CONDOMINIUM OFFERING PLAN

for

324 West 108 Condominium
324 West 108th Street (a/k/a 324-326 West 108th Street)
New York, New York 10025
County of New York

The Condominium will comprise 10 Residential Units, which are being offered for sale pursuant to this Offering Plan.

Total Amount of Offering[1]:	10 Residential Units:	$26,452,900.00[1]
Initial Working Capital Fund [2]:	$17,000	

(1) Offering prices are negotiable and may be changed (see "Section I. Changes in Prices and Units").

(2) At the First Unit Closing, Sponsor will make a reimbursable "advance" payment in this amount to the Condominium's Working Capital Fund. See "Section V. Working Capital Fund" for discussion and the projected amount of the Working Capital Fund if and when all Units are sold and conveyed.

SPONSOR:	SELLING AGENT:
W 108 Development LLC	Douglas Elliman, LLC
119 West 72nd Street #401	575 Madison Avenue
New York, New York 10023	New York, New York 10022

Date of Acceptance for Filing: _____

The term of the initial offer is twelve (12) months commencing on the foregoing date of acceptance for filing of the Plan by the Department of Law. The term may be extended by an amendment to the Plan.

SEE "SECTION A" FOR SPECIAL RISKS TO PURCHASERS.

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

BECAUSE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER THAN SELL UNITS AFTER THE PLAN HAS BEEN CONSUMMATED, 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. IN ADDITION, 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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PART I

SECTION A. SPECIAL RISKS

The SPECIAL RISKS summarized below are explained more fully in other Sections of this Offering Plan (the "**Plan**"). The entire Plan must be read to completely understand these and other material aspects of this offering.

The meanings of the capitalized terms and the interpretation of certain lowercase words and derivations and variations thereof used in this Part I are found in those Sections of this Part I listed in "Section B-13 Glossary; Rules of Interpretation; Grammar". All references to a Section refer to a Section in Part I of this Plan, unless otherwise expressly indicated.

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

Section A-1. Certain Prominent Special Risks.

Section A-1.1. *Acquisition of Property*. W 108 Development LLC, the Sponsor, acquired title to the Property in an arms-length transaction from The Board of Managers of the Diocesan Missionary and Church Extension Society of the Protestant Episcopal Church in the Diocese of New York pursuant to a deed dated February 13, 2015, recorded March 10, 2015 in the Office of the City Register of the City of New York, borough of Manhattan, County and State of New York, in CRFN: 2015000080952. See Section B-3.

Section A-1.2. *Landmarks Law*. The Building is not an individual landmark, but is located in a historic district known as the Riverside-West End Historic District Extension II. As a result, the Building is subject to the New York City Landmarks Preservation Law (hereafter, the "**Landmarks Law**"). Pursuant to the Landmarks Law, if the Board or any Unit Owner desires to make any alteration, addition, improvement or repair in or to the Building or a Unit (other than certain ordinary repairs and maintenance as defined in Section 302 of the Landmarks Law) that affects any exterior architectural feature of the Building, or where the scope of work is required by the New York City Building Code to have a Governmental Work Permit, then, in addition to obtaining any necessary approval or consent under the Condominium Documents, such party must first apply to the Landmarks Preservation Commission of The City of New York (hereafter, the "**Landmarks Commission**") for approval and obtain a Certificate of Appropriateness or a Certificate of No Effect (as applicable). The application is to include detailed plans and specifications of the work and information regarding the contractor and its insurance. If the proposed alteration, addition, improvement or repair is interior, is of sufficient scope to require a Governmental Work Permit, and will not affect any exterior architectural feature of the Building, a submission to that effect to the Landmarks Commission will be necessary in order to obtain

a Certificate of No Effect. The issuance of such Certificate of No Effect has in the past been a common occurrence and is issued on a ministerial basis, but is not assured or guaranteed by Sponsor or the Selling Agent. See Section B-2.

Section A-1.3. *Zoning Documents; Excess Development Rights*. In connection with the rehabilitation of Sponsor's building at 324-326 West 108th Street, New York, New York with a newly added floor, Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Declaration of Zoning Lot Restrictions ("**ZLDA**") whereby the two lots on which the Sponsor's buildings and the adjacent building at 328 West 108th Street are located have been merged into a single zoning lot. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible as a separate zoning lot under the New York City Zoning Resolution governing the rehabilitation of Sponsor's building. A small section of the sixth floor, approximately 1 foot 6 inches wide, of the western Building Wall towards the front cantilevers over the roof of the adjacent building located at 328 West 108th Street in accordance with a certain Zoning Lot Development and Cantilever Easement Agreement, dated as of April 4, 2019, between 328W108 LLC and W 108 Development LLC, recorded on April 17, 2019 in CRFN: 2019000123155. The cantilever was required under the Zoning Resolution to add the floor to Sponsor's building. These zoning documents do not give the owner of the adjacent building access to Sponsor's building or the land thereunder. For real estate tax purposes, each building and the land thereunder remain a separate tax lot.

Based upon a Residential Floor Area Ratio ("**FAR**") of 4 (Quality Housing) applicable to merged zoning lot, there are approximately an aggregate 26,440 square feet of available development rights (6,610 square foot lot size x 4 FAR).

Under the ZLDA, each owner retains the development rights applicable to its property. The development rights applicable to the subject 324-326 West 108th Street Building is approximately 17,560 square feet. The rehabilitated Building with the newly constructed additional floor contains approximately 16,478 square feet, leaving approximately 1,082 square feet of unused development rights.

Sponsor is not submitting to condominium ownership and is reserving for its exclusive use and enjoyment the approximately 1,082 square feet of unused development rights available to the Property's zoning lot after completion of rehabilitation and construction of the Building with one additional floor and any future development rights that Sponsor might purchase or might become available to the Property's zoning lot by reason of a special permit or a change in zoning or otherwise (collectively, the "**Excess Development Rights**"). Sponsor may sell and transfer all, or a portion of, the Excess Development Rights and retain all proceeds realized therefrom without participation of the Condominium Board or Unit Owners. However, no Excess Development Rights may be used to expand the size, height, bulk or density of any portion of the Property after the recording of the Declaration establishing the Condominium. If any of the Excess Development Rights are transferred to an adjoining

premises, the light and air of the Building and views from Units and/or their Balconies, Terraces or Yard might be adversely affected. See Section D-1.1 and Section BB.

Section A-1.4. *Federal Bank Deposit Insurance*. The initial payment (the "**Deposit**") of each purchaser (a "**Purchaser**") under the agreement to purchase a unit (a "**Unit**") being offered for sale under this Plan (the "**Purchase and Sale Agreement**") will be an amount equal to ten percent (10%) of the Unit's purchase and sale price (the "**Purchase Price**") and placed in a separate subaccount of a segregated attorneys special escrow account at Wells Fargo Bank, N.A. (the "**Depository**"). Each subaccount will be insured by the Federal Deposit Insurance Corporation in the maximum amount of $250,000. To the extent a Purchaser's Deposit exceeds said insured amount (i.e., $250,000), the excess will not be federally insured. Purchaser will not have any recourse against Sponsor, Sponsor's Related Parties, Selling Agent or Escrow Agent based upon any losses resulting from failure of the Depository. If a Purchaser maintains an account at the Depository, the funds in such account factor into the $250,000. Sponsor, Selling Agent and the escrow attorney for contract Deposits do not represent, assure or guarantee the solvency of the Depository and will not be responsible or liable for any loss due to the failure of the Depository. See Section K-3.2 for discussion.

Section A-1.5. *Construction Loans*. Sponsor obtained three construction loans to rehabilitate and construct the Building from CPIF Lending LLC (the Construction Lender), a Washington limited liability company, having offices at 1910 Fairview Avenue East, Seattle, Washington 98102, each dated February 21, 2021, in the amounts of $9,401,000 (the Consolidated, Amended and Restated Senior Loan Promissory Note), $3,743,079 (the Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixtures Filing) and $755,921 (the Project Loan), for an aggregate $13,900,000. All three construction loans have matured. Sponsor is negotiating an extension of the construction loans and will not declare the Plan effective unless and until the Plan is amended to disclose the construction loans have been extended and the terms of the extension. There are no other construction loans. If the actual date to commence Condominium operation is delayed twelve (12) months or more from the January 1, 2023 projected start date Condominium operation, Sponsor must amend this Plan to offer all Purchasers the right to rescind and a period of fifteen (15) days after the date of Presentation of the Plan Amendment to exercise such rescission right. Sponsor must return any Deposit or down payment to Purchasers who timely rescinds within such fifteen (15)-day period, together with any interest earned thereon. See Sections L-2 and O-2.7.

Section A-2. Purchase and Sale Agreement. The following is a summary of provisions of the Purchase and Sale Agreement that contain SPECIAL RISKS. This is not intended as a summary of all material provisions of the Purchase and Sale Agreement. Purchaser is urged to read the entire Purchase and Sale Agreement and consult with a legal adviser to understand the full import of its terms and Purchaser's obligations.

Section A-2.1. *Liquidated Damages*. If a Purchase and Sale Agreement is cancelled based on a default by Purchaser that is not cured within thirty (30) days after written notice of the default is given to Purchaser and this Plan is consummated with the first conveyance of a Unit (the "**First Unit Closing**")

to a Bona Fide Purchaser, Sponsor's sole remedy shall be to receive and retain as agreed upon damages (the "**Liquidated Damages**"), Purchaser's Deposit (not to exceed the ten percent (10%) of the Purchase Price) and the interest earned thereon. The provision nonetheless is subject to review by a court or other authority having jurisdiction as to whether the liquidated amount is an unenforceable penalty designed to coerce performance of a Purchaser. Sponsor, however, may not seek specific performance of the Purchase and Sale Agreement. See Section K-19 for discussion.

The Liquidated Damages provision limits Purchaser's liability and avoids Purchaser potentially paying Sponsor higher actual, consequential or other damages caused by Purchaser's default (e.g., due to a sale at a price lower than Purchaser's price and added carrying costs, among others) and is an agreement by the parties that the foregoing amounts are fair, reasonable and just compensation under the circumstances. The provision nonetheless is subject to review by a court or other authority having jurisdiction as to whether the liquidated amount is an unenforceable penalty designed to coerce performance of a Purchaser.

Section A-2.2. *Cross Default*. If Purchaser signs a Purchase and Sale Agreement for more than one Unit, a default under either Purchase and Sale Agreement is automatically a default under the other Purchase and Sale Agreement. In such case, the only time period Purchaser will have to remedy the default is the time period set forth in the Purchase and Sale Agreement that first went into default. If the default is not timely remedied and both Purchase and Sale Agreements are canceled, Sponsor shall have the right to receive and retain as Liquidated Damages the ten percent (10%) Deposit under each Purchase and Sale Agreement together with the interest earned thereon. See Section K-18(e) for discussion.

Section A-2.3. *"TIME OF THE ESSENCE" Provisions*. Whenever the Purchase and Sale Agreement or this Plan or the Condominium Documents provide for a deadline within which a payment is to be made, or an act is be performed, or a notice is to be given, or a default is to be cured, or to otherwise do something, means "TIME IS OF THE ESSENCE" to make such payment, or to perform such act, or to give such notice, or to cure such default, or to otherwise do something, and cannot be extended regardless of inability or other excuse for the delay. See Section K-5 for list of these deadline or "TIME OF ESSENCE" periods for discussion.

Section A-2.4. *No Mortgage Contingency*. The Purchase and Sale Agreement is not contingent upon Purchaser obtaining financing (secured or unsecured) to pay the Purchase Price of a Unit or any portion thereof. Any prospective purchaser who executes a Purchase and Sale Agreement and does not obtain financing may lose his or her Deposit if he or she is unable to otherwise raise the monies for the balance of the Purchase Price. Prospective Purchasers who require financing are advised to consult with a lending institution before executing and delivering a Purchase and Sale Agreement. No representation is made by Sponsor as to the availability or cost of such financing.

If Purchaser desires financing, Purchaser assumes and accepts the full and sole risk to obtain and close the loan simultaneously with the conveyance of legal ownership of the Unit by Sponsor to Purchaser and the payment by Purchaser to Sponsor of the balance of the Purchase Price pursuant to this Plan and the Purchase and Sale Agreement (the "**Closing**" or "**Closing of Title**" or "**Close Title**").

Under no circumstance shall Purchaser have the right to cancel the Purchase and Sale Agreement, or to delay the Closing of Title, or to be relieved or excused from paying the full Purchase Price, without abatement, set-off or credit, and without liability or recourse of any kind against Sponsor or Selling Agent, or their respective Related Parties (defined below) in the event:

(a) Purchaser is unable to arrange financing; or

(b) Purchaser receives a loan commitment letter, but before the Closing of Title:

(b-1) the interest rate or other terms change unfavorably, or a "lock-in" interest rate is lost, because the Closing of Title under Purchaser's Purchase and Sale Agreement fails to occur before the expiration of the period within which the loan must close; or

(b-2) such commitment expires and is not extended or renewed, or is extended or renewed on less favorable terms; or

(b-3) Purchaser is required to make additional payments to the lender to extend the loan commitment period; or

(b-4) the Building fails to qualify for federally insured or provided financing under federal home loan programs (e.g., FHA or Fannie Mae); or

(b-5) the loan commitment terminates because of: (i) an adverse change in Purchaser's financial condition (e.g., an unfavorable change in Purchaser's income, assets or employment status, or failure to sell of an existing residence, etc.); or (ii) an appraisal of the Unit is not satisfactory to the lender; or (iii) any other lender required condition or factor is not met; or

(c) the lender fails to fund the loan at Closing.

Sponsor and Selling Agent do not represent, assure or guarantee a Purchaser's ability to obtain financing or (if obtained) the terms of financing, or whether the Closing of Title will occur before the loan commitment or any lock-in rate expires, or (if it expires) whether the commitment will be extended or the costs to obtain an extension or the terms and conditions thereof, which may be less favorable than the original commitment. See Section K-13 for further discussion.

Section A-2.5. *Certain Closing Costs*. At Closing of Title, Purchaser will pay (among other things) the following Closing costs (see Section N-1):

Section A-2.5.1. Under the Purchase and Sale Agreement, the Purchaser is obligated to pay the transfer taxes imposed by law on the Sponsor. Before 2021, in computing the New York State transfer tax, the amount of such transfer tax imposed on Sponsor being paid by Purchaser is added to the consideration (i.e., purchase price), which is a tax on a tax (also called "grossed-up consideration"). New York State Tax Law Section 1404(a) was amended in 2021 to exclude from the computation of the State transfer tax said amount of the State transfer tax imposed on Sponsor being paid by Purchaser. The amendment to Section 1404(a) can be accessed at the following web address: *https://www.nysenate.gov/legislation/laws/TAX/1404 [nysenate.gov]*.

The Section 1404(a) amendment to the New York State Tax Law does not apply to the New York City Real Property Transfer Tax (New York City Administrative Code § 11-2102), which continues to calculate the New York City transfer tax on the grossed-up consideration.

The current applicable residential New York State transfer tax of consideration is as follows: 0.4% thereof up to less than $3 million and 0.65% thereof from $3 million or more. The current residential New York State transfer imposes on the purchaser payment of a so-called "mansion tax" and a recently enacted "supplemental tax" added thereto, which equals:

1.00% of consideration of $1 million to less than $2 million

1.25% of consideration of $2 million to less than $3 million

1.5% of consideration of $3 million to less than $5 million,

2.25 of consideration of $5 million to less than $10 million

3.25% of consideration of $10 million to less than $15 million

3.5% of consideration of $15 million to less than $20 million

3.75 of consideration of $20 million to less than $25 million

3.9%. of consideration of $25 million and above

The current applicable residential New York City transfer tax of grossed-up consideration is 1% thereof up to $500,000 and 1.425% thereof over $500,000.

In addition, if Purchaser buys two or more Units, the New York City transfer tax for all Units may be computed at the then applicable commercial tax rate, which currently is higher than the residential rate. However, the New York State "mansion tax" is not applicable to transfers of commercial real estate. See Section N-1.1.1 for discussion.

Section A-2.5.2. Sponsor's Legal Fees. At Closing, Purchaser shall pay closing fee of Sponsor's attorney of $3,000.00 (if Purchaser closes without financing) or $3,500.00 (if Purchaser closes with financing). If Purchaser's lender or attorney refuses to Close Title at the office of Sponsor's attorney, Purchaser will pay a travel fee to Sponsor's attorney of $500.00 (if the closing is held in Manhattan). Sponsor and Sponsor's attorney, however, are not required to conduct the closing outside of the office of Sponsor's attorney or outside of New York City.

Section A-2.5.3. Postponement Costs. If Purchaser fails to Close Title on the date set by Sponsor in accordance with this Plan and the Purchase and Sale Agreement, or Purchaser is at fault for causing Sponsor to postpone the date scheduled by Sponsor for Closing (e.g., Sponsor postpones the Closing to remove a title condition because Purchaser fails to timely send Sponsor's attorney written notice of an objection to title at least ten (10) days prior to the date set by Sponsor for Closing), Purchaser will reimburse Sponsor at Closing for the Unit's Common Charges and real estate taxes for the period the Closing is delayed, plus Per Diem Interest on the Purchase Price, prorated for each day during such period of delay, starting on the first day after the date Sponsor scheduled the Closing of Title to occur

pursuant to the Purchase and Sale Agreement (the "**Scheduled Closing Date**"), to compensate Sponsor for loss of potential earnings on investment of the Purchase Price. See Section K-26.

Purchaser also will pay Sponsor's designated attorney $250.00 for each default notice sent to Purchaser and $250.00 for each time the closing is rescheduled through no fault of Sponsor.

Section A-2.5.4. Working Capital Payment. At Closing of Title, each Purchaser will be required to make a contribution to the Condominium Association's Working Capital Fund in an amount equal to two months' projected Common Charges for each Unit being purchased, as shown in the schedule of offering prices and related information contained in the Offering Price Schedule in Section E (the "**Offering Price Schedule**"), as such projection may change in an amendment to this Plan (a "**Plan Amendment**") filed prior to the First Unit Closing. Sponsor will advance $17,000.00 as an initial contribution to the Working Capital Fund at the First Unit Closing and will be reimbursed for such payment from the first Working Capital Fund contributions made by Purchasers of Units under this Plan. See Section V-2, and see Section V-3 for use of the Working Capital Fund.

Section A-2.6. *Mortgage Tax Credit*. Under this Plan and the Purchase and Sale Agreement, as to each blanket mortgage, including a construction loan mortgage encumbering the Property that is recorded before the First Unit Closing, Purchaser is required to reimburse Sponsor at Closing of Title an amount equal to any savings on the mortgage recording tax resulting from a mortgage tax credit available to Purchaser with respect to any mortgage on the Unit obtained by Purchaser at Closing of Title. The net result to Purchaser of such payment (if any) to Sponsor is to eliminate any benefit to Purchaser for the statutory mortgage tax credit and, in effect, for Purchaser to pay overall an amount equal to the mortgage recording tax on Purchaser's mortgage as though there were no such credit. See Section N-2.

Section A-2.7. *Prohibition Against Advertising*. Purchaser is prohibited from advertising, publicizing or listing with brokers the availability of Purchaser's Unit for sale or lease prior to Closing of Title. See Section K-35 for discussion.

Section A-2.8. *Risk of Loss*. Prior to Closing of Title, the risk of loss or damage to a Purchaser's Unit and its contents from casualty or other cause is assumed by Sponsor. Sponsor's assumption of the risk of loss does not obligate Sponsor to repair the loss or damage or to restore a the Unit or its contents. If Sponsor (in its sole and absolute discretion) elects to repair, or if the First Unit Closing has occurred and the Condominium Board is obligated to repair the loss or damage, the Closing of Title will be postponed to the later to occur of the date fixed by Sponsor for closing in accordance with the Purchase and Sale Agreement or ninety (90) days from the date the loss or damage occurs in order to permit the repairs to be completed.

Purchaser shall not be required to Close Title until the Unit and its contents are made habitable in the condition required in the Purchase and Sale Agreement and the Unit has all essential Building Services (e.g., heat, air conditioning and utilities) and a reasonable means of access to and from the street. If Sponsor elects not to repair, the Purchase and Sale Agreement will be canceled and the Deposit returned to Purchaser together with any earned interest thereon.

If, however, Purchaser is given possession of the Unit under an Interim Use and Occupancy Agreement or is at fault for causing the loss or damage, then Purchaser shall assume the risk of loss to the Unit and its contents, regardless of whether the fire or other casualty causing the loss or damage originates inside or outside of the Unit. In such case, Purchaser shall be obligated to consummate the Closing of Title on the date set by Sponsor in accordance with the Purchase and Sale Agreement, without delay, and pay the full Purchase Price without abatement, set-off or credit, and without liability or recourse of any kind by reason thereof against Sponsor or the Selling Agent, or their respective Related Parties. A Purchaser in possession who is not an owner cannot insure the Unit since he or she has no ownership interest, and the Unit cannot be doubly insured. A person who takes possession prior to Closing assumes the risk of losses not covered by insurance. Such Purchaser should consider obtaining, at Purchaser's expense, renter's insurance to insure Purchaser against loss to the extent insurable. See Section K-11 and Section M-2 for discussion.

Sponsor, at its expense, will insure the Building until Condominium Board, as a Common Expense, obtains the insurance set forth in the First Year's Budget and the By-Laws, which shall be in effect no later than the First Unit Closing.

Section A-2.9. *Sponsor's Default or Inability to Perform*. Purchaser must give Sponsor thirty (30) days written notice of any default by Sponsor under the Purchase and Sale Agreement and allow Sponsor an opportunity to cure the default or (if not reasonably curable in thirty (30) days), such reasonably longer period (not to exceed ninety (90) days) from giving the default notice. If Sponsor fails to cure the default within the applicable grace period, Purchaser's sole remedy shall be either: (a) to compel Sponsor to specifically perform; or (b) to cancel the Purchase and Sale Agreement and recover Purchaser's Deposit together with any interest earned thereon. The Sponsor cannot limit any rights which the Purchaser may have pursuant to Art. 23A of the GBL, NYCRR regulations, and the Offering Plan, except as determined in a final decision or order by a court of competent jurisdiction or any governmental agency or by executive order and that Purchaser may be entitled to. Except in the case of Sponsor's willful default for intentionally causing a title objection to frustrate a sale in bad faith or Sponsor's failure to obtain a release of a mortgage lien on the Unit, Purchaser shall conclusively be deemed to have elected to cancel and recover said sums if Purchaser fails to consummate the Closing of Title on the date or any postponed date set by Sponsor.

If Sponsor is unable, in good faith, to perform Sponsor's obligations or satisfy any condition applicable to Sponsor or the Unit, or title shall not be in accordance with the Purchase and Sale Agreement, Purchaser's sole remedy shall be either: (a) to consummate the Closing of Title without delay and accept such title to the Unit as Sponsor is able to convey without abatement in, or set-off against, the Purchase Price and without escrowing monies or liability or recourse of any kind by reason thereof against Sponsor or the Selling Agent, or their respective Related Parties; or (b) to cancel the Purchase and Sale Agreement and recover Purchaser's Deposit together with any interest earned thereon, and Purchaser's costs paid to a title insurer or agent to search title, if any. Purchaser shall conclusively be deemed to have elected to cancel and recover said sums if Purchaser fails to consummate the Closing of Title on the date or any postponed date set by Sponsor. See Section K-20.

Section A-2.10. *Plan and Plan Amendments Govern*. If the provisions of this Plan or any Plan Amendments filed before or after the date of the Purchase and Sale Agreement, but before Closing, conflict, or are inconsistent or ambiguous, with the Purchase and Sale Agreement, such conflict, inconsistency or ambiguity shall be resolved according to the terms of the Plan and said Plan Amendments, which are paramount and shall govern. See Section K-14.

Section A-2.11. *Waiver of Jury Trial*. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY LAWSUIT ARISING FROM THE PURCHASE AND SALE AGREEMENT OR THE PLAN OR PLAN AMENDMENTS, OTHER THAN A LAWSUIT IN WHICH A JURY TRIAL CANNOT LEGALLY BE WAIVED. ANY CLAIM FOR WHICH A JURY TRIAL CANNOT LEGALLY BE WAIVED SHALL NOT BE ASSERTED AS A COUNTERCLAIM OR JOINED WITH ANY LAWSUIT IN WHICH A JURY TRIAL IS WAIVED, UNLESS THE FAILURE TO ASSERT IT WOULD PREVENT THE CLAIM FROM BEING MADE LATER. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OR (IF THE CLOSING DOES NOT OCCUR) THE CANCELLATION OR TERMINATION OF THE PURCHASE AND SALE AGREEMENT. See Section K-37.

Section A-2.12. *Escrow Agent*. Sponsor's attorney, Paley Group, P.C. is the Escrow Agent under the Purchase and Sale Agreement which provides the Escrow Agent may represent Sponsor in any litigation, whether or not related to Purchase and Sale Agreement and irrespective of Escrow Agent being in possession of the Deposit. See Section X-2.

Section A-2.13. *Legal Expenses*. In any litigation between Purchaser and Sponsor, Purchaser will not be obligated to pay Sponsor's legal expenses unless awarded in a final non-appealable order or judgment of a court having competent jurisdiction. See Section K-39.

Section A-3. Reserve Fund. Many banks and Institutional Lenders require condominium budgets to comply with Fannie Mae (the Federal National Mortgage Association) guidelines in order to extend financing to purchasers of condominium units, refinancing of existing mortgage loans to unit owners and to provide a line of credit to a condominium board of managers. The Fannie Mae guidelines require (among other things) a budget to include a line item for a reserve for capital replacements of major components of the Building equal to not less than 10% of all budgeted expenses each budget year. The Reserve for Capital Replacements in this Budget is intended to comply with Fannie Mae guidelines. Sponsor and Daisy Management LLC, however, do not represent, assure or guarantee this Budget item complies with Fannie guidelines. The portion of the Common Charges attributable to the Reserve for Capital Replacements is to be maintained in a separate account and used only to replace or otherwise alter major components of the Building in accordance with Fannie Mae guidelines. Major components of the Building include the Roofs; the exterior Building Walls; the heating, plumbing and electrical Building Systems; the elevator; and the Structural Component of the Building. In no event may the Reserve for Capital Replacements be used for ordinary maintenance or repairs of the Common Elements.

Because the Building is being substantially rehabilitated and newly constructed with an additional floor and entirely new Units outfitted with modern Unit Facilities, no major capital

replacements are anticipated during the first five (5) years of Condominium operation. No representation, assurance or guaranty, however, is made or given when such capital expenditures will be required or that the Reserve for Capital Replacement will be sufficient when a capital replacement may be required. Unit Owners will be obligated to pay their share of the cost of ordinary and capital repairs, replacements and/or improvements to the Common Elements as and when required. See Note 13 to SCHEDULE b in Section F.

