off valve are located in the cellar mechanical room.
  - (iv) Domestic water supply piping shall be new hard drawn type L copper tubing with copper solder fittings, or new case bronze threaded fittings. All piping and fittings shall comply with the requirements of the 20014 NYC Plumbing Code.
  - (v) Hot & cold water piping, including exposed distribution piping risers and branches shall be insulated using jacketed fiberglass pipe insulation with a minimum thickness of 1". Pipe insulation complies with the requirements of the NYC Building and Plumbing Codes.
  - (vi) No lead, galvanized, or non-metallic piping shall be used in the water distribution system.
  - (vii) Upon Completion of the Building the underside of all sinks will be checked for leaks and the water flow will be verified to be adequate at the highest point of the building.
  - (viii) Site Connection: TBD
- (2) Fire protection system:
  - (i) Standpipes: None.
  - (ii) Hose racks, hoses and nozzles: None.
  - (iii) Sprinkler system:
    - (a) A sprinkler system is provided to protect the building and its occupants. The 2" sprinkler service is equipped with double check detector assembly to protect the public water main, as required by the Building Code.
    - (b) Sprinklers are located on all floors, including cellar. Sprinkler piping – standard weight schedule 40 black steel pipe seamless or welded mild steel. Sprinkler heads – cast brass closed fusible link spray type.
    - (c) Upon completion of the building the sprinkler system will be fully inspected and signed off by the Department of Buildings. Thereafter it will be subject to all local laws, DOB inspections and requirements as well as NYC Fire Department regulations, inspections and requirements.
  - (iv) Siamese connection: The building has a 3" double inlet fire department connection located at the front of the building.

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- (v) Fire Alarm System: The building has a fire alarm system complying with the requirements of the 2014 NYC Construction Codes. The system includes a sprinkler alarm control panel located at the first floor entry lobby, smoke detectors located at the first floor lobby, and at the ceiling of the fire stair bulkhead, and the cellar mechanical room, a tamper switch in the cellar mechanical room, two flow switches in the cellar mechanical room, a manual pull station at the cellar mechanical room, and an exterior sprinkler alarm bell mounted on the front wall of the building.
- (3) Water storage tanks and enclosures: None
- (4) Water Pressure: The existing water pressure at street level is: static pressure is 52 psi. residual pressure is 50 psi at flow 500 gpm, as per hydrant flow test performed by NYC DEP on 03/29/2018. The building relies on the normal New York City water pressure to raise the water to the top floor level. The water pressure at the top floor level is adequate. There is no water tank at the roof of the building.
- (5) Sanitary sewage system:
  - (i) Sewage piping: The 4" sanitary house connection is connected by gravity to the public NYC sewer system. Sanitary piping shall be "no hub" cast iron, pipe and fitting service weight.
  - (ii) Sewage pumps: None.
  - (iii) Sewage disposal: NYC sanitary sewer system beneath Douglass Street.
- (6) Permits required: 321383454-03-PL – Filing for mechanical and plumbing work.
- (7) Storm drainage system:
  - (i) Catch basins: None.
  - (ii) Yard and roof drains: 1 area yard drain and 1 linear trench drain located in the rear yard, and connected to a dry well beneath the rear yard. 1 area drain located in the areaway beneath the stoop at the front yard. 2 cast iron flow control drains on the roof. 2 cast iron drains on the 4th floor front terrace. 1 scupper and downspout at bulkhead roof. All storm drains and related piping are installed in compliance with the 2014 NYC Construction Codes.
  - (iii) Piping: "No Hub" cast iron, pipe and fitting service weight.
  - (iv) Ejection or sump pumps: Storm drains on the Cellar level will be pumped to the dry well by a duplex sump pump ejector, Federal Pump model VSP-2a-0.25-6, which has a one year warranty.
  - (v) Site Connection: None (all storm drainage is connected to the dry well beneath the rear yard).

### K. HEATING

- (1) Domestic hot water heating is provided to each unit by a new tankless 6.3 GPM gas how water heater, Bosch model C-1050-ES, with a fifteen year warranty for the unit's heat exchanger, and a five year warranty on all other parts and components, and a 0.95 energy factor, providing a water temperature of 120 degrees Fahrenheit, located in the laundry room of each unit. The hot water heater has been designed by the project's MEP engineer to maintain legally required conditions under anticipated weather conditions and an internal air temperature of 68 degrees Fahrenheit.

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(2) Space heating:

- (i) Type of system: The heating of the building is done by a VRF split system with a minimum cooling energy efficiency rating of SEER 14.7, and minimum heating efficiency of 10 COP at forty seven degrees Fahrenheit, individually metered roof mounted, air source heat pumps connected to ducted air handlers inside each unit. The thermostats installed for each air handler control room temperature according to the tenant's individual requirements. The heating system has been designed by the project's MEP engineer to maintain legally required conditions under anticipated weather conditions, including an external wet bulb temperature of 11 degrees Fahrenheit, to maintain an internal temperature of 70 degrees Fahrenheit.
- (ii) Rooftop Condensers: The units are manufactured by Mitsubishi. The size and capacity of each unit is as follows:

| Serving         | Heating Capacity | Cooling Capacity |          |
|-----------------|------------------|------------------|----------|
|                 | Model No.        | (BTU/Hr)         | (BTU/Hr) |
| Unit A          | MXZ-8C60NA-U1    | 66,000           | 60,000   |
| Unit B          | MXZ-8C48NAHZ     | 54,000           | 48,000   |
| Unit C          | MXZ-8C48NAHZ     | 54,000           | 48,000   |
| 1st Floor Lobby | MUZ-FH12NA-1     | 13,600           | 12,000   |

- (iii) Air handlers: The air handler units are manufactured by Mitsubishi. The size and capacity of each unit is as follows:

| Serving         | Heating Capacity | Cooling Capacity |          |
|-----------------|------------------|------------------|----------|
|                 | Model No.        | (BTU/Hr)         | (BTU/Hr) |
| Unit A          | PEAD-A24AA7      | 26,200           | 24,000   |
|                 | PEAD-A30AA7      | 33,500           | 30,000   |
| Unit B          | PEAD-A30AA7      | 33,500           | 30,000   |
|                 | PEAD-A18AA7      | 19,900           | 18,000   |
| Unit C          | PEAD-A30AA7      | 33,500           | 30,000   |
|                 | PEAD-A18AA7      | 19,900           | 18,000   |
| 1st Floor Lobby | MSZFH12NA        | 13,600           | 12,000   |

- (iv) Warrantee: One year warrantee for parts and labor after which replacement will be the unit owner's responsibility.
- (v) Manuals & balancing report: The O & M manuals for all equipment shall be provided to the condominium's management. The most recent balancing report for the Heating and Air Conditioning System shall be provided to the condominium's management.
- (vi) Rooftop Pipe Insulation: R-8 pipe insulation shall be installed at all rooftop HVAC piping.

### L. GAS SUPPLY

- (1) Gas shall be used for domestic cooking, heating domestic hot water, and for gas fireplace appliances, and shall be supplied by a local utility company.
- (2) Three gas meters shall be located in the gas meter closet at the cellar level. The meters and are to be provided by the Local Utility Company.

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- (3) One gas service line shall be located in the gas meter closet at the cellar level and shall be provided by the Local Utility Company.
- (4) All gas piping is specified to be of black iron.
- (5) Incoming gas service shall be determined by National Grid, based on the engineer's load letter.

### **M. AIR CONDITIONING**

See section K. Heating, for air conditioning system specifications.

### **N. VENTILATION**

- (1) The building has adequate ventilation in compliance with New York City Building Code. Kitchens shall have mechanical exhaust capacity of 150 CFM. Bathrooms and toilet rooms shall have mechanical exhaust capacity of 75 CFM. Bedrooms and living rooms shall be naturally ventilated, with minimum open ventilation areas of not less than 5% of the room's floor area in compliance with the requirements of the 2014 NYC Building Code.
- (2) All kitchen hood exhausts are ducted to the roof with the exhaust riser terminating at an exhaust fan at the roof.
- (3) All interior bathroom exhausts are ducted to the roof with the exhaust riser terminating at an exhaust fan at the roof.
- (4) The cellar mechanical and electrical rooms are not mechanically ventilated.
- (5) All horizontal branches are protected from vertical risers by fire dampers as required by New York City Building Code.

### **O. ELECTRICAL SYSTEM**

- (1) The main electrical service shall enter the building underground from Douglass Street. The service shall have the capacity of 400 amps at 29/240 volt, single phase, 3 wire. Wiring shall be protected by fused switches and circuit breakers in accordance with the New York City Electrical Code. The meters for all units will be located within the mechanical room.
- (2) The service configuration shall be as follows: service switch 1, rated for 400 amps, 120/208 volts, single phase, 3 wire shall serve the buildings house loads. Service switches 2 through 4, rated for 100 amps, 208/240 volts, single phase, 3 wire shall serve the residential apartments.
- (3) Each apartment has a 100 amps 208/120 volts single-phase panel board. The panel board shall have approximately 40 circuits, including two pole circuit for each air conditioning unit, 3 appliance circuits, one microwave oven circuit one washer circuit, one dryer circuit and several general lighting and convenience outlet circuits as required by N.Y. City Electrical Code.
- (4) Public corridors shall be lit by means of lighting fixtures as required to maintain NYC minimum 2 foot-candles upon power failure.
- (5) Cellar areas to be lit by means of standard fluorescent industrial type exposed surface mounted lights.
- (6) All wiring shall be copper.
- (7) GFCI, AFCI, tamper resistant, and waterproof outlets are provided where required in compliance with the requirements of the 2014 NYC Building Code and the 2014 NYC Electrical Code.
- (8) The building does not have a generator or other provisions for electrical service during a power outage.

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- (9) Lighting and fixtures within units: Living rooms and bedrooms are provided with surface mounted ceiling fixtures and recessed downlights. Kitchens are provided with recessed downlights and over-island/peninsula pendant fixtures. Bathrooms are provided with surface mounted ceiling fixtures and wall sconces. Unit hallways are provided with recessed downlights.
- (10) Appliance outlets: All appliances within the building's dwelling units are provided with dedicated outlets.
- (11) Convenience outlets: Convenience outlets are provided throughout the building in compliance with the requirements of the NYC Electrical Code.

### **P. INTERCOMS**

- (1) Each unit will be equipped with a Vesta GB2 video intercom system or equal. There will be one outdoor unit serving all three apartments.

### **Q. PUBLIC AREA LIGHTING**

- (1) Exterior lighting: Exterior lighting shall be provided at the front stoop (on the common meter) and the under-stoop entrance. The public area lighting shall be compliant with all applicable codes. Additionally, there shall be exterior lighting fixtures at the rear yard (on the Unit A meter), and at the Unit A, Unit B and Unit C terraces (on their respective meters).
- (2) Interior lighting: The cellar corridor and mechanical spaces are provided with surface mounted ceiling fixtures. The 1st floor lobby and hallway are provided with a ceiling mounted pendant fixture and recessed downlighting. The common stairs are provided with wall mounted sconces at each landing. Public area lighting is in compliance with the requirements of the 2014 NYC Construction Codes.

### **R. GARAGES AND PARKING AREAS:**

- (1) There is no parking within the building. Residential parking is provided on Douglass Street between Smith Street and Court Street, and in much of the surrounding neighborhood. Alternate side street cleaning rules apply.

### **S. SWIMMING POOLS**

- (1) The building has no swimming pool.

### **T. TENNIS COURTS, PLAYGROUNDS AND RECREATIONAL FACILITIES**

- (1) None

### **U. PERMITS AND CERTIFICATES**

- (1) The following permits were required for construction relating to the condominium conversion and were obtained prior to/during construction of the building:
  - (i) New Building
  - (ii) Foundation and Excavation
  - (iii) Plumbing, including sewer and water
  - (iv) Electric
  - (v) Sprinkler
  - (vi) Scaffolding
  - (vii) Temporary Construction Fence
  - (viii) Sidewalk Shed

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- (ix) Sidewalk
- (2) The following categories of inspections of work relating to the above-referenced permits are expected to be required. All inspections will be completed and inspection reports will be certified prior to final signoff and issuance of the Certificate of Occupancy:
  - (i) NYC Department of Buildings
  - (ii) Plumbing
  - (iii) Electrical
  - (iv) Sprinkler
  - (v) Final Construction (C of O)
- (3) The following special, controlled, and energy code inspections will be performed by a Special Testing Agency:
  - (i) Structural Steel - Welding
  - (ii) Structural Steel – High Strength Bolting
  - (iii) Structural Cold Formed Steel
  - (iv) Concrete – Cast-In-Place
  - (v) Masonry
  - (vi) Subgrade Inspection
  - (vii) Subsurface Investigations (Borings/Test Pits)
  - (viii) Exterior Insulation and Finish Systems
  - (ix) Mechanical Systems
  - (x) Structural Stability – Existing Buildings
  - (xi) Excavations – Sheeting, Shoring, and Bracing
  - (xii) Sprinkler Systems
  - (xiii) Heating Systems
  - (xiv) Chimneys
  - (xv) Fire Resistant Penetrations and Joints
  - (xvi) Concrete Design Mix
  - (xvii) Concrete Sampling and Testing
  - (xviii) Footing and Foundation
  - (xix) Energy Code Compliance Inspections
    - (a) Protection of Exposed Foundation Insulation
    - (b) Insulation Placement and R-Values
    - (c) Fenestration U-Factor and Product Rating
    - (d) Fenestration Air Leakage
    - (e) Fenestration Areas
    - (f) Air sealing and Insulation – Visual
    - (g) Fireplaces
    - (h) HVAC and Service Water Heating Equipment
    - (i) HVAC and Service Water Heating System Controls
    - (j) HVAC Insulation and Sealing
    - (k) Electrical Energy Consumption
    - (l) Lighting in Dwelling Units
    - (m) Lighting Controls
    - (n) Maintenance Information
  - (xx) Fire-Resistance Rated Construction

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- (4) Recurring inspections, including of the building's fire alarm system, sprinklers, and backflow prevention devices, will be required by the NYC DOB, FDNY, and other authorities having jurisdiction over the property.

### V. VIOLATIONS

- (1) Any Building Code violations will be corrected prior to the issuance of the Permanent Certificate of Occupancy.

### W. RESIDENTIAL UNIT INFORMATION

- (1) 40 Douglass Street has a total of 3 units:
- (i) Unit A is a two (2) bedroom, 3 bathroom apartment with accessory use cellar.
  - (ii) Unit B is a three (3) bedroom, 3 bathroom duplex apartment.
  - (iii) Unit C is a three (3) bedroom, 2.5 bathroom triplex apartment.

The areas indicated below shall be approximate and shall be calculated as follows: horizontally, approximately to the outside face of the exterior walls of the building. Dimensions shall be to the centerline of demising walls dividing units from each other. Dimensions shall be to the property line at lot-line walls. Stairs internal to the units shall be included in the area calculations. Unit A cellar space is considered occupiable accessory space and as such cannot legally be used as a bedroom or living area.