The Reserve for Capital Replacement is the only reserve fund to be provided under this Plan and is included in the budget for the projected first year of condominium operation (see Section A-4).

Section A-4. First Year's Budget. Sponsor anticipates that the First Unit Closing will occur by January 1, 2023. Purchasers will be offered a right of rescission if: (a) the actual date of closing of title to the first Unit; or (b) the projected date of closing of title to the first Unit occurs later than December 31, 2023, which is twelve (12) months after the projected date for the First Unit Closing. If the Plan is amended to provide for a later projected date for the First Unit Closing, Purchasers will be entitled to an offer of rescission if the First Unit Closing occurs more than 12 months beyond that amended, later date. However, if the First Unit Closing occurs before December 31, 2023, the Sponsor may schedule the closings of title to other Units significantly later than such date. Unless your Purchase and Sale 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.

The projected income in the budget set forth in Schedule B in Section F is based on the first twelve (12) months of Condominium operation starting on or about January 1, 2023 ("**First Year's Budget**"), which is believed to be a reasonable estimate. Sponsor, Selling Agent and Daisy Management LLC, however, cannot, and do not, represent, assure or guarantee the actual date Condominium operation will begin or the amount of the Common Expenses (or the resulting Common Charges), which may be higher or lower than those estimated in the First Year's Budget. See Section F-2 for requirements to revise the First Year's Budget and to offer rescission if the amended projections exceed the original projections by twenty-five percent (25%) or more.

For purposes only of presentation, the First Year's Budget does not include: (a) estimated real estate taxes for the interim period prior to the separate assessment of Units; and (b) miscellaneous two and five year inspection fees. See Section F-6.

During the Sponsor Board Control Period, the Condominium Board shall have the right, in its sole discretion, to waive Unit Owner obligations to pay Common Charges from and after the First Unit Closing for a period to be determined by the Condominium Board ("**Waiver Period**") provided the basic operating costs of the Condominium, including any insurance premiums and reserves by lenders (collectively, "**Operating Costs**") are paid by either (i) Sponsor ("**Sponsor Paid Waiver Period**") or (ii) all Unit Owners, including Sponsor with respect to Unsold Units, in proportion to their respective percentages of Common Interest ("**Unit Owners Paid Waiver Period**"). If the Condominium Board

elects to waive payment of Common Charges, Sponsor shall disclose such waiver in a post-closing amendment to this Plan, which shall include (i) the expiration date of the Waiver Period and (ii) whether the Waiver Period shall be a Sponsor Paid Waiver Period or a Unit Owners Paid Waiver Period. Purchasers are advised that the Operating Costs during the Waiver Period will likely vary from month to month and that certain seasons or periods may give rise to more or different costs than other seasons or periods (e.g. seasonal increases in heating and/or cooling costs, costs in the event of a needed repair to a Common Element, etc.). Also, as more fully set forth in Sections A-16 and A-18.2 of this Plan, given that the completion and/or availability of amenities, services, and/or facilities may be delayed due to Unavoidable Causes or temporarily disrupted following the First Unit Closing depending on ongoing construction and/or the occupancy level in the Building, it is anticipated that the Operating Costs will increase as the occupancy level of the Building increases and the construction of the Building progresses. In the event the Condominium Board thereafter elects to extend the Waiver Period, Sponsor shall (a) notify Unit Owners of such extension at least thirty (30) days prior to the previously disclosed expiration date of the Waiver Period and (b) amend this Plan to disclose the new expiration date of the Waiver Period. Sponsor shall additionally notify Unit Owners of the expiration of the Waiver Period at least thirty (30) days prior to such expiration. Upon commencement of collection of Common Charges from all Unit Owners, there will not be a Special Assessment for any expense set forth in the approved budget for which Common Charges were not collected during the Waiver Period. Sponsor shall remain obligated to cause the Condominium Board to update the budget in accordance with the terms of this Plan. Purchasers should note that, during any Waiver Period (regardless whether the Sponsor Paid Waiver Period or the Unit Owners Paid Waiver Period), Unit Owners will remain responsible for (in addition to their proportionate share of Operating Costs, if applicable) all individual Unit expenses, including (as applicable) real estate taxes on the Unit, mortgage payments under a loan obtained to finance the purchase of the Unit (if any), the cost of electricity supplied to the Unit, which will be separately metered and payable directly to the utility company, the cost of any insurance which the Unit Owner obtains for the Unit and the cost of interior repairs and decorations to the Unit. Whenever the Condominium Board elects to waive payment of common charges there will not be a reduction in services to be provided by the Managing Agent of the Building.

See Section C-1.5 and Note 3 to SCHEDULE B in Section F-6.

The First Year's Budget provides a fund for unanticipated operating expenses during the first year of Condominium operation, including an allowance for a possible increase in one or more expense items in the First Year's Budget and/or to add to the First Year's Budget one or more new expense items. No representation, assurance or guaranty is made or given that such reserve for contingencies will be adequate to provide for any actual increase in operating expenses during the first year of Condominium operation. If said reserve for contingencies is inadequate, it may be necessary for the Condominium Board to increase Common Charges or impose Special Assessments. This budget item is not to provide a reserve for major or capital expenditures. A separate item of Reserve for Capital Replacements is included in the budget for the projected first year of condominium operation (see Section A-3).

Under Section 8.5.3 of the By-Laws, a budget adopted by the Condominium Board may include a reserve for unanticipated operating expenses, including an allowance for a possible increase in one or more expense items and/or to add one or more new expense items. Any such reserve amounts may not exceed, in the aggregate, five percent (5%) of the projected annual Common Expenses for the then current budget year without obtaining the prior written consent of Sponsor (during only the Sponsor Veto Control Period). See Section P-2.1.

Section A-5. International Organization and Diplomat. A foreign government or the United Nations, or any agency, department, embassy, consulate or mission or governmental entity of a foreign state or the United Nations, or any other international organization or instrumentality (each an "**International Organization**"), or any individual entitled to diplomatic or sovereign immunity, by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit, or leasing or occupying a Unit, shall conclusively be deemed to have automatically, irrevocably and unconditionally covenanted and agreed (among other things) to the following: (a) to own, lease or occupy a Unit constitutes commercial activity within the meaning of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1602, et seq., as the same may be amended; (b) to voluntarily waive all rights to any sovereign or diplomatic immunity (as applicable) from the personal jurisdiction of the courts of the United States of America and of the individual States comprising the United States of America with respect to any claim or Litigation in connection with the Condominium Documents, as each may be amended from time to time; (c) to consent to any suit, action or proceeding arising from the Condominium Documents, as each may be amended from time to time being brought in any state or federal court in the State of New York only; (d) to waive any objection that such international organization or diplomat (as applicable) may have now or hereafter to the laying of the venue of any such suit, action or proceeding under clause (c) above; and (e) to waive any objection that any such court, or claim that any such suit, action or proceeding under clause (c) above has been brought in an inconvenient forum.

Section A-6. Foreign Person. An organization that is not formed or organized under the laws of the State of New York or is not an instrumentality of the State of New York or of any county, municipality, village or other Governmental Authority of the State of New York, or any individual who does not maintain his or her principal residence in the State of New York (each, a "**Foreign Person**"), by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit, or leasing or occupying a Unit, shall conclusively be deemed to automatically, irrevocably and unconditionally covenant and agree to the following among other things: (a) to be personally subject to the jurisdiction of the Supreme Court of the State of New York or (if such court lacks jurisdiction) a court of competent jurisdiction in the State of New York (including federal courts sitting in New York) and to the American Arbitration Association (or any successor thereto with similar function) with respect to all Litigation arising, directly or indirectly, out of the Condominium Documents, the Property; (b) to conclusively be deemed to have automatically, irrevocably and unconditionally waived any defenses by a foreign organization or individual with respect to jurisdictional defects; (c) to duly execute and deliver to the Condominium Board or the Condominium Association's agent engaged by from time-to-time the Condominium Board to perform the duties of a managing agent of the Building (the "**Managing Agent**"), if any (as directed

by either), at or prior to the time such foreign organization or individual becomes a Unit Owner or a tenant of a Unit, an irrevocable and unconditional written designation or appointment of: (c-1) (in the case of an organization) the Secretary of State of the State of New York as agent of said organization upon whom process against such organization may be served; or (c-2) (in the case of an individual) an attorney admitted to practice and maintaining an office in the State of New York pursuant to a subject to jurisdiction and irrevocable designation of agent for service of process instrument, or a New York organization, whose business includes to act as agent for service of process, as such Foreign Person's agent for service of process, each in form and content acceptable to the Condominium Board, in its sole Business Judgment.

Section A-7. Sponsor Control of Condominium Board, Common Expenses and Certain Work.

Section A-7.1. *Sponsor Voting Control of Board*. Sponsor shall have the right to exclusively designate a majority of the Condominium Board and thereby have voting control of the Condominium Board for five years from the First Unit Closing or whenever the Units owned by Sponsor (each, an "**Unsold Unit**") constitute less than twenty-five percent (25%) of all Units in number and Common Interest, whichever is sooner to occur (the "**Sponsor Board Control Period**"). After the end of the Sponsor Board Control Period, the Independent Board Members shall constitute a majority of the Board Members. As a result, Sponsor may no longer exercise voting control of the Board. However, Sponsor shall continue to have the right to nominate and vote (without limitation or restriction) for all candidates to serve as Independent Board Members, both before and after the end of the Sponsor Board Control Period. In addition, for as long as Sponsor owns at least one Unsold Unit, Sponsor shall have the right to exclusively designate one Sponsor Board Member. Sponsor will cause the Condominium Board to call a special meeting of Unit Owners to be held within approximately sixty (60) days after second anniversary of the First Unit Closing or whenever the Units sold to Bona Fide Purchasers (each a "**Sold Unit**") constitute eighty percent (80%) or more in number and Common Interest of all Units, whichever is the first to occur. See Section P-1.1. Prospective Purchasers should be aware that as a result of Sponsor's voting control over the Board during the Sponsor Board Control Period, Owner-occupants and Sponsor may have inherent conflicts on how the Property should be managed because Owner-occupants purchase Units as a home and Sponsor owns the Unsold Units as an investment.

Section A-7.2. *Sponsor Veto Control of Expenses*. The period ending on the earlier to occur of: (a) the date that the Common Interests appurtenant to the Unsold Units constitute less than 25% of the aggregate Common Interests appurtenant to all Residential Units; or (b) the fifth (5th) anniversary of the First Unit Closing with a Bona Fide Purchaser under the Plan is called the "**Sponsor Veto Control Period**". During the Sponsor Veto Control Period, Sponsor shall have veto control over the following expenditures, decisions and actions of the Condominium Board and Unit Owners (as to any vote or action by them), and the Board and Unit Owners must obtain Sponsor's consent to do any of the following:

(a) to raise Common Charges or levy a Special Assessment in order to do any of the following:

(a-1) to make an alteration to the Common Elements, the Association's Assets, including any Unit owned or held under a lease or otherwise by the Condominium Board or its nominee or designee, incorporated or otherwise, organized by the Board to act on behalf and for the account of the Condominium Board or the Condominium Association (an "**Affiliated Nominee or Designee**");

(a-2) to establish a fund for reserves for unanticipated expenses and/or contingencies (i.e., a Reserve for Contingencies) in excess of five percent (5%) of the projected annual Common Expenses for any budget year of Condominium Operation;

(a-3) to change or eliminate the Reserve for Capital Replacements set forth in this Plan, which is required to be included in each budget in accordance with Section 8.5.4 of the By-Laws;

(a-4) to increase, decrease, eliminate or otherwise change the number, type, classification or working hours of the Building's service staff from those set forth in the First Year's Budget, except as permitted to be changed pursuant thereto;

(a-5) to increase, decrease, eliminate or otherwise change Building Services by (for example) entering into contracts for new or additional services or maintenance work not included in said First Year's Budget, or failing to provide any service or maintenance contracts set forth in such First Year's Budget, or otherwise; or

(a-6) to increase, decrease, eliminate or otherwise change the amounts or types of insurance coverage from those provided in said First Year's Budget; or

(b) to borrow money on behalf of the Condominium Association; or

(c) exercise the right of first refusal to purchase or lease a Unit.

Sponsor may not, however, exercise veto control over expenses included in said First Year's Budget or over expenses required: (a) to comply with applicable federal, state, city or other local laws and ordinances (including the New York City Landmarks Preservation Law), and all applicable regulations, codes, rules, orders, permits, directives and requirements of all governmental agencies, departments, assessors, boards, bodies, instrumentalities and authorities (including the Landmarks Preservation Commission) having jurisdiction over the Property or the Condominium Association (each, a "**Governmental Authority**"), as each may be duly amended from time to time (all such laws and requirements of each and every Governmental Authority are collectively, the "**Laws**"); (b) to remedy a governmental notice of a violation of Laws; or (c) to remedy an order of a Governmental Authority or an insurer of the Building.

Section A-7.3. *Sponsor Control of Certain Work*. No Unit may be occupied until certificate of occupancy of the Building ("**Certificate of Occupancy**") authorizing the use of such Unit for the purposes set forth in this Plan is issued by the New York City Department of Buildings ("**DOB**"), whether such Certificate of Occupancy is a partial or temporary Certificate of Occupancy (collectively,

"**Temporary Certificate of Occupancy**" or "**TCO**") or a final Certificate of Occupancy of the Building ("**Final Certificate of Occupancy**" or "**FCO**"), which authorizes the use of all Units for the purposes contained in this Plan. In order for Sponsor to obtain in a timely manner from the DOB an extension of a TCO or the FCO, the Condominium Board and a Sold Unit Owner shall not be permitted to apply to a Governmental Authority for an approval, license, authorization, certificate or permit in connection with any work to be undertaken ("**Governmental Work Permit**") prior to the issuance of a Final Certificate of Occupancy without obtaining the prior written consent of Sponsor in each instance. The foregoing, however, shall not prevent the Board to perform Work requiring the issuance of a Governmental Work Permit when required (a) to comply with applicable Laws; (b) to remedy a governmental notice or violation; or (c) to remedy a work order by an insurer of the Building. See Section P-2.4.

Section A-8. Resale Risk. A Purchaser may have difficulty in reselling his or her Unit if the prospective buyer is relying upon financing and is unable to obtain or close a loan because the Building does not then meet the lender's requirement for Units occupied by their Owners or a member of an Owner's Immediate Family (hereafter, "**Owner-Occupied**") or the Building does not qualify for federally insured or provided financing under federal loan programs. See Section A-9.1 for discussion.

Section A-9. Occupancy of Residential Units By Owners and Renters; Owner-Occupants and Board Control.

Section A-9.1. *Occupancy By Owners or Renters*. Sponsor will endeavor in good faith to sell all of the Units in a reasonably timely manner, preferably to Purchasers for personal occupancy by themselves or members of their Immediate Families, but Sponsor reserves the to sell Units to Purchasers for rental investment or resale. To that end, Sponsor has engaged a Selling Agent to market and multi-list the Units for sale. Because of the uncertainty and volatility of market conditions and subject to obtaining the prior written consent of CPIF Lending, LLC ("**Construction Lender**"), Sponsor's Construction Lender, Sponsor has the unfettered right to rent Units for an indefinite period after, but not before, the Plan is consummated with the First Unit Closing, except Sponsor may enter into an Interim Use and Occupancy Agreement for a Unit with the Purchaser of such Unit. Sponsor's mortgage loan does not require the lender to release the lien of the construction mortgage from Units as they are sold and conveyed in exchange for a release price. Before this Plan is declared effective, Sponsor intends to refinance the mortgage loan with financing that will contain provisions requiring the lender's lien to be released upon the consummation of the sale of each Unit and will file a Plan Amendment with the Department of Law disclosing the forgoing and other terms relevant to the conversion of the Property to condominium ownership. See Sections B-4 and O-2.7.

Prospective 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 Residential Units in a building or group of building 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 Residential Units in the building or group of buildings, which in some cases may be

as high as 70%. Moreover, some lenders will not provide financing in a building or group of buildings where an investor other than the original sponsor has an ownership interest of 10% or more. It also may be difficult for a Purchaser to resell an Residential Unit if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions.

Prospective Purchasers also should be aware that they potentially may be living with transient tenants for an unlimited period. Transient tenants will receive the same Building Services and have the right to use and enjoy all of the same Building's amenities (e.g., the lobby, the elevator, community Terrace and patio, and other amenities in and on the Common Elements) on the same terms and conditions as Owner-occupants. However, they have no investment in their Units and, therefore, do not share the same economic interests and values as Owner-occupants in the maintenance and care of the Common Facilities. The occupancy of Units potentially by transient tenants may limit or impair a Purchaser's ability to obtain financing or (after Closing) refinancing, or to resell the Unit to a Purchaser who is relying on financing, if the Building does not meet a lender's requirement (if any) for Owner-occupied Units. Some Institutional Lenders may require up to seventy percent (70%) of the Units to be Owner-Occupied or such other percentage as may then be required by an Institutional Lender to which a Purchaser applies for financing. See Section A-8 and Section B-4.

Section A-9.2. *Owner-Occupants and Board Control*. Because Sponsor is not limiting the conditions under which it will rent rather than sell the Units, there is no commitment to sell more than the fifteen percent (15%), or two Units (rounded up), necessary to declare this Plan effective, with at least one Unit closing in order to convert the Property to a valid regime of condominium ownership. As a result, this Plan may not result in the establishment of a Condominium in which a majority of the Units are owned by Owner-occupants or investors unrelated to the Sponsor. In addition, the Condominium By-Laws do not include a provision requiring a majority of the Condominium Board to be Owner-occupants or members of the Owner's Immediate Family who are unrelated to Sponsor and its principals after the expiration of the Sponsor Board Control Period. As a result, Purchasers for their own occupancy may never gain control of the Condominium Board under the terms of this Plan. See Section B-4, and Section Q-1.3.

Section A-9.3. *Effectiveness of Plan*. Sponsor may declare the Plan effective when Purchase and Sale Agreements are executed and in effect with Bona Fide Purchasers for a minimum of 15% of the Units being offered for sale, or 2 Units based on 10 Units being offered for sale (rounded up). Even if the Plan is declared effective with a minimum number of sales, it is possible that Sponsor may be able to establish the Condominium with fewer than the minimum number of sales because Purchasers being counted towards effectiveness do not ultimately complete the Closing of Title to their Units. Notwithstanding the Plan is declared effective, to consummate the Plan, the Declaration must be recorded and the Floor Plans must be filed in the City Register's Office, the First Unit Closing must be completed with at least one (1) Purchaser under the Plan following Sponsor declaring the Plan effective and the acceptance and filing by the New York Department of Law of a Plan Amendment declaring the Plan effective. If before the Plan is consummated in accordance with the foregoing, all Purchasers being counted toward effectiveness properly and timely terminate their respective Purchase and Sale

Agreements pursuant to the terms of said Purchase and Sale Agreements or an offer of rescission contained in a Plan Amendment, the Plan must again be declared effective in accordance with the terms contained in Section L. In such event, no Unit closings may be conducted until the acceptance and filing by the New York Department of Law of a Plan Amendment declaring the Plan effective. See Section L for details.

Section A-10. Real Estate Tax Projection; Coop/Condo Tax Abatement.

Section A-10.1. *Real Estate Tax Projection*. The first year of Condominium operation is projected to begin on or about January 1, 2023. The projected real estate taxes as contained in SCHEDULE A, however, are based on the estimated *post-completion of rehabilitation* assessed valuation for the July 1, 2023- June 30, 2024 fiscal tax year and reflect the post-construction taxes as opined by Lawrence J. Berger P.C. (hereafter "**Berger**" or "**Berger P.C.**") having offices at 240 Madison Avenue, 7th Floor, New York, New York 10016. See Note 6 to SCHEDULE A and Section S-3 for more information regarding the projected real estate taxes for the first year of operation. Prospective Purchasers also should be aware that improvements a Purchaser makes to his or her Unit may increase its assessed valuation, resulting in higher real estate taxes.

For purposes only of presenting the projected real estate taxes in SCHEDULE A -- the Offering Price Schedule (in Section E), the Property's projected assessed valuation has been apportioned and assessed to all Units in the proportion that the Common Interest of a Unit bears to the total Common Interests of all Units (hereafter, "**Pro Rata**"), which Berger P.C. reports is the method followed by the New York City Department of Finance (sometimes, the "**DOF**") since 2007. Berger P.C. has found, however, that the assessment practices of the DOF are notoriously inconsistent and there may be a substantial deviation in apportioning Property's assessed valuation to the Units in the 2023 calendar year (i.e., the first year of Condominium operation).

While Berger P.C. has had considerable experience in real estate tax assessments, Sponsor, Selling Agent and Berger P.C. do not assure, represent or guarantee: (a) the accuracy of the real estate tax projections; or (b) the actual assessed valuation of the Property upon completion of rehabilitation and construction of the Building with an additional floor and the newly constructed and outfitted Units and Common Facilities; or (c) the actual apportionment of the Property's assessed valuation to each Unit; or (d) the actual tax rate or tax class for any tax period during Condominium operation. See footnote (6) to the Offering Price Schedule for details of Berger P.C.'s projections and Section S-9 for the full text of its opinion and the assumptions and estimates upon which it is predicated.

Section A-10.1. *Coop/Condo Tax Abatement*. Real Property Tax Law ("**RPTL**") Section 467-a (known as the "**Coop/Condo Tax Abatement**") has provided partial tax abatement to owners of residential cooperative and condominium units. The tax benefit is based upon 17.5% of the net property taxes due on eligible dwelling units with an average assessed valuation greater than $60,000.

In order for a Unit Owner to be eligible for the Condo Tax Abatement for a fiscal tax year starting July 1 and ending June 30, the deed conveying a Unit to such Owner must be recorded by January 5th

preceding such fiscal tax year. Accordingly, Unit Owners will not be eligible to receive the Condo Tax Abatement benefits for the current July 1, 2022 to June 30, 2023 fiscal tax year. For fiscal tax year July 1, 2023 to June 30, 2024, the deed to a Purchaser must be recorded by January 5, 2023. However, the current version of RPTL 467-a is set to sunset on June 30, 2023. Consequently, Unit Owners who otherwise meet the qualifications listed in clauses (a) through (h) of Section S-8.2 below will receive the Condo Tax Abatement benefits for the July 1, 2023 to June 30, 2024 fiscal tax year *only if* the statute is renewed in its current form.

There is no guaranty that RPTL 467-a will be renewed or if renewed, that the benefit will not be reduced or eliminated as it relates to tax year 2023/2024 and thereafter.

Since the average assessment per Unit for tax year 2023/24 is estimated to be greater than $100,000 per Unit, for Unit Owners to be eligible for the Condo Tax Abatement, the Condominium Board will be required to submit an affidavit stating that Building service employees who work at least eight (8) hours per week are paid the prevailing wage for the duration of the Property's tax abatement. Under this Plan, Building service employees who work at least eight (8) hours per week are scheduled to be paid the prevailing wage for the duration of the Property's tax abatement. The budget in the Offering Plan accounts for paying such Building service employees the prevailing wage. However, in the event that DOF determines that prevailing wages are required to be paid to Building employees, and such wages are not paid, then no Unit Owners will qualify for any abatement pursuant to RPTL §467-a. Therefore, there is no guaranty that Unit Owners will qualify for the Condo Tax Abatement for 2023/2024 or thereafter.

This Plan will be amended to reflect the status of RPTL Section 467-a when publicly available. See Section S-8.

Section A-11. Suspension of Voting and Other Rights. Under the By-Laws, if the Condominium Board perfects its lien against a Unit for unpaid Common Charges, then until the lien is paid or discharged by bonding or otherwise, the Owner of such Unit will not have the right to nominate candidates to serve on the Condominium Board or to vote for election of the Condominium Board or to serve as a member of the Condominium Board. See Section Q-6 for full discussion. In addition, no new mortgage may encumber a Sold Unit while its Owner is in default in paying the Common Charges or Additional Common Charges or other unpaid lien on said Owner's Unit is outstanding, other than a mortgage made when these requirements were met (a "**Permitted Mortgage**"). See Section B-5.5.3.

Section A-12. Cancellation of Interim Use and Occupancy Agreement. If an Interim Use and Occupancy Agreement is entered into with a Purchaser for a Unit and the Interim Use and Occupancy Agreement is cancelled because of an uncured default or the election by such Purchaser to rescind pursuant to the terms of the Purchase and Sale Agreement or an offer to rescind in a Plan Amendment, said Purchaser will have a deadline of only thirty (30) days thereafter to surrender vacant possession of the Unit under the Interim Use and Occupancy Agreement. The thirty (30) days is a "TIME OF ESSENCE" period. If the Purchaser fails to timely surrender vacant possession of the Unit within such thirty (30)-day deadline period (regardless of inability or other excuse for not timely doing so), he or she

will be liable to Sponsor for all costs and expenses incurred by Sponsor for the delay and to recover vacant possession of the Unit together with, if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, Legal Expenses and Per Diem Interest thereon to enforce or defend this right and to collect the amounts owed. See Section J-3 and Section J-4 for discussion.

Section A-13. Board Consent Required for Lease Term of Less Than One Year. A Sold Unit Owner may not lease his or her Unit for less than one year to other than a "Related Party" (defined below) to an Owner, without obtaining the prior written consent of the Condominium Board. This restriction does not apply to Unsold Units. See Section B-5.5.2 and Section R-1.1. A "**Related Party**" means generally a member of the Immediate Family of an Owner or a tenant of a Unit or (in the case of an Entity) a past, present and future partner, member, manager, shareholder, officer, director or principal of such Entity or an Entity in which such Entity owns or holds a legal, equity or beneficial interest.

Section A-14. Terraces, Juliette Balcony, Balconies, Yard and Storage Lockers. Each Unit includes as part of its private and exclusive ownership and possession a Storage Locker located in the cellar and certain Units also include as part of their private and exclusive ownership and possession a Terrace, Juliette Balcony, Balcony or Yard. See the Offering Price Schedule in Section E-1 for details.

Section A-14.1. *General Restrictions and Requirements*. In order to protect the structural integrity and weather tightness of the Building and the safety of lower floors as well as the Sidewalk adjacent to the Building, and to preserve the architectural and aesthetic harmony of the Building's façade and minimize possible unsightliness, a Sold Unit's windows, exterior doors, Terrace, Juliette Balcony, Balcony or Yard (if and as applicable), and related structures enclosing these outdoor areas, may not be replaced, removed or otherwise altered or decorated without obtaining in each instance the prior written reasonable consent of the Board. The foregoing restrictions do not apply to Unsold Units. Sponsor or other Owner of an Unsold Unit shall have the unfettered right to alter and decorate their respective Unsold Units, other than the requirement to comply with the applicable General Requirements set forth in Section 10.1 of the Declaration. See Section R-5.4.