The approximate square footages for each unit shall be as follows:

| Unit Designation | Unit Type                                                      | Gross Square Footage of Condo Unit                                  | Limited Common Elements                                    | Notes                                                                                                                     |
|------------------|----------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| A                | 2 Bedroom/<br>3 Bathroom<br>Duplex + Cellar<br>Accessory Space | 2,406 S.F.<br><br>(cellar & 1st floor)                              | 787 s.f. rear yard                                         | Cellar accessory space will not be used for sleeping, cooking and/or living purposes and will not be rented independently |
| B                | 3 Bedroom/<br>3 Bathroom<br>Duplex                             | 1,841 S.F.<br><br>(2nd floor & 3rd floor)                           | 64 s.f. balcony &<br>300 s.f. terrace                      |                                                                                                                           |
| C                | 3 Bedroom/<br>2.5 Bathroom<br>Triplex                          | 2,000 S.F.<br><br>(3 <sup>rd</sup> floor, 4th floor, &<br>bulkhead) | 64 s.f. balcony,<br>179 s.f. terrace &<br>440 s.f. terrace |                                                                                                                           |

- (2) The number of units is in compliance with the requirements of the New York City Zoning Resolution.
- (3) All units shall be compliant with Local Law 58.
- (4) All units have kitchen and living/dining spaces.
- (5) The habitable rooms in the cellar have been approved by the NYC Department of Buildings.

## 40 DOUGLASS STREET

Brooklyn, New York

(6) Appliances – Fixtures – Finishes

(i) Kitchen:

(a) Appliances:

- a. Dishwasher: Bosch SHVM63W53N or equal
- b. Range: Bertazzoni MAST305GASXE 30" Master Series or equal
- c. Hood: Bertazzoni KTV30PRO1X 30" slide out hood or equal
- d. Refrigerator: Liebherr HC2082 36" french door or equal
- e. Microwave: Bosch HMC54151UC or equal

(b) Plumbing Fixtures:

- a. Kitchen Sink: Elkay Crosstown, model no. ECTSR25229BG or equal
- b. Kitchen Faucet: Grohe Minta, model no. 32-319 or equal

(c) Cabinets: Nobilia

(d) Counters: 1 1/4" thick quartz Caesarstone or equal

(e) Ceiling height: 8'-0" minimum

(f) Finishes:

- a. Floor: 3/4" thick engineered, pre-finished white oak, 5" wide planks select grade
- b. Walls: Painted g.w.b., 1 coat Benjamin-Moor Fresh Start primer, 2 coats Benjamin-Moore Regal Select or equal
- c. Ceiling: Painted g.w.b., 1 coat Benjamin-Moor Fresh Start primer, 2 coats Benjamin-Moore Regal Select or equal

(ii) Bathroom:

(a) Plumbing Fixtures:

- a. Lavatories: Fresca or equal (at powder rooms), Fresca Largo & Valencia (at all other bathrooms)
- b. Faucets: Fresca Allaro or equal
- c. Wall Mounted Lavatories: Toto CT418F Aquia or equal
- d. Floor Mounted Lavatories: Fresca FTL2346 Serena or equal

Toilets shall meet water saving performance standards as per New York City, Local Law 29/89.

- e. Alcove Tub: Neptune Entrepreneur or equal
- f. Free Standing Tub: Avanity ABT1524-GL Aria or equal
- g. Shower Heads/Controls: Grohe 35051001 Europlus or equal.

(b) Cabinets: Fresca Valencia or equal

(c) Counters: None (lavatories are full width/depth of vanities)

(d) Medicine Cabinets: Fresca 50" Wide x 36 " Tall Bathroom Medicine Cabinet with Mirrors or equal

(e) Ceiling height: 8' minimum

(f) Finishes:

- a. Floor: Ceramic or porcelain floor tile
- b. Walls: Ceramic or porcelain wall tile, full height at showers/bathtubs, minimum 4'-0" high at other bathroom walls, with painted moisture resistant g.w.b., 1 coat Benjamin-Moor Fresh Start primer, 2 coats Benjamin-Moore Regal Select or equal, where bathroom walls are not tiled

## **40 DOUGLASS STREET**

Brooklyn, New York

- c. Ceiling: Painted g.w.b., 1 coat Benjamin-Moor Fresh Start primer, 2 coats Benjamin-Moore Regal Select or equal.
  - (iii) Hallways, Living Rooms, Bedrooms:
    - (a) Finishes:
      - a. Floor: 3/4" thick engineered, pre-finished white oak, 5" wide planks select grade
      - b. Walls: Painted g.w.b., 1 coat Benjamin-Moor Fresh Start primer, 2 coats Benjamin-Moore Regal Select or equal
      - c. Ceiling: Painted g.w.b., 1 coat Benjamin-Moor Fresh Start primer, 2 coats Benjamin-Moore Regal Select or equal
  - (iv) Ceiling Heights
    - (a) Ceiling heights in all spaces in the building comply with the requirements of the 2014 NYC Construction Codes. Refer to unit floor plans for ceiling heights of specific spaces in each unit.

### **X. FINISH SCHEDULE OF SPACES OTHER THAN UNITS**

- (1) Lobby
  - (i) Flooring: Porcelain or ceramic tile
  - (ii) Walls: Painted g.w.b., Benjamin Moore, latex flat, china white or equal
  - (iii) Ceiling: Painted g.w.b., Benjamin Moore, latex flat, china white or equal
  - (iv) Doors/Frame: Hollow metal doors and frames, painted or equal
  - (v) Ceiling mounted light fixtures, by Lightolier, or equal
  - (vi) Mailboxes: Anodized Aluminum, Salisbury Industries, 3503ARU, with black finish, or equal
  - (vii) Ceiling height: 8'-8" minimum
- (2) Corridors
  - (i) Flooring: Porcelain or ceramic tile
  - (ii) Base: Painted mdf, or equal
  - (iii) Walls: Painted g.w.b., Benjamin Moore, latex flat, china white, or equal
  - (iv) Ceiling: Painted g.w.b., Benjamin Moore, latex flat, china white, or equal
  - (v) Doors/Frame: Hollow metal doors and frames, painted, or equal
  - (vi) Ceiling mounted light fixtures, by Lightolier, or equal
  - (vii) Ceiling height: 8'-8" minimum
- (3) Stairs
  - (i) Flooring: Steel pan treads with poured concrete topping, painted steel risers, Benjamin Moore, Dark Gray, or equal
  - (ii) Walls: Painted g.w.b., Benjamin Moore, latex flat, china white, or equal
  - (iii) Ceiling: Painted g.w.b., Benjamin Moore, latex flat, china white, or equal
  - (iv) Doors/Frame: Hollow metal doors and frames, painted, or equal
  - (v) Lighting: Wall mounted light fixtures, by Lithonia, or equal

### **Y. SAFETY & WARNING DEVICES**

- (1) Combination smoke/carbon monoxide detectors will be provided as per building code requirements, including at least one detector at each floor, one detector in all sleeping rooms and one detector within fifteen (15) feet of each bedroom door, smoke/carbon monoxide detectors will be hard-wired.

**40 DOUGLASS STREET**

Brooklyn, New York

**Z. ADDITIONAL INFORMATION REQUIRED**

None

**AA. NOT APPLICABLE**

**BB. FURTHER DEVELOPMENT**

(1) The sponsor does not intend to add additional units to the building.

**CC. ASBESTOS**

(1) No asbestos was used in the construction of the building.

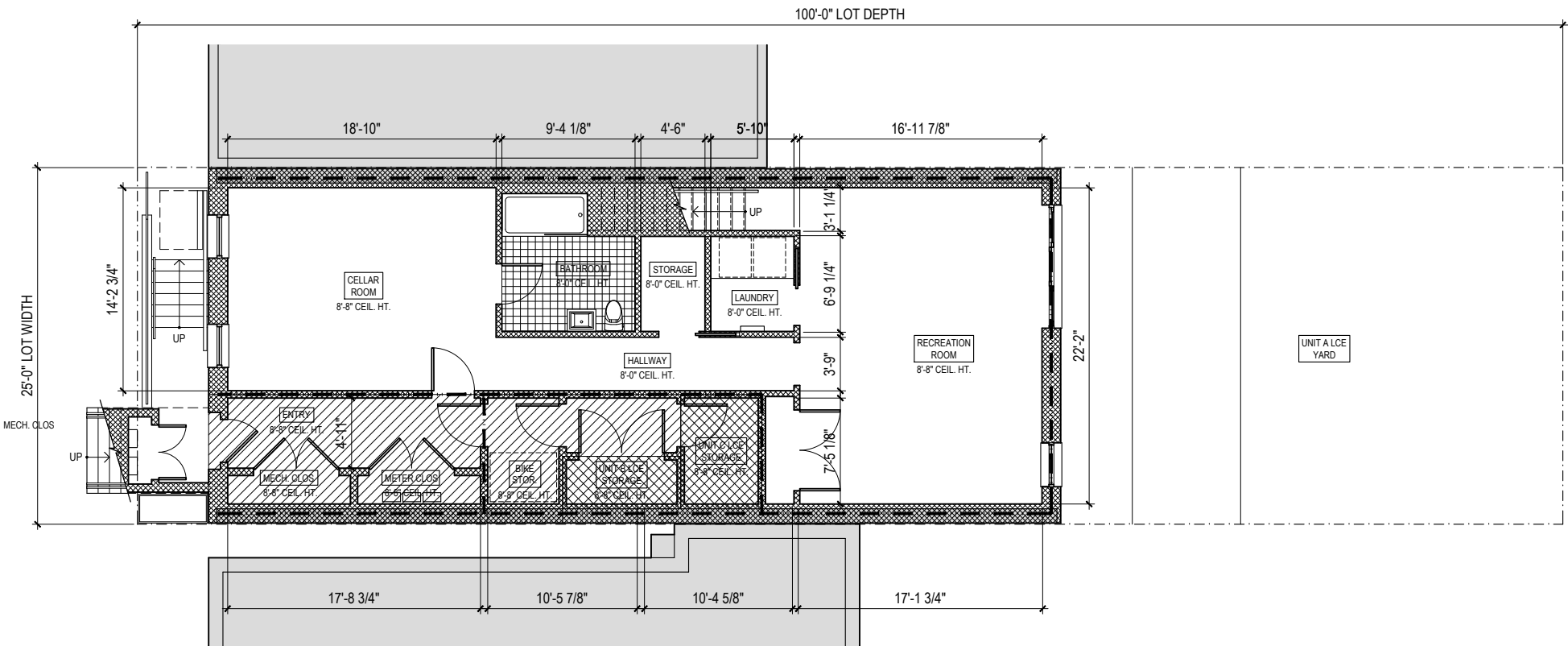
**DD. LEAD BASED PAINT**

(1) No lead based paint was used in the construction of the building.

**DOCUMENTS TO BE TRANSFERRED TO THE CONDOMINIUM MANAGEMENT**

The following documents shall be transmitted to the Condominium Management upon transfer of control:

- Final as-built drawings, e.g. structural, mechanical, electrical, plumbing, approved shop drawings
- Operation & maintenance manuals for mechanical equipment
- Electronic system manual
- Re-commissioning manual
- Equipment warranties
- NDL Manufacturer's Roof Warranty
- Major equipment start-up sheets
- Control system as-built
- Original test & balance report for HVAC system
- Post-construction indoor air quality report



**UNIT A SQUARE FOOTAGE**  
LISTED ON 1ST FLOOR PLAN

**UNIT B LIMITED COMMON ELEMENTS**  
LISTED ON 2ND FLOOR PLAN

**UNIT C LIMITED COMMON ELEMENTS**  
LISTED ON 3RD FLOOR PLAN

**COMMON SPACE SQUARE FOOTAGE**  
BUILDING ENTRY/CORRIDOR/MECH/BICYCLE STOR: 259 S.F.  
TOTAL: 259 S.F.



= COMMON ELEMENT

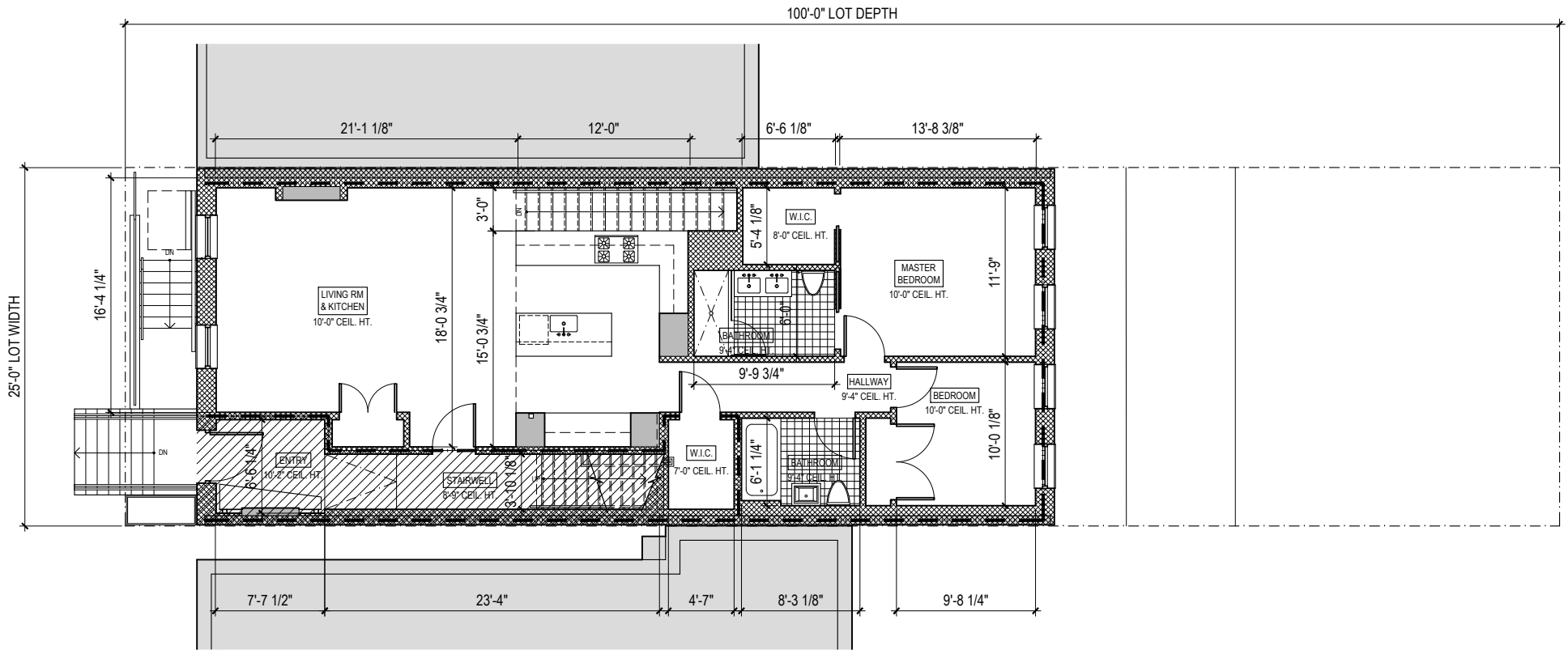


= LIMITED COMMON ELEMENT

# CELLAR

## 40 DOUGLASS STREET, BROOKLYN, NY 11231

01 SEPTEMBER 2020



#### UNIT A SQUARE FOOTAGE

|            |            |
|------------|------------|
| CELLAR:    | 1,134 S.F. |
| 1ST FLOOR: | 1,294 S.F. |
| TOTAL:     | 2,428 S.F. |

#### COMMON SPACE SQUARE FOOTAGE

|                         |          |
|-------------------------|----------|
| BUILDING ENTRY & STAIR: | 190 S.F. |
| TOTAL:                  | 190 S.F. |



= COMMON ELEMENT



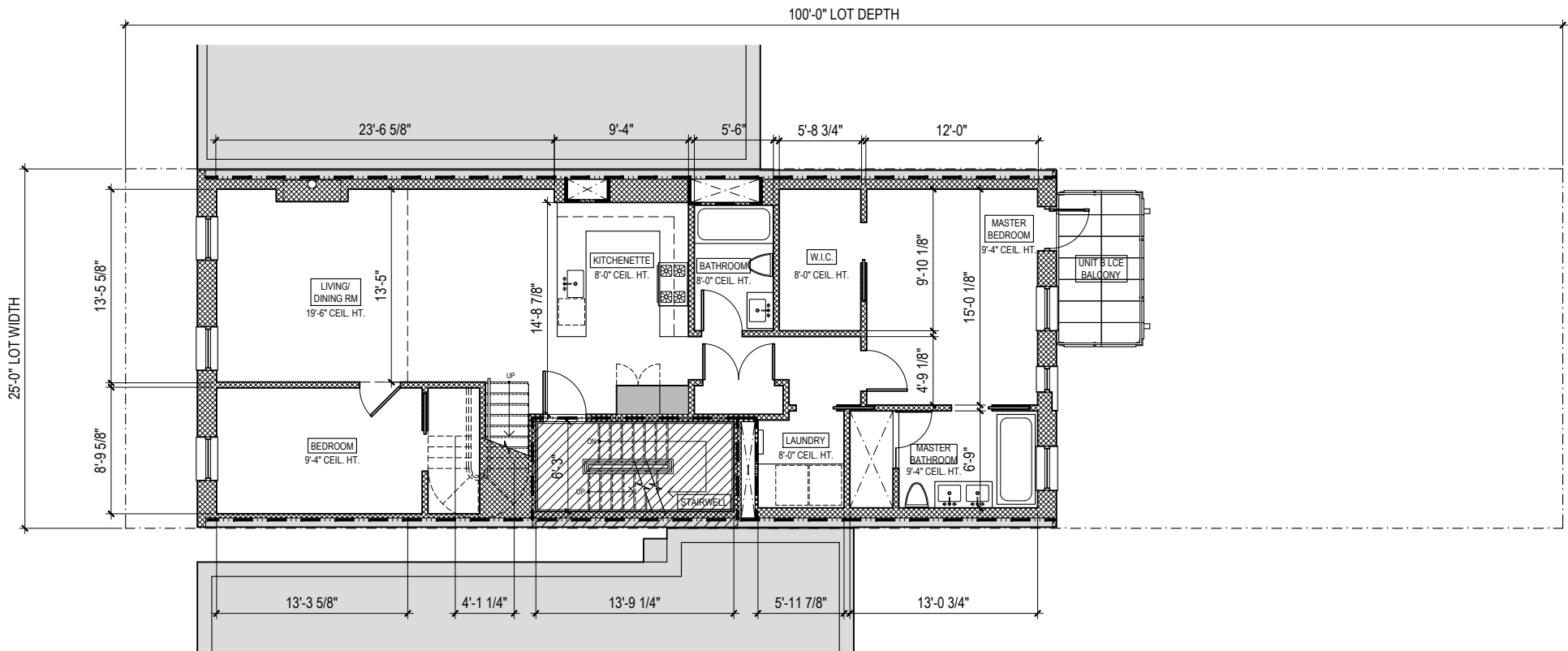
= LIMITED COMMON ELEMENT

#### UNIT A LIMITED COMMON ELEMENTS

|                     |          |
|---------------------|----------|
| REAR YARD (CELLAR): | 787 S.F. |
| TOTAL:              | 787 S.F. |

**1ST FLOOR**  
**40 DOUGLASS STREET, BROOKLYN, NY 11231**

01 SEPTEMBER 2020



#### UNIT B SQUARE FOOTAGE

|            |            |
|------------|------------|
| 2ND FLOOR: | 1,376 S.F. |
| 3RD FLOOR: | 641 S.F.   |
| TOTAL:     | 2,017 S.F. |

#### UNIT B LIMITED COMMON ELEMENTS

|                              |          |
|------------------------------|----------|
| STORAGE CLOSETS (AT CELLAR): | 39 S.F.  |
| BALCONY (AT 2ND FL):         | 64 S.F.  |
| TERRACE (AT ROOF):           | 300 S.F. |
| TOTAL:                       | 403 S.F. |

#### COMMON SPACE SQUARE FOOTAGE

|        |          |
|--------|----------|
| STAIR: | 108 S.F. |
| TOTAL: | 108 S.F. |



= COMMON ELEMENT

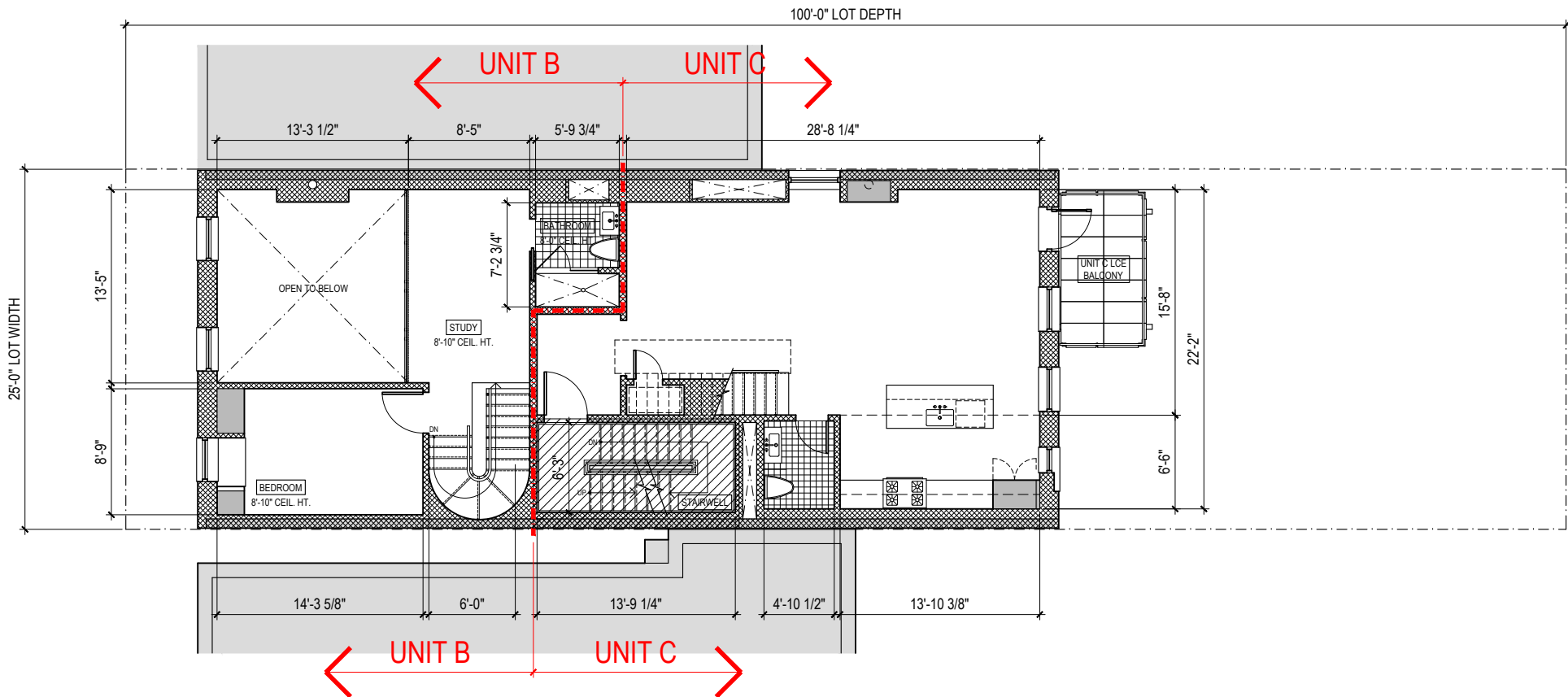


= LIMITED COMMON ELEMENT

## 2ND FLOOR

# 40 DOUGLASS STREET, BROOKLYN, NY 11231

01 SEPTEMBER 2020



**UNIT B SQUARE FOOTAGE**  
LISTED ON 2ND FLOOR PLAN

| <b>UNIT C SQUARE FOOTAGE</b> |            |
|------------------------------|------------|
| 3RD FLOOR:                   | 737 S.F.   |
| 4TH FLOOR:                   | 1,128 S.F. |
| BULKHEAD:                    | 162 S.F.   |
| TOTAL:                       | 2,027 S.F. |

| <b>COMMON SPACE SQUARE FOOTAGE</b> |          |
|------------------------------------|----------|
| STAIR:                             | 108 S.F. |
| TOTAL:                             | 108 S.F. |

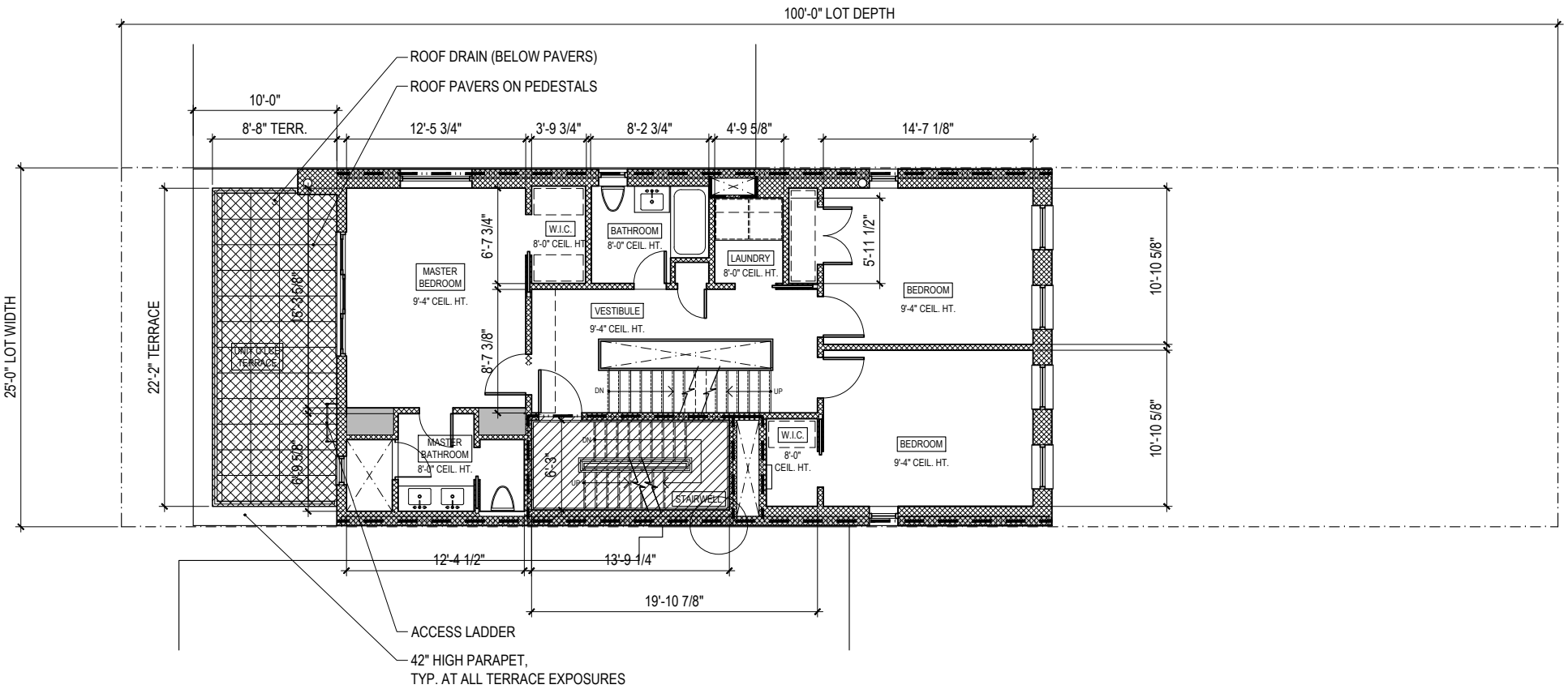
 = COMMON ELEMENT

 = LIMITED COMMON ELEMENT

| <b>UNIT C LIMITED COMMON ELEMENTS</b> |          |
|---------------------------------------|----------|
| STORAGE CLOSET (AT CELLAR):           | 51 S.F.  |
| BALCONY (3RD FL):                     | 64 S.F.  |
| TERRACE (4TH FL):                     | 179 S.F. |
| TERRACE (ROOF):                       | 440 S.F. |
| TOTAL:                                | 734 S.F. |