Section A-14.2. *Gardening Restrictions and Requirements*. Any plants, trees, flowers, hedges, shrubs or other gardening item permitted to be installed on a Sold Unit's Balcony, Terrace, Juliette Balcony or Yard (if and as applicable) shall be contained in free standing, removable boxes of wood, lined with metal or other materials impervious to dampness and standing on supports at least two inches from the surface, and if adjoining a Boundary Wall, at least three inches from such element. The wood boxes shall have suitable weep holes to draw off water and only light weight soil shall be used. In special locations, such as a corner abutting a Boundary Wall or the like, plants may be contained in masonry or hollow tile walls which will be at least three inches from such Boundary Wall, with a floor of drainage tiles and suitable weep holes at the sides to draw off water. No trees taller than six feet will be allowed on a Balcony or Terrace, including its container and supports. The Owner of such Sold Unit shall have the duty, at such Owner's sole cost and expense, to properly maintain the containers, the drainage tiles and weep holes in operating condition in accordance with the Building Standard, and all gardening items

properly pruned so that the height of tree shall not be taller than six (6) feet, including its container and supports, and all gardening items shall not hang over the railings, parapets or other structures, or otherwise outside the borders of the Unit's Balcony, Terrace, Juliette Balcony or Yard (if and as applicable). See Sections R-5.4 and R-7.2.

Section A-14.3. *Use and Restrictions.* A Unit's Balcony, Terrace or Yard (if and as applicable) may be used only for lounging, sunbathing and other passive recreational activities, and for no other purpose, and may be used and occupied only in accordance with the same Unit Users applicable to the interior of the Unit. In connection with such use:

(a) no alteration or decoration shall be made, nor enclosure installed, on such outdoor area of a Unit, other than a temporary structure erected in accordance with applicable Laws for religious, ceremonial or similar purposes;

(b) no antennae, satellite dishes or other communication devices and related facilities (including fiber optic cable or other communication lines, wires, cables and conduits), plus any and all other new and/or additional communication facilities that service or benefit the Units and/or the general public (collectively, "**Communications Facilities**") may be installed in, on or from such outdoor area of a Unit;

(c) no fence, partition, furniture, furnishing, barbecue or grilling facility, plants, trees, flowers, hedges, shrubs or other gardening item, planters or containers, structures or other objects shall be installed or placed in or on said outdoor area of a Unit, unless in compliance with applicable Laws and after first obtaining in each instance the reasonable consent of the Board and (until there are no Unsold Units and the Final Certificate of Occupancy of the Building is issued) the consent of Sponsor.

In no event may a Balcony, Terrace or Yard be used for sleeping, dining or any other any type of "living" or habitable space, or as an office. Failure to comply with these restrictions would be a violation of the Condominium Declaration and may result in a violation being issued by the DOB. The Condominium Board may enjoin such violation, among other rights and remedies provided in the Condominium Documents. The offending Unit Owner, at such Owner's sole cost and expense, shall be responsible to correct the condition causing the violation and to reimburse the Board for its costs and expenses and, if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, any Legal Expenses (with Per Diem Interest thereon) to enforce and uphold these restrictions.

A Juliette Balcony is a decorative element of a Building Wall and may not be used by an Owner or tenant whose Unit is adjacent thereto to install therein, thereon or therefrom:

(a) satellite dishes, antennae of similar Communications Facilities; or

(b) flower, plant or other horticulture containers, structures or other objects, unless in compliance with applicable Laws and after first obtaining in each instance the reasonable consent of the Board and (until there are no Unsold Units and the Final Certificate of Occupancy of the Building is issued) the consent of Sponsor.

A Storage Locker shall be used only for the storage of personal effects of the Owner or a tenant of a Unit to which it is appurtenant, and in no event shall any food or other perishable item, or any flammable or explosive item, or any item which would impose a health or safety threat or cause noxious odors, dirt or other sanitary problems or create a nuisance, be stored in a Storage Locker.

In no event may all or any portion of a private Terrace, Juliette Balcony, Balcony or Yard be enclosed in a manner that would use, impair, infringe or otherwise affect the Excess Development Rights reserved exclusively to Sponsor without obtaining the prior written consent of Sponsor. See Section R-7.

Section A-15. Restriction on Sale, Lease and Mortgaging. The Condominium Board shall have a Right of First Refusal to purchase or lease, directly or through a nominee or designee, a Sold Unit at the same price or rent offered by a bona fide purchaser or tenant, respectively, subject to obtaining the consent of a majority in Common Interest of those Unit Owners attending a duly constituted meeting of Unit Owners at which a quorum is present (excluding the selling or leasing Sold Unit Owner for quorum and voting purposes). Unless purchased or held under a lease pursuant to said Right of First Refusal, the Condominium Board does not have the right to approve or disapprove of a Purchaser or tenant. As a result, there is no limit on the number of Purchasers who may purchase for rental investment or resale rather than personal occupancy and the Board and Unit Owners shall have no control over occupancy of Units, apart from said Right of First Refusal. See Section B-7.6.1. The Board's Right of First Refusal and other restrictions, requirements and payments applicable to Sold Units are not applicable to Unsold Units, each of which may be sold, transferred and leased freely (other than the requirement to lease an Unsold Unit for a minimum initial term of at least six months and the restriction against using a Unit for applicable Prohibited Uses). See Section A-32 and Section B-7.5.2.

No new mortgage may encumber a Sold Unit while its Owner is in default in paying the Common Charges or Additional Common Charges or while an unpaid lien on said Owner's Unit is outstanding (other than Permitted Mortgages).

Section A-16. Building Amenities, Recreational Facilities and Services. All Building amenities, recreational facilities and services have been completed. They include: the community recreation room and the exercise room in the cellar; the rooftop community Terrace and the ground level patio; the decorations or finishes of the 324 West 108th Street Public Areas, the Building entrance, the lobby and the elevator cab. The part-time non-resident superintendent/handyman and the part-time porter will be working on site the full number of hours per week as planned in the First Year's Budget. See below for further details and see Section C-1.5, Note 5 to SCHEDULE A in Section E, Note 3 to the First Year's Budget in Section F.

Section A-16.1. *Building Staff.* The Building staff will consist of a non-resident superintendent/handyman who will be available to visit the Building on an as needed basis, but not less often than 3 days a week for a total of 15 hours per week, and a porter who will be scheduled to work in the building five (5) times a week for four (4) hours at each visit. The forgoing level of staffing complies with all applicable Laws, including the janitorial requirements stated under the New York City Administrative Code. See Note 4 to SCHEDULE B in Section F for full discussion.

Section A-16.2. *Community Recreation Room Exercise Room*. All Building Amenities have been completed. These amenities include a community recreation room in the cellar, which will be outfitted with a Miele refrigerator, Miele microwave and Miele dishwasher, and an exercise room. The exercise room is to be equipped with a Primasole Yoga Mat (or no less equal in quality and design) and a Core Fitness Dumbbell Weight Set (or no less equal in quality and design).

Section A-16.3. *Community Terrace and Patio*. The Building is planned to contain a rooftop community Terrace and ground level patio, which will be available from and after the First Unit Closing and occupancy of a Unit, subject to delays caused by Unavoidable Causes

Section A-16.4. *Elevator Service*: One automatic, self-service elevator will serve the cellar, all floors and the main Roof.

Section A-16.5. *Building Security System*. There will be a security camera installed outside of the main entrance, a camera in the lobby, and at least one camera on the roof, which will be operational from and after the First Unit Closing and occupancy of one Unit. The video intercom panel outside of the main entrance also has a camera. The main entrance and side entrance doors will have self-closing mechanisms and will be locked at all times. Each camera will be designed to cover the immediate area within the view of the camera, but will not cover all areas involved. No representation, assurance or guaranty is made or given that that the security system will prevent personal injury or damage to, or loss of, property.

In addition, a video intercom system will be installed outside of the main entrance. Residents will be able to access the Building using mobile phone unlock, a face identification and a pin code entered on the intercom screen. Guests will use the video intercom system to call residents in order to gain access. There is also a handicap accessible service entrance with a key reader for access. Residents will have a key fob and can use their phones to unlock the service entrance.

No representation, assurance or guaranty is made or given that the security system will prevent personal injury or damage to, or loss of, property. See Section C-1.5.

Section A-16.6. *Utilities*. Each Unit will contain connections for utilities, including electricity, heating, domestic hot and cold water, telephone and cable television service. The Building will be wired for a cable television connection to each Unit. Telephone and internet service, and television service will be available through a cable that will be provided. Installation and operation costs of telecommunications and television equipment are to be borne by the individual Unit Owners. Owners will have to make individual arrangements for cable television, telephone and internet services with providers with direct billing to the Unit's Owner.

Electricity will be provided by Consolidated Edison Company of New York, Inc. (or any utility that subsequently supplies electricity to the Building). Each Unit will be separately metered for electricity. Electricity will be provided to each Unit for cooking and hot water provided to the Units. No gas service will be provided to the Units.

Heating and air conditioning for each Unit will be provided by an electric, split system heat pump system consisting of a rooftop condenser, an air handler located in the ceiling of the Unit, and ductwork distributing hot/cold air into the rooms from the handler. There will be one heat pump per Unit.

Section A-16.7. *Telephone and Television*. The Building will be serviced by Time Warner Spectrum or another equal telephone service provider. Units will not be allowed to install wiring in any Common Area without Condominium Board's consent. Units will be prewired and provided with a telephone jack outlet in the bedroom and the living/dining room. Cable television service will be provided by Time Warner Cable or another equal cable service provider. Units will be prewired for cable service and provided with a cable service jack in each bedroom and living/dining room. Charges for telephone and cable services will be paid for by the individual Unit Owner directly to the service provider. Unit Owners are to arrange for telephone and cable television service directly with the utility provider. Internet service must be arranged by the Unit Owner, at such Owner's sole cost and expense.

Section A-16.8. *Refuse Disposal*. Each floor will contains a trash room with a refuse chute for storage and disposal of refuse by Owners and tenants of Units. The refuse will be taken by the porter to the refuse room located in the cellar, which will be used to store the refuse. The refuse will be loaded into plastic bags and taken by the porter to curbside for collection by the New York *City Department of* Sanitation. There will not be a compactor. See Section C-1.5.

Section A-16.9. *Laundry*. Each Unit will have a laundry room or closet outfitted with a side by side Miele (or equal) electric washer and a Miele (or equal) electric dryer. In addition, a common laundry room in the cellar will be outfitted with two pay Bosch (or equal) electric washers and two pay Bosch (or equal) condenser type, non-vent electric dryers that do not require ventilation.

Section A-17. Closing Apportionments Between Sponsor and the Board. At the First Unit Closing, Sponsor and the Condominium Board will apportion certain customary Building expenses. If the closing apportionments results in a "net amount" to be paid by the Condominium Board to Sponsor, the Condominium Board will pay such net amount to Sponsor at the First Unit Closing from the Initial Working Capital Fund and (if insufficient) the balance owed shall be paid, without interest, in twelve (12) equal, consecutive monthly installments on the first day of the month, starting with the first full calendar month after the First Unit Closing, or sooner as, when and from the first Working Capital Payments paid by Purchasers are received by Sponsor that otherwise would have been delivered to the Board, all pursuant to a promissory note to be signed and delivered by the Condominium Board at said First Unit Closing. If the net amount of the closing apportionments is in favor of the Condominium Board: (a) Sponsor's payment of the Initial Working Capital Fund will be credited against the net amount owed and (if insufficient) the deficiency will be paid by Sponsor to the Condominium Board at the First Unit Closing and added to the Working Capital Fund; and (b) an amount equal to such credit that otherwise is to be reimbursed to Sponsor from the first Working Capital Fund contributions of Purchasers of Units will not be paid to Sponsor and instead will be paid to the Condominium Board. See Section N-1.4.

Section A-18. Construction Matters.

Section A-18.1. *Easements*. In order to permit Sponsor to complete construction necessary for the issuance of a Final Certificate of Occupancy and to perform other construction obligations under this Plan or a Purchase and Sale Agreement, Sponsor and Sponsor's Construction Parties shall have the following unfettered easements and rights, among others, with respect to the Common Elements after the First Unit Closing: (a) an easement and right of preferential and priority access to, and use of, the Common Elements (including preferential and priority use of one elevator); (b) an easement and right to transport on, across and through the Common Elements, and to temporarily store construction equipment, materials, supplies and debris on portions of the Common Elements considered appropriate by Sponsor or Sponsor's contractors; and (c) the right to temporarily interrupt Building Services (including water, heating, cooling, electric, gas, ventilation, plumbing and other Building Systems). Sponsor will endeavor to minimize inconveniencing residents of the Building.

Section A-18.2. *Disruptions*. After the First Unit Closing, portions of the Common Elements and Units will still be undergoing construction, equipping, outfitting and decorating, which may extend up to possibly a year or more, subject to delays caused by completion of Units and Punch List Work (which will have the highest priority) and Unavoidable Causes (defined below). During this period, the electrical, plumbing, elevator and other Building Systems may be disrupted temporarily from time to time as Work is performed or Building Systems are balanced and adjusted. The occupied Units, however, will remain habitable and a tenant protection plan to the extent required by Laws will be in place. The term "**Unavoidable Causes**" means acts of nature (such as flood, earthquake or severe or unusually inclement weather); explosion; fire; labor strikes, work stoppage or slowdown; shortage or late delivery or unavailability of materials or supplies; war, emergencies, national defense preemptions, governmental restrictions or actions; endemics and pandemics; court injunctions or orders; power interruption; failure of electrical or mechanical equipment; or other cause or event or circumstance beyond the reasonable control of Sponsor, the Condominium Board or other person in question (as applicable) and not attributable to the improper or bad faith conduct of such person.

Section A-18.3. *Construction Hours*. From and after first occupancy a Unit, Sponsor's Construction Parties shall have the unfettered right to perform Work on Mondays to and including Fridays, from 8:00 a.m. to 5:00 p.m. and on Saturdays from 9:00 a.m. to 1:00 p.m., except that especially noisy Work will not begin before 9:00 a.m., and except further that Work may be performed at any time and on any day to correct or remediate a condition that: threatens or endangers the life, health, safety, security or protection of an occupant of a Unit or requires action necessary to avoid injury to person or damage to property, or the suspension or disruption of an essential or necessary service to a Unit or the Common Elements (collectively, an "**Emergency**") See Section R-4.5.

Section A-18.4. *Security*. At the time of first occupancy of a Unit, all contemplated security systems will be fully operational (see Section C-1.5). No additional security measures are planned as the Common Areas and most, if not all, Units are anticipated to have been substantially completed, subject to customary Punch List Work remaining.

Section A-18.5. *Debris and Dust*. From and after first occupancy of a Unit, the debris from the anticipated remaining work will be removed daily from the Building by Sponsor's appropriate Construction Parties. The dust from work within Units is anticipated to mostly be self-contained in the Units involved in the work. Any dust or dirt in the Common Areas will be cleaned at the end of the work day by Sponsor's appropriate Construction Parties.

Section A-18.6. *Inconveniences*. During the course of completing the construction and build-out of the Common Elements and the Units after the First Unit Closing, Unit Owners in occupancy may experience construction noise, dust, debris, temporary interruptions in service and other inconveniences from time to time. In addition, portions of the Common Elements, including the Building entrance and lobby and the elevator cab may be covered with padding or other protections for this interim period.

Section A-18.7. *Construction Schedule*. Based on the current schedule, the construction of the Building is projected to be sufficiently completed to permit the issuance of a TCO authorizing the residential use of at least one Unit on or about January 1, 2023. Such date is only a target and is not guaranteed. The timetable for substantial completion of all Units and the 324 West 108th Street Public Areas (other than cosmetic or minor work, including Punch List Work listed on a Purchaser's Final Inspection Statement, attached as Exhibit B to the Purchase and Sale Agreement) is currently scheduled to occur within approximately twelve (12) months from such date (i.e., December 31, 2023), unless delayed by events or circumstances beyond Sponsor's reasonable control. While these are good faith estimates of the target dates for substantial completion, Sponsor does not assure, represent or guarantee that these goals will be achieved. See Section C-3.

Section A-18.8. *Construction Changes*. Sponsor has the right to make the following Construction Changes:

(a) to divide, combine and reconfigure Units (see Section I-4, and the requirements to be met in Sections I-5 and I-6);

(b) to substitute equipment or materials and make modifications of layout and design comprising the Building Systems and Unit Facilities; provided, however, Sponsor may not:

(b-1) substitute equipment or materials of lesser quality and design; or

(b-2) change the size or location of the Building or Units or other improvements or Common Elements if such changes affect the percentage of Common Interests or adversely affect the value of any Unit to which title has closed or for which a Purchase and Sale Agreement has been executed and in effect unless all affected Unit Owners and Purchasers consent in writing to such change.

This Plan will be amended to disclose any material Construction Changes as required by Article 23-A of the General Business Law and Part 20 of the Department of Law's regulations. When required, the Declaration will be revised appropriately to reflect any material Construction Changes. No material change may be made to a Unit in contract without the consent of the Purchaser.

Section A-18.9. *Minor* Construction Defects. Sponsor will not be obligated to correct the following Minor Construction Defects:

(a) all Construction Changes made in accordance with Construction Change Requirements (defined in Section O-2.8.2);

(b) all minor variations from: Sponsor's Plans and Specifications, the floor plans of a Unit or a description of the construction of the Building (including the Units and Common Elements) set forth in this Plan; however this Plan will be amended to disclose any material variations from the foregoing as required by Article 23-A of the General Business Law and Part 20 of the Department of Law's regulations and no material variation may be made to a Unit in contract without the consent of the Purchaser;

(c) all variations necessitated by site conditions, or by construction, job or governmental requirements, provided all Construction Change Requirements are met to the extent applicable;

(d) all Construction Defects covered by assignable, unexpired warranties or other undertakings (however denoted) from manufacturers, contractors, suppliers or others that are assigned to, or benefit (without assignment), a Unit Owner or the Condominium Board;

(e) any condition caused by normal use, wear, tear, deterioration, settlement or shifting, or aging or seasonal variations; and

(f) all minor conditions or defects involving color, alignment, fit, noise, drafts, cracks, chips, scratches, breaks, curling, warpage or other imperfections.

Odors, noise, fumes, vapors and similar inconveniences transmitted from one Unit to another Unit or from the Common Elements to a Unit are common occurrences in multi-family dwellings and are not Construction Defects.

All changes must be disclosed in an amendment to this Plan and when necessary the Declaration as required by Article 23-A of the General Business Law and Part 20 of the Department of Law's regulations. See Section O-2.11.2 for full discussion.

Section A-18.9.2. Patent and Latent Construction Defects. Sponsor's only obligations and liability for Construction Defects are as follows:

(a) (in the case of a Unit Property) to repair, replace or otherwise correct in the manner determined by Sponsor (in its sole judgment) only those:

(a-1) Patent Construction Defects in a Purchaser's Unit and Patent Construction Defects in the Common Elements that affect a Unit as to which a reasonably detailed Defect Notice signed by Purchaser and received by Sponsor within a deadline of six months from the Closing of Title to the Unit; or

(a-2) Latent Construction Defects in Purchaser's Unit and Latent Construction Defects in the Common Elements that affect a Unit as to which a reasonably detailed Defect Notice

signed by Purchaser and received by Sponsor within a deadline of one year following the Closing of Title to the Unit; and

(b) (in the case of the Common Elements) to repair, replace or otherwise correct in the manner determined by Sponsor (in its sole judgment) only those Construction Defects (both Patent and Latent) in the Common Elements that are listed in a reasonably detailed Defect Notice signed by any Independent Board Member and received by Sponsor within a deadline of one year from the later of issuance of a Certificate of Occupancy or completion of that portion of the Common Elements which is claimed to be defective.

Nothing contained herein shall reduce or otherwise abridge any rights of Purchaser under Article 23-A of the General Business Law, or Part 20 of the Department of Law's regulations nor excuse Sponsor from Sponsor's obligations to comply with Article 23-A of the General Business Law or Part 20 of the Department of Law's regulations.

See Section O-2.11.2 for definitions of capitalized terms and full discussion.

Section A-18.10. *Remedies for Construction Defects*. If Sponsor defaults in Sponsor's Obligations to correct Construction Defects, the sole right and remedy of a Purchaser (for Construction Defects in Purchaser's Unit Property) or the Condominium Board (for Construction Defects in the Common Elements) is a suit to compel Sponsor to repair, replace or otherwise correct (at Sponsor's exclusive option) the Construction Defects, but Sponsor shall not be liable to Purchasers or the Condominium Board for any losses resulting therefrom. The foregoing, however, shall not limit liability for losses based on common law fraud or arising under Article 23-A of the General Business Law or Section 63 of the Executive Law. See Section O-2.11.4.

Sponsor shall be excused, released and discharged from Sponsor's Obligations for Construction Defects in a Unit Property or the Common Elements if reasonably continuous access thereto by Sponsor and Sponsor's Construction Parties is prevented and is not given within a deadline of thirty (30) days ("TIME OF ESSENCE") after written notice thereof is mailed by certified mail (return receipt requested) or hand delivered, respectively, to the Purchaser of such Unit or an Independent Board Member, as applicable. See Section O-2.11.4.

Section A-18.11. *15-Year Roof Warranty*. The Roof will have a fifteen (15)-year warranty by the manufacturer, which shall be limited to repairs of the Roof caused by defective material, but the warranty will exclude repairs to any areas or facilities within the Building caused by leaks in the Roof. See DOCUMENT 4 in Part II of this Plan entitled "Description of Property and Specifications or Building Condition".

Section A-18.12. *Wood Floors*. The Units will contain engineered wood floors in bedrooms and living and dining rooms. Wood floors should not be washed with water and should be maintained in accordance with the manufacturers recommendations. Wood flooring is also subject to changes due to humidity as well as chipping, scratching, cracking, curling, warpage and other imperfections. Sponsor does not represent, assure or guaranty that the wood floors will maintain their appearance after they are

subject to wear and tear and shall not be responsible or liable for any changes in appearance or condition resulting therefrom.

Section A-19. Sponsor's Financial Resources for Construction and Carrying Costs of Unsold Units. Sponsor represents that it has the financial resources: (a) to complete all planned construction of the Units and Common Elements in order to obtain a Final Certificate of Occupancy; and (b) to pay for all "carrying costs" (namely, Common Charges, Special Assessments (if any) of the Condominium Board, real estate taxes and financing debt service) of Unsold Units. No bond or security is being provided to secure Sponsor's obligations for said construction or carrying costs. See Section O-2.3, Section O-2.7 and Section O-2.15 for further discussion.

Section A-20. Limited Period to Send Notice of Claim. Sponsor's agreement to indemnify the Condominium Board and Unit Owners from and against suits or proceedings arising out of Sponsor's Acts or Omissions is conditional upon any Independent Board Member (on behalf of the Board) in the case of a claim with respect to the Common Elements, or an affected Unit Owner in the case of a claim with respect to said Owner's Unit Property, promptly notifying Sponsor in writing of any claim for which indemnity is sought, but in no event shall Sponsor receive such notice, together with any complaint or petition (as applicable) as to which Sponsor is not directly served with process therein, later than five full business days before an answer is required to be served or filed. Such five-business day period is a "TIME BEING OF ESSENCE" or deadline period. See Section O-2.1.

Section A-21. No Housing Merchant Implied Warranty. Article 36-B of the General Business Law entitled "Warranties on Sale of New Homes" does not apply to newly constructed or rehabilitated condominium units in buildings taller than five stories and, therefore, does not apply to the Units. Except to the extent set forth in Section O-2.11.5, Sponsor does not warrant the materials or workmanship of any Unit or the Common Elements. Sponsor's obligation, regardless of any limitations in the warranty or in this Plan, is to construct the premises in accordance with all applicable codes and filed plans and specifications, and that any conflict between the disclaimers and 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.

Section A-22. Square Footage in the Offering Price Schedule and Floor Plans Exceed Usable Floor Area. In accordance with customary practice in New York City, the approximate floor area of each Unit shown on the Offering Price Schedule (in Section E) or the Unit's floor plan (in DOCUMENT 5 in Part II of this Plan) has been measured as follows. The approximate interior contiguous floor area of each Unit has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line) enclosing the Unit, or from the midpoint of a Boundary Wall separating the Unit from another Unit. The approximate non-contiguous floor area of a Unit's Storage Locker has been measured from the exterior side of the Boundary Wall enclosing the Storage Locker, or from the midpoint of a Boundary Wall separating two Storage Lockers. The approximate outdoor floor area of a Unit's Balcony, Terrace, Juliette Balcony or Yard (if any) has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line), or from the exposed surface of the

prevailing Building Wall, enclosing such outdoor floor area. All Common Elements bordering or within the indoor or outdoor floor areas of a Unit (e.g., Boundary Walls and any interior columns or shafts) have been included in the computation of the floor areas of the Unit, but such Common Elements are not part of the Unit. As a result, the indoor or outdoor floor areas of a Unit will substantially exceed the Unit's useable floor areas.

The room and area dimensions shown on a Unit's floor plan, however, are measured from the exposed interior surface of the prevailing walls enclosing the room or area (as applicable). All measurements and dimensions are based on construction drawings.

A minor or immaterial inaccuracy in the actual square footage (i.e., floor area) or the actual size of individual rooms or areas of a Unit when built from that shown on its floor plan in DOCUMENT 5 in Part II of this Plan (or any other drawing or diagram) and the Offering Price Schedule (in Section E) shall not excuse a Purchaser from his or her obligation under the Purchase and Sale Agreement to pay the full Purchase Price and all Closing costs, without abatement, set-off or credit, and without liability or recourse of any kind against Sponsor or the Selling Agent or their respective Related Parties.

If the actual overall size of a Unit when built, as similarly measured as set forth above, is materially smaller than the total square footage of these floor areas stated on its floor plan in DOCUMENT 5 in Part II or in the Offering Price Schedule, this Plan will be amended to offer the affected Purchaser the right for fifteen (15) days after Presentation of the Plan Amendment to rescind and recover Purchaser's Deposit together with any earned interest thereon, which shall be the limit on Purchaser's remedy and Purchaser's sole recourse against Sponsor and its Selling Agent, and their respective Related Parties. Sponsor reserves the right to make changes in the planned design, configuration, room dimensions, arrangement of windows for views and "light and air" and approximate overall size (collectively, the "**Unit Layout**"). See Section I-4) and footnote (2) to the Offering Price Schedule.