**3RD FLOOR**  
**40 DOUGLASS STREET, BROOKLYN, NY 11231**

01 SEPTEMBER 2020



**UNIT C SQUARE FOOTAGE**  
LISTED ON 3RD FLOOR PLAN

**COMMON SPACE SQUARE FOOTAGE**  
STAIR: 108 S.F.  
STAIR: 108 S.F.

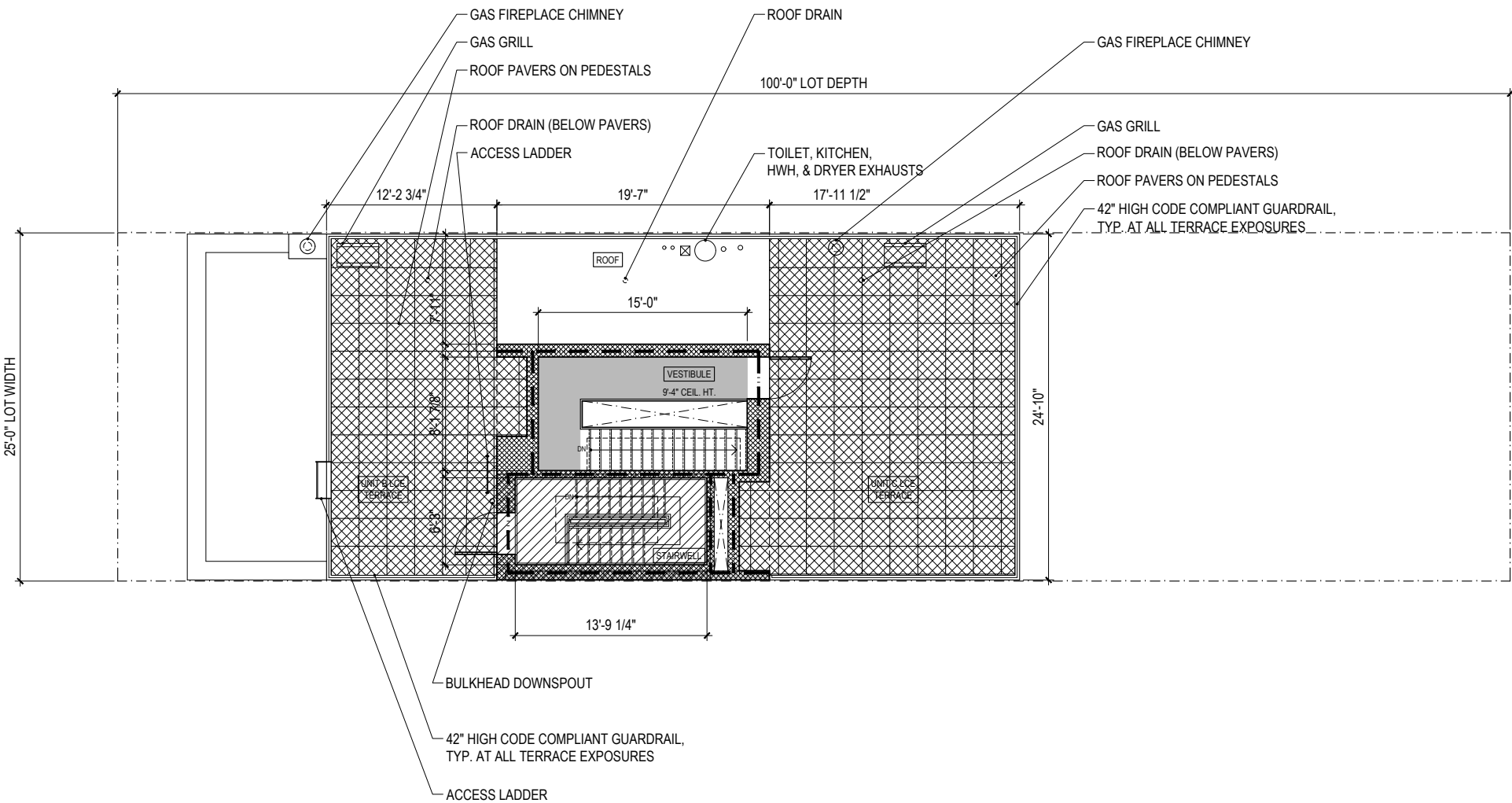
 = COMMON ELEMENT

 = LIMITED COMMON ELEMENT

# 4TH FLOOR PLAN

## 40 DOUGLASS STREET, BROOKLYN, NY 11231

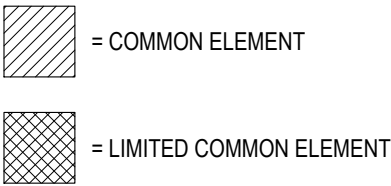
01 SEPTEMBER 2020



**UNIT B LIMITED COMMON ELEMENTS**  
LISTED ON 2ND FLOOR PLAN

**UNIT C SQUARE FOOTAGE**  
LISTED ON 3RD FLOOR PLAN

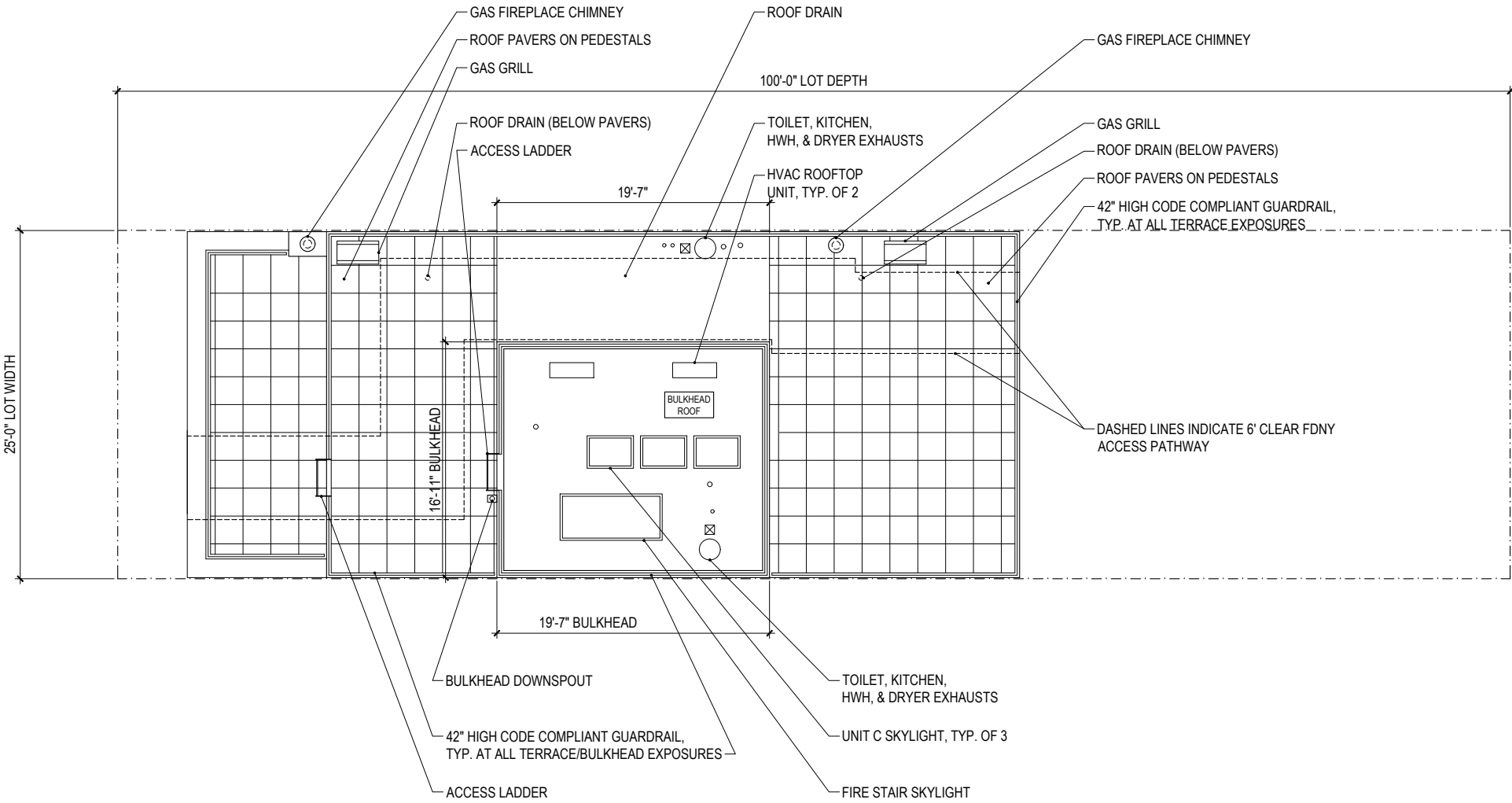
**COMMON SPACE SQUARE FOOTAGE**  
STAIR: 116 S.F.  
STAIR: 116 S.F.



# BULKHEAD PLAN

## 40 DOUGLASS STREET, BROOKLYN, NY 11231

01 SEPTEMBER 2020



**UNIT B LIMITED COMMON ELEMENTS**  
LISTED ON 2ND FLOOR PLAN

**UNIT C SQUARE FOOTAGE**  
LISTED ON 3RD FLOOR PLAN

**COMMON SPACE SQUARE FOOTAGE**

|        |          |
|--------|----------|
| STAIR: | 116 S.F. |
| STAIR: | 116 S.F. |


= COMMON ELEMENT


= LIMITED COMMON ELEMENT

**ROOF PLAN**  
**40 DOUGLASS STREET, BROOKLYN, NY 11231**  
 01 SEPTEMBER 2020

**General Business Law—Civil Practice Law and Rules**  
**New Homes—Sales—Warranties**

We ACT to amend the general business law and civil practice law and rules, in relation to warranties on sales of new homes.

Approved September 6, 1988, effective as provided in S 3.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The general business law is amended by adding a new article S 1 thirty-six B to read as follows:

ARTICLE 36-B

§ 777. Definitions.

777-a. Housing Merchant Implied Warranty

777-b. Exclusion or modification of warranties.

§ 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 title 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 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.

§ 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.

New York Real Property Law, Article 9-B.

**§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.

## **DECLARATION**

**Establishing a Plan for Condominium Ownership of Premises located 40 Douglass Street, Brooklyn, New York, County of Kings, City and State of New York Pursuant to Article 9-B of the Real Property Law of the State of New York.**

**NAME: THE 40 DOUGLASS STREET CONDOMINIUM**

**DECLARANT: 40 DOUGLASS LLC  
284 President Street  
Brooklyn, New York 11231**

**DATE OF DECLARATION:**

**The land affected by the within instrument lies in Block 414 on the Tax Map of the Borough of Brooklyn, County of Kings, City and State of New York.**

|               |                  |
|---------------|------------------|
| <b>F/k/a:</b> | <b>Lot(s) 26</b> |
| <b>N/k/a:</b> | <b>Lot(s)</b>    |

**Record and Return:**

**LAW OFFICE OF CLAUDIA V. MURDOCH, P.C.  
Attorney for Declarant  
117 Seventh Avenue  
Brooklyn, New York 11215**

**DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP of Premises to be known as THE 40 DOUGLASS STREET CONDOMINIUM, located at 40 Douglass Street, Brooklyn, New York, Borough of Brooklyn, County of Kings, City and State of New York, pursuant to Article 9B of the Real Property Law of the State of New York.**

40 DOUGLASS LLC, located at 284 President Street, Brooklyn, New York 11231, hereinafter referred to collectively as "the Declarant," does hereby declare:

1. SUBMISSION OF PROPERTY: Declarant hereby submits the land hereinafter described, together with the Buildings and improvements thereon erected ("the Property"), to the provisions of Article 9-B of the Real Property Law of the State of New York.
2. AREA AND LOCATION OF LAND: The land ("Land") consists of all that certain tract, plot, piece, and parcel of land situate, lying and being in the County of Kings, City and State of New York, more particularly described on Schedule A annexed hereto and made a part hereof. The Land is owned by the Declarant in fee simple absolute.
3. NAME OF CONDOMINIUM: The Condominium shall be known as THE 40 DOUGLASS STREET CONDOMINIUM.
4. DESCRIPTION OF THE BUILDING: The Condominium consists of a single building composed of four stories and a below-grade cellar, and containing, in aggregate, three (3) residential units. The legal occupancy will match the proposed occupancy hereunder. The building complies with Class I-B building construction requirements.
5. THE UNITS: SCHEDULE B annexed hereto and made a part hereof sets forth the following data with respect to each Unit necessary for the proper identification thereof: Unit designation; tax lot number; approximate square foot area; location; number of rooms; the portion of the Common Elements, including Limited Common Elements to which the Unit has immediate access (if any) and the percentage of interest in the Common Elements. The location of each Unit and any Limited Common Elements appurtenant thereto is more clearly designated on the Floor Plans (as hereinafter defined) and reference should be made thereto for the statement of the location of each Unit.

The square footage of each unit is calculated as follows: horizontally, approximately to the outside face of the exterior walls of the building. Dimensions shall be to the centerline of demising walls dividing units from each other. Dimensions shall be to the property line at lot line walls. Stairs internal to the units shall be included in the area calculations.

6. FLOOR PLANS: As shown on the Floor Plans of the Buildings (the "Floor Plans"), certified by James Cleary, R.A., Principal of James Cleary Architecture, and intended to be filed in the Office of the City Register of the City of New York simultaneously with the recording of this Declaration, the dimensions indicated are approximate, and are incorporated by reference as if fully set forth herein.

7. COMMON ELEMENTS: The Common Elements of the Condominium consist of the entire Property, including parts of the Buildings and improvements thereon other than the Units. Common Elements are comprised of General Common Elements and Limited Common Elements. They include, to the extent applicable, the following:

a) General Common Elements:

(i) The land on which the Buildings are physically erected, including any open areas appurtenant to the building(s);

(ii) All foundations, columns, girders, beams, supports, bearing walls; those portions of the exterior walls and installations beyond the exterior face of the Buildings; those portions of the walls and partitions dividing the Units from corridors, lobby and stairs located beyond the exposed face of the dry walls enclosing the Unit; the subfloor and framing joists, including any framing attached to such joists from which the dry wall ceiling of the Unit below is attached; roofs (excluding terraces), fire escapes (if any), corridors, halls, stairs and stairway areas located beyond the unexposed face of the dry walls enclosing the Residential Unit; lobby; storage and utility areas located beyond the unexposed face of the dry walls and the entrances to and exits from the Buildings;

(iii) All installations outside the Units for services such as gas, power, light, telephone and water;

(iv) All sewer pipes and drainage pipes outside units, including all drains and dry well on the land and those located outside the building footprint;

(v) The boiler room and meter areas, and janitor's closet(s), if any, as shown and delineated on the Floor Plans. To the extent the "as-built" condition of the building differs from such Floor Plans, both said Floor Plans and this Declaration shall be deemed amended to conform to said as-built condition;

(vi) All other apparatus and installations existing in the Buildings for common use or necessary or convenient to the existence, maintenance or safety of the Buildings.

(vii) The foregoing are included only to the extent they are present in this building. If any of the foregoing items are hereinafter designated as limited common elements, such designation shall take priority over the listing set forth herein.

b) Limited Common Elements:

Limited Common Elements are those areas appurtenant to a particular Unit or Units, the use of which is restricted to the owner(s) of such Unit or Units, but which are not owned by that unit owner. Each Unit Owner, his guests, invitees, lessees and residents of his Unit shall have the exclusive right to use and possession of the limited common elements of the building indicated in the attached Exhibit B, subject to the following:

Each Unit Owner shall be solely and only responsible for repair and maintenance of the Limited Common Element appurtenant to his/her Unit including, but not limited to, painting, cleaning, patching, and surface repair. In the event a Unit Owner fails to properly maintain his/her Limited Common Element, the Condominium Board of Managers may take such steps as in its exclusive judgment are necessary to maintain the areas and the cost thereof shall be assessed against the Condominium Unit to which such Limited Common Elements are appurtenant. To the extent that any damage to a Limited Common Element is caused by building condition, or by other condition for which the Condominium carries insurance, the cost of repair of such damage shall be borne by the Condominium.

8. DETERMINATION OF PERCENTAGES OF COMMON INTEREST: The determination of percentages of Common Interest allocated to each unit is based upon floor space, subject to the location of such space, and the additional factors of relative value to other space in the condominium, the uniqueness of the unit, the availability of common

elements or exclusive or shared use, and the overall dimensions of a particular unit, as per Section 339(i)(1)(iv) of the New York State Real Property Law.

9. USE OF UNITS: Any Residential Unit may be used for private residential use, or for any home occupation use permitted under applicable zoning laws and ordinances, building code, or other rules and regulations of governmental authorities having jurisdiction thereof. Notwithstanding the foregoing, the Declarant may, without the permission of the Board of Managers, retain ownership of one or more Units for use as rental units, models, sales and/or offices, in connection with the sale or rental of the Units.

10. ENCROACHMENTS: If any portion of the Common Elements encroach upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any encroachment shall occur hereafter as a result of (a) settling or shifting of the Buildings, or (b) alteration or repair to the Common Elements made by or with the consent of the Board of Managers, or (c) as a result of repair or restoration of the Buildings or a Unit after damage by fire or other casualty, or (d) as a result of condemnation or eminent domain proceedings; a valid easement shall exist for such encroachments and for the maintenance of the same so long as the Buildings shall stand.

11. EASEMENTS:

a) Each Unit Owner shall have an easement in common with the owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Board of Managers shall have a right to access to each Unit and any Limited Common Elements appurtenant thereto to inspect the same, to remove violations therefrom and/or to maintain, repair or replace the Common Elements contained therein or elsewhere in the Building.

b) The Declarant and its designees, their successors, assigns, invitees, licensee, contractors, employees and tenants, shall have an easement in, on, over and across the Property for (i) construction, installation and development thereon and for the construction and installation, ingress to and egress from, and use of (including the right to connect with) all pipes, conduits, ducts, cables, wires, storm drainage facilities, water, sewer and other utility lines and (ii) construction and installation, ingress to and egress from and the right to use (in common with Unit Owners) all storm drainage facilities, water, sewer and other utility lines, pipes, conduits, flues, ducts, wires and cables, and (iv) ingress to and egress

from all land areas of the Property and the use of said land areas (in common with Unit Owners) for any lawful purpose.

c) The Declarant, its designees and their successors, assigns, invitees, licensees, contractors, employees and tenants (i) shall have an easement to erect, maintain, repair and replace from time to time one or more signs on the Property for the purposes of advertising the sale of Units and the leasing of space in any Unit as well as an easement in the access to Units and Common Elements consistent with the purposes of the Offering Plan for the Property as same may be amended, and Declarant's rights and obligations thereunder, including, without limitation, the right to develop, renovate, maintain, repair, refurbish, offer, sell and lease Units and Common Elements, and (ii) reserve the right to establish, grant and create easements for any additional underground electric, transformer, amplifier, gas, cable television, telephone, water, storm drainage, sewer or other utility lines and appurtenances in, under and through the Property, including, without limitation, an easement or easements for the benefit of any property adjacent to the Property, to relocate any existing utility easements in any portion of the Property and to dedicate any or all of such facilities to any governmental body, public benefit corporation or utility company if the Declarant or designee shall deem it necessary or desirable for the proper operation and maintenance of the Property or any portion thereof, or the residents of any property adjacent to the Property, or users of the Recreation Facilities, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Residential Units for dwelling purposes. Any utility company or public benefit corporation furnishing services to the Property, and the employees and agents of any such company or corporation, shall have the right to access of any Unit, to the Common Elements or the Limited Common Elements in furtherance of such easements, provided such right to access is exercised in such a manner as not unreasonably to interfere with the use of the Units.

d) The user of any easement granted by Sub-paragraphs "b" and "c" of this Paragraph 11 shall have the responsibility of repairing any damage resulting therefrom.

12. PERSON TO RECEIVE SERVICE: For the period during which Declarant is in control of the Board of Managers, 40 Douglass LLC, 284 President Street, Brooklyn, New York 11231 is hereby designated to receive notice of process in any action which may be brought against the Condominium. After Declarant relinquishes control of the Board of Managers notice of process in any action which may be brought against the Condominium shall be served on the President of the Condominium at the office of the Condominium located at 40 Douglass Street, Brooklyn, New York. In addition to the foregoing, the Secretary of

State of the state of New York is hereby designated as agent of the Board of Managers to accept the service of process in any proceeding.

13. UNITS SUBJECT TO DECLARATION, BY-LAWS, AND RULES AND REGULATIONS:

All present and future Owners, tenants, subtenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws, and the Rules and Regulations (if any), as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into a lease or the entering unto occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such Owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

14. AMENDMENT TO DECLARATION: This Declaration may be amended, modified, added to or deleted from by vote of Unit Owners representing at least 66-2/3% of all Unit Owners in number and in common interest, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, or in lieu of a meeting, any amendment may be approved, in writing by vote of Unit Owners representing at least 66-2/3% of the Common Interest of all Unit Owners; provided however,

a) No amendment, modification, addition, or deletion which shall adversely affect the lien or any mortgage may be made without the written consent of the mortgagee;

b) No amendment which shall change the percentage of Common Interest allocated to any Unit or Units may be made without the written consent of such Owner;

c) No amendment, modification, addition, or deletion of or to this Declaration will be effective in any respect against the Declarant, its designee, or any Unsold Unit until the Declarant or such designee shall consent thereto in writing;

d) No amendment, modification, addition, or deletion of or to this Declaration which would in any way alter, restrict or change the use to which a Commercial Unit may be put shall be effective against any such Commercial Unit without the written consent of the Owner of such Commercial Unit.

The Declarant hereby reserves to itself and its designee(s) the right to amend this Declaration at any time without the requirements of a vote and without the

approval or consent of any Unit Owners or mortgagees for the sole purpose of filing the Floor Plans required by the New York Real Property Law Section 339-p for any portion or portions of the Buildings and appurtenances that are incomplete upon the original filing of the Declaration provided that the verified statement of a registered architect or licensed professional engineer certifying that the plans being filed simultaneously with such amendment, fully and fairly depicting the layout, location, unit designations and approximate dimensions of the particular Unit or Units as built, as provided in said Section 339-p, will be filed with such amendment.

No such amendment shall be effective until recorded in the Office of the City Register of the City of New York.

15. CHANGES IN UNSOLD UNITS: For any Unit owned by the Declarant or its designee(s), if not prohibited by the New York Condominium Act (as the same may be amended), the Declarant or its designee(s) shall have the right, without the vote or consent of the Board of Managers, other Unit Owners or the holders of Unit Mortgages, to (i) make alterations, additions, or improvements in, to and upon the Unit; (ii) change the layout or number of rooms in the Unit; (iii) change in and size and/or number of such Units by subdividing a Unit, combining separate Units (including those resulting from any subdivision or otherwise) into one or more Units, altering the boundary walls between any Unit or otherwise; and (iv) reapportion among such Units affected by such change in size or number, subdivision, combination or alteration, appurtenant interests in the Common Elements; provided, however, that the Declarant or its designee(s) shall comply with all rules, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold the Board of Managers and all other Unit Owners harmless from any liability arising therefrom. In accordance with law, the Common Elements appurtenant to each Unit as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all Unit Owners affected. Written consent will be obtained from Unit Owners, if any, who are adversely affected as a result of the above changes. Contract vendees, if any, pursuant to Purchase Agreements with the Declarant or its designees for a Unit adversely affected as a result of the above changes, will be given the right to rescind their Purchase Agreements and receive a refund of any disclosed in an amendment to the Offering Plan for the Property. The provisions of this Paragraph 15 may not be added to, amended or deleted without the prior written consent of the Declarant or its designee(s). In the event of any such change in an Unsold Units, Declarant shall amend the Declaration and Floor Plans to reflect same.

In the event the Declarant or its designee, exercising its rights pursuant to this Article so requires, the Board of Managers shall promptly amend the Declaration at the expense of the Declarant or its designee, to reflect any such alteration, addition, improvements, changes or reapportionments and shall record such amendment in the Office of the City Register of the City of New York.

Unit Owners in the Condominium hold title to their respective Units subject to the benefits, rights, privileges, easements, burdens, covenants, and restrictions as described herein, in the By-Laws of the Condominium and any agreement of record recorded prior or subsequent to this Declaration.

16. INVALIDITY:

a) If any provision of this Declaration or of the By-Laws is invalid under, or would cause this Declaration or the By-Laws to be insufficient to submit the Property to, the provisions of the Condominium Act, such provision shall be deemed deleted from this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act, but shall nevertheless be valid and binding upon, and shall inure to the benefit of, the owners of the Property and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable law with the same force and effect as if, immediately after the recording of this Declaration or the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land. If any provision that is necessary to cause this Declaration or the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included;

(b) Subject to the terms of Paragraph "a" above, if this Declaration or the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, this Declaration and By-Laws shall nevertheless be valid and binding upon, and shall inure to the benefit of, the owners of the Property and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable law to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provisions as a covenant running with the Land.

17. THIS PARAGRAPH HAS BEEN INTENTIONALLY OMITTED.

18. TERMINATION OF CONDOMINIUM: The Condominium may be terminated by casualty loss, condemnation, or eminent domain, in accordance with the provisions of the By-Laws, or by withdrawing the Property from the provisions of the New York Condominium Act if authorized by an affirmative vote of Unit Owners who own not less than eighty (80%) percent in Common Interest of the Units. The Declarant or its designees will not vote its interests appurtenant to any Unsold Units for such withdrawal unless at least eighty (80%) percent in Common Interest of all other Unit Owners have elected for such withdrawal, in which event the Declarant may choose to vote in favor of or against such withdrawal. In the event said withdrawal is authorized as aforesaid, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all the Unit Owners in proportion to their respective Common Interests, provided however, that no payment shall be made to a Unit Owner until all lienors have first been paid off out of his share of such proceeds.

19. COMMON EXPENSE: Common Expenses of the Condominium mean and include all expenses of operation of the Property and all sums designated Common Expenses by or pursuant to the provisions of Article 9-B of the Real Property Law of the State of New York, the Declaration or the By-Laws. Common expenses shall be charged to unit owners according to their respective common interests, except that such expenses may be specially allocated and apportioned by the Board of Managers in a manner different from common profits and expenses for one (1) or more non-residential units. Additionally, common expenses may be specially allocated and apportioned to residential or non-residential units, or a combination thereof, based on special or exclusive use or availability, or exclusive control, of particular units or common areas by particular Unit Owners.

20. DEFINITION OF "DECLARANT-DESIGNEE": The term "Declarant- Designee" as used in this Declaration shall mean any person or entity designated by the Declarant to acquire title to a Unit, other than a good faith Purchaser for value purchasing pursuant to a validly executed Purchase Agreement. A "Declarant-Designee" shall have the right to designate a person or entity to succeed to its rights and any such designee shall also be deemed a "Declarant-Designee."

21. WAIVER: No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

22. CAPTIONS: The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration, nor the intent of any provision thereof.

23. GENDER: The use of the masculine gender in this Declaration shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

24. MORTGAGEES RIGHTS:

a) Notwithstanding anything to the contrary set forth in any other portion of this Declaration, amendments of a material adverse nature to the interest of the mortgagees must be agreed to by mortgagees holding mortgages on units entitled to cast at least 51.00% of the votes of the Condominium allocated to all units which are subject to mortgages;

b) Any action to terminate the legal status of the project after substantial destruction or condemnation, or for any other reason, must be agreed to by mortgagees holding mortgages on units entitled to cast at least 51.00% of the votes allocated to units which are encumbered by mortgages at the time of such termination. In the event notice of either of the foregoing is delivered to any mortgagee; and in the further event such mortgagee fails to submit a written response to such written notice within sixty (60) days after it receives such notice (and further provided that such notice was delivered by registered or certified mail with a return receipt requested); then in such case such mortgagee will be deemed to have consented to the notice to action.

**IN WITNESS WHEREOF**, the parties have caused this Declaration to be executed by its duly authorized representatives this  
day of \_\_\_\_\_, 20\_\_.

40 DOUGLASS LLC

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_ ) SS.:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## **BY-LAWS**

### **of the**

## **40 DOUGLASS STREET CONDOMINIUM**

### **ARTICLE I**

#### **Purpose of Business**

**Section 1. Unit Ownership:** The property located in the Borough of Brooklyn, County of Kings, City and State of New York at 40 Douglass Street, Brooklyn, New York (hereinafter called the "Property") has been submitted pursuant to the provisions of Article 9-B of the Real Property Law of the State of New York by the Declaration recorded in the Office of the City Register of the City of New York, simultaneously herewith. The Condominium thereby created shall hereinafter be known as the 40 DOUGLASS STREET CONDOMINIUM.

**Section 2. Applicability of By-Laws:** The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the Buildings, and all other improvements thereon (including the Units, the Common Elements and the Limited Common Elements), owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Article 9-B of the Real Property Law of the State of New York. The Condominium Units are hereinafter sometimes referred to as "Unit" or "Units."

**Section 3. Application:** All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-laws, the Declaration and the Rules and Regulations attached hereto as Schedule A.

The acceptance of a deed or conveyance or the entering into of a lease for a Unit or the act of occupancy of a Unit shall constitute an agreement that these By-Laws, the Rules and Regulations and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

Section 4. Office: The office of the Condominium and of the Board of Managers shall be located at the Property.

## **ARTICLE II**

### **Meetings of Unit Owners**

Section 1. Annual Meeting: The Annual Meeting of the Unit Owners of the Condominium for the election of the Board of Managers and for such other business as may properly come before such meeting, shall be held in the Borough of Brooklyn, City of New York, at such time and place, each year as may be designated by the Board. The notice of the meeting shall be in writing and signed by the President or a Vice President or the Secretary or an Assistant Secretary. Such notice shall state the time when and the place within the state where it is to be held, and the Secretary shall cause a copy thereof to be delivered personally or mailed to each Unit Owner of record of the Condominium entitled to vote at such meeting not less than ten (10) nor more than forty (40) days before the meeting. If mailed, it shall be directed to each such Unit Owner at his or her address as it appears in the records of the Condominium, unless he or she shall have filed with the Secretary of the Condominium a written request that notices intended for the him or her be mailed to some other address, in which case it shall be mailed to the address designated in such request.

Section 2. Special Meetings: Special meetings of Unit Owners, other than those the calling of which is regulated by statute, may be called at any time by the President or Secretary or by a majority of the Board of Managers. It shall also be the duty of the Secretary to call such meetings whenever requested in writing to do so by Unit Owners owning at least twenty-five per cent (25%) of the votes of the Condominium. The Secretary shall cause a notice of such Special Meeting stating the time, place and object thereof and the officer or other person or persons by whom the meeting is called, to be delivered personally or mailed as provided in Section 1 of this Article to each Unit Owner of record of the Condominium entitled to vote at such meeting not less than ten (10) nor more than forty (40) days before such meeting. No business other than that stated in such notice shall be transacted at such Special Meeting unless the holders of all the Units of the Condominium be present thereat in person or by proxy. Except that there shall be a meeting commenced within sixty days after the closing of the First Unit to be sold to elect a Board of Managers.