Section A-23. Limited Common Elements; Unit Windows and Doors. The Limited Common Elements are the portions of the Common Elements that are restricted and limited to the exclusive use and enjoyment of a specified Unit Owner and consist of only the Unit windows and all entrance doors to a Unit or leading from the interior of a Unit to its Balcony, Terrace, Juliette Balcony or Yard (if and as applicable). Each Owner will responsible, at the Owner's sole cost and expense, to maintain, repair, replace and restore the Unit's Limited Common Elements. See Section B-7.2.3 and Section R-4.1.

A Unit's windows and exterior doors and related Structures enclosing these outdoor areas, may not be replaced, removed or otherwise altered or decorated without obtaining in each instance the prior written the reasonable consent of the Board and (until there are no Unsold Units or the Final Certificate of Occupancy of the Building is issued, whichever is the later to occur) the consent of Sponsor; except window shades, blinds, curtains and other window treatments will be permitted if they are light colored with light colored backings facing the outdoors in conformity with the Rules and Regulations and any amendments to them adopted from time to time by the Condominium Board (said amendments shall be

subject to obtaining the prior written consent of Sponsor while Sponsor owns any Unsold Unit). See Section B-7.8.1.

Section A-24. Views from Units (Light and Air). The Building is located in Manhattan, which is experiencing new construction or rehabilitation projects. Because nearby sites may be developed with new buildings or the buildings thereon may be reconstructed with additional floors, the views and "light and air" from any Unit at the time of purchase or Closing of Title may change and become obstructed. No representations are made or assurances given that the view or views from any Unit will remain as they are as of the date of this Plan or the date of Closing of Title to a Unit, or thereafter. Sponsor, however, is not planning and is unaware of any planned development or construction at sites near the Building at the date of this Plan. See Section AA-5.

Section A-25. Construction Inconveniences from Other Sites. In addition, Unit Owners may experience the noise, disruption, dust and other inconveniences associated with nearby construction. Sponsor, however, is not aware of any planned development or construction at sites near the Building at the date of this Plan. See Section AA-5.

Section A-26. Insurance.

Section A-26.1. *Insurance to be Maintained by Condominium Board.* The insurance to be maintained by the Condominium Board will include the cost to replace the Common Elements, including the Building Walls, Unit Boundary Walls, Structural Floors and Structural Ceilings, following a fire or other casualty based on a "replacement cost endorsement". Under this endorsement, the insurance carrier agrees to reimburse the Condominium Association for losses up to the full amount of the policy limit, regardless of the actual cost of replacement. The effect of the endorsement is to waive any claim the insurer might otherwise have for co-insurance whereby the Condominium Association would bear a portion of the cost of replacement. The endorsement, however, does not mean that the Condominium Board would necessarily receive sufficient proceeds to actually fully rebuild or restore the Building in the event of its total or substantial destruction. The Condominium Board will be responsible to periodically review the amount of casualty insurance for the Building's Common Elements to assure that the amount of coverage is sufficient, See Section B-7.8.4 and the Insurance note in SCHEDULE B in Section F for discussion.

Section A-26.2. *Insurance to be Maintained by Sold Unit Owners.* The Condominium Association's insurance will not cover: (a) losses to the furniture, furnishings, personal belongings, fixtures, cabinets, appliances, finishes or other improvements or contents of, or within, a Unit, including wall and floor coverings and finishes, window treatments and other decorations; or (b) claims for personal injury and property damage arising from occurrences within a Unit or on a Unit's Terrace, Juliette Balcony, Balcony or Yard (if and as applicable). Each Owner of a Sold Unit (a "**Sold Unit Owner**") shall be required to obtain and maintain condominium homeowner's insurance with additions and alterations coverage, personal property coverage and personal liability limits of not less than $300,000.00. This requirement is not applicable to Owners of Unsold Units (each, an "**Unsold Unit Owner**"). See Section O-2.5.

It is noted that the liability insurance to be maintained by the Condominium Board will cover claims for personal injury and property damage arising from occurrences on the Common Elements. Nonetheless, Unit Owners may be liable, jointly and severally, for occurrences in, on or caused by the Common Elements to the extent the liability insurance maintained by the Condominium Board is inadequate or does not cover the risk. See Section B-5.8.3 and Section R-6.4 for discussion.

Section A-27. Certain Sponsor's Rights.

Section A-27.1. *Definition*. The special easements, rights, licenses, exemptions, remedies, indemnities, privileges, benefits and protections of Sponsor set forth in this Plan or the Condominium Documents, as each may be duly amended by Sponsor, are called collectively, "**Sponsor's Rights**" and shall apply to all Unsold Units owned by Sponsor at the time in question. Certain Sponsor's Rights are listed below.

Section A-27.2. *Condominium Amendment*. Sponsor's Rights include Sponsor's unfettered right to amend the Condominium Documents (each, a "**Condominium Amendment**") without the consent of the Condominium Board or Unit Owners for the purpose (among other things) to reflect Unit Changes made to Unsold Units or to conform the Condominium Documents to objections from an Institutional Lender, a Governmental Authority or a title insurer, or to correct scrivener's errors. See Section O-1.12.1 for full discussion.

Section A-27.3. *Prohibited Condominium Amendments*. No Condominium Amendment, however, may change the use or Common Interest of a Sold Unit, or require a Sold Unit to physically be modified, nor adversely affect the priority or validity of the lien of any purchase money mortgage or Institutional Lender's mortgage on a Sold Unit, unless the Owner of the affected Sold Unit or said mortgage lender (as applicable) consents in writing to the Condominium Amendment. In addition, no Condominium Amendment may be made by the Condominium Board or other Unit Owners that: (a) unreasonably interferes with the disposition of an Unsold Unit; or (b) imposes new, different or additional fees or charges (whether or not discriminatory) on Sponsor or a Purchaser, tenant or occupant of an Unsold Unit; or (c), or limits, restricts, impairs, burdens or otherwise changes the permitted use or occupancy, or Common Interest, or value of an Unsold Unit; or (d) otherwise adversely affects Sponsor's Rights, without obtaining in each instance the prior written consent of Sponsor, recorded together with such Condominium Amendment. See Section O-1.12.2 for full discussion.

Section A-27.4. *Sponsors Right to Make Unit Changes*. In order meet the possible demand for Units of different sizes and/or configurations, or to meet particular requirements of Purchasers or prospective Purchasers, or for any other reason or no reason, Sponsor reserves the right from time to time, both before and after the First Unit Closing, to divide, combine, reconfigure and alter Units in compliance with Part 20, Section 20.3(k) and the Unit Change Requirements, as more fully explained in Section I. The Plan will be amended to reflect such Unit Changes and no Unit Change shall be made for a Unit in contract without the consent of the Purchaser of such Unit. All such Unit Changes must be disclosed in an amendment to this Plan and when necessary the Declaration as required by Article 23-A of the General Business Law and Part 20 of the Department of Law's regulations.

Section A-27.5. *Sponsor's Right to Grant Easements, Licenses and Leases*. For so long as Sponsor owns any Unsold Unit, Sponsor shall have the right, on behalf of all Unit Owners, to grant easements, licenses and leases to all or any portion of the Common Areas of the Property as Sponsor deems necessary or desirable to: (a) properly operate and maintain the Common Elements; (b) promote and protect the general health, safety, security, protection or welfare of Owners or occupants of one or more Units; (c) to comply with applicable Laws or requirements of a Governmental Authority having jurisdiction; or (d) to install, maintain, repair, restore and operate Communications Facilities and other utility services. See Section O-1.13 for discussion.

Section A-27.6. *Sponsor's Rights to Sell, Lease, Sublease and Mortgage*. Subject to compliance with Sponsor's construction financing, Sponsor shall have the unfettered right to sell, convey, lease, sublease and mortgage (with one or more mortgages) Unsold Units from time to time, free of the Condominium Board's Right of First Refusal to purchase or lease the Unsold Unit, and without:

(a) the consent of the Condominium Board or Unit Owners;

(b) complying with any kind of condition, requirement or restriction, except Sponsor shall not rent Unsold Units until after the First Unit Closing, except (b-1) Sponsor may enter into an Interim Use and Occupancy Agreement for a Unit with the Purchaser of such Unit and (b-2) the initial term of the lease shall not be less than six months, which shall be the only requirement or limitation applicable to Sponsor's Right to rent;

(c) complying with any requirements as to the form of a lease, sublease, mortgage or other instrument (except each lease and sublease of an Unsold Unit shall expressly provide that it is subordinate to the Condominium Documents);

(d) Sponsor or a Purchaser, tenant or subtenant paying any fee, charge, "flip tax", "exit fee", "entrance fee", imposition or expense to the Condominium Board or its Managing Agent or attorneys (however, this will not excuse the payment of any applicable governmental taxes charged by Law, such as the New York City and New York State transfer taxes, which shall be payable by the Purchaser pursuant to the Purchase and Sale Agreement); and

(e) the proposed Purchaser, Owner, tenant or subtenant (as applicable) submitting an application, financial or bank statement, copies of income tax returns, references or other documents or attending a personal interview or complying with any requirements, restrictions or otherwise.

Section A-27.7. *Sponsor Designee*. A person who is designated by Sponsor in a Plan Amendment or a deed, or a Condominium Amendment or other instrument executed and acknowledged in recordable form by Sponsor is a "**Designee**" or a "**Sponsor Designee**". All of Sponsor's Rights under this Plan, a Plan Amendment and the Condominium Documents shall inure to the benefit of a Sponsor Designee, shall apply to the Unsold Units owned by such Designee at the time in question, and shall be binding upon, and enforceable by a Sponsor Designee against, the Condominium Board and all Unit Owners with respect to each Unsold Unit owned by a Sponsor Designee, but subject to the limitations,

restrictions and requirements applicable to Sponsor's Rights as contained in this Plan. Each Designee shall have the same right to designate a person as a Sponsor Designee in the same manner as Sponsor provided herein. See Section O-1.

Section A-28. Certificate of Occupancy. Purchasers are advised that in New York City, newly constructed and newly renovated buildings are sometimes offered as condominium projects without a FCO covering the entire building but with only a TCO and sometimes with several successive Temporary Certificates of Occupancy. Certificates of Occupancy are generally governed by Section 301 of the New York Multiple Dwelling Law and local building codes and rules. Both TCOs and FCOs are issued by the DOB. A TCO is intended to indicate that the property conforms substantially to the DOB approved plans and specifications, and to the requirements of all applicable laws, rules, and regulations for the uses and occupancies specified in the TCO. No change of use or occupancy shall be made unless a new Certificate of Occupancy is issued. All TCOs have an expiration date. A TCO typically expires 90 days after the date of issuance. When a TCO expires and is not renewed, it may be difficult or impossible to buy insurance, refinance, or sell units. In New York City, it is common for sponsors to commence unit closings when some or all units are covered by a TCO rather than a FCO. Sponsor anticipates this scenario may occur. Sponsor and its principals will undertake the responsibility for extending each TCO received prior to expiration thereof, and ultimately for obtaining a FCO covering the entire Building. However, Sponsor and its principals make no representation or guarantee that DOB will issue the FCO within two years, which is the timeframe anticipated by the Multiple Dwelling Law (the "**MDL**") for issuance of a FCO. NOTWITHSTANDING THE FOREGOING, SPONSOR AND ITS PRINCIPALS ARE OBLIGATED TO PROCURE THE FINAL CERTIFICATE OF OCCUPANCY FOR THE ENTIRE BUILDING, AND SHALL EXERCISE BEST EFFORTS TO OBTAIN THE FCO WITHIN SUCH TWO-YEAR PERIOD WHILE KEEPING THE TCO CURRENT. Unit Owners and the Condominium Board shall be obligated to cooperate with and refrain from obstructing Sponsor in these undertakings.

Purchasers are advised to visit the DOB website (Factsheet on Certificates of Occupancy at *http://www.nyc.gov/html/dob/downloads/pdf/co_factsheet.pdf*) for recommendations when buying units in a condominium that does not have a FCO. See Section O-2.9.

Section A-29. Security for FCO. In accordance with Part 20.3(t)(13) of the Department of Law's regulations, Sponsor is required to maintain all Deposits and funds paid on account of the Purchase Price in the special escrow account required by General Business Law Section 352-e(2-b) unless Sponsor's engineer, architect or other qualified expert certifies that a lesser amount will be reasonably necessary to complete the Work to the Common Elements and the Building Services to be provided to all Units needed to obtain a FCO, in which case the sum exceeding the amount so certified by Sponsor's engineer, architect or other qualified expert may be released from the special escrow account. Alternatively, Sponsor must deposit with an Escrow Agent an unconditional, irrevocable letter of credit or post a surety bond in the amount so certified, or in an account that, when added to the Deposits being maintained in the special escrow account, will equal not less than the amount so certified. Sponsor may also secure its obligation to obtain a FCO with other collateral acceptable to the Department of Law and disclosed in a

Plan Amendment (e.g., cash deposit or (if acceptable) the unfunded portion of a mortgage loan). As the Work progresses, Deposits held for Units conveyed to Purchasers may be released to Sponsor from time to time, provided the remaining Deposits maintained in the special escrow account, together with such other collateral acceptable to the Department of Law, shall be not less than the amount then so certified to be reasonably necessary to complete all remaining Work for the Common Elements and the Building Services to be provided to all Units in order to obtain a FCO.

Section A-30. "As Built" Plans. With reasonable promptness after issuance of a Final Certificate of Occupancy, Sponsor will deliver to the Condominium Board or its Managing Agent a set of "as built" plans used for the major components of the Building's Systems and the maintenance manuals for the Building's mechanical equipment to the extent provided by the applicable manufacturer, vendor or contractor. See Section O-2.14.

Section A-31. Business Judgment Rule. The decisions, approvals, consents, actions and transactions of the Condominium Board or the Sponsor Board Member or Board Members under the Condominium Documents that are made in good faith, for the purposes set forth in the Condominium Documents and within the scope of the party's authority, absent bad faith, breach of a fiduciary obligation, self-dealing, breach of contract or disparate treatment are called the "**Business Judgment**" and shall have the equivalent status of those made by a cooperative housing corporation as to which the so-called "**Business Judgment Rule**" articulated in *Levandusky v. One Fifth Ave Corp.* (75 NY2d 530 [1990]). Under this Plan and the Condominium Documents, the Business Judgment Rule shall not apply to any decisions or transactions affecting, directly or indirectly, the Sponsor or other Owner of an Unsold Unit, the Sponsor's Rights under this Plan or the Condominium Documents, or an Unsold Unit, which shall be subject to scrutiny and determined solely on the merits by a court, arbitration panel or other forum having competent jurisdiction, without any deference, weight or favorable assumption being given to the Condominium Board. The foregoing is not contrary to the Condominium Act or any other statute, and its enforceability has yet to be determined by a court. See Section Q-1.7.2.

Section A-32. Prohibited Uses; General Requirements.

Section A-32.1. *Prohibited Uses*. The Common Elements, the Sidewalk and the Units (or only Sold Units where indicated) shall not be used for any of the following uses (collectively, "**Prohibited Uses**"):

(a) any use or alteration of, or matter kept in or on, a Sold Unit or its appurtenant Limited Common Element, that, in the Business Judgment of the Board, would impair or threaten the structural integrity of the Building, or damage to the Common Elements or another Unit Property, or the life, health, safety, protection or security of Owners or tenants of Units;

(b) any use that violates applicable Laws (as such Laws may change from time to time as a result of a statutory change, a zoning variance, a new or amended Certificate of Occupancy of the Building or otherwise);

(c) any use of, or matter kept in or on, a Sold Unit or its Limited Common Element, whether permitted or suffered, that results in, or in the Business Judgment of the Board would result in, the cancellation or notice of cancellation of insurance maintained by the Board;

(d) any use of a Sold Unit that increases or, in the Business Judgment of the Board, would increase, the rate of insurance for the Property above the rate in effect at the date of recording the Declaration, unless the Unit Owner responsible for such increase pays the additional premium therefor as a Specially Allocated Expense;

(e) any use inconsistent with or in violation of its permitted use;

(f) any use of, or practice permitted or suffered in, on or to a Sold Unit or its Limited Common Element, a Common Element, a vault or the Sidewalk that, in the Business Judgment of the Board, is an unreasonable and substantial annoyance or nuisance to an Owner or a tenant of another Unit or an unreasonable, substantial and repeated interference with the peaceful possession or proper use and enjoyment of a Unit or the Common Elements for their intended or permitted purposes as stated in the Condominium Documents;

(g) any use of a Common Element causing or comprising waste;

(h) any use involving the storage, purchase, sale, disposal or release or other disposition of any hazardous, explosive, toxic or radioactive material, matter, substance or waste that is or becomes regulated under applicable Law, including: asbestos; polychlorinated biphenyls (i.e., "PCBs"); radioactive substances; petroleum, petroleum-based derivatives and hydrocarbons; urea formaldehyde; and any "hazardous substance" or "hazardous waste", as defined in and regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, 6903, 6921, et seq., as each statute may hereafter be amended from time to time, or any other existing or hereafter enacted or promulgated new applicable federal, state or local Law, but excluding from the foregoing the following:

(h-1) petroleum products for mechanical equipment of a Unit or Common Element that are properly used and stored in accordance with applicable Law or the Condominium Documents; and

(h-2) cleaning, heating and lubricating products in general use in first-class, high quality residential buildings located in the vicinity of the Building and similar to the Building's amenities; provided, however, such products are properly used and stored in accordance with applicable Laws);

(i) any use of a Unit or any portion thereof by any International Organization, unless such International Organization waives its sovereign or diplomatic immunity in conformity with the terms contained in the Declaration; and

(j) any change in use that would require a new or amended Certificate of Occupancy that would affect the permitted use of another Unit.

See Section R-7.5 for discussion.

Section A-32.2. *General Requirements*. The use and enjoyment of the Common Elements, the vaults and the Sidewalk adjacent to the Property by each Unit Owner or only each Sold Unit Owner (as indicated), and all Unit Users of such Unit Owner or only each Sold Unit (as applicable), and the Condominium Board, and the use and enjoyment of each Unit or only each Sold Unit (as indicated) and its Limited Common Elements by the Owner thereof and all Unit Users of such Sold Unit, shall be in accordance with the following requirements (collectively, the "**General Requirements**"):

(a) the requirement to use and enjoy the Common Elements, vaults, Sidewalk and Units (or only Sold Units where indicated) and their respective Limited Common Elements for the purposes for which each is reasonably suited, capable, designed and intended, and as permitted or stated in the Declaration, the By-Laws or the Rules and Regulations, but not to permit or suffer Prohibited Uses;

(b) the requirement to use and enjoy the Common Elements, the Limited Common Elements, the Sidewalk, the vaults and the Units in accordance with the Building Standard and in a manner that shall not hinder or impair the exercise of, or infringe, the Sponsor's Rights;

(c) the requirement to maintain, repair, restore, alter, operate or otherwise perform all manner of labor, job, action and activity, whether structural or non-structural, extraordinary or ordinary (collectively, "**Work**"), affecting a Unit, a Limited Common Element, a Common Element, an Association's Asset, a vault or the Sidewalk as summarized in this Plan and as more fully set forth in the Declaration and the By-Laws (the "**Work Requirements**");

(d) the requirement to obtain the consent of Sponsor or (after Sponsor no longer owns a Unit) the Condominium Board to alter or otherwise change the aesthetics, architectural integrity or appearance of the exterior Building Walls, Unit windows or street entrances, unless required by Law or in connection with permitted maintenance or repairs performed in accordance with the Building Standard; provided, however, such changes (including design and materials) shall be consistent in all material respects to the original aesthetics, architectural integrity and appearance of such exterior Building Walls, Unit windows or street entrances as determined in the Business Judgment of Sponsor or (after Sponsor no longer owns a Unit and the Final Certificate of Occupancy is issued) in the Business Judgment of Condominium Board;

(e) the requirement of each Sold Unit Owner to not discharge, nor permit or suffer (whether knowingly or unknowingly) such Owner's tenant to, discharge, any materials or items into, or to emanate from, such Owner's Unit into waste lines, vents or flues that causes or would reasonably expect to cause damage thereto;

(f) the requirement of each Sold Unit Owner to not, nor permit or suffer (whether knowingly or unknowingly) such Owner's tenant to, emit fumes, vapors or odors from such Owner's Unit that would unreasonably disturb or interfere with the comforts, conveniences or use and enjoyment of another Owner or a tenant of such other Owner's Unit;

(g) the requirement of each Sold Unit Owner to not install or use, nor permit or suffer (whether knowingly or unknowingly) a tenant of such Owner's Unit to install or use, any facilities in or on said Owner's Unit or the Common Elements that exceeds the Building's permissible floor load or electrical capacity under applicable Law;

(h) the requirement of each Sold Unit Owner, at its sole cost and expense, to install and maintain in its Unit, and to cause a tenant of such Owner's Unit to install and maintain therein, such insulation or buffers or other material or apparatus as may be necessary to prevent the transmission from such Owner's Unit to another Unit of commercially unreasonable disturbing noise, vibration, odor, fume or other interference with another Unit's electrical, internet, television or other Communications Facilities; and

(i) until issuance of the Final Certificate of Occupancy, the requirement to obtain the consent of the Sponsor for any Work to be undertaken by or behalf of the Condominium Board or a Unit Owner or its tenant that requires a Governmental Approval or a Work Permit or an application therefor.

Section A-33. Outfitting of Units. Residential Units are planned to be outfitted as follows subject to the right reserved to Sponsor to substitute material and appliances of no less equal in quality or design: Miele refrigerator; Miele kitchen induction cooktop; Miele kitchen convection oven; Miele kitchen electric dishwasher; Miele electric washer and dryer; Poggenpohl kitchen cabinets with siletone kitchen counters; tongue and groove, end matched engineered 5/8" European oak flooring by Modera with a cured oil finish in living and dining rooms, set on a plywood subfloor; bathroom tile floors and baseboards; Robern bathroom vanities and medicine cabinets with soft close hinges and matt white lacquered finish; and light colored painted gypsum board walls and ceilings. The Purchase Price of a Unit includes all of the foregoing items. See Section C-1.4 and see the Description of the Property and Specifications or Building Condition (DOCUMENT 4 in Part II of this Plan) for appliance makers, model numbers and further details.

Section A-34. Use and Occupancy of Unsold Units. Unsold Units shall be exempt from all restrictions and requirements in the Condominium Documents applicable to the use and occupancy of Sold Units and may be used for any lawful purpose, including as models and offices for the sale, promotion, rental, management and operation of Unsold Units. Such permitted uses of the Unsold Units may be noisy, emit odors, involve heavy traffic and cause other effects that need not be compatible with the primary use of the Building for dwelling purposes. The Condominium Board and the other Unit Owners shall not have the right to approve or consent to tenants or Unit Users of Unsold Units, nor impose any restrictions, limitations, requirements with respect to, the use or any changes in the use, or operation of, or the business conducted in, the Unsold Units, or any portions thereof, nor levy any fees or charges or impositions on Sponsor or other Owners of Unsold Unit, or Unit Users of Unsold Units, in connection therewith. The Unsold Units may be occupied by any person or persons approved by Sponsor, regardless of any relationship or lack of relationship with Sponsor. See Section B-7.5.1 and Section O-1.5.

Section A-35. Window Guards. Each Unit Owner shall notify the Condominium Board or the Managing Agent, if any, in writing when a child under the age of eleven (11) years lives or resides (even

temporarily) in the Unit. Such Unit Owner shall be obligated to install, at said Unit Owner's sole cost and expense, window guards (or safety "stops" in lieu of window guards, designed specifically to prevent a child from falling out of the window) in all windows of the Unit in accordance with applicable Law. The design and composition of the window guards shall conform to the architectural features of the Building as determined solely by the Condominium Board and (until there is no Unsold Unit and the Final Certificate of Occupancy is issued) Sponsor. Such Unit Owner shall maintain all window guards (or stops) installed in, on or to the Unit and shall not remove them until permitted by applicable Laws. The installation and removal of the window guards (or stops) shall be performed in accordance with all applicable Work Requirements, which (among others) require a Sold Unit Owner (but not an Unsold Unit Owner, who is exempt from this requirement): (a) signing the Building's standard alteration agreement with such modifications as the Board may determine to be appropriate (in its sole judgment); and (b) obtaining the prior written reasonable consents of the Condominium Board and (until there is no Unsold Unit and the Final Certificate of Occupancy is issued) Sponsor. In the event of any disagreement between the Board and Sponsor (whenever its consent is required), the decision of Sponsor shall be paramount and control. See Section R-5.4.

Section A-36. Aesthetic Controls. In order to protect the structural integrity and weather tightness of the Building and the safety of lower floors as well as the Sidewalk, and to preserve the architectural and aesthetic harmony of the Building's façade and minimize possible unsightliness, a Sold Unit's private Terrace, Juliette Balcony, Balcony or Yard (if and as applicable), and related Structures enclosing these outdoor areas, may not be replaced, removed or otherwise altered or decorated without obtaining in each instance the prior written the reasonable consent of the Board and (until there are no Unsold Units or the Final Certificate of Occupancy of the Building is issued, whichever is the later to occur) the consent of Sponsor in each instance. The foregoing restrictions do not apply to Unsold Sold Units (including their windows exterior doors, private Terrace, Juliette Balcony, Balcony or Yard, and related Structures enclosing these outdoor areas, if and as applicable). Sponsor or other Owner of an Unsold Unit shall have the unfettered right to alter and decorate their respective Unsold Units, other than the requirement to comply with the applicable General Requirements. See Section R-5.4.

Section A-37. Sponsor's Obligations for Violations. Sponsor, at its sole cost and expense, will be obligated to correct within a reasonable period of time after the First Unit Closing (subject to delays due to Unavoidable Causes) any violation noted or issued against the Property that are outstanding at the First Unit Closing, other than violations caused by Acts or Omissions of Owners, occupants or tenants in their own Units, unless Sponsor is otherwise required to correct the conditions causing such violations under the Purchase and Sale Agreement with the applicable Unit Owner. At the First Unit Closing, Sponsor will escrow with Paley Group, P.C. an irrevocable and unconditional letter of credit, or cash, or equivalent security, to secure the foregoing obligation. The amount escrowed will be sufficient to correct such violations as estimated by an independent architect or engineer selected by Sponsor. See Section O-2.22 for full discussion.

There is a $2,590 civil judgment related to a fuel bill owed by a former owner of the Property who is unrelated to Sponsor and Sponsor's principals. Sponsor had paid and believed the judgment had

been removed or record. Sponsor shall remove such judgment and any other title objection that impacts the marketability of title before the first conveyance of a Unit under this Plan. See Section X-1.2.

Section A-38. Building Conditions. The observable portions of the Building (without damage to walls, floors or ceilings) that are not being rehabilitated or newly constructed are generally in fair condition or without signs of settlement cracks, bulges, leaning conditions, or other signs of distress, or (if otherwise) Sponsor states will be repaired or refurbished to fair condition by Sponsor.