Section 3. Waiver of Notices: The notice provided for in the two foregoing sections is not indispensable, but any Unit Owners' meeting whatever shall be valid for all purposes if all the Unit Owners of the Condominium are represented thereat in person or by proxy, or if a quorum is present, as provided in the next succeeding section, and waiver of notice of the time, place and objects of such meeting shall be duly executed in writing either before or after said meeting by such Unit Owners as are not so represented and were not given such notice.

Section 4. Quorum: At each meeting of Unit Owners, except where otherwise provided by law, Unit Owners representing, in person or by proxy, 51% of the votes of the Units shall constitute a quorum; in case a quorum shall not be present at any meeting, the holders of a majority of the Units represented may adjourn the meeting to some future time and place. Only those Unit Owners who, if present at the adjourned meeting, would have been entitled to vote thereat, shall be entitled to vote at any such adjourned meeting.

Section 5. Voting: At each meeting of Unit Owners, each Unit Owner present in person or by proxy shall be entitled to cast the votes appurtenant to his/her Unit at the time of service of notice of such meeting or at such prior date, not more than forty (40) days before such meeting, as may be prescribed by the Board of Managers as the date for determining which Unit Owners of record are entitled to notice of and to vote at such meeting. The proxies shall be in writing duly signed by the Unit Owner but need not be acknowledged or witnessed, and the person named as proxy by any Unit Owner need not himself be a Unit Owner of the Condominium. Voting by Unit Owners shall be viva voce unless any Unit Owner present at the meeting, in person or by proxy, demands a vote by written ballot, in which case the voting shall be by ballot, and each ballot shall state the name of the Unit Owner voting and the number of votes appurtenant to his/her Unit, and in addition, the names of the proxy of such ballot if cast by a proxy.

Section 6. Title to Units: Title to Units may be taken in the name of an individual or in the name of two (2) or more persons, as tenants in common or as joint tenants or as tenants by the entirety or in the name of a corporation or partnership, or in the name of a fiduciary or trust, estate, un-incorporated association, syndicate, joint venture, organization, government or any department or agency thereof, or any other entity. The term "Unit Owner" as used in these By-Laws shall include any person, group of persons, association or entity taking title as set forth in this Section.

Section 7. Number of Votes: Any or all of such Owners (including the Sponsor or Sponsor-designee, if the Sponsor or its designee shall then own one or more Units) shall be entitled to cast one vote for each .01% of interest in the Common Elements attributable to

the Unit or Units owned by them on all matters put to the vote at all meetings of Unit Owners; except that, when voting for the election of members of the Board of Managers, each Condominium Unit shall be entitled to elect one manager to the Board of Managers. If Units are owned by more than one person as joint tenants, tenants by the entirety, or as tenants in common or by a partnership, corporation or other entity, the persons owning said Unit shall agree among themselves and cast the votes for their Unit as a single vote. A fiduciary shall be the voting member with respect to any Unit in a fiduciary capacity. Any Unit or Units owned by the Board of Managers or its designee shall not be entitled to vote.

Section 8. Majority of Unit Owners: As used in these By-Laws the term "majority of Unit Owners" shall mean those Unit Owners having greater than 50% of the total authorized votes of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners, determined in accordance with the provisions of Section 7 of this Article II. Two thirds of Unit Owners shall mean those Unit Owners having greater than 66-2/3% of the total authorized vote of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners. A vote of a majority of Unit Owners shall be sufficient for any action of any meeting, except where otherwise provided herein or required by statute.

Section 9. Inspectors of Election: Inspectors of election shall not be required to be appointed at any meeting of Unit Owners unless requested by a Unit Owner present (in person or by proxy) and entitled to vote at such meeting and upon the making of such request inspectors shall be appointed or elected as provided in Section 610 of the Business Corporation Law.

## **ARTICLE III**

### **OFFICERS**

Section 1. Designation: The principal officers of the Condominium shall be the President, the Vice-President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint such other officers as in its judgment may be necessary. The President and Vice-President, but no other officers, need be members of the Board of Managers.

Section 2. Election of Officers: The officers of the Condominium shall be elected annually by the Board of Managers at the organization meeting of each new Board of Managers and shall hold office at the pleasure of the Board of Managers and until their successors are elected, their resignation or death.

Section 3. Removal of Officers: Upon the affirmative vote of a majority of the members of the Board of Managers, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Managers, or at any special meeting of the Board of Managers called for such purpose.

Section 4. President: The President shall be the chief executive officer of the Condominium. He shall preside at all meetings of the Unit Owners and of the Board of Managers. He shall have all of the general powers and duties which are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

Section 5. Vice-President: The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Managers shall appoint some other member of the Board of Managers to act in the place of the President, on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Managers or by the President.

Section 6. Secretary: The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Managers; he shall have charge of such books and papers as the Board of Managers may direct; and he shall in general perform all the duties incident to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York.

Section 7. Treasurer: The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Board of Managers, or the Managing Agent, in such depositories as may from time to time be designated by the Board of Managers, and he shall, in general, perform all the duties incident to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York.

Section 8. Compensation of Officers: No officer shall receive any salary or other compensation from the Condominium for acting as such or for services rendered in an official capacity.

Section 9. Liability of Officers: No officer shall be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for willful misconduct or bad faith. The Unit Owners shall severally indemnify each officer against any liability or claims except those arising out of the bad faith or willful misconduct of an officer. It is intended that each officer shall have no personal liability with respect to any contract made by him on behalf of the Condominium. It is and shall be permissible for each officer who is appointed by the original Board of Managers (designees of the Sponsor), to contract with the Sponsor and affiliated corporations without fear of being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by an officer or out of the aforesaid indemnity in favor of each officer shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the aggregate interest in the Common Elements of all the Unit Owners. Every agreement made by an officer on behalf of the Condominium shall provide that each officer is acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners, except for willful misconduct or bad faith), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the aggregate interest in the Common Elements of all Unit Owners.

## **ARTICLE IV**

### **Managers**

Section 1. Number: The number of Managers of the Corporation shall not be less than three (3) nor more than seven (7), as may from time to time be herein provided and, in the absence of such provision shall be three (3). Commencing with the first election of Managers by Unit Owners of the Condominium, and until changed by amendment of this By-Law provision, and hereinafter provided, the number of Managers shall be three (3). The number of Managers shall not be decreased to a number less than the number of Managers then in office except at any Annual Meeting of Unit Owners. However, during the period the Sponsor, its Successor Offeror(s) or Designees(s) continue to own 50% or more of the Condominium the number of Managers shall remain fixed at three (3).

Section 2. Powers and Duties: The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium, as agent of all Unit Owners. The Board shall further have the right to employ a manager or managing agent or both, and may delegate any or all of the powers conferred by this section to such managing

agent. Persons employed in the operation of the property may be designated or removed by a majority vote of the Board of Managers, or without vote by the managing agent or manager, if such a person is employed by the Board.

Section 3. Nomination and Election: The Managers shall be elected for a term of one year at the Annual Meeting of Unit Owners or at a Special Meeting called for that purpose as provided by law. Each Condominium Unit shall be entitled to elect one manager to the Board of Managers. Their terms of office shall be until their respective successors are elected and qualify.

Section 4. Quorum: A majority of the Managers then authorized by these By-Laws shall constitute a quorum.

Section 5. Vacancies: Vacancies in the Board of Managers resulting from death, resignation or otherwise may be filled without notice to any of the Unit Owners by a vote of a majority of the remaining Managers present at the meeting at which such election is held for that purpose promptly after the occurrence of any such vacancy even though no quorum is present. Each person so elected shall be a member of the Board of Managers until a successor shall be elected at the next annual meeting of Unit Owners to serve the remaining term. In the event of the failure to hold any election of Managers at the time designated for the annual election of Managers or in the event that the Board of Managers shall not have filled any such vacancy, a Special Meeting of Unit Owners shall be called to elect a new Board of Managers. Any vacancy created by amendment of these By-Laws shall be filled in the manner provided in the resolution adopting such amendment. In case of a reduction of the authorized number of Managers by amendment of these By-Laws, the Manager, if any, whose term of office shall cease, shall be determined in the manner provided in the resolution adopting such amendment.

Section 6. Meetings: The Board of Managers shall meet immediately after the Annual Meeting of Unit Owners without notice and also whenever called together by any Manager of the Condominium or upon the written request of any three Managers then holding office, upon notice given to each Manager, by delivering personally, mailing or telegraphing the same to him at least two days prior to such meeting at the last address furnished by him to the Condominium. Regular meetings may be held without notice at such times and places as the Board of Managers may determine. Any meeting of the Board at which all the Managers shall be present, or of which notice shall be duly waived by all absentees, either before or after the holding of such meeting, shall be valid for all purposes provided a quorum be present. Meetings of Managers may be held either at the principal office of the Condominium or elsewhere within the State of New York as provided in the

notice calling the meeting, unless the Board of Managers by resolution adopt some further limitation in regard thereto. At all meetings of the Board of Managers, each Manager shall be entitled to one vote. The vote of a majority of the Board of Managers present at the time of a vote of a duly constituted meeting shall be the act of the Board of Managers.

Section 7. Resignation and Removal: Any Manager may resign at any time by written notice delivered in person or sent by certified registered mail to the President or Secretary of the Condominium. Such resignation shall take effect at the time specified therein, and unless specifically requested acceptance of such resignation shall not be necessary to make it effective. Any Manager may be removed from office at any time with or without cause upon the affirmative vote of the Unit Owners whose aggregate vote is at least 51% of the votes of the Condominium at a Unit Owners' meeting duly called for that purpose; provided, however, that the Manager(s) elected by the Holders of "Unsold Units" can be removed only for cause by a vote of a majority of the Unit Owners or without cause by the Holders of Unsold Units.

Section 8. Annual Cash Requirements: The Board of Managers shall, from time to time determine the cash requirements as defined in the Condominium's By-Laws, and fix the terms and manner of payment of Common Charges as more specifically set forth in Article VI. The Board of Manager shall have discretionary power to prescribe the manner of maintaining and operating the Building, to be paid as aforesaid by the Unit Owners. Every such determination by the Board of Managers shall be final and conclusive as to all Unit Owners and any expenditures made by the Condominium's officers or its agent under authority of, or with the approval of, the Board of Managers of the Condominium shall, as against the Unit Owners, be deemed necessarily and properly made for such purpose. Until the earlier of (i) the fifth anniversary of the First Closing or (ii) such time as the Holders of Unsold Units hold less than 50% of the outstanding votes of the Residential Units, the Board of Managers of the Condominium will not take any of the following actions unless Unit Owners owning at least 51% of the votes of Residential Units of the Condominium approve in writing or by vote, in person or by proxy, at a duly constituted meeting called for such purpose:

- a) Increase the number or change the type of employees from that described in the FOOTNOTES TO SCHEDULE B of the Offering Plan;
- b) Provide for new or additional services from those indicated in the FOOTNOTES TO SCHEDULE B, unless the annual cost of such new or additional services, when added to the annual cost of all other services, being provided, is no greater than that provided in said notes;

c) Establish any reserve other than the Reserve and/or Working Capital Funds set forth in the Offering Plan.

Until the earlier of five years from the date of closing, or at the time at which the Sponsor or other Holder of Unsold Units owns units consisting of less than 25% of the common interest of the Condominium, the Sponsor may exercise veto power over any expenses other than those described in SCHEDULE B, or which are required to comply with applicable laws or regulations; remedy any notice of a violation; or remedy any work order from an insurer. Additionally, so long as the Sponsor retains ownership of at least one unit in the building, the By-Laws, Declaration, and Rules and Regulations of the Condominium, may not be amended or modified in any way so as to adversely affect the Sponsor without written consent by the Sponsor.

Section 9. Rules and Regulations: The Board of Managers may from time to time adopt and amend such rules and regulations as it may deem necessary in respect to the Building of the Condominium for the health, safety and convenience of the Unit Owners. Copies thereof and of changes therein shall be furnished to each Unit Owner.

Section 10. Compensation: No Member of the Board of Managers shall receive any compensation from the Condominium for acting as such.

Section 11. Liability of the Board of Managers: The Members of the Board of Managers shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the members of the Board of Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium within the scope of their authority. It is understood and permissible for the original Board of Managers, who are designated by the Sponsor, to contract with the Sponsor and affiliated corporations without fear of being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements, and, except as prohibited by law, the Unit Owner's interest in the Unit. Every agreement made by the Board of Managers, or the Managing Agent, or the Manager, on behalf of the Condominium shall provide that the members of the Board of Managers, or the Managing Agent, or the

Manager as the case may be, are acting only as agent for the Unit Owners in the Common Elements. Every agreement made by the Board of Managers or by the Managing Agent or by the Manager on behalf of the Condominium shall provide that the members of the Board of Managers, or the Managing Agent, or the Manager, as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements, and, except as prohibited by law, the Unit Owner's interest in the Unit.

## **ARTICLE V**

### **NOTICES**

Section 1. Definitions: Whenever under the provisions of the Declaration or of these By-Laws, notice is required to be given to the Board of Managers, any Manager, Unit Owner or mortgagee, it shall not be construed to mean personal notice; but such notice may be given in writing, by mail, by depositing the same in a post office or letter box, in a postpaid sealed wrapper, addressed to the Board of Managers, such Managers or Unit Owner or mortgagee in such address as appears on the books of the Condominium.

Sections 2. Service of Notice Waiver: Whenever any notice is required to be given under the provisions of the Declaration or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## **ARTICLE VI**

### **OPERATION OF THE PROPERTY**

Section 1. Determination of Common Expenses and Fixing of Common Charges: The Board of Managers shall from time to time, and at least annually, prepare a budget for the operation of the Condominium, determine the amount of the Common Charges payable by the Unit Owners to meet the Common Expenses, and allocate and assess such Common Charges and Expenses among the Unit Owners in proportion to their respective Common Interests; except that such expenses may be specifically allocated and apportioned by the Board of Managers in a manner different from common interest to one (1) or more non-

residential units; or in the case of either residential or non-residential units or any combination thereof, such expenses may be specially allocated and apportioned based on special or exclusive use or availability, or exclusive control, of particular units or common areas by particular unit owners. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers pursuant to the provisions of these By-Laws and the fees and disbursements of the Insurance Trustee. The Common Expenses may also include such amount as the Board of Managers may deem proper for the operation and maintenance of the Common Elements including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year. The Common Expenses may also include such amounts as may be required for the purchase or lease of any Unit whose Owner has elected to sell or lease such Unit, or any Unit which is to be sold at a foreclosure or other judicial sale. The Board of Managers shall advise all Unit Owners promptly, in writing, of the amount of Common Charges and Expenses payable by each of them, respectively, as determined by the Board of Managers, as aforesaid, and shall furnish copies of each budget on which such Common Charges and Expenses are based, to all Unit Owners. Any dispute relating to the expenses to be borne by the Unit Owners shall be submitted to arbitration in accordance with these By-Laws.