The steps leading to the entrance doors do not meet the current Building Code minimum depth requirements. This is a permitted non-conforming condition permitted under the NYC Building Code and is not a violation under the NYC Building Code.

In addition, the front stoops/porch and steps, as well as the cellar access vaults, are located slightly beyond the Property line and have been permitted to exist for decades under a revocable, undocumented license from The City of New York, as owner of the sidewalk. These conditions are commonly found in New York City and have remained undisturbed. In the unlikely event the DOB would revoke said license and require the removal of the minor encroachments by the front steps/porch and steps, and the cellar access vaults, the Condominium Board, as a Common Expense assessed to all Unit Owners Pro Rata to their respective Common Interests, would have to undertake such work. The current estimated approximate cost of engineering, filing and construction is $15,000. These changes, nonetheless, would not affect the new Certificate of Occupancy to be obtained upon completion of renovation or impact the Certificate of Occupancy if the changes occur after it is issued, nor affect the habitability of the Units or the operation of the Building (the vaults do not house utilities or other operational facilities). See Section C-1.6.

Section A-39. Marketing Materials. In no event shall the presence of any furniture, furnishings, finishes, equipment or decorations, wall coverings, window treatments, carpeting and the like in any portion of the Building or Units set forth in any marketing materials, artistic renderings, advertisements, and/or websites used in connection with the sale and marketing of the Units imply or represent that any such items will be located within any portion of the Building or the Units. The presence of such items in such marketing materials is for illustrative or purposes only and will not be included in the Building or a Unit. See DOCUMENT 4 in Part II of this Plan entitled "Description of Property and Specifications or Building Condition" for items to be included in the Building and the Units.

Section A-40. Common Interest.

Section A-40.1. *Determination*. The Common Interest of each Unit has been determined based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Unit in accordance with Section 339-i(1)(iv) of the Condominium Act. The Common Interest appurtenant to each Unit cannot be separated from the Unit. See Section B-7.4.1.

Section A-40.2. *Impact*. The Common Interest of each Unit constitutes the proportionate undivided interest of the Owner of such Unit in the Common Elements and the Association's Assets. Similarly sized Units: (a) shall have different Common Interests based upon its location and additional factors of relative value to other Units, its uniqueness (such as its appurtenant Yard, Terrace, Juliette Balcony or Balcony) and overall dimensions; and (b) pay different amounts of Common Expenses, which generally are apportioned to each Unit Pro Rata to its Common Interest. See Section B-7.4.1.

Section A-41. Disclosure Requirements Regarding FinCen's Geographic Targeting Order. On November 15, 2018, the Director of the Financial Crimes Enforcement Network ("**FinCEN**") issued a revised and updated Geographic Target Order (the "**Order**") that affects disclosure requirements for sponsors and prospective purchasers of residential real property located in all Boroughs of New York City. The Order requires title insurance companies to collect and report information about persons involved in certain residential real estate transactions in furtherance of the Bank Secrecy Act. The reporting requirement went into effect as of March 1, 2016. A copy of the Order is available at:

https://www.fincen.gov/news/news-releases/fincen-targets-shell-companies-purchasing-luxury-properties-seven-major

Pursuant to the Order, title companies are now required to collect and report information regarding purchasers in transactions where: (a) the purchaser is a legal entity as defined in the Order; (b) the purchaser purchases residential real property located in the Boroughs of Brooklyn, Queens, Bronx, Manhattan and Staten Island; (c) the total purchase price is the amount of $300,000 or more; (d) such purchase is made without a bank loan or other similar form of external financing; and (e) the purchase is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, funds transfer or virtual currency. The updated Order affects all residential real property closings occurring on or after November 17, 2018 and while the Order remains in effect.

Section A-42. Smoking and E-Smoking Policy. Under the By-Laws, smoking, e-smoking, smoke and vapors shall be prohibited in all indoor and outdoor Common Areas of the Building and the vaults, including hallways, lobby, public egress stairs and landings, elevator and elevator landings, mail room, amenity areas, storage areas, refuse closets, all roof setbacks and roofs of the Building, all other Common Areas located in the interior or exterior of the Building (whether below, at or above grade level), and on all Balconies, Terraces and Yards. The smoking and e-smoking ban shall apply to all persons permitted to occupy, visit or work in (including contractors, subcontractor and their respective workers) or otherwise use a Unit, whether by the Owner or Owner's tenant (collectively, "**Permitted Users**"), and any other person in the Building or elsewhere on the Property. It is the responsibility of each Unit Owner to ensure that such Permitted Users are informed of this smoking policy and comply to its terms.

The smoking and e-smoking ban does not apply to smoking, e-smoking, smoke and vapors in or on a Unit; provided, however, any smoke or vapors that emanates beyond the Unit must be abated immediately by the Unit's Owner at his or her own sole cost and expense. Such abatement may include the sealing of openings, the purchase and installation of "smoke-enders" to be installed in each room of

the Unit, and the purchase and installation of air purifiers. The effectiveness of such abatement must be satisfactory to the Condominium Board. The failure by a Unit Owner to effectively abate any such smoke or vapors to permeate into the Common Areas or other Units following written notice by the Condominium Board shall be a violation of this smoking and e-smoking ban by such Unit Owner.

Owner shall not cause, nor permit or suffer (whether knowingly or unknowingly), and shall be responsible and accountable for a violation of this smoking and e-smoking ban attributable to the Owner's tenant or other Permitted User of Owner's Unit. See Section R-7.5.2(d).

The Condominium Board shall post a copy of this smoking and e-smoking ban in a prominent location in the Building or deliver this smoking and e-smoking ban to all Unit Owners at least annually.

Owner shall disclose this smoking and e-smoking ban to a tenant of Owner's Unit and shall be incorporated in each lease or agreement to sell the Owner's Unit.

A violation of this smoking and e-smoking ban by an Owner or the Owner's tenant or other Permitted User of Owner's Unit shall entitle the Board, in addition to all rights and remedies available at law or in equity:

(a) (in the case of a violation by a tenant of Owner's Unit or a Permitted User of a tenant), to implement all remedies available under the tenant's lease by reason of such violation in the name and on behalf and at the expense of the Owner of the Unit leased to such tenant, including to terminate the lease and evict tenant by summary proceedings or otherwise; and

(b) to levy upon the Owner, as Administrative Expenses:

(b-1) a fine equal to the maximum lawful daily rate, but not to exceed $75.00 a day for each day such violation occurs one or more times;

(b-2) a charge of $250 for each notice of said violation given by counsel engaged by Board in order to reimburse the Board for the Legal Expenses incurred, which charge shall constitute liquidated or agreed upon damages incurred by the Board in connection with such notice; and

(b-3) an amount equal to all losses paid or incurred by the Board to remedy, and/or that are attributable to, such violation as evidenced by invoices, statements or other documentary proof thereof.

See Section R-7.5.2 for discussion.

Section A-43. Certification of Sponsor and Principals for Compliance with the Martin Act and Governing Regulations. Consistent with a First Department court decision, 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. See 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).

Section A-44- Prevailing Party Dispute in the Event of a Lawsuit

The Offering Plan provides that in the event of a lawsuit between Purchaser and Sponsor, Purchaser is only responsible for Seller's attorney's fees if Seller is the prevailing party. See Paragraph (m) of Section 34.14 of the Purchase Agreement entitled **Indemnity General,** where it specifically states that "in the event of a lawsuit between Purchaser and Sponsor, Purchaser is only responsible for Seller's attorney's fees if Seller is the prevailing party."

END OF SECTION A

SECTION B. INTRODUCTION

Section B-1. Purpose of Plan. The purpose of this Plan is to set forth all the material terms of this offer. This Plan consists of this "**Part I**" and the documents in "**Part II**". This Plan may be amended from time to time when a Plan Amendment is accepted and filed by the New York State Department of Law (the "**Department of Law**"). Plan Amendments will be served on all "offerees" as defined in Section 20.1 of Part 20 of Title 13 New York Codes, Rules & Regulations ("**Part 20**"), which includes Purchasers who have executed and delivered Purchase and Sale Agreements for Units being offered for sale under this Plan and owners of Units (the "**Unit Owners**" or "**Owners**") after the First Unit Closing. Sponsor reserves the right to file Plan Amendments that will substantially change the terms of this Plan. The changes may adversely affect rights of Purchasers to the extent not prohibited by Part 20. In such case, however, Purchasers will be given the right to rescind their Purchase and Sale Agreements following material adverse Plan Amendments (see Section AA-4 for discussion).

Section B-2. The Condominium. Sponsor intends to convert the Property to condominium ownership in compliance with Article 9-B of the Real Property Law of the State of New York (the "**Condominium Act**") by duly signing, acknowledging and recording against the Property in the Office of the City Register of The City of New York, County and State of New York (the "**City Register's Office**"), a declaration of condominium (the "**Declaration**"), substantially in the form and content contained as DOCUMENT 6 in Part II, which includes among other Exhibits thereto the Condominium, by-laws (the "**By-Laws**") and the rules and regulations (the "**Rules and Regulations**"), substantially in the form and content contained as DOCUMENT 7 in Part II, and filing in the City Register's Office the floor plans of the Units, the Common Elements and the Limited Common Elements (the "**Floor Plans**", which together with the Declaration and the Exhibits thereto are collectively, the "**Condominium Documents**"). The term "**Condominium**" refers to the Property submitted to condominium ownership pursuant to the provisions of the Condominium Act. The Condominium is to be called *324 West 108 Condominium*.

Sponsor is not submitting to condominium ownership and is reserving for its exclusive use and enjoyment the Excess Development Rights that will exist after completion of rehabilitation and construction of the Building, the conveyance of all Unsold Units and the issuance of the Final Certificate of Occupancy that may be purchased by Sponsor or otherwise may become available in the future to the Property's zoning lot. See Section A-42 and Section BB.

The Building is not an individual landmark, but is located in a historic district known as the Riverside-West End Historic District Extension II. As a result, the Building is subject to the New York City Landmarks Law. Pursuant to the Landmarks Law, if the Board or any Unit Owner desires to make any alteration, addition, improvement or repair in or to the Building or a Unit (other than certain ordinary repairs and maintenance as defined in Section 302 of the Landmarks Law) that affects any exterior architectural feature of the Building, or where the scope of work is required by the New York City Building Code to have a Governmental Work Permit, then, in

addition to obtaining any necessary approval or consent under the Condominium Documents, such party must first obtain the approval and a Certificate of Appropriateness or a Certificate of No Effect (as applicable) from the New York City Landmarks Commission. If the proposed alteration, addition, improvement or repair is interior, is of sufficient scope to require a Governmental Work Permit, and will not affect any exterior architectural feature of the Building, a submission to that effect to the Landmarks Commission will be necessary in order to obtain a Certificate of No Effect. The issuance of such Certificate of No Effect has in the past been a common occurrence and is issued on a ministerial basis, but is not assured or guaranteed by Sponsor or the Selling Agent. See Section A-1.2.

Section B-3. Identity of Sponsor. W 108 Development LLC (the "**Sponsor**"), having an address at 119 West 72nd Street #401, New York, New York 100223, is the sponsor of this Plan. Sponsor acquired fee title to the building known as 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York (the "**Building**") and the parcel thereunder and the utilized air space thereover (the "**Land**") by deed dated February 13, 2015 from The Board of Managers of the Diocesan Missionary and Church Extension Society of the Protestant Episcopal Church in the Diocese of New York, recorded in the City Register's Office on March 10, 2015 in CRFN: 2015000080952. See Section A-1.1. The Building and the Land are together, the "**Property**").

The Building is being substantially rehabilitated and newly constructed by Sponsor with one additional floor and entirely new Units and Common Facilities. The legal description of the parcel on which the Building is being substantially rehabilitated and newly constructed is more particularly set forth in EXHIBIT A to the Declaration.

Section B-4. Unfettered Right to Sell or Rent Units. Sponsor will endeavor in good faith to sell all of the Units in a reasonably timely manner, preferably to Purchasers for personal occupancy by themselves or members of their Immediate Families, but Sponsor reserves the unfettered right to sell Units to Purchasers for rental investment or resale. To that end, Sponsor has engaged a Selling Agent to market and multi-list the Units for sale. Because of the uncertainty and volatility of market conditions and subject to obtaining the prior written consent of Sponsor's Construction Lender, Sponsor has the unfettered right to rent Units for an indefinite period after, but not before, the Plan is consummated with the First Unit Closing, except Sponsor may enter into an Interim Use and Occupancy Agreement for a Unit with the Purchaser of such Unit.

Prospective 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 Residential Units in a building or group of building 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 Residential Units in the building or group of buildings, which in some cases may be as high as 70%. Moreover, some lenders will not provide

financing in a building or group of buildings where an investor other than the original sponsor has an ownership interest of 10% or more. It also may be difficult for a Purchaser to resell a Residential Unit if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions.

Prospective Purchasers also should be aware that they potentially may be living with transient tenants for an unlimited period. Transient tenants will receive the same Building Services and have the right to use and enjoy all of the same Building's amenities (e.g., the lobby, the elevator, the community recreation room, the exercise room, community Terrace and patio, and other amenities in and on the Common Elements) on the same terms and conditions as Owner-occupants. However, they have no investment in their Units and, therefore, do not share the same economic interests and values as Owner-occupants in the maintenance and care of the Common Facilities. The occupancy of Units potentially by transient tenants may limit or impair a Purchaser's ability to obtain financing or (after Closing) refinancing, or to resell the Unit to a Purchaser who is relying on financing, if the Building does not meet a lender's requirement (if any) for Owner-occupied Units. Some Institutional Lenders (defined below) may require up to seventy percent (70%) of the Units to be Owner-Occupied. An "**Institutional Lender**" includes a savings bank, a savings and loan association, a bank or trust company, a credit union, an insurance company, a real estate investment trust, a mortgage trust, a federal, state or municipal union or similar organization, a welfare, pension or retirement fund or system See Section A-9.1.

Because Sponsor is not limiting the conditions under which it will rent rather than sell the Units, there is no commitment to sell more than the fifteen percent (15%), or two Units (rounded up), necessary to declare this Plan effective, with at least one Unit closing in order to convert the Property to a bona fide condominium regime. As a result, this Plan may not result in the establishment of a Condominium in which a majority of the Units are owned by Owner-occupants and/or investors unrelated to the Sponsor. In addition, the Condominium By-Laws do not include a provision requiring a majority of the Condominium Board to be Owner-occupants or members of the Owner's Immediate Family who are unrelated to Sponsor and its principals after the expiration of the Sponsor Board Control Period. As a result, Purchasers for their own occupancy may never gain control of the Condominium Board under the terms of this Plan. See Section A-9.2 for discussion.

If Sponsor makes a bulk sale of some or all of its Unsold Units, the transferee successor sponsor shall be bound by Sponsor's representations regarding its preference to sell Units, subject, however, to Sponsor's unfettered right to rent Unsold Units rather than sell for an indefinite period after the First Unit Closing.

Section B-5. The Units. Building is planned to contain ten (10) newly constructed and modernized one-family dwelling Units (each, a "**Residential Unit**"), all of which are being offered for sale under this Plan.

The Building and Units are in the course of construction. Each Unit will include as part of its private and exclusive ownership and possession the volume of space comprising a "**Storage Locker**" on the cellar and either one or more of the following appurtenances accessible exclusively from the interior of a Unit from a Unit's door: a "**Yard**", "**Terrace**", "**Juliette Balcony**" or "**Balcony**" (collectively, the "**Appurtenances**"). See Section B-7.1.2 for the description these Appurtenances and see the Offering Price Schedule in Section E for the identity of the Unit and its Appurtenance(s).

Certain development rights from the adjacent property located at 328 West 108th Street are being used to construct the Building pursuant to a certain Zoning Lot Development and Cantilever Easement Agreement, dated as of April 10, 2019, recorded on April 17, 2019 in the City Register's Office in CRFN: 2019000123156.

Section B-6. Declaring Plan Effective. Sponsor's offer to sell and obligations to convey and consummate the Closing of Title to Units under the Purchase and Sale Agreement are contingent upon Sponsor electing to declare this Plan effective. Sponsor may declare the Plan effective by: (a) a Plan Amendment; or (b) by notice stating that this Plan is declared effective served on every Purchaser. Sponsor may not declare this Plan effective unless Bona Fide Purchasers, including investors for rental investment or resale, have signed Purchase and Sale Agreements for at least fifteen percent (15%) of the Units offered for sale under this Plan, or two Units (10 Units x 15%, rounded up). Sponsor must declare this Plan effective when Purchase and Sale Agreements with Bona Fide Purchasers have been accepted by Sponsor for eighty percent (80%), or eight Units (10 Residential Units x 80%) being offered for sale under this Plan. See Section L for full discussion.

Section B-7. Basic Aspects of Condominium Ownership. The basic aspects of condominium ownership are set forth below.

Section B-7.1. *Unit Ownership and Possession*. Each Purchaser will own his or her Unit outright and is entitled to exclusive possession of that Unit, together with a proportionate undivided interest (the "**Common Interest**") in fee simple absolute in the elements of the Property owned in common by all Unit Owners that are for the use and enjoyment by all Unit owners (the "**Common Elements**") and are for the exclusive use and enjoyment of a specified Unit Owner (the "**Limited Common Elements**").

Section B-7.1.1. Unit Areas. The areas of each Unit (the "**Unit Areas**") consist of the volume of space bordered horizontally and vertically by Common Elements enclosing the indoor contiguous area of the Unit and its noncontiguous Storage Locker and the outdoor area of a Unit consisting of a Terrace, Juliette Balcony, Balcony or Yard, if and as applicable. The Common Elements enclosing the indoor Unit Areas horizontally and vertically are Boundary Floors, Boundary Ceilings and Boundary Walls. The Common Elements enclosing the outdoor Unit Areas horizontally are Boundary Floors and vertically are parapets and Building Walls extending to a

height of an imaginary horizontal plane that is directly opposite and coincident with the exposed underside of the Unit's Boundary Ceiling).

Section B-7.1.2. Unit Facilities. The facilities of each Unit (the "**Unit Facilities**") consist of the following:

(a) Interior Walls and Partitions: all non-load bearing interior walls and partitions;

(b) Interior Window Sills: all interior window sills;

(c) Doors: all interior doors;

(d) Terrace: the pavers, tiles, decking or other construction material and the supporting pedestals located above and protecting a Roof or Roof setback (which are part of the Common Elements);

(e) Balcony: the top surface or sealant of a Balcony, but not its Structural Components, which are part of the Common Elements;

(f) Yard: the pavement, tile or other construction material located above the dirt or earth (which is part of the Common Elements);

(g) Decorations: all decorations on the Unit's windows, interior walls and partitions, the Unit-side of a Boundary Floor, Boundary Ceiling and Boundary Wall, including the Unit-side of any plaster, gypsum board or other finishes or coverings on the underside of Structural Ceilings, which are part of the Common Elements;

(h) Kitchens and Bathrooms: all Unit kitchen and bathroom appliances, including (if and as applicable) cooktop, oven, microwave oven (Units 501 and PH only), dishwasher, clothes washer and dryer and refrigerator, sinks, lavatories, showers, bathtubs, cabinets, countertops and built-ins, and all accessible facilities exclusively serving any of the foregoing;

(i) Finishes and Coverings: all finishes and coverings on walls, partitions, floors and ceilings on the Unit-side of the Common Elements enclosing the Unit, including paint, wallpaper, tiles (e.g., ceramic, marble, granite, stone, vinyl or otherwise), wood, fabrics, carpeting, rugs, subflooring, sound dampening, supporting pedestals, paneling, baseboards and moldings;

(j) Meter and Submeter: any separate individual meter or submeter (wherever located) that serves exclusively the Unit and its Unit Facilities;

(k) New Facilities: any new facilities installed by an Owner which are not included in Sponsor's plans and specifications for rehabilitating and newly constructing, equipping and outfitting the Building and Units, which (to the extent required by Law) have been or will be filed with the DOB and which may, from time to time, hereafter be amended in accordance with the provisions of this Plan (the "**Plans and Specifications**"), whether accessible or inaccessible, including all newly installed cables, wires, fibers, optic fibers, filaments and lines (including risers

and distribution and branch lines), together with the pipes, tubes, ducts, insulation and other conduits, together with their components, protecting or enclosing them (collectively, the "**Lines and Conduits**") serving such new Unit Facilities; and

(l) General: the portions of the Building Systems and the separate, independent facilities that serve exclusively the Unit, all of which are exposed to view inside the Unit or are accessible from within the Unit's Boundary Walls, Boundary Floors and Boundary Ceilings enclosing the Unit (including, if and where applicable, facilities with respect to plumbing, electricity, equipment, electronics, heat pump system (including compressor and air handlers), ventilation, hot and cold water, telephone, television, internet, intercom, telecommunications, security, sanitary waste, refuse, lighting, sprinkler heads, and smoke and carbon monoxide detectors, and their respective pipes, shut-off valves, faucets, spouts, outlets, jacks, switches, panel and circuit breakers, and other components, including the portions of their respective related exposed or accessible Lines and Conduits serving only these facilities).

A Juliette Balcony has no facilities and consists of the volume space bordered horizontally and in part vertically by the non-walkable extension of a Building Wall (which is part of the Common Elements) and is accessed to a Unit through a door or doors leading thereto.

A Unit does not include the items comprising the Common Elements or Limited Common Elements listed below in Section B-7.2.2 and Section B-7.2.3, respectively.

Section B-7.2. *Description of Common Elements and Limited Common Elements*. The Common Elements consist of the areas (collectively, the "**Common Areas**") listed in Section B-7.2.1 and the facilities (collectively, the "**Common Facilities**") listed in Section B-7.2.2. The Common Elements also include all other parts of the Property necessary or convenient to its existence, maintenance, security, protection and safety of the Building and the Owners and occupants of Units, or are normally in common use. The Limited Common Elements consist only of the facilities listed in Section B-7.2.3.

Section B-7.2.1. Common Areas. The Common Areas shall be immutable and inalienable and include the following:

(a) Land: the Land (excluding the Excess Development Rights);

(b) On the Cellar Level: all cellar level corridors, rooms and other areas housing Common Facilities or the Storage Lockers (e.g., the electric meter room, the maintenance rooms, the laundry room, the bicycle storage room, the exercise room, the community/recreation room with its warming kitchen, the trash recycling room, the room housing the Storage Lockers, the water meter and pump room, the elevator closet, the elevator shaft, the powder room, the public egress stairs and landings, the areaway, the unexcavated area, and the license for the two vaults;

(c) On (Ground) Floor 1: the Building street entrance, vestibule, lobby, concierge desk, the corridor leading to the package room, the package room, and the corridor leading to the

elevator (all the foregoing are collectively, the "**324 West 108th Street Public Areas**") the trash room and the fire-safety egress stairs and landings;

(d) On Floors 2 to 6: all hallways and other areas (including rooms housing the trash chute), other than the Units;

(e) Public Egress Stairs: all fire-safety egress stairs and their respective landings;

(f) Roofs: all Roofs; and

(g) Generally: generally, all rooms and other areas housing the Common Facilities, and all corridors, hallways, passageways leading thereto or to the elevator or to a fire-safety egress stair.

Section B-7.2.2. Common Facilities. The Common Facilities shall be mutable and perishable in connection with Unit Changes set forth in Article 12 of the Declaration and summarized in Section I below, or as otherwise provided elsewhere in the Condominium Documents, and include the following items that serve only the Common Elements or two or more Units or are inaccessible from within the interior of a Unit, regardless of their location within or bordering a Unit or elsewhere in, on, under or adjoining the Building, if and to the extent included in Sponsor's Plans and Specifications or substitute facilities of no lesser quality and design:

(a) Structural Components: all component that contribute to the physical support, soundness, integrity and weather-tightness of the Building (the "**Structural Components**"), including (if and to the extent applicable):

(a-1) the Building's foundation, foundation walls, retaining walls, footings, pilings and structural columns, beams and supports;

(a-2) all wood joist or wood joist with metal beams (or comparable construction material) floors (the "**Structural Floors**" or "**Boundary Floors**") and ceilings (the "**Structural Ceilings**" or "**Boundary Ceilings**"), including any plaster, gypsum board or other construction material on the underside of a Structural Ceiling enclosing a Unit or a Common Element;

(a-3) all exterior walls of the Building and its components, including masonry and brick walls, fire retardant insulation and furring, together with all exterior window sills, ornaments, heads and jambs (the "**Structural Walls**" or "**Building Walls**") and the load-bearing or shear walls;

(a-4) all "Roofs" (defined below), including the Roofs below Terraces;

(a-5) all Structural Components comprising the Balconies and Juliette Balcony; and

(a-6) generally, all comparable structural members of the Building not expressly included in a Unit or the Limited Common Elements;

(b) Roof, Roof Setback, Balcony, Terrace, Juliette Balcony and Yard Structures: the "Structures" (defined below) bordering, enclosing and/or supporting or serving a Roof, Roof setback, Balcony, Terrace, Juliette Balcony or Yard;

(c) Main Feeder Lines: all main feeder lines for water, sewerage, sanitary waste, storm drainage, fire protection, electricity, power, telephone, cable television, Internet and other media, communications and utility equipment and related facilities for Building Services that serve the Common Elements or all or portions of one or more Units;

(d) Building Systems: all systems of the Building serving or benefiting: (d-1) more than one Unit or are inaccessible to a Unit from within the interior of a Unit; or (d-2) the Common Elements, or a portion thereof, for heating, ventilating, air-conditioning, hot and cold water, refuse disposal, storm drainage, sanitary sewerage or waste lines, fire protection (e.g., sprinkler, sprinkler alarm, hoses, standpipe, siamese connection and related facilities), utilities (i.e., electricity, water and sewer, cable television, telephone and Internet), intercom, security cameras, monitors and other devices, and their respective components (including all manner of motors, pumps, equipment, machinery, tools and apparatus), together with all inaccessible risers and distribution or branch lines, and other Lines and Conduits of the Building Systems the serve all or portions of more one Unit or are inaccessible from within the interior of a Unit, or serve the Common Elements (collectively, the "**Building Systems**");

(e) Fire Protection System: all portions of the fire protection Building System (e.g., pumps, sprinklers, sprinkler alarm, hoses, nozzles, Siamese connection, standpipe and related facilities) serving or benefiting the Common Elements or all or portions of more than one Unit;

(f) Lighting and Ventilation Systems: all portions of the lighting Building System (e.g., all lighting fixtures, Lines and Conduits) and the ventilation Building System (e.g., all Lines and Conduits) that serve the Common Elements and the inaccessible portions of said lighting Building System or the ventilation Building System that serve all or portions of one or more Units;

(g) Inaccessible Facilities: all other inaccessible facilities serving one or more Units or the Common Elements;

(h) Boundary Walls: all gypsum board walls (the "**Boundary Walls**"), including their struts and other components, enclosing the rooms and other areas comprising the Common Areas or enclosing Units vertically, including separating vertically two Units or separating vertically a Unit from a hallway, elevator shaft, trash closet or other Common Area;

(i) Interior Walls and Partitions, and Doors: all walls and partitions enclosing and within the rooms and other areas comprising the Common Areas, all entrance doors leading to the Building and all doors leading to or within the Common Areas;

(j) Public Egress Stairs: the fire rated walls, hand rails, steps, landings other facilities comprising the fire-safety egress stairs serving the Common Areas and the Units;

(k) Elevator: the elevator, including the cab, shaft, pit, cables and all other facilities comprising its components;

(l) Bulkheads: the main Roof Bulkheads, including its Boundary Walls, Boundary Floors, Boundary Ceilings, Roofs and related Roof Structures;

(m) Shafts, Ducts, Conduits, Chases etc.: the shafts, ducts, conduits, chases, chase walls, shelves, coves, dropped ceilings, ducts, soffits and other structures that house facilities comprising or serving one or more Units or the Common Elements;

(n) Corridors, Hallways and Passageways: the components of all common or public corridors, hallways, passageways leading to a Common Area or a Unit;

(o) Staff Bathroom: all fixtures and other facilities comprising and enclosing the staff bathroom;

(p) Finishes, Coverings Decorations: all finishes, coverings and other decorations on the rooms and other areas comprising the Common Areas; and

(q) Generally: all facilities:

(q-1) serving the Common Elements and the inaccessible portions of facilities that serve all or portions of one or more Units; or

(q-2) necessary or convenient for the use and enjoyment in common of two or more Units or the Property as a whole, and are not expressly stated to be part of the private and exclusive ownership and possession of a Unit.

The "**Roofs**" consist of the top weather protection of the Building or a Building setback, which are composed of concrete on metal deck (or other construction material) with a roofing system composed of a membrane, insulation, flashing and counter-flashing (or other construction material and fabrication), if and to the extent existing upon completion of the rehabilitation and construction of the Building and issuance of the Final Certificate of Occupancy. The Roofs include the Roof above the top floor of the Building, the Roof protecting the elevator and mechanical equipment bulkheads located thereon (the "**Bulkheads**") and the setback Building Roofs below the Terraces.

The "**Structures**" consist of the Building Walls, parapets, copings, railings, drainage Building Systems (including drains, gutters, leaders and similar elements), fences and all other structures bordering, enclosing and/or supporting or serving a Roof, Roof setback, Bulkhead, Balcony, Terrace, Juliette Balcony or Yard, if and to the extent existing at the date of recording the Declaration or to be built pursuant to Sponsor's Plans and Specifications.

Section B-7.3. *Limited Common Elements*. The Limited Common Elements comprise all Unit windows and all entrance doors to a Unit or leading from the interior of a Unit to its Balcony, Terrace, Juliette Balcony or Yard (if and as applicable). A "**Unit Property**" shall mean a Unit and its Limited Common Elements.

Section B-7.4. *Owner's Obligation to Pay Common Charges*.

Section B-7.4.1. Common Charges. Each Owner shall be obligated to pay charges assessed by the Condominium Board (the "**Condominium Charges**") to pay the expenses of the Condominium Association (the "**Condominium Expenses**") in accordance with the Condominium Act and New York Real Property Law (the "**RPL**") Section 339-(i) and Section 339-(m). The Condominium Charges consist of the following:

(a) the Condominium Charges assessed by the Board to all Unit Owners to pay the "Common Expenses" (defined below Section B-7.3.2) are called the "**Common Charges**"; and

(b) the Condominium Charges assessed by the Board to a Unit Owner under the Declaration or the By-Laws to pay the "Specially Allocated Expenses" and "Administrative Expenses" (see Section B-7.4.2 for definitions of the quoted terms) are called the "**Additional Common Charges**".

The Condominium Board shall have all of the same rights and remedies to collect Additional Common Charges as are applicable to collect Common Charges.

The Common Charges shall be assessed to each Unit Pro Rata to its Common Interest percentage, subject to the right of the Board to require one or more of the Common Expenses to be charged as a Specially Allocated Expense to a Unit in accordance with clause (b) hereinabove.

All references in this Plan to apportioning and assessing the Common Expenses to each Unit Pro Rata to its Common Interest (or words of similar import) shall mean in the ratio that the Common Interest appurtenant each Unit bears to one hundred percent (100%) (i.e., total Common Interest percentages appurtenant to all Units).

Unless otherwise determined by the Condominium Board, the Owners shall be obligated to pay the Common Charges in equal monthly installments in advance on the first day of every month. The Condominium Board shall have the power to assess one or more Common Expense items in one or more installments, payable at one time or installments over a period to be specified by the Board, with or without interest, all as shall be determined by the Board, in its sole Business Judgment. The installment payment or installment payments are called "**Special Assessments**" and constitute Additional Common Charges. As a result, the Condominium Board shall have all of the same rights and remedies to collect Special Assessments as are applicable to collect Common Charges.

Each Owner shall be liable personally to pay the Common Charges and Additional Common Charges levied by the Condominium Board on such Owner or such Owner's Unit. See Section R-3.3 for further discussion.

The Condominium Board will have a lien on each Unit for unpaid Common Charges and unpaid Additional Common Charges owed by the Owner of such Unit (see Section R-3.4.1 and Section R-3.4.2).

The Common Interest of each Unit has been determined based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Unit in accordance with Section 339-i(1)(iv) of the Condominium Act. The Common Interest appurtenant to each Unit cannot be separated from the Unit. See Section A-44.1.

Similarly sized Units: (a) shall have different Common Interests based upon its location and additional factors of relative value to other Units, its uniqueness (such as its appurtenant Yard, Terrace, Juliette Balcony or Balcony and overall dimensions; and pay different amounts of Common Expenses, which generally are apportioned to each Pro Rata to its Common Interest. See Section A-44.2.

The Common Interest of a Unit may change following a "Unit Division", a "Unit Combination" or a "Unit Reconfiguration" (see Section I-4 below for definitions of the quoted terms), or a taking by a Governmental Authority in condemnation or be eminent domain as provided in Section 12.6 of the By-Laws. See also Section I-4 below.

Section B-7.4.2. Condominium Expenses. The Condominium Expenses consist of the following:

(a) the expenses assessed to all Units Pro Rata to their respective Common Interests (collectively, the "**Common Expenses**") to do the following:

(a-1) maintain, repair, restore, alter, lease, manage and otherwise operate the Common Elements and the Association's Assets;

(a-2) purchase, acquire (including own and lease), mortgage, securitize, sell, convey, transfer, assign and make other dispositions of the Association's Assets;

(a-3) provide "Building Services" (defined below) to all Owners and tenants of Units;

(a-4) properly maintain, repair, restore and alter the Sidewalk in accordance with the "Building Standard" (defined below); and

(a-5) generally, to exercise and prosecute the Board's Governance Rights over the affairs and business of the Condominium Association, the use and enjoyment of the

Common Elements and the Limited Common Elements, and the actions and activities of Owners and tenants in, on and to their respective Units and each Unit's Storage Locker and (if and as applicable) Yard, Terrace, Juliette Balcony or Balcony (collectively, "**Unit's Appurtenances**") (as discussed in Section B-7.6.1);

(b) the expenses assessed to one or more, but not all, Units or Owners to reflect the amounts fairly and properly attributable to such Unit(s) or Owner(s) based on special or exclusive use or availability or exclusive control, or consumption, of the Common Elements or the Building Services provided to a Unit or its Owner or tenant (collectively, "**Usage**") as determined by the Condominium Board, in its sole Business Judgment, in accordance with RPL Section 339-m, and consist of the following expenses (collectively, the "**Specially Allocated Expenses**"):

(b-1) the amount of increase in the Common Expense item for insurance premiums attributable to one Unit caused by a change in use, or the manner of use, or occupancy of such Unit, which shall be charged by the Board as a Specially Allocated Expense to such Unit;

(b-2) the costs and expenses specially allocated to a Unit to provide utility services from the Building Systems that are disproportionate to the Common Interest of the affected Unit, which shall be based on submetering or if not submetered, at the exclusive option of the Board, in its sole Business Judgment, based upon a utility consumption survey obtained by the Board; and

(b-3) the costs and expenses to maintain, repair, restore and alter a Common Element due to the "Acts or Omissions" (defined below) of the Owner or for whom such Owner is accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1.1 of the By-Laws (i.e., the agents, employees and representatives, Construction Parties, and their respective agents, employees and workers, and all vendors of materials and supplies engaged in Work by or on behalf of said Owner and (if authorized or permitted in a lease) a tenant of an Owner's Unit), which shall be specially allocated and assessed to such Owner as therein provided; and

(c) the expenses assessed to only the applicable Owner for such Owner's late payment of Common Charges or other violations of the Condominium Documents by an Owner or for whom such Owner is accountable as set forth in clause (b-3) above (collectively, the "**Administrative Expenses**").

The term "**Acts or Omissions**" means actions, abuse, neglect, mistakes or oversights, whether proper or improper, right or wrong, inadvertent or intentional, with or without negligence, lawful or unlawful, or in compliance with or in violation of the Condominium Documents.

The term "**Building Services**" means the services to be provided to the Units by the Common Elements and all other services and amenities to be provided to the Units and their

Owners and tenants contemplated in the Declaration, the By-Laws or this Plan (see Section C-1.5 for more details).

The term "**Building Standard**" means to perform all Work affecting a Unit Property, a Common Element, an Association's Asset, a vault or the Sidewalk in a good, safe, clean, neat and sanitary first class condition and appearance, in proper working order, free and clear of water leaks, water accumulations, snow, ice, debris, dirt and undue air penetration, in keeping with the high quality, character, standards and dignity of the Building and with the quality of the workmanship and materials that shall meet or exceed the standards of locally accepted building practices for high quality residential buildings in the locale of the Building and comparable to the construction and amenities of the Building, in accordance with Laws and all other Work Requirements.

The Common Expenses do not include the expenses to maintain, repair, restore, alter or otherwise operate an Owner's Unit Property or Unit Appurtenances, which shall be the responsibility of the Owner of such Unit to directly pay and perform. See Section R-4.1 for further discussion.

Section B-7.5. *Owner's Obligations to Comply with Condominium Documents*. Each Unit Owner shall be obligated personally to comply with the Declaration, the By-Laws and the Rules and Regulations, as they may be duly amended from time-to-time. These Condominium Documents, among other things, place reasonable restrictions on the use and occupancy of the Units (see Section B-7.6) and Common Elements (see Section B-7.8) in order to avoid one Unit Owner from unreasonably interfering with the use and enjoyment of another Unit Owner or to prevent the Common Elements from being used improperly. If a Unit Owner violates any of these provisions, such Unit Owner may be enjoined by a court in a Litigation brought by the Condominium Board and will be liable for all costs and expenses incurred by the Board in connection therewith together with, if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, Legal Expenses and Per Diem Interest thereon to pursue, enforce, defend and protect these Board's Governance Rights and to collect the amounts owed. See "Section R-8. Remedies" for discussion.

Section B-7.6. *Owners' Restrictions on Use, Occupancy, Resale, Leasing and Mortgaging.*

Section B-7.6.1. Use and Occupancy. Each Sold Unit shall be used only as a private one-family dwelling and incidental home occupations permitted by Laws, and for no other purpose, and shall be occupied in accordance with all applicable Laws by only the Unit's Owner or tenant, the "Household" of said Owner or tenant, and the "Guests" of said Owner or a tenant or a Household member of said Owner or tenant (see below for the definitions of the quoted terms). All of the foregoing are called the "**Unit Users**".

If the Owner or a tenant is a corporation, partnership, limited liability company, trust, consulate, mission, sovereign government or other non-individual (each, an "**Entity**"), then

occupancy of a Sold Unit shall mean the individual who is an officer, director, shareholder, member, partner, fiduciary, trust grantor or beneficiary, principal or governmental official or employee designated by such Entity (the "**Designated Occupant**"), or said Unit's tenant, and the Household of said individual or tenant, and the Guests of said individual or tenant or a Household member said individual or tenant.

The term "**Household**" means to the extent not prohibited by Laws, the spouse, child (whether by blood, marriage or adoption), parent (including a step-parent or parent-in-law), grandparent and sibling (the "**Immediate Family**") or a domestic partner and such domestic partner's dependent children, domestic employees or housekeepers and health care aides of the Owner or a tenant or a Designated Occupant of the Unit (as applicable).

The term "**Guests**" means the visitors and invitees of an Owner or a tenant or Designated Occupant (as applicable) of a Unit, or of a Household member of such Owner or tenant or Designated Occupant (as applicable) of said Unit who do not pay any manner of consideration or value or provide any service or exchange to occupy the Unit or any portion thereof and whose relationship to the Owner or said tenant (as applicable), or a Household member of such Owner or tenant or Designated Occupant (as applicable) is not attributable to advertising on any media platform (such as the Internet, Airbnb, Home Away, Roomorama or other social media site) or to a broker or other intermediary.

The foregoing permitted Household and Guests will be permitted to occupy the Sold Unit even though the Owner or a tenant or a Designated Occupant (as applicable) is absent; provided, however, at least one Household member of the Owner or tenant or a Designated Occupant aged 18 years or older is simultaneously in occupancy overnight. No transient or short-term occupancy or stay, similar to a hotel, motel, dormitory, bed and breakfast, boarding house (other than Guests) shall be accommodated in a Sold Unit or any room of a Sold Unit at any time. No Sold Unit Owner shall permit or suffer (whether knowingly or unknowingly) such Owner's Sold Unit to be used or occupied in violation hereof.

Notwithstanding the foregoing, the Condominium Board may, in its sole and absolute discretion, grant permission for occupancy of a Sold Unit by individuals other than those set forth above, subject, however, to compliance with applicable Laws. If granted by the Condominium Board, such permission must be in writing and shall be personal to such Sold Unit Owner or tenant of the Sold Unit (as applicable) and shall not inure to the benefit of the successors or assigns or a succeeding Owner of such Sold Unit.

None of the requirements and restrictions contained above shall apply to Unsold Units, each of which may be used and occupied, and changed to be used, for any lawful purposes. The Condominium Board and other Unit Owners do not have the right to approve or consent to the Unit Users of Unsold Units, nor impose any restrictions, limitations, requirements with respect to, the use or any changes in the use, or operation of, or the business conducted in, the Unsold Units,

or any portions thereof, nor levy any fees or charges or impositions on Sponsor or other Owners of Unsold Unit, or Unit Users of Unsold Units, in connection therewith. The Unsold Units may be occupied by any individuals approved by Sponsor, regardless of any relationship or lack of relationship with Sponsor. The permitted uses of Unsold Units include as models and offices for the sale, promotion, rental, management and operation of Unsold Units. Such permitted uses of the Unsold Units may be noisy, emit odors, involve heavy traffic and cause other effects that need not be compatible with the primary use of the Building for dwelling purposes. Sponsor and each Unsold Unit Owner shall have, and must be given, the unfettered right, at its sole cost and expense, to change the use and configuration of its Unsold Units from time to time. See Section A-34.

Section B-7.7. *Owner's Restrictions on Sale and Leasing*. A sale or leasing by a Purchaser and succeeding Owners of a Sold Unit is subject to the right of the Condominium Board, or its nominee or designee, to purchase or lease the Sold Unit on the same terms offered by a bona fide purchaser or tenant (the "**Right of First Refusal**"). Certain sales and leasing are exempt from the Board's Right of First Refusal (e.g., a sale or lease to an adult member of the Owner's Immediate Family or a transfer by gift or a devise under a will of a deceased Owner). The Board does not have the right to approve or disapprove of the Purchaser or the sales price, or the tenant or the rent, but may purchase or lease a Sold Unit pursuant to its Right of First Refusal if approved by a majority in Common Interest of those Unit Owners attending a meeting of Unit Owners at which a quorum is present in person or by proxy (excluding the selling or leasing Sold Unit Owner for quorum and voting purposes).

A lease of a Sold Unit must meet certain requirements (e.g., the term may not be less than one year) and cannot be assigned or the Unit sublet without obtaining the prior written consent of the Condominium Board (see Section A-13). The Condominium Board, its Managing Agent and/or attorneys may also collect reasonable fees and expenses in connection with processing a sale or lease that is subject to the Board's Right of First Refusal.

The Board's Right of First Refusal and the other restrictions, requirements and payments do not apply to Unsold Units, each of which may be sold, conveyed and leased freely (other than the requirement to lease for an initial minimum term of not less than six months and the restriction against using a Unit for applicable Prohibited Uses). See Section A 9.1, Section A-15 and Section R-1.1.4.

Section B-7.7.1. Restriction on Mortgaging. Each Unit may be separately encumbered by one or more mortgages held by any lenders, without the consent of the Condominium Board and without restriction, except an Owner may not encumber a Sold Unit with a new mortgage while said Owner is in default in paying the Common Charges or Additional Common Charges or while an unpaid lien on said Owner's Unit is outstanding (other than Permitted Mortgages). See Section A-15. A copy of the each mortgage is to be filed with the Condominium Board. See "Section R-2. Mortgaging of Units by Unit Owners" for discussion. See also Section W-1.3 for

the fee to be paid by an Owner to the Managing Agent if any Board action is requested with respect to a mortgage financing or refinancing of a Sold Unit.

Section B-7.8. *Authority of the Condominium Board; Unit Owner's Right to Vote for Board Members*.

Section B-7.8.1. Authority of the Condominium Board. A Condominium consists of an unincorporated association of the Unit Owners ("**Condominium Association**"), which is governed by a board of managers ("**Condominium Board**" or "**Board**") elected by the Unit Owners and designated by Sponsor, as explained in Section B-7.6.2. The Units, the Common Elements and the Limited Common Elements are subject to the powers of the Condominium Board to (a) govern and conduct the affairs of the Condominium Association; (b) administer, manage, direct, control, rule, and regulate the use of, and access to, the Common Elements; (c) supervise the use of the Limited Common Elements and the actions and activities of Unit Users in, on and to their respective Units, each Unit's Appurtenances and the Common Elements; (d) implement the powers, obligations and duties vested in the Board in the Condominium Documents; and (e) generally, to do, perform, exercise, pursue, enforce, uphold, protect and defend the easements, rights, remedies, indemnities, protections, privileges, exemptions and other benefits of the Condominium Board as set forth in the Condominium Documents (all of the foregoing are called the "**Board's Governance**" or the "**Board's Governance Rights**"). The Board's Governance Rights include the exclusive right of the Condominium Board to:

(a) determine the use and enjoyment of the Common Elements and the Limited Common Elements, and to amend the Rules and Regulations from time to time governing their use and enjoyment, by Unit Users and "Construction Parties" (defined below) of Sold Units, but not governing their use and enjoyment by Sponsor or the tenants of Unsold Units or Sponsor's Construction Parties;

(b) implement the powers, obligations and duties vested in the Board in the Condominium Documents, including:

(b-1) to oversee the use and enjoyment of Units and their Appurtenances in accordance with the terms of the Condominium Documents;

(b-2) to own, lease or otherwise acquire and dispose of real property or personal property, chattel real, intangibles, monies, securities, licenses, belongings (collectively herein called the "**Association's Assets**"), such as a Unit purchased or held under a lease by the Board or the Board's Affiliated Nominee or Designee pursuant to the Board's Right of First Refusal;

(b-3) to determine the Condominium Expenses, the Common Charges and the Special Assessments;

(b-4) to determine investment and expenditure of the monies collected from payments of the Common Charges and payments to the Working Capital Fund, any capital reserve fund adopted by the Board, and any interest or investment income earned on all such monies;

(b-5) to determine the use and enjoyment of the undocumented revocable license from The City of New York to use the vaults abutting the Land; and

(b-6) generally, to do, perform, exercise, pursue, enforce, uphold, protect and defend the easements, rights, remedies, indemnities, protections, privileges, exemptions and other benefits of the Condominium Board as set forth in the Condominium Documents.

The Board's Governance Rights are, however, subject to Sponsor's Rights and to the terms, conditions, prohibitions, limitations and restrictions contained in, the Condominium Documents.

The term "**Construction Parties**" means all architects, engineers, construction managers, contractors, subcontractors, consultants, expediters, experts, decorators and other professionals, and their respective workers and employees.

Section B-7.8.2. Owner's Right to Vote for Board Members. Initially, the Condominium Board will consist of one Board member (a "**Board Member**") designated by Sponsor to represent the interests of Sponsor and other Unsold Unit Owners on the Condominium Board (the "**Sponsor Board Member**"). Sponsor will call the first meeting of Unit Owners to be held within approximately sixty (60) days after the second anniversary of the First Unit Closing. If prior thereto, the Sold Units constitute eighty percent (80%) or more in number and Common Interest of all Units, such first meeting will be called to be held within approximately thirty (30) days after such eighty percent (80%) threshold is exceeded. At such first meeting, the Unit Owners will elect or designate (as applicable) a new three-member Condominium Board.

During the Sponsor Board Control Period, the Condominium Board will consist of two Board Members appointed by Sponsor and one Board Member who has no family (by blood, marriage or adoption), employment or business relationship or affiliation with Sponsor, a "Sponsor-Related Party" (defined below) or an Unsold Unit Owner (an "**Independent Board Member**"), thereby giving Sponsor voting control of the Board. The Sponsor Board Members will be appointed exclusively by Sponsor. The Independent Board Member will be elected by all Sold and Unsold Unit Owners, each of whom will have one vote for each 0.01% of Common Interest (e.g., 955 votes if the Common Interest is 9.55%). See Section Q-1 and Section Q-6 for details.

The term "**Sponsor-Related Party**" means generally a past or present Related Party to Sponsor or an Unsold Unit Owner and all employees, agents or attorneys of such Related Party.

At all Board elections held after the end of the Sponsor Board Control Period, the Independent Board Members shall constitute a majority of the Condominium Board. As a result, Sponsor may no longer exercise voting control of the Condominium Board. However, Sponsor shall continue to have the right to nominate and vote (without limitation or restriction) for all candidates to serve as the Independent Board Member(s), both before and after the end of the Sponsor Board Control Period. In addition, after the end of the Sponsor Board Control Period, for so long as Sponsor owns at least one Unsold Unit, Sponsor shall continue to have the right to exclusively appoint and designate one Sponsor Board Member. See Section P-1 for full discussion.

The Condominium By-Laws do not include a provision that requires a majority of the Condominium Board to be Owner-occupants or members of an Owner-occupant's Household who are unrelated to Sponsor and its principals after the end of the Sponsor Board Control Period. As a result, Purchasers for their own occupancy may never gain control of the Condominium Board under the terms of this Plan. See Section A-9.2 and see Section Q-1.2.

Section B-7.9. *Separate Taxes and Mortgages.*

Section B-7.9.1. Separate Taxes. Each Unit will be separately assessed by the DOF for real estate taxes. The estimated post-completion of rehabilitation real estate taxes for each Unit are listed in the Offering Price Schedule. These estimates are based on certain assumptions and projections and are not assured or guaranteed (see footnote (6) to the Offering Price Schedule).

Generally, the DOF will start separately billing each Unit for real estate taxes within approximately six months after the Condominium Documents are recorded and filed in the City Register's Office. During the interim period, the real estate taxes will continue to be assessed against the entire Property and will be paid by the Condominium Board as a Common Expense and assessed to all Units Pro Rata to their respective Common Interest, which Berger P.C. reports in its tax opinion is the most recent method followed by the DOF, although the actual method to be used is uncertain. See Section A-10 and see Section S). After the Units are separately assessed and billed for real estate taxes, each Owner will only be liable for the real estate taxes levied against his or her Unit and no lien may thereafter be placed against an Owner's Unit because of non-payment of the real estate taxes on another Unit.

Section B-7.9.2. Mortgages. Each Unit may be separately mortgaged. The lien of the Condominium Board will be subordinate to the lien of a first mortgage placed on a Sold Unit provided and on condition that the Owner of such Unit is current in the full payment of all Common Charges and any Additional Common Charges (including unpaid Special Assessments) assessed by the Board against such Sold Unit and all unpaid liens against such Sold Unit are satisfied or bonded, other than the liens of mortgages made in compliance with the By-Laws. If such requirements are not met, the lien of the Condominium Board will be superior to the lien a first mortgage, but the validity or enforceability of such first mortgage will not otherwise be affected.

No Unit Owner shall execute any mortgage or other document mortgaging, pledging or hypothecating title to such Owner's Unit without including therein its appurtenant Common Interest, it being the intention to prevent any severance of such combined ownership. Any mortgage or other instrument purporting to affect one of such interests without including both of such interests shall automatically be deemed and taken to include the interest so omitted, even though the latter shall not be expressly mentioned or described therein.

Each Unit is separately owned and is not subject to the lien, nor liable for payments, of any mortgage placed on any other Unit.

Section B-7.10. *Maintenance and Repairs; Insurance.*

Section B-7.10.1. Maintenance and Repairs by Unit Owner. Each Unit Owner, at his or her sole cost and expense, shall maintain and repair his or her Unit, including its individual Unit Areas, Unit Facilities and Unit Appurtenances (i.e., Storage Locker and (if and as applicable) Yard, Terrace, Juliette Balcony or Balcony) and the Unit's Limited Common Elements in accordance and compliance with the Building Standard.

The Owner's maintenance and repair obligations do not apply to the Structural Components of the Building or the Structures bordering, enclosing and/or supporting the Unit's Balcony, Terrace, Juliette Balcony or Yard, which are part of the Common Elements and are to be maintained and repaired exclusively by the Condominium Board as a Common Expense.

A Sold Unit's windows, entrance door and the door leading to its Balcony, Terrace, Juliette Balcony or Yard (as applicable) may not be replaced, removed or otherwise altered, and the Unit's Balcony, Terrace, Juliette Balcony or Yard (as applicable) may not be enclosed, partitioned, landscaped, furnished or decorated, without obtaining in each instance the prior written consents of both Sponsor (while there is any Unsold Unit or until issuance of the Final Certificate of Occupancy, whichever is the later to occur) and the Condominium Board.

For similar aesthetic purposes, a Sold Unit's windows, entrance door or the door leading to its Balcony, Terrace, Juliette Balcony or Yard (as applicable) may not be colored, painted or covered without obtaining in each instance the prior written consents of both Sponsor (while there is any Unsold Unit) and the Condominium Board; except window shades, blinds, curtains and other window treatments will be permitted if they are light colored or have light colored backings facing the outdoors in conformity with the Rules and Regulations as they may be amended from time to time by the Condominium Board (subject to obtaining the prior written consent of Sponsor while Sponsor owns any Unsold Unit). The foregoing restrictions do not apply to an Unsold Unit's windows, entrance door or the door leading to its Balcony, Terrace, Juliette Balcony or Yard (as applicable), which may be altered and decorated freely, other than the requirement to comply with the applicable Work Requirements. See Section A-14.1 and see Section R-4 and Section R-5 for discussion.

Section B-7.10.2. Insurance Requirements of a Unit Owner. Each Sold Unit Owner shall be required to obtain and maintain condominium homeowner's insurance with additions and alterations coverage, personal property coverage (e.g., the furniture, furnishings, kitchen appliances, electric, electronic or plumbing fixtures, finishes, treatments or decorations of Unit or its windows or on the Unit-side of the Unit's Boundary Floors, Boundary Ceiling and Boundary Walls, or other improvements and contents in an Owner's Unit, or the personal belongings of the Owner and the Owner's Household) and personal liability limits of not less than $300,000.00. This requirement is not applicable to Unsold Unit Owners. See Section A-26.2 and see Section R-6.4 for further discussion.

Section B-7.10.3. Maintenance and Repairs by Condominium Board. The Condominium Board shall maintain and repair the Common Elements and the Association's Assets in accordance and compliance with the Building Standard (see Section R-4.2.1 and Section R-4.2.2) and in a manner that: (a) shall not materially impair or prevent, nor unreasonably and materially interrupt or interfere with, the permitted use and enjoyment of a Unit; and (b) shall maintain the value of all Units and the Building Services to be provided to the Units pursuant to the Declaration and the By-Laws. The costs and expenses of such maintenance and repairs shall be a Common Expense and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section B-7.10.4. Insurance Requirements of Condominium Board. The Condominium Board will maintain fire and other casualty insurance insuring the Common Elements, including the Common Areas and Common Facilities, and the Limited Common Elements. The insurance will include the interests of the Condominium Board, the Unit Owners and their respective holders of Permitted Mortgages. This insurance will not cover losses to the personal property of an Owner or Owner's Household, which are to be obtained and maintained by the Sold Unit Owners as provided above.

The Condominium Board will also maintain liability insurance covering claims for personal injury and property damage arising from occurrences in or on or to the Common Elements, but not in or on or to Units or a Unit's Appurtenances. The insurance will include the interests of the Condominium Board, its Board Members, officers, employees and agents, and each Unit Owner. Unit Owners may be liable, jointly and severally, for occurrences in, on or caused by the Common Elements to the extent the liability insurance maintained by the Board is inadequate or does not cover the risk. The liability insurance in the First Year's Budget is in the amount recommended by the insurance agent identified in a Note to the First Year's Budget (see SCHEDULE B in Section F for details).

The premiums for the casualty and liability insurance maintained by the Condominium Board will be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests as set forth in the First Year's Budget (SCHEDULE B in Section F)

and the Condominium Documents. The minimum insurance coverages are also contained in such First Year's Budget.

Section B-7.11. *No Right of Board to Approve Purchasers*. The Condominium Board and the other Unit Owners shall not have the right to approve or disapprove Purchasers. Unless purchased by the Board under said Right of First Refusal, there is no limit on the number of Owners who may purchase for investment rather than for personal occupancy. This potentially may result in an indeterminate number of non-resident Owners resulting in Purchasers for their own occupancy never gaining or losing control of the Condominium Board under the terms of this Plan. See Section A-9.2.

Section B-8. Equipment and Fixtures Included in Sale. The offering price of each Unit includes all appliances, equipment, cabinets, and electrical and plumbing fixtures included in Sponsor's Plans and Specifications and summarized in Section C-1.4 and the Description of Property and Specifications or Building Condition (see DOCUMENT 4 in Part II of this Plan).

Section B-9. Prices Set By Sponsor Without Governmental Approval. The offering prices are set by Sponsor and are not subject to approval of the Department of Law or any other governmental agency.

Section B-10. All Material Terms Disclosed. This Plan delivered to prospective Purchasers contains all of the material terms of the transaction. Copies of this Plan, all documents referred to in this Plan and all Exhibits submitted to the Department of Law in connection with the filing of this Plan will be available for inspection without charge and for copying at a reasonable charge to prospective Purchasers and their attorneys at the office of the Selling Agent or the site of any sales office or the office of Sponsor and at the Real Estate Finance Bureau of the Office of the New York State Attorney General, 28 Liberty Street, New York, New York 10005.

Section B-11. Who May Purchase. This offering is made to only individuals aged 18 years or older and Entities qualified to do business in the State of New York who are competent to own real estate in the State of New York. There are no restrictions (on age or otherwise) to live in the Condominium.

Section B-12. Caveat. THE PURCHASE OF A CONDOMINIUM UNIT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A PURCHASE AND SALE AGREEMENT.

Section B-13. Glossary; Rules of Interpretation; Grammar.

Section B-13.1. *Glossary*. The meanings of the defined terms set forth below are contained in the following Sections of this Part I and shall apply to derivations thereof.

24/7: Section A-4.
324 West 108th Street Public Areas: Section B-7.2.1(c).
Acts or Omissions: Section B-7.4.2.
Additional Common Charges: Section B-7.4.1(b).
Administrative Expenses: Section B-7.4.2(c).
Affiliated Nominee or Designee: Section A-7.2(a-1).
Agent: Section W-1.1.
Appurtenances: Section B-5.
Association's Assets: Section B-7.8.1(b-2).
Balance: Section K-1.3.
Balcony: Section B-5.
Bank: Section K-3.1.1.
Baseball Arbitration: Section R-9.
Berger P.C.: Section A-10.
Board: Section B-7.8.1.
Board Alterations: Section R-5.1.1.
Board's Governance: Section B-7.8.1.
Board's Governance Rights: Section B-7.8.1.
Board Member: Section B-7.8.2.
Bona Fide Purchaser: Section L-3.
Boundary Ceilings: Section B-7.2.2(a-2).
Boundary Floors: Section B-7.3.2(a-2).
Boundary Walls: Section B-7.2.2(h).
Building: Section B-3.
Building Code: Section C-2.
Building Services: Section B-7.3.2.
Building Standard: Section B-7.3.2.
Building Construction Standard: Section O-2.11.1.
Building Systems: Section B-7.2.2(d).
Building Walls: Section B-7.2.2(a-3).
Bulkheads: Section B-7.2.2.
Business Judgment: Section A-31.
Business Judgment Rule: Section A-31.
By-Laws: Section B-2.
Certificate of Occupancy: Section A-7.3.
City Register's Office: Section B-2.
Close Title: Section A-2.4.
Closing: Section A-2.4.
Closing Date: Section K-6.
Closing of Title: Section A-2.4.
Combined Unit: Section I-4(b).
Common Charges: Section B-7.4.1(a).
Common Areas: Section B-7.2.
Common Elements: Section B-7.1.
Common Expenses: Section B-7.4.2.
Common Facilities: Section B-7.2
Common Interest: Section B-7.1.
Communications Facilities: Section A-14.3(b).
Condominium: Section B-2.
Condominium Act: Section B-2.
Condominium Amendment: Section A-27.2.
Condominium Association: Section B-7.8.1.
Condominium Board: Section B-7.8.1.
Condominium Charges: Section B-7.4.1.
Condominium Documents: Section B-2.
Condominium Expenses: Section B-7.4.1.
Construction Change Requirements: Section O-2.8.2.
Construction Changes: Section O-2.8.2.
Construction Defect: Section O-2.11.2.
Construction Lender: Section A-9.1.
Construction Parties: Section B-7.8.1.
Controlling Interest: Section R-1.2.
Coop/Condo Tax Abatement: Section A-10.2.
Declaration: Section B-2.
Defect Notice: Section O-2.11.2.

Department of Law: Section B-1.
Deposit: Section A-1.4.
Deposit Notice: Section K-3.8.
Depository: Section A-1.4.
Designated Occupant: Section B-7.5.1.
Designee: Section A-27.7.
DOB: Section A-7.3.
DOF: Section A-10.
Douglas Elliman Property Management: Section X-3.
Effectiveness Amendment: Section L-2.
Emergency: Section A-18.3.
Entity: Section B-7.5.1.
Escrow Account: Section K-3.1.1.
Escrow Agent: Section K-3.1.1.
Excess Development Rights: Section A-1.3
FAR: Section A-1.3
FCO: Section A-7.3.
Final Certificate of Occupancy: Section A-7.3.
FinCEN: Section A-41.
First Unit Closing: Section A-2.1.
First Year's Budget: Section A-4.
Floor Plans: Section B-2.
Foreign Person: Section A-6.
GBL: Section K-2.
General Requirements: Section A-32.2.
Government Document: Section O-1.7.
Governmental Authority: Section A-7.2.
Governmental Work Permit: Section A-7.3.
Guests: Section B-7.5.1.
Household: Section B-7.5.1.
ILSA: Section AA-7
Immediate Family: Section B-7.5.1.
Indemnified Party: Sections O-1.7(d) and O-2.1.
Independent Board Member: Section B-7.6.2.
Initial Managing Agent: Section W-1.1.
Initial Working Capital Fund: Section V-2.
Institutional Lender: Section B-4.
Insurance Trustee: Section R-6.1.1(b).
Interim Use and Occupancy Agreement: Section J-1.
International Organization: Section A-5.
Juliette Balcony: Section B-5.
KWH: Section F-7.
Land: Section B-3.
Landmarks Commission: Section A-1.2.
Landmarks Law: Section A-1.2.
Latent Construction Defect: Section O-2.11.2.
Laws: Section A-7.2.
Legal Expenses: Section A-2.1.
Limited Common Elements: Section B-7.1.
Lines and Conduits: Section B-7.1.2(j).
Litigation: Section K-33.
Litigation Document: Section O-1.7.
Liquidated Damages: Section A-2.1.
Malfeasance: Section Q-3.
Managing Agent: Section A-6.
MDL: Section A-28.
Miller LLP: Section T-1.
Minor Construction Defect: Section O-2.11.2.
Non-Recourse, Limited and Several Liability: Section Q-3.
OCV: Section X-5
Offering Price Schedule: Section A-2.5.4.

Operating Costs: Section A-4
Order: Section A-41.
Ordinary Work: Section R-5.1.1.
Owners: Section B-1.
Owner-Occupied: Section A-8.
Part I: Section B-1.
Part II: Section B-1.
Part 20: Section B-1.
Patent Construction Defect: Section O-2.11.2.
Per Diem Interest: Section A-2.1.
Permitted Encumbrances: Section M-4.
Permitted First Mortgage: Section Q-7.2(b).
Permitted Mortgage: Section A-11.
Permitted Users: Section A-42.
Plan: Preamble.
Plan Amendment: Section A-2.5.4.
Plans and Specifications: Section B-7.1.2(j).
Presentation: Section C-1.3.
Pro Rata: Section A-10.
Prohibited Uses: Section A-32.1.
Property: Section B-3.
Punch List Work: Section K-28.2.
Purchase and Sale Agreement: Section A-1.4.
Purchase Price: Section A-1.4.
Purchaser: Section A-1.4.
Reasonably Acceptable: Section O-7.1(b).
Reconfigured Units: Section I-4(c).
Related Party: Section A-13.
Registered Mortgage: Section R-6.1.1(c).
Reserve for Capital Replacements: Section R-3.2.
Reserve for Contingencies: Section R-3.2
Residential Unit: Section B-5.
Right of First Refusal: Section B-7.5.2.
Roofs: Section B-7.2.2.
RPL: Section B-7.4.1.
RPTL: Section A-10.2
Rules and Regulations: Section B-2.
Scheduled Closing Date: Section A-2.5.3.
Security Deposit: Section R-3.7.
Selling Agent: Section X-4.
Sidewalk: Section R-4.2.2.
Sold Unit: Section A-7.1.
Sold Unit Owner: Section A-26.2.
Special Assessments: Section B-7.4.1.
Specially Allocated Expenses: Section B-7.3.2(b).
Sponsor: Section B-3.
Sponsor Board Control Period: Section A-7.1.
Sponsor Board Member: Section B-7.6.2.
Sponsor Designee: Section A-27.7.
Sponsor-Related Party: Section B-7.8.2.
Sponsor Veto Control: Section P-2.1.
Sponsor Veto Control Period: Section A-7.2.
Sponsor's Obligations: Section O-2.
Sponsor Paid Waiver Period: Section A-4
Sponsor's Rights: Section A-27.1.
STAR: Section S-8.1
Storage Locker: Section B-5.
Structural Ceilings: Section B-7.2(a-2).
Structural Components: Section B-7.2.2(a).
Structural Floors: Section B-7.2.2(a-2).
Structural Walls: Section B-7.2.2(a-3).
Structures: Section B-7.2.2.

Subdivided Units:	Section I-4(a).
Substantial Damage:	Section R-6.3.
TCO:	Section A-7.3.
Temporary Certificate of Occupancy:	Section A-7.3
TIME OF ESSENCE:	Section A-2.3.
Title Insurance Company:	Section M-4(b).
Unavoidable Causes:	Section A-18.2.
Unit:	Section A-1.4.
Unit Alteration:	Section I-4(e).
Unit Areas:	Section B-7.1.
Unit Change Requirements:	Section I-6.
Unit Changes:	Section I-4.
Unit Combination:	Section I-4(b).
Unit Division:	Section I-4(a).
Unit Expansion:	Section I-4(d).
Unit Facilities:	Section B-7.1.2.
Unit Layout:	Section A-22.
Unit Owner:	Section O-1.4.
Unit Owners:	Section B-1.
Unit Owners Paid Waiver Period:	Section A-4
Unit Property:	Section B-7.2.3.
Unit Users:	Section B-7.5.1.
Unit Reconfiguration:	Section I-4(c).
Unit's Appurtenances:	Section B-7.3.2(a-5)
Unsold Unit:	Section A-7.1.
Unsold Unit Owner:	Section A-26.2.
Usage:	Section B-7.3.2(b).
Veto Control:	Section P-2.1.
Waiver Period:	Section A-4
Work:	Section A-32.2(c).
Work Requirements:	Section A-32.2(c).
Working Capital Fund:	Section V-1.
Working Capital Payment:	Section V-2.
Yard:	Section B-5.
ZLDA:	Section A-1.3.

Section B-13.2. *Rules of Interpretation*. The lowercase words used in this Part I or derivations or variations thereof shall be interpreted as indicated below. All other lowercase words shall have their ordinary meanings.

"**accessible**": the facility or other item in question is accessible from within the interior of a Unit without damage or destruction to partitions, Boundary Walls, Boundary Floors, Boundary Ceilings, Building Walls, or similar Common Elements within or bordering a Unit.

"**alter**": improve, modify, add to, adjust, vary, change, amend, revise, rework, correct, demolish, remove or replace, whether a Structural Component or a non-Structural Component, or extraordinary or ordinary.

"**amend**" modify, revise, correct, rewrite, supplement, add, eliminate, delete, repeal, replace, substitute, or otherwise change.

"**business day**": any calendar day other than Saturday, Sunday or a legal holiday of the State of New York or United States government.

"**claim**": any manner of contention, dispute, controversy or and disagreement.

"**consent**": unless expressly stated to be the reasonable consent, the consent to be given is discretionary and may be conditioned, delayed, withheld or denied, without cause or explanation, and without liability or recourse of any kind against the party whose consent is required.

"**costs and expenses**": any kind of pecuniary expenditure, outlay, charge, price, fee, imposition, penalty or fine; provided, however, the pecuniary or monetary expenditures to be paid or reimbursed to a party shall be out-of-pocket and at commercially competitive, market rates and amounts.

"**day**": any day of the year, unless expressly stated to be a business day.

"**decorate**": all manner of paintings, ornaments, furnishings, furniture, fixtures, embellishments and decorations of any kind, including: all manner of flooring (e.g., wood, tiles of any composition, carpeting, rugs and other floor coverings); all manner of baseboards and moldings; all manner of lighting fixtures and chandeliers and related switch plates and electrical outlets; all manner of doorknobs, hinges and other hardware; all manner of plants, flowers and gardening; and all manner of wall and ceiling finishes and coverings (e.g., paint, plaster, paper, fabric, wood, glass, tile and other materials).

"**disposition**": to lease, rent, grant easements or concessions, license, mortgage, securitize, collateralize, assign, transfer, sell, convey, market, advertise, improve, combine, divide, expand, contract and to otherwise transact any matter.

"**duty**": a responsibility, obligation, burden, or requirement.

"**equipment**": all manner of machinery, tools, apparatus, devices and implements comprising part of a Common Element or Unit (as applicable), now or hereafter, whether mechanical, electrical, electronic, plumbing, heating, ventilation, cooling or otherwise (see EXHIBIT C to the Declaration for full definition).

"**facilities**": all manner of equipment, structures, fixtures, amenities and improvements, including Unit Facilities and Common Facilities.

"**freely**": the same as unfettered.

"**inaccessible**": the facility or other item in question is not accessible.

"**include**", "**such as**", "**for example**": these shall always be deemed to be followed by the words "but not limited to".

"**indemnify**": this word shall always be deemed to be followed by the words "defend and hold harmless.

"**install**": erect, construct, affix, mount, fasten, project or otherwise attach to, in, on, under, above or from, or to hang on, under or from.

"**lease**"; a contract or agreement to use and occupy a Unit or a portion of a Common Element in exchange for rent or other consideration and includes an agreement creating a landlord and tenant relationship, or a license or other form of use and occupancy.

"**liable**": all manner of legal responsibility, obligation or accountability.

"**loss**": all manner of actual or compensatory damages, but not consequential, indirect, incidental, special, punitive or otherwise (unless otherwise expressly specified), as well as all costs and expenses.

"**maintain**": inspect, test, preserve, clean, wash, paint, waterproof and otherwise keep in good and proper working order and first-class condition and appearance in accordance with, and to prevent a decline, lapse or cessation from, the Building Standard.

"**offending**": fault, blame, responsible or accountable.

"**operate**": govern, administer, manage, control, perform, conduct or transact business or affairs or other activities; or to run, work or function, as indicated or inferred by the text.

"**person**": an individual (i.e., natural people) or an Entity.

"**power**": the authority and right of a party set forth in the Condominium Documents or this Plan or the Condominium Act.

"**promote**": all manner of offering, advertising, marketing, signage, displays and other promotion and promotional activities in connection with the sale, rental or operation of an Unsold Unit or the business related thereto or as otherwise indicated by the context.

"**reasonable consent**": the consent to be given shall not be arbitrarily conditioned, withheld, denied or delayed, and instead shall be determined in accordance with reasonable criteria and if the consent is not given, or if no response is given within a specified period (or if none) a commercially reasonable period, then the reason to condition, withhold, deny or delay, or to not respond, shall be explained upon written request.

"**repair**": fix, correct, refurbish, replace and substitute, and to remove decay or dilapidation, whether a Structural Component or a non-Structural Component, or extraordinary or ordinary (unless otherwise expressly provided).

"**restore**": reinstate or rebuild.

"**right of self-help**": the right of a party, for the account and at the expense of another party, to pay or perform an obligation of such other party.

"**sign**": an item used to sell, rent or promote a Unit or a business being conducted in a Unit or the Building or the Condominium Association.

"**sole cost and expense**": the costs and expenses shall be borne solely by the applicable party without reimbursement from, or any manner of recourse against, another party or its Related Parties.

"**tenant**": the person entitled to use, occupy and possess a Unit, a Common Element or an Association's Asset pursuant to a lease.

"**unfettered**"; unrestrained, without and free of any consent, approval, fee, charge, imposition, payment, condition, restriction, limitation, prohibition or requirement, other than compliance with the General Requirements and any other expressly stated restriction, limitation, prohibition or requirement.

"**use and enjoy**" all rights, privileges and benefits, either exclusively or in common with respect to a portion of the Property for its permitted purposes, under the terms and conditions contained in Condominium Documents.

"**utilities**" electricity, water and sewer, cable television, telephone and Internet.

"**violate**": to default or breach, or (where expressly provided) to suffer a default or breach, or to fail to observe, perform or comply with (whether intentional or inadvertent) an obligation, restriction, limitation, prohibition or other requirement.

Section B-13.3. *Grammar*. Any grammatical errors in this Part I shall automatically be deemed corrected so that the singular shall include the plural and vice versa; or any gender shall include any other gender; or any tense (past, present or future), shall include any other tense, whenever required by the sense of this Part I and is not contrary to the express context.

END OF SECTION B

SECTION C. DESCRIPTION OF THE PROPERTY AND IMPROVEMENTS

The following is a general description of the Property, including the Units and Common Elements, as well as certain facilities to be provided at the Condominium. For a more detailed description of the Property and the Building, as well as the Building condition, see DOCUMENT 4. "Description of Property and Specifications or Building Condition" in Part II of this Plan. This summary and said DOCUMENT 4 are based on Sponsor's Plans and Specifications for the rehabilitation of the Building with an additional floor and newly constructed and outfitted Units and Common Facilities filed with the DOB, which may be amended from time to time pursuant to this Plan.

Section C-1. The Property, Services and Amenities.

Section C-1.1. *Land*. The parcel of Land comprises approximately 4,390 square feet and fronts approximately 43 feet, 6 inches along the south side of West 108th Street and is approximately 100 feet, 11 inches deep. The Property is distant approximately 143.375 feet to the west from the sidewalk of the corner formed by the intersection of the southeastern side of 108th Street and the eastern side of Riverside Drive.

Section C-1.2. *Building*. The building at 324 West 108th Street was previously combined with the building at 326 West 108th Street into a single interconnected Building with unitary services and infrastructure. Upon completion of rehabilitation with a newly constructed sixth floor, the Building will contain a cellar, six floors above the cellar, a main Roof and an elevator Bulkhead and a stair Bulkhead. The floors above the cellar will be numbered 1 (ground floor) to 6. See the following Section C-1.3 for location of the Units. An elevator will serve all floors from the cellar to floor 6 and the main Roof.

Section C-1.3. *Units*. Under Sponsor's current Plans and Specifications, the Building is to be rehabilitated and constructed with a total of ten (10) newly constructed Residential Units. Two Units will be located on each of floors 1 (ground) to 4, and one Unit will be located on each of floors 5 and 6. The Unit numbers will correspond to the floors on which they are located, except the Unit located on floor 6 will be called Unit PH (i.e., penthouse).

The indoor contiguous floor areas of the Units are planned to range in size from an estimated 754 square feet for Unit 101, to an estimated 2,362 square feet for Unit 501.

Each Unit will include as part of the private and exclusive ownership and possession an estimated 9 square foot Storage Locker located in the cellar. In addition, included as part of the private and exclusive ownership and possession of:

Unit 102 will be a Yard measuring an estimated 423 square feet;

Unit 202 will be Juliette Balcony measuring an estimated 89 square feet;

Unit 302 and Unit 402 each, will be two Balconies measuring an aggregate of an estimated 80 square feet;

Unit 501 will be a Terrace measuring an estimated 239 square feet; and

Unit PH will be two Terraces measuring in the aggregate approximately an estimated 653 square feet.

See the Offering Price Schedule for the estimated square feet of each Unit, including its Storage Locker and Yard or Juliette Balcony, Terrace or Balcony (as applicable).

The approximate interior contiguous floor area of each Unit has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line) enclosing the Unit, or from the midpoint of a Boundary Wall separating the Unit from another Unit. The approximate non-contiguous floor area of a Unit's Storage Locker has been measured from the exterior side of the Boundary Wall enclosing the Storage Locker, or from the midpoint of a Boundary Wall separating two Storage Lockers. The approximate outdoor floor area of a Unit's Balcony, Terrace, Juliette Balcony or Yard (if any) has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line), or from the exposed surface of the prevailing Building Wall, enclosing such outdoor floor area. All Common Elements bordering or within the indoor or outdoor floor areas of a Unit have been included in the computation of the floor areas of the Unit, but such Common Elements are not part of the Unit. As a result, the indoor or outdoor floor areas of a Unit will substantially exceed the Unit's useable floor areas. The room and area dimensions, however, are measured from the exposed surface of the prevailing walls enclosing the room or area. Chase walls, shafts, cabinets and the like are not subtracted. See Section A-22 for discussion.

The Floor Plan of the planned configuration, layout, size and room dimensions of each Unit is contained in Part II as DOCUMENT 5 of this Plan. All square footages and dimensions shown on the Floor Plans and stated above and in the Offering Price Schedule are approximate, rounded and within reasonable tolerances and estimates based on Sponsor's Plans and Specifications, all of which are subject to normal construction allowances, tolerances, variances and changes pursuant to Sponsor's Right to change the number, configuration, layout, size and room dimensions of Units in compliance with Part 20, Section 20.3(k) of the regulations issued by the Department of Law (see Section I-4 and Section I-5).

SPECIAL RISK: A minor or immaterial inaccuracy in the actual square footage (i.e., floor area) or the actual size of individual rooms or areas of a Unit when built from that shown on the Offering Price Schedule or its Floor Plan in DOCUMENT 5 in Part II, shall not excuse a Purchaser of such Unit from paying the full Purchase Price, without abatement, set-off or credit, and without liability or recourse of any kind against Sponsor or its Related Parties. If the actual overall size of a Unit when built, as similarly measured in accordance with the foregoing, is materially smaller than the total square footage (i.e., floor area) stated on its Floor Plan in DOCUMENT 5 in Part II or in the Offering Price Schedule, this Plan will be amended to offer such Purchaser the right for only fifteen (15) days after "Presentation" (defined below) of the Plan Amendment to rescind the Purchase and Sale Agreement, which shall be the limit of Purchaser's remedy and Purchaser's sole recourse against

Sponsor. If Purchaser timely elects to rescind, Purchaser's Deposit and any earned interest thereon will be returned to Purchaser (see Section A-22).

Any change in the percentage of Common Interest or the reapportionment thereof may only be made by filing an amendment to this Plan and the Condominium Declaration. No material change may be made to Units in contract without the consent of a Purchaser who is not in default.

The term "**Presentation**" or words of similar import mean the day of hand delivery or (if mailed) the fifth day after mailing (whether by ordinary mail or registered or certified mail, with or without return receipt requested) of this Plan or a Plan Amendment to prospective Purchasers, all then existing Purchasers and (after the First Unit Closing) then existing Sold Unit Owners.

Section C-1.4. *Appliances and Finishes*. Residential Units are planned to be outfitted as follows subject to the right reserved to Sponsor to substitute material and appliances of no less equal in quality or design: Miele refrigerator; Miele kitchen induction cooktop; Miele kitchen induction oven; Miele kitchen electric dishwasher; Miele electric washer and dryer; Poggenpohl kitchen cabinets with siletone kitchen counters; tongue and groove, end matched engineered 5/8" European oak flooring with a cured oil finish in living and dining rooms, set on a plywood subfloor; bathroom tile floors and baseboards; Robern bathroom vanities and medicine cabinets with soft close hinges and matt white lacquered finish; and light colored painted gypsum board walls and ceilings. See Section A-33 and the Description of the Property and Specifications or Building Condition (DOCUMENT 4 in Part II of this Plan) for appliance makers, model numbers and further details.

Furnishing, furniture, appliances, finishes and coverings (on walls, floors and ceilings) window treatments and all other decorations in or about any sales model or office that are not expressly set forth in this Plan are for display purposes only and not included in the sale. Purchaser, at his or her sole cost and expense, will be responsible to repaint and repair any damage to the Unit or its contents that might be caused when Purchaser moves in.

Section C-1.5. *Standard Building Services and Amenities*. Generally, the services normally associated with the operation and maintenance of comparably sized and equipped high quality residential condominiums located in the vicinity of the Building will be provided to the Owners, tenants and occupants of Units, regardless of the number of Units that are sold.

All costs and expenses of these Building Services will be part of the Common Expenses, which shall be allocated to all Unit Owners and apportioned and assessed among them Pro Rata to their respective Common Interests.

The Building amenities and recreational facilities have been completed and are listed below. They include the following: the cellar is planned to contain a community recreation room, which will be outfitted with a Miele refrigerator, Miele microwave and Miele dishwasher, and an exercise room, which will be will be equipped with a Primasole Yoga Mat (or no less equal in quality and design) and a Core Fitness Dumbbell Weight Set (or no less equal in quality and design); a rooftop community Terrace and a ground level patio; the decorations or finishes of the 324 West 108th Street Public

Areas, the Building entrance, the lobby and the elevator cab. The part-time non-resident superintendent/handyman and the part-time porter will be working on site the full number of hours per week as planned in the First Year's Budget. See below for further details and see Section A-16.1, Section C-1.5, Note 5 to SCHEDULE A in Section E, Note 3 to the First Year's Budget in Section F.

After the First Unit Closing, portions of the Common Elements and Units will still be undergoing construction, equipping, outfitting and decorating, which may extend up to possibly a year or more, subject to delays caused by completion of Units and Punch List Work (which will have the highest priority) and Unavoidable Causes. During this period, the electrical, plumbing, elevator and other Building Systems may be disrupted temporarily from time to time as Work is performed or Building Systems are balanced and adjusted. The occupied Units, however, will remain habitable and a tenant protection plan to the extent required by Laws will be in place.

See Section A-16 and Section A-18.2 with respect to the foregoing, and see Section C-1.7 as to potential changes in Building Services.

Standard Building Services and Amenities

The standard Building Services to be provided to the Owners, tenants and occupants of Units, and included in the Common Charges, will include the following and are planned to be in effect from and after the First Unit Closing and occupancy of a Unit, subject to delays caused by Unavoidable Causes.:

Community Terrace and Patio: The Building is planned to contain a rooftop community Terrace and ground level patio.

Community Recreation Room and Exercise Room: The Building's cellar is planned to contain a community recreation room, which will be outfitted with a Miele refrigerator, Miele microwave and Miele dishwasher, and an exercise room, which will be will be equipped with a Primasole Yoga Mat (or no less equal in quality and design) and a Core Fitness Dumbbell Weight Set (or no less equal in quality and design).

Elevator Service: One automatic, self-service elevator will serve the cellar, all floors and the main Roof.

Building Security System: A video intercom system will be installed outside of the main entrance. Residents will be able to access the Building using mobile phone unlock, a face identification and a pin code entered on the intercom screen. Guests will use the video intercom system to call residents in order to gain access. There is also a handicap accessible service entrance with a key reader for access. Residents will have a key fob and can use their phones to unlock the service entrance.

There will be a security camera installed outside of the main entrance, a camera in the lobby, and at least one camera on the roof. The video intercom panel outside of the main entrance also has a camera. The main entrance and side entrance doors will have self-closing mechanisms and will be locked at all times.

No representation, assurance or guaranty is made or given that the security system will prevent personal injury or damage to, or loss of, property. See Section A-31.

Building Staff: The Building staff will consist of non-resident superintendent/handyman who will be available to visit the Building on an as needed basis, but not less often than 3 days a week for a total of 15 hours per week. Tasks will include addressing all building equipment and facilities, maintaining and to the extent capable repairing the Common Element, and supervising the porter. The non-resident superintendent will be on call 24/7. The Managing Agent will provide 24/7 backup emergency service.

The porter will be scheduled to work in the building five (5) times a week for four (4) hours at each visit. The porter's duties will include the removal of trash from the refuse room for pick-up at the sidewalk by the New York City Department of Sanitation, cleaning of the Common Areas, sidewalk cleaning and snow removal. The weekly schedule of trash removal will be based on City refuse days (currently Tuesday, Thursday, and Saturday), and two additional days, currently set at Monday morning and Friday afternoon. The schedule of the porter is to be arranged between the Condominium Board and the superintendent, based on Building needs. See Section A-16.1.

Utilities: Each Unit will contain connections for utilities, including electricity, heating, domestic hot and cold water, telephone and cable television service. The Building will be wired for a cable television connection to each Unit. Telephone and internet service, and television service will be available through a cable that will be provided. Installation and operation costs of telecommunications and television equipment are to be borne by the individual Unit Owners. Owners will have to make individual arrangements for cable television, telephone and internet services with providers with direct billing to the Unit's Owner (as available in the Building)

Electricity will be provided by Consolidated Edison Company of New York, Inc. ("Con Edison") (or any utility that subsequently supplies electricity to the Building). Each Unit will be separately metered for electricity. Electricity will be provided to each Unit for cooking and hot water provided to the Units. No gas service will be provided to the Units.

Heating and air conditioning for each Unit will be provided by an electric, split system heat pump system consisting of a rooftop condenser, an air handler located in the ceiling of the Unit, and ductwork distributing hot/cold air into the rooms from the handler. There will be one heat pump per Unit.

There will be a heat pump to service public areas, which will be master metered and included in the Common Expenses to be billed as part of the Common Charges to all Units Pro Rata to their respective Common Interests.

Water and sewer services will be provided by The City of New York and the costs of such services will be included in the Common Charges and assessed to all Units Pro Rata to their respective Common Interests.

The Building will be serviced by Time Warner Spectrum or another equal telephone service provider. Units will not be allowed to install wiring in any Common Area without Condominium Board's consent. Units will be prewired and provided with a telephone jack outlet in the bedroom and the living/dining room. Cable television service will be provided by Time Warner Cable or another equal cable service provider. Units will be prewired for cable service and provided with a cable service jack in each bedroom and living/dining room. Charges for telephone and cable services will be paid for by the individual Unit Owner directly to the service provider. Unit Owners are to arrange for telephone and cable television service directly with the utility provider. Internet service must be arranged by the Unit Owner, at such Owner's sole cost and expense.

Refuse Disposal: Each floor will contains a trash room with a refuse chute for storage and disposal of refuse by Owners and tenants of Units. The refuse will be taken by the porter to a refuse room located in the cellar, which will be used to store the refuse. Refuse will be loaded into plastic bags and taken by the porter to curbside for collection by the New York City Department of Sanitation. There will not be a compactor.

Laundry: Each Unit will have a laundry room or closet outfitted with a side by side Miele (or equal) electric washer and a Miele (or equal) electric dryer. In addition, a common laundry room in the cellar will be outfitted with two Miele (or equal) electric washers and two Miele (or equal) condenser type, non-vent electric dryers that do not require ventilation. The Condominium Board will have the right to add payment requirement for the laundry equipment.

Other Service Contracts: Certain additional services, covered by third-party contracts, are included in standard Building Services, such as elevator maintenance.

Smoke and Carbon Monoxide Detectors: Smoke and carbon monoxide detectors shall be provided in each Unit in compliance with applicable Law.

General Provisions Concerning Building Services. In all likelihood, the nature of the Building Services listed above, the hours during which they are provided, and any increase or decrease or elimination of any such Building Services may change from time to time, in the discretion of the Independent Board Members when they have voting control of the Board; subject however, to Sponsor Veto Control during the Sponsor Veto Control Period, and subject further to obtaining Sponsor's consent while Sponsor owns an Unsold Unit to any elimination or decrease in said Building Services not provided in the First Year's Budget. In addition, the rates charged for Building Services provided by third-parties will likely change from time to time. Sponsor and the Selling Agent do not represent, assure or guarantee that the Independent Board Members will maintain the Building Services set forth above.

All decisions concerning the Building Services summarized in this Section C-1.5 and any changes thereto will be made by the Sponsor Board Members while they have voting control of the Condominium Board during only the Sponsor Board Control Period. This Plan will be amended to disclose an adverse change in a material Building Service.

Section C-1.6. *Building Conditions*. The observable portions of the Building (without damage to walls, floors or ceilings) that are not being rehabilitated or newly constructed are generally in fair condition or without signs of settlement cracks, bulges, leaning conditions, or other signs of distress, or (if otherwise) Sponsor states will be repaired or refurbished to fair condition by Sponsor.

The steps leading to the entrance doors do not meet the current Building Code minimum depth requirements. This is a permitted non-conforming condition permitted under the NYC Building Code.

In addition, the front stoops/porch and steps, as well as the cellar access vaults, are located slightly beyond the Property line and have been permitted to exist for decades under a revocable, undocumented license from The City of New York, as owner of the sidewalk. These conditions are commonly found in New York City and have remained undisturbed. In the unlikely event the DOB would revoke said license and require the removal of the minor encroachments by the front steps/porch and steps, and the cellar access vaults, the Condominium Board, as a Common Expense assessed to all Unit Owners Pro Rata to their respective Common Interests, would have to undertake such work. The current estimated approximate cost of engineering, filing and construction is $15,000. These changes, nonetheless, would not affect the new Certificate of Occupancy to be obtained upon completion of renovation or impact the Certificate of Occupancy if the changes occur after it is issued, nor affect the habitability of the Units or the operation of the Building (the vaults do not house utilities or other operational facilities). See Section A-38

Sponsor's obligation, regardless of any limitations in this Plan, is to construct the premises in accordance with all applicable codes and filed plans and specifications, and that any conflict between the disclaimers and 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.

Section C-1.7. *Governing Condominium Documents; Changes and Interruptions in Building Services*. The foregoing Building Services will be governed by, and subject to, the Declaration, By-Laws and the Rules and Regulations (the latter may be amended from time to time by the Condominium Board without the consent of Unit Owners). The Sponsor and Managing Agent will not be responsible for changes made by the Condominium Board to: (a) the quality or level of Building Services or (b) a change, reduction or discontinuance of Building Services provided in the First Year's Budget, all of which will be within the discretion of the Condominium Board, but subject to Sponsor Veto Control during the Sponsor Veto Control Period.

In all likelihood, the nature of the Building Services listed above, the hours during which they are provided, any increase or decrease or elimination of any such Building Services, and the rates charged for Building Services provided by third-parties will change from time to time, in the discretion of the Board (subject to Sponsor Veto Control during the Sponsor Veto Control Period) or the party providing the Building Service. Sponsor and the Selling Agent do not represent, assure or guarantee that the Board will maintain the Building Services set forth above.

Sponsor will have the unfettered right (other than the requirement to comply with the applicable Work Requirements), and without liability to Owners, tenants or occupants of Units or to the Board for any claims or liabilities, to temporarily interrupt Building Services in order to complete the rehabilitation of the Building with additional floors and newly constructed and outfitted Units and Common Facilities in accordance with Sponsor's Plans and Specifications disclosed in this Plan or to perform construction obligations under this Plan, a Plan Amendment or a Purchase and Sale Agreement (whether performed before or after the Closing of Title thereunder).

The Condominium Board (including its members and officers in their capacity as such), the Managing Agent and Sponsor will not be liable to Owners, tenants or occupants of Units, or their Construction Parties, or visitors, for any claims or resulting liabilities based on an interruption, reduction, change or discontinuance of a Building Service due to Unavoidable Causes or the Acts or Omissions of third-parties engaged to provide Building Services. The foregoing shall not excuse Sponsor from Sponsor's obligations under this Plan (including those set forth in "Section O-2 Obligations of Sponsor"), nor excuse Sponsor or the Managing Agent from its own negligence.

Section C-2. Applicable Laws. The Property will be improved and the units constructed in accordance all applicable zoning and building laws, requirements and regulations, including the New York City Zoning Resolution, the Zoning Resolution, the building code of The City of New York (the "**Building Code**") and Sponsor's Plans and Specifications (as same may be amended from time to time pursuant to this Plan).

Section C-3. Construction Schedule. All of the amenities, recreational facilities and services to be provided have been completed. Based on the current schedule, the Building is projected to be sufficiently completed to permit the issuance of a TCO authorizing the residential use of at least one Unit on or about January 1, 2023. Such date is only a target and is not guaranteed. The timetable for substantial completion of all Units and the 324 West 108th Street Public Areas (other than cosmetic or minor work, including Punch List Work items listed on a Purchaser's Final Inspection Statement, attached as Exhibit B to the Purchase and Sale Agreement) is currently scheduled to occur within approximately twelve (12) months from such date (i.e., December 31, 2023), unless delayed by events or circumstances beyond Sponsor's reasonable control. While these are good faith estimates of the target dates for completion or substantial completion of rehabilitation and construction, Sponsor does not assure, represent or guarantee that these goals will be achieved. See Section A-18.8 and Section A-4.

END OF SECTION C

SECTION D. LOCATION AND AREA INFORMATION

Section D-1. Location and Surrounding Areas.

Section D-1.1. *Location*. The Property is located on the south side of West 108th Street between Broadway and Riverside Drive, approximately 143 feet 4 inches east of Riverside Drive. The Property is rectangular, fronts approximately 43 feet 6 inches along the south side of West 108th Street and approximately 100 feet 11 inches deep (excluding the cellar access openings and front stoops/steps). The Property is in Block 1892, Lot 60 on the Block Map of the Tax Map Unit for Manhattan and comprises approximately 4,390 square feet. A small section of the sixth floor, approximately 1 foot 6 inches wide, of the western Building Wall towards the front cantilevers over the roof of the adjacent building located at 328 West 108th Street in accordance with a certain Zoning Lot Development and Cantilever Easement Agreement, dated as of April 4, 2019, between 328W108 LLC and W 108 Development LLC, recorded on April 17, 2019 in CRFN: 2019000123155. Sponsor and its principals do not own, in whole or in part, or have any option or right to require, in whole or in part, any adjacent areas which are not fully developed.

Section D-1.2. *Surrounding Areas.*

Neighborhood: The immediate neighborhood is primarily residential, steps away from Riverside Park and within walking distance of a variety of retail establishments (see "Shopping" below).

Transportation: The Condominium is served by taxis and a variety of public transportation facilities. The property is convenient to both bus and subway transportation. Municipal bus service is readily available on both Riverside Drive & Broadway travelling up, down and across town. Closest bus stop M5 Bus distance 254 feet or M104 Distance .1 mile (approximate).

Entrances to the subway are located at 110th Street and 103rd Street on Broadway for the #1 train, located 0.12 miles and .26 miles away respectively (distances are approximate). Access to the B and C subway lines are on Cathedral Parkway at 110th Street, located 0.57 miles and also on 103rd Street, located 0.6 miles (distances are approximate).

New York is served by 3 major airports located within approximately 10 miles of LaGuardia Airport, 30 miles to JFK and 27 miles to Newark, New Jersey (distances are approximate).

Shopping: Within walking distance of the Property is a wide variety of neighborhood stores where goods and services supporting residential uses can readily be found. Business and shopping areas are also within walking distance of the Property. They include supermarkets, cleaner/tailors, banks, drugstore, library, restaurants, high end retail shops. The central locations for shopping are located along Broadway, Columbus Avenue and Amsterdam Avenue.

Recreation and Cultural: Numerous museums, art galleries, health clubs, restaurants and other entertainment are within easy walking distance, including: Nicholas Roerich Museum (located on 107th Street between Riverside Drive and Broadway); Bloomingdale School of Music

is a neighbor (located at 323 West 108th Street); Columbia University is located on 116th Street and Broadway); American Museum of Natural History is located at Central Park West and 79th Street; Children's Museum of Manhattan is located at Broadway and West 83rd Street; Bard Graduate Center Gallery is located at 86th Street and Central Park West; and Soldiers' and Sailors' Monument is located at Riverside Drive and 89th Street. Entertainment at Smoke Jazz & Supper Club is located at 2751 Broadway. The West End Lounge is located at 955 West End Avenue. A Riverside Park entrance is located on Riverside Drive and West 108th Street. A Morningside Park entrance is located 110th Street and Columbus Avenue. Central Park is located at 108th Street and Central Park West.

Medical: The Property is also within easy access to a number of medical facilities, including: Mount Sinai Hospital (located at 1111 Amsterdam Avenue); New York Presbyterian Medical Center (located at 2960 Broadway); Saint Luke's Roosevelt Hospital Psychotherapy (located at 1090 Amsterdam Avenue); Health Services at Columbia University (located at 1116 Amsterdam Avenue); Riverside Animal Hospital North (located 250 West 108th Street); and CityMD Urgent Care (located at 2710 Broadway).

Religious: Institutions serving most religious denominations are easily accessible to the Property, including the following: New York Buddhist Church (located at 332 Riverside Drive); The Cathedral Church of St. John the Divine (located at 1047 Amsterdam Avenue); Congregation Ramath Orah (located at 550 West 110th Street); Upper West Manhattan Church of Christ (located at 891 Amsterdam Avenue); Church of the Ascension (located at 221 West 107th Street); Trinity Lutheran Church of Manhattan (located at 164 West 100th Street); Chabad of the West Side (located at 166 West 97th Street); and Romemu (located at 165 East 105th Street).

Educational: The Property is located in School District 3. Local educational institutions include: The School at Columbia University (located at 556 West 110th Street); Institute for Creative Music (located at 244 West 109th Street #2d); Bank Street College of Education (located at 610 West 112th Street); Booker T. Washington Middle School (located at 103 West 107th Street); Edward A Reynolds West Side High School (located at 140 West 102nd Street); The Harlem Edutainment Company (located at 69 West 106th Street, Suite 5B); Spoleto Music Institute (located at 760 West End Avenue # 3A); Chabad Early Learning Center (located at 166 West 97th Street); Terry's School P.S. 256 Academic Athletic Excellence (located at 154 West 93rd Street); Moshe Cotel (located at 639 West End Avenue); West Side Montessori School (located at 309 West 92nd Street); and The New York School of Regional Anesthesia (located at 2753 Broadway). Sponsor does not represent, assure or guarantee which schools that children residing in the Building will attend.

Municipal Services: The City of New York provides police, fire, water, sanitation, street snow removal and maintenance. The Property is served by the 24th police precinct (located at 151

West 100th Street) and the FDNY Battalion 11 Engine 76 & Ladder 22 (located at 145 West 100th Street).

New York City: The Building is located in one of the most historic, vibrant areas in all of New York City. In the last twenty years New York City has become a major cultural center with world class artists. The latest trend is for more residential growth.

Section D-2. Zoning. The Property is in a R8B zoning district, which permits residential and community facility use as of right, but not commercial use. The Building is located in the Riverside-West End Historic District Extension II. As a result, the Building is subject to the Landmarks Law. See Section A-40. The rehabilitation and construction of the Building will not use all available development rights under the existing zoning law. Sponsor is not submitting to condominium ownership and is reserving for its exclusive use and enjoyment the Excess Development Rights of the Property's zoning lot after completion of rehabilitation of the Building and construction of one additional floor. See Sections A-41 and BB.

END OF SECTION D

SECTION E. OFFERING PRICES AND RELATED INFORMATION

Section E-1. SCHEDULE A

324 WEST 108 CONDOMINIUM

The Projections in this SCHEDULE A assume that the first year of Condominium operation will be on or about from January 1, 2023 to December 31, 2023. The projected Real Estate Taxes in this SCHEDULE A are based on the *post-completion of rehabilitation assessment* of the Building for the July 1, 2023 to June 30, 2024 fiscal tax year.

Unit No. (1)	No. of Bedrooms/ Bathrooms (1)	APPROXIMATE FLOOR AREA (2) Interior Unit Square Footage	Exterior Sq. Ft.		Unit Total Sq. Ft.	Offering Price (3)	Percentage of Common Interest (4)	Projected First Year's Common Charges (5) Monthly	Projected First Year's Common Charges (5) Annual	Projected 7/1/23 to 6/30/24 Real Estate Taxes (6) Monthly	Projected 7/1/23 to 6/30/24 Real Estate Taxes (6) Annual	Projected Total Charges (7) Monthly	Projected Total Charges (7) Annual
101	1 / 1	754	9	(SB)	763	$1,357,200	5.43%	$964.97	$11,579.70	$1,072.90	$12,874.75	$2,037.87	$24,454.39
102	2 / 2	1,207	432	(Y,SB)	1,639	$2,554,200	9.45%	$1,677.94	$20,135.28	$1,867.19	$22,406.33	$3,545.13	$42,541.61
201	2 / 2	1,305	98	(2JB,SB)	1,403	$2,429,100	9.55%	$1,696.44	$20,357.30	$1,886.95	$22,643.43	$3,583.39	$43,000.71
202	2 / 2	1,207	9	(SB)	1,216	$2,172,600	8.69%	$1,543.00	$18,516.04	$1,717.03	$20,604.34	$3,260.03	$39,120.34
301	2 / 2	1,305	9	(SB)	1,314	$2,369,000	9.39%	$1,668.05	$20,016.61	$1,855.34	$22,264.07	$3,523.39	$42,280.67
302	2 / 2	1,207	89	(2B,SB)	1,296	$2,269,600	8.83%	$1,568.52	$18,822.28	$1,744.69	$20,936.28	$3,313.21	$39,758.52
401	2 / 2	1,230	9	(SB)	1,248	$2,290,200	8.92%	$1,583.83	$19,006.02	$1,762.47	$21,149.68	$3,346.30	$40,155.64
402	2 / 2	1,207	89	(2B,SB)	1,296	$2,319,600	8.83%	$1,568.52	$18,822.28	$1,744.69	$20,936.28	$3,313.21	$39,758.52
501	3 / 3	2,362	248	(2T,SB)	2,610	$4,716,700	17.41%	$3,093.02	$37,116.29	$3,439.98	$41,279.81	$6,533.00	$78,396.05
PH	3 / 3	1,715	662	(2T,SB)	2,377	$3,974,700	13.50%	$2,399.52	$28,794.21	$2,667.42	$32,009.04	$5,066.94	$60,803.28
TOTAL:		**13,508**	**1,654**		**15,162**	**$26,452,900**	**100.00%**	**$17,763.83**	**$213,166.00**	**$19,758.67**	**$237,104.00**	**$37,522.48**	**$450,269.72**

10 Units

Unit	Exterior Sq. Ft. Detail
102	423 s.f. (Y), 9 s.f. (SB)
201	89 s.f. (2JT), 9 s.f. (SB)
302	80 s.f. (2B), 9 s.f. (SB)
402	80 s.f. (2B), 9 s.f. (SB)
501	239 s.f. (2T), 9 s.f. (SB)
PH	653 s.f. (2T), 9 s.f. (SB)

"Y": Yard

"JB": Juliette Balcony

"B": Balcony

"SB": Storage Bin

Notes to Offering Price Schedule:

(1) The Building is planned to contain a total of ten (10) Residential Units, all of which are being offered for sale under terms set forth in this Plan. Sponsor reserves the unfettered right to: (a) to change the number of Units in compliance with Part 20, Section 20.3(k) (see Sections I-4 and I-5); (b) to limit a Purchaser from buying more than one Unit; (c) to determine the order in which Units are offered for sale; (d) to temporarily withhold or withdraw a Unit from sale without prior notice while preparing and processing a price change Plan Amendment or awaiting a signed Purchase and Sale Agreement from a prospective Purchaser; (e) to withhold a Unit for future sale, but Sponsor will amend this Plan to identify the affected Unit being so withheld; and (f) to reject any purchase offer without cause or explanation, except no purchase offer will be rejected based on grounds prohibited by civil rights Laws (see Section AA-3).

(2) Floor plans of the planned design, configuration, room dimensions, arrangement of windows for views and "light and air" and approximate overall size of each Unit are contained in DOCUMENT 5 of Part II of this Plan. The Floor Plans and any other drawing or diagram of the Units, and all dimensions and square footages noted thereon, and the square footages set forth in this Offering Price Schedule, are only approximations and rounded within reasonable tolerances, and estimates based on the construction Floor Plans. Sponsor reserves the right to make changes in a Unit Layout (see Section I-4).

In accordance with customary practice in New York City in the sale of newly constructed or rehabilitated condominium units, the approximate floor area of each Unit shown in this Offering Price Schedule or the Unit's Floor Plan (in DOCUMENT 5 of Part II) has been measured as follows. The approximate interior contiguous floor area of each Unit has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line) enclosing the Unit, or from the midpoint of a Boundary Wall separating the Unit from another Unit. The approximate non-contiguous floor area of a Unit's Storage Locker has been measured from the exterior side of the Boundary Wall enclosing the Storage Locker, or from the midpoint of a Boundary Wall separating two Storage Lockers. The approximate outdoor floor area of a Unit's Balcony, Terrace, Juliette Balcony or Yard (if any) has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line), or from the exposed surface of the prevailing Building Wall, enclosing such outdoor floor area. All Common Elements bordering or within the indoor or outdoor floor areas of a Unit have been included in the computation of the floor areas of the Unit, but such Common Elements are not part of the Unit. As a result, the indoor and outdoor floor areas of a Unit will substantially exceed the Unit's useable floor areas.

The room and area dimensions shown on a Unit's Floor Plan, however, are measured from the exposed interior surface of the prevailing walls enclosing the room or area (as applicable). All measurements and dimensions are based on construction drawings.

A minor or immaterial inaccuracy in the actual square footage (i.e., floor area) or the actual size of individual rooms or areas of a Unit when built from that shown on its Floor Plan in DOCUMENT 5 in Part II of this Plan (or any other drawing or diagram) and this Offering Price Schedule shall not excuse a Purchaser from his or her obligation under the Purchase and Sale Agreement to pay the full Purchase Price and all Closing costs, without abatement, set-off or credit, and without liability or recourse of any kind against Sponsor or the Selling Agent or their respective Related Parties.

If the actual overall size of a Unit when built, as measured in accordance with the foregoing, is materially smaller than the total square footage (i.e., floor area) stated on its Floor Plan in DOCUMENT 5 in Part II or in this Offering Price Schedule, this Plan will be amended to offer the affected Purchaser(s) the right for fifteen (15) days after Presentation of the Plan Amendment to rescind and recover Purchaser's Deposit together with any earned interest thereon and any unapplied special work payment (if and to the extent applicable), which shall be the limit of Purchaser's remedy and Purchaser's sole