Until such time as units are separately assessed for New York City real estate tax purposes, real estate taxes shall be deemed part of the common expenses of the building, and individual unit owners will be assessed their proportionate share thereof. After assessment, unit owners will be reimbursed for any overpayment of taxes or assessed for any underpayment.

The Sponsor or Sponsor-designee shall be responsible for the Common Charges assessed against a Unit owned by it from the date of the First Unit Closing until such Unit is sold to a bona fide purchaser.

Section 2. Insurance: The Board of Managers shall be required to obtain and maintain, to the extent obtainable, the following insurance: (1) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the Buildings containing the Units (including all of the Units and the fixtures initially installed therein by the Sponsor or by prior construction and any other property usual to the servicing and general occupancy, but not including furniture, furnishings, or other personal property supplied or installed by Unit Owners) together with all service machinery and equipment contained therein and covering the interests of the Condominium, the Board of Managers and all Unit Owners and their mortgagees with certificates of insurance, as their interests may appear, in an

amount to be determined by the Board of Managers. In the event this building includes a commercial unit, the Board of Managers shall annually obtain from the insurance broker a letter stating the extent to which the cost of insurance for the condominium, on account of the usage of the commercial unit, exceeds the cost which would otherwise have been obtained if no commercial unit were present; and this cost shall be borne by the commercial unit owner. A copy of the letter shall be delivered to the commercial unit owner within ten (10) days after receipt thereof, and the commercial unit owner shall be obligated to pay the amount assessed therein within fifteen (15) days after receipt thereof.

Section 3. Payment of Common Charges: All Unit Owners shall be obligated to pay the Common Charges assessed by the Board of Managers pursuant to the provisions of Section 1 of Article VI at such time or times as the Board of Managers shall determine.

No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a sale, transfer or other conveyance by him.

Section 4. Collection of Common Charges and Assessments: The Board of Managers shall assess Common Charges against Unit Owners from time to time at least annually and shall take prompt action to collect any Common Charge due from any Unit Owner that remains unpaid for more than thirty (30) days from the due date for payment thereof. The Board of Managers shall also take prompt action to collect any assessment due from any Unit Owner that remains unpaid for more than thirty (30) days from the due date thereof.

Section 5. Default in Payment of Common Charges or Assessments: In the event of default by any Unit Owner in paying to the Board of Managers the Common Charges or any assessment as determined by the Board of Managers, such Unit Owners shall be obligated to pay interest at the highest legal rate on such Common Charges or assessments from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board of Managers in any proceeding brought to collect such unpaid Common Charges or assessments. The Board of Managers shall have the right and duty to attempt to recover such Common Charges or assessments, together with interest thereon, and the expenses of the proceeding, including attorney's fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit granted by Section 339-z of the Real Property Law of the State of New York, in the manner provided in Section 339-aa thereof. A Unit Owner defaulting in payment of Common Charges or assessments shall not be permitted to vote at any regular or special meeting of Unit Owners. During the time that the Sponsor is in control of the Board of Managers, Sponsor will cause the Board of Managers to file a lien as provided for in Section 339-aa of the Real Property Law on units in which the Sponsor is more than 30 days in arrears of common charges.

Section 6. Foreclosure of Liens for Unpaid Common Charges: In any action brought by the Board of Managers to foreclose a lien on a Unit because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled the appointment of a receiver to collect the same. The Board of Managers, acting on behalf of all Unit Owners, shall have the power to purchase such Unit at foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant to), convey, or otherwise deal with same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the lien securing the same. The proceeds from the sale of any Unit pursuant to this Section shall be used first to pay the unpaid Common Charges and/or assessments, plus reasonable attorney's fees and administrative costs and any other lawful liens on the defaulting Unit. Amounts above this, if any, will be the property of the defaulting Unit Owner. If after the sale of Unit for the nonpayment of Common Charges and/or assessments, the sale does not recover the full amount due and owing, the Board of Managers has the right to assess all the Unit Owners as a Common Expense for the difference between the amount received by the Condominium from the sale of the Unit and the amount owed to the Condominium.

Section 7. Statement of Common Charges and Assessment: The Board of Managers shall promptly provide any Unit Owner so requesting the same in writing, with a written statement of all unpaid Common Charges due from such Unit Owner.

Section 8. Abatement and Enjoinment of Violations by Unit Owners: The violation of any rule or regulation adopted by the Board of Managers, or the breach of any By-Law contained herein, or the breach of any provision of the Declaration, shall give the Board of Managers the right, in addition to any other right set forth in these By-Laws; (a) upon reasonable notice to the Unit Owner, to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof (provided, however, that no prior notice shall be required in the event the Board of Managers shall determine that action is immediately necessary for the preservation or safety of the Property of the Condominium or for the safety of residents of the Condominium or other persons or required to avoid the suspension of any necessary service to the Condominium); or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

Section 9. Maintenance and Repairs:

a) All maintenance, replacement, or repair to any Unit, ordinary or extraordinary, and to the doors (except painting exterior side of Unit entrance door), windows (except painting exterior side of windows), electrical (except Common Elements), plumbing (except Common Elements) and heating fixtures and air conditioning units within the Unit or belonging to the Unit Owner shall be the responsibility of the unit owner, and the expense thereof shall be the sole responsibility of the Unit Owner, excepting as otherwise specifically provided herein.

b) All maintenance, repairs and replacements to the General Common Elements as defined in the Declaration, shall be made by the Board of Managers as a Common Expense, excepting to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner. Maintenance, repair and replacements in or to the Limited Common Elements as defined in the Declaration will be performed as per the Declaration.

c) Each unit owner shall be solely and only responsible for repair or maintenance of any limited common element appurtenant to his/her unit, including but not limited to painting, cleaning, patching, and surface repair, and, in the case of balconies, if any, structural maintenance.

d) In the event a unit owner fails properly to maintain his unit or limited common element, the Board of Managers may take such steps as in its exclusive judgment are necessary to maintain the areas, and the cost thereof shall be assessed against the owner of the condominium unit in question, or the owner of the unit to which such limited common elements are appurtenant.

e) To the extent that damage to a limited common element or unit is caused by a building condition or by other condition for which the condominium carries insurance, the cost of repair of such damage shall be borne by the condominium.

Section 10. Restrictions on Use of Units: In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of the Property shall be restricted to and shall be in accordance with the following:

a) The Residential Units shall be used for private residences only, except that a Unit Owner may use his Unit for any home occupation use permitted under applicable zoning law and ordinances, building code or other rules and regulations of governmental authorities having jurisdiction, and except that the noncommercial gallery space may be used for noncommercial purposes. Notwithstanding the foregoing, the Sponsor or Sponsor-Designee shall have the right, without charge, (i) to maintain general and sales offices in one or more Units or elsewhere on the Property, to use one or more Units as models and for other promotional purposes and to erect and maintain signs on the Property; (ii) to have its employees, contractors and sales agents present on the Property; (iii) to do all things necessary or appropriate, including the use of the Common Elements, to sell or lease Units and to complete construction of the Building and to comply with its obligations.

b) The Common Elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

c) No nuisances shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful possession or proper use of the Property by its residents.

d) No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be eliminated, by and at the sole expense of the Unit Owners, or the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property.

e) No portion of a Unit or other Limited Common Elements appurtenant thereto (other than the entire Unit including the Limited Common Elements appurtenant thereto), may be separately rented.

Section 11. Additions, Alterations or Improvements by Unit Owners: No Unit Owner shall make any structural addition, alteration or improvement in or to his Unit, or which affects the exterior of the Building's Units, without prior written consent thereto of the Board of Managers. The Board of Managers shall have the obligation to answer in writing any

written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's Unit, within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Managers to the proposed addition, alteration, or improvement. An application to any department of the City of New York or to any other governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Board of Managers only, without however, incurring any liability on the part of the Board of Managers or any of them to any contractor, subcontractor, or material man on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

In the event the Board of Managers grants its consent, either affirmatively or by its inaction, to any structural addition, alteration or improvement to be made by a Unit Owner, the consent shall provide that any such work shall be at the Unit Owner's sole cost and expense, that work shall be done in accordance with all governmental or quasi-governmental laws, rules, regulations, codes and ordinances, that all work shall be done by reputable contractors with adequate liability, property damage and worker's compensation insurances (certificates for which shall be delivered to the Board of Managers prior to the commencement of construction), that any additions, alterations or improvements, shall be maintained in their entirety by said Unit Owner who shall also be responsible for any repairs, including structural repairs, to such area in any event, and to the Unit and any Common Elements where such repairs become necessary due to additional stresses caused by the structural alteration, addition or improvement, or due to improper design or construction of the structural alteration, addition or improvement, and such approval shall further provide that the Unit Owner shall reimburse the Board of Managers for any out-of-pocket expenses incurred by the Board of Managers in connection with the granting of such approval and in connection with any services provided to such alteration, addition or improvement; such expenses may include, but shall not be limited to, any fees of an attorney and/or fees of an architect consulted in connection with any request by a Unit Owner for approval of such work.

The provisions of this Section 11 that require the consent of the Board of Managers in connection with a structural addition, alteration, or improvement shall not apply to Units owned by the Sponsor or its designee. All other provisions of this Section 11 shall apply to all Units.

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

Section 12. Use of Common Elements and Facilities: A Unit Owner shall not place or cause to be placed in the lobby, public halls, stairways or other common areas or common facilities, any furniture, packages or objects of any kind. The public halls and stairways shall be used for no purpose other than for normal transit through them. The Sponsor and any Sponsor-Designee shall have the right to use of the Common Elements, without charge, for the purpose set forth in Section II of this Article VI.

Section 13. Right of Access: A Unit Owner shall grant a right of access to his Unit, to the Manager and/or any other person authorized by the Board of Managers, the Manager or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his Unit or elsewhere in the Building in which the Unit is located, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not. In the event of the exercise of the right of access provided in this Section 13, any costs for repairs shall be borne in accordance with the provisions of Section 10 of this Article VI. Each Unit Owner will be required to give a copy of his/her keys to his/her Unit to the President of the Board of Managers who shall designate an authorized person or persons to keep the keys and use them in case of an emergency.

Section 14. Rules of Conduct: Rules and Regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board of Managers. A majority vote of Unit Owners at a meeting may overrule the Board. A copy of such rules and regulations shall be furnished by the Board of Managers to each Unit Owner prior to the time when the same shall become effective. Initial rules and regulations, which shall be effective until amended by the Board of Managers are annexed hereto and made a part hereof as Schedule A.

Section 15. Water Charges and Sewer Rents: Water shall be supplied to all of the Units and the Common Elements through one or more building meters or pursuant to a frontage charge and, the Board of Managers shall pay, as a Common Expense, all charges for water consumed on the Property and in the Units, together with all related sewer rents arising therefrom, promptly after the bills for the same shall have been rendered. In the event of a proposed sale of a Unit by the Owner thereof, the Board of Managers, on request of the selling Unit Owner, shall execute and deliver to the purchaser of such Unit or to the purchaser's title insurance company, a letter agreeing to pay all charges for water and

sewer rents affecting the Property as of the date of closing of title to such Unit promptly after such charges shall have been billed.

Section 16. Smoking Policy: Pursuant to Local Law 147, the subject premises' smoking policy is consistent with the Smoke Free Air Act ("SFAA"), which is the current law governing smoking in class A multiple dwellings. This building prohibits smoking or using electronic cigarettes in common indoor areas of the building. Smoking and electronic cigarette usage is permitted in private apartments, outdoor common areas, and outdoor limited common elements.

## **ARTICLE VII**

### **Mortgages**

Section 1. Notice to Board of Managers: A Unit Owner who mortgages his Unit shall notify the Board of Managers of the name and address of his mortgagee and shall file a confirmed copy of the note and mortgage with the Board of Managers; the Board of Managers shall maintain such information in a book entitled "Mortgages of Units".

Section 2. Notice of Unpaid Common Charges: The Board of Managers, when so requested in writing by a mortgagee of a Unit, shall promptly notify any mortgagee of a Unit, of such Unit Owner's default, including non-payment of Common Charges, in the obligations of such Unit Owner under the Declaration, By-Laws, Rules and Regulations, as the same are amended from time to time, or in any order of the Board of Managers issued with respect thereto.

Section 3. Notice of Default: The Board of Managers, when giving notice to a Unit Owner of a default in paying Common Charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has heretofore been furnished to the Board of Managers.

Section 4. Examination of Books: Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium at reasonable times, on business days.

Section 5. Any mortgagee shall be entitled to timely written notice of:

- a. Any condemnation of casualty loss that affects either a material portion of the project or the unit securing its mortgage.
- b. Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage.
- c. A lapse, cancellation, or material modification of any insurance policy maintained by the Homeowner's Association.
- d. Any proposed action that requires the consent of a specified percentage of mortgagees.

Section 6. Notwithstanding anything to the contrary set forth in any portion of these By-Laws, any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of such unit's unpaid regularly scheduled budgeted dues or common charges accrued before acquisition of title to the unit by the mortgagee, together with any fees or costs related to the collection of such unpaid dues.

Section 7. Notwithstanding anything to the contrary set forth elsewhere in these By-Laws, no amendment, modification, addition, or deletion that shall adversely affect the lien of any mortgage may be made without the consent of the mortgagee.

Section 8. When a mortgagee fails to submit a response to any written notification made pursuant to these By-Laws within sixty (60) days after such notice is delivered by certified or registered mail, return receipt requested, said mortgagee will be conclusively presumed to have consented to the action set forth in said notice.

## **ARTICLE VIII**

### **Condemnation and Termination**

Section 1. Condemnation: In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, the award made for such taking shall be payable to the Board of Managers, if such award amounts to \$50,000.00 or less, and to the Insurance Trustee if such award amounts to more than \$50,000.00. If seventy-five (75%) percent or more of the Unit Owners duly and promptly approve the repair and restoration of such Common Elements, the Board of Managers or the Insurance Trustee, as the case may be, shall arrange for the repair and restoration of such Common Elements, and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in

appropriate progress payments. In the event that seventy-five (75%) percent or more of the Unit Owners do not duly and promptly approve the repair and restoration of such Common Element, the Board of Managers shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage, as provided in Section 2 of Article VI of these By-Laws. As used in this Section, the words "promptly approve" shall mean not more than sixty (60) days from the date of such taking.

Section 2. Termination: The Condominium may be terminated by the casualty loss, condemnation or eminent domain, in accordance with the provisions of the By-Laws, or by withdrawing the Property from the provisions of the New York Condominium Act if authorized by an affirmative vote of Unit Owners who own not less than eighty (80%) percent in number and in Common Interest of the Units. Sponsor or its designees will not vote its interests appurtenant to any Unsold Units for such withdrawal unless at least eighty (80%) percent in number and in Common Interest of all other Unit Owners have elected for such withdrawal, in which event the Sponsor may choose to vote in favor of or against such withdrawal. In the event said withdrawal is authorized as aforesaid, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all the Unit Owners in proportion to their respective Common Interests. However, no payment shall be made to a Unit Owner until all liens to which his/her Unit are subject are paid off.

## **ARTICLE IX**

### **Arbitration**

Section 1. Procedure: Any matter required or permitted to be determined by arbitration pursuant to the terms of the Condominium Documents shall be submitted for resolution by a single arbitrator in a proceeding held in New York City, New York, in accordance with the then existing rules of the American Arbitration Association or any successor organization thereto. In the event that the American Arbitration Association shall not then be in existence and has no successor organization, any such arbitration shall be held in New York City, New York before one arbitrator appointed, upon the application of any party, by the Real Estate Board of New York.

Section 2. Variation by Agreement: The parties to any dispute required or permitted to be resolved by arbitration pursuant to the terms of the Condominium Documents may, by written agreement, vary any of the terms of Section 1 hereof with respect to the arbitration

of such dispute or may agree to resolve their dispute in any manner, including, without limitation, the manner set forth in Section 3031 of the New York City 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. Cost and Expenses: (a) The fees, costs and expenses of the arbitrator shall be borne by the losing party in the arbitration or, if the position of neither party to the dispute shall be substantially upheld by the arbitrator, such fees, costs and expenses shall be borne equally by the disputants. Each disputant shall also bear the fees and expenses of his counsel and expert witnesses.

All costs and expenses paid or incurred by Condominium board in connection with any arbitration held hereunder, including, without limitation, the fees and expenses of counsel and expert witnesses, shall constitute Common Expenses.

## **ARTICLE X**

### **Conflicts**

Section 1. Conflicts: These By-Laws are set forth to comply with the requirements of Article 9-B of the Real Property Law of the State of New York. In case any of these By-Laws conflict with the provisions of said statute or of the Declaration, the provisions of said statute or of the Declaration, as the case may be, shall control.

## **ARTICLE XI**

### **Amendments to the By-Laws**

Section 1. Amendment to By-Laws: These By-Laws may be modified or amended by the vote of two-thirds (as that number is defined in these ByLaws) in number and in Common Interests of all Unit Owners at a meeting of Unit Owners duly held for such purpose.

For as long as there are one or more Unsold Units, these By-Laws, including the Rules and Regulations of the Condominium attached hereto, may not be altered, amended, repealed or added to without the consent of the Holder(s) of Unsold Residential Units and the Sponsor.

## ARTICLE XII

### Miscellaneous

Section 1. Invalidity: The invalidity of any part of the By-Laws shall not impair or affect in any manner the valid enforceability or effect of the balance of these By-Laws.

Section 2. Captions: The captions herein are inserted only by matter of convenience and/or reference, and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision therein.

Section 3. Gender: The use of the masculine gender in the By-Laws shall be deemed to include the feminine gender and the use of singular shall be deemed to include the plural, whenever the context requires.

Section 4. Waiver: No restriction, condition, obligation or provision contained in these By-Laws, shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, respective of the number of violations or breaches thereof which may occur.

Section 5. Insurance Trustee: The Insurance Trustee selected, shall be a bank, trust company or savings and loan association in the State of New York, designated by the Board of Managers (with approval of the holders of two (2) or more Unit first mortgages, if applicable). In the event the Insurance Trustee shall resign, the new insurance Trustee shall also be a bank, trust company, or savings and loan association in the State of New York, designated by the Board of Managers (with the approval of the holders of two (2) or more Unit first mortgages, if applicable). The Board of Managers shall pay fees and disbursements of any Insurance Trustee, and such fees or disbursements shall constitute a Common Expense of the Condominium.

Section 6. Report to Unit Owners: The Board of Managers of the Condominium shall give annually to each and every Unit Owner:

1) On or before March 1st of each year a financial statement for the previous years operation. During the period the Sponsor is in control of the Board of Managers, there shall be a certified financial statement prepared by a certified public accountant or public accountant.

2) Prior notice of the annual Unit Owners meeting at least 30 days prior to such meeting.

3) A copy of the proposed annual budget of the Condominium, no less than thirty (30) days prior to the date set for adoption thereof by the Board of Managers. During the time the Board is controlled by the Sponsor, this statement shall be certified by a qualified budget expert.

### **ARTICLE XIII**

#### **Sponsor Control**

Section 1: Transfer of control of the Condominium Board of Managers shall pass to unit owners, other than the Sponsor, at the later of the following:

- Sixty (60) days after the date by which 75% of the units have been conveyed to unit purchasers; or
- Three (3) years after the first conveyance of a unit to a unit purchaser.

Notwithstanding the foregoing, Sponsor may vote for unit owners of its choice.

Section 2: Until the earlier of five years from the date of closing, or at the time at which the Sponsor or other Holder of Unsold Units owns units consisting of less than 25% of the common interest of the Condominium, Sponsor may exercise veto power over any expenses other than those described in Schedule B, or which are required to comply with applicable laws or regulations; remedy any notice of a violation; or remedy any work order from an insurer; or for any repair or replacement necessary for the preservation or safety of the Building or for the safety of the occupants of the Building or required to avoid the suspension of any necessary service to the Building.

Section 3: So long as the Sponsor retains ownership of at least one unit in the building, the By-Laws, Declaration, and Rules and Regulations of the Condominium, may not be amended or modified in any way so as to adversely affect the Sponsor without written consent by the Sponsor.

Section 4: At the time of the First Closing there will be three Managers designated by the Sponsor. However, the Managers will resign in favor of Managers who will be elected by the purchasers at a meeting to be convened within 60 days after First Closing. If the Sponsor still owns 50% or more of the units in the building, the Sponsor-appointed managers may be re-elected at such time.

Section 5: So long as a majority of the Board of Managers consists of managers elected by the Sponsor or holders of unsold units, the board:

1. Shall not eliminate or reduce the number of employees, insurance coverages or any service to a level less than that provided in Schedule B unless a majority of board members elected by bona fide unit purchasers vote in favor thereof.
2. Shall, to the extent of their authority as Board Members, use all reasonable efforts to cause the Building (including its equipment, services and installations) to be kept operational, clean, and, in a good state of repair and condition;
3. Shall not veto expenditures required to comply with applicable laws or regulations and/or expenses necessary to remedy notice of violations of law, or order of an insurance carrier, or for any repair or replacement 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.

**CERTIFICATION OF SPONSOR AND SPONSOR'S PRINCIPALS PURSUANT TO  
SECTION 20 OF THE REGULATIONS ISSUED PURSUANT TO GENERAL  
BUSINESS LAW ARTICLE 23-A, AS AMENDED**

**RE:        40 Douglass Street  
             Brooklyn, New York**

We, 40 DOUGLASS LLC, JAMIE GRADY, JOSEPH CALABRESE, JOANNE MERCALDI, ROGER MERCALDI, LAURA BOYD, and JOSEPH BOYD, being the Sponsor and Principals of the Sponsor of the Offering Plan to convert the above captioned property to condominium ownership, jointly and severally certify as follows:

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 Attorney General 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 that amend or supplement the Offering Plan will:

1.     Set forth the detailed terms of the transaction and be complete, current, and accurate;
2.     Afford potential purchasers, investors, and participants an adequate basis on which to found their judgment;
3.     Not omit any material fact;
4.     Not contain any untrue statement of a material fact;
5.     Not contain any fraud, deception, concealment, suppression, false pretense, or fictitious or pretended purchase or sale;
6.     Not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

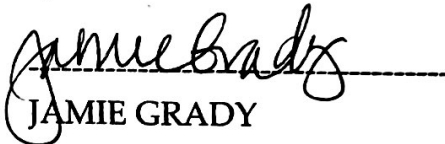
7. Not contain any representation or statement which is false where we:
- a) knew the truth;
  - b) with reasonable effort could have known the truth;
  - c) made no reasonable effort to ascertain the truth; or
  - d) did not have knowledge concerning the representation or statement made.

This certification is made under the penalty of perjury for the benefit of all persons to whom this offering is made. We understand that violations are subject to the Civil and Criminal penalties of the General Business Law and the Penal Law.

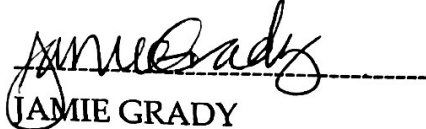
I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August 24 2020.

40 DOUGLASS LLC

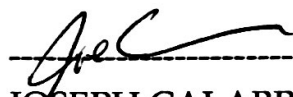
by:

  
JAMIE GRADY

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August 24 2020.

  
JAMIE GRADY

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August 24, 2020.

  
\_\_\_\_\_  
JOSEPH CALABRESE

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

\_\_\_\_\_  
JOANNE MERCALDI

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

\_\_\_\_\_  
ROGER MERCALDI

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

\_\_\_\_\_  
LAURA BOYD

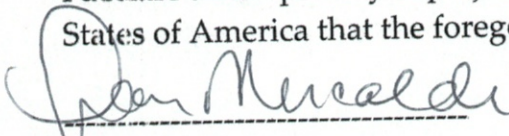
I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

\_\_\_\_\_  
JOSEPH BOYD

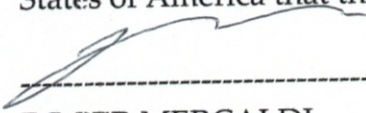
I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

-----  
JOSEPH CALABRESE

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August 26<sup>th</sup>, 2020.

  
-----  
JOANNE MERCALDI

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August 26<sup>th</sup>, 2020.

  
-----  
ROGER MERCALDI

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

-----  
LAURA BOYD

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

-----  
JOSEPH BOYD

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

\_\_\_\_\_  
JOSEPH CALABRESE

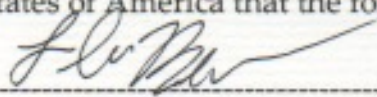
I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

\_\_\_\_\_  
JOANNE MERCALDI

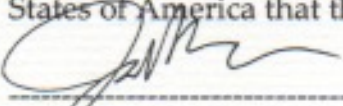
I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August \_\_, 2020.

\_\_\_\_\_  
ROGER MERCALDI

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August 24, 2020.

  
\_\_\_\_\_  
LAURA BOYD

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on August 24, 2020.

  
\_\_\_\_\_  
JOSEPH BOYD

# James Cleary Architecture

68 35<sup>TH</sup> STREET BUILDING NO. 4 SUITE C652 BROOKLYN, NY 11232

718.858.1730

JCARCHITECTURE.COM

01 September 2020

## CERTIFICATION OF SPONSOR'S ARCHITECT PURSUANT TO PART 20.4(c) OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW ARTICLE 23-A, AS AMENDED

Curriculum Vitae   
Selected Project List 

Re: 40 Douglass Street  
Brooklyn, NY 11231

Owner-Architect  
Agreement 

Project Schedule  
Estimate 

Project Budget  
Estimate 

Correspondence   
Facsimile   
Transmittal 

Meeting Agenda   
Meeting Minutes 

Supplemental  
Instructions   
Addenda 

Construction  
Change Directive   
Change Order   
Field Report 

Purchase Order   
Invoice 

The Sponsor of the Offering Plan to convert the captioned property to condominium ownership retained James Cleary Architecture to prepare a report describing the construction of the property (the "Report"). I visually inspected existing portions of the property, if any, on April 10th, 2020, and examined the building plans and specifications that were prepared by James Cleary Architecture dated April 17th 2018, also prepared the Report dated September 1st, 2020, a copy of which is intended to be incorporated into the Offering Plan so that prospective Purchasers may rely on the Report.

I am a registered architect in the state in which the property is located.

I understand that I am responsible for complying with Article 23-A of the General Business Law and the Regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to this Report.

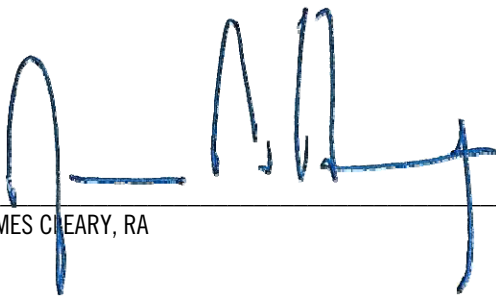
I have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

I certify that the Report:

- (i) sets forth in narrative form the description and/or physical condition of the entire property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (ii) in my 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 construction, provided that construction is in accordance with the plans and specifications that I 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:
  - (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, and have no beneficial interest in, the Sponsor, and that my 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.

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on July 6th, 2020.



A handwritten signature in blue ink, appearing to read "James P. Cleary", is written over a horizontal line.

JAMES C. LEARY, RA



(SEAL)



6/30/2020

**CERTIFICATION OF SPONSOR'S EXPERT ON ADEQUACY OF BUDGET PURSUANT TO SECTION 20  
OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW, ARTICLE 23A, AS  
AMENDED**

**RE: 40 Douglas Street, Brooklyn, New York**

The Sponsor of the condominium Offering Plan for the above captioned property retained me to review SCHEDULE B and SCHEDULE B1, containing the projections of income and expenses for the first year of condominium operation. Our experience in the field includes being a licensed real estate broker for over 20 years, the management of approximately eleven total buildings over ten years, and the sale of numerous condominium and rental properties. We are familiar with prices, practices, and procedures in the area of this condominium.

We understand that we are 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 they are applicable to SCHEDULE B and SCHEDULE B1. We have reviewed the SCHEDULES and investigated the facts set forth in the SCHEDULES, and the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential buildings.

We certify that the projections in SCHEDULE B and SCHEDULE B1 appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the projected first year of condominium operation.

We certify that the Schedules do:

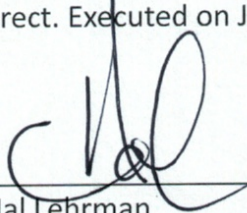
1. Set forth in detail the projected income and expenses for the first year of condominium operation;
2. Afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of condominium operation;
3. Not omit any material fact;
4. Not contain any untrue statement of a material fact;
5. Not contain any fraud, deception, concealment, or suppression;
6. Not contain any promise or representation as to the future which is beyond



- reasonable expectation or unwarranted by existing circumstances;
7. Not contain any representation or statement which is false where we:
- a) knew the truth;
  - b) with reasonable effort, could have known the truth;
  - c) made no reasonable effort to ascertain the truth; or;
  - d) did not have knowledge concerning the representations or statements made.

We further certify that we are not owned or controlled by the Sponsor. We understand that a copy of this certification is intended to be incorporated into the Offering Plan. This statement is not intended as a guarantee or warranty of the income and expenses of the first year of condominium operation. This certification is made under the penalty of perjury for the benefit of all persons to whom this offering is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

I declare under penalty of perjury under the laws of the State of New York and the United States of American that the foregoing is true and correct. Executed on June 30, 2020.

  
\_\_\_\_\_  
Hal Lehrman  
Licensed Real Estate Broker

Sworn to before  
me this 30th day  
of June, 2020.



**CLAUDIA V. MURDOCH**  
**Notary Public, State of New York**  
**No. 02MU6286339**  
**Qualified in Kings County**  
**My Commission Expires July 22, 2021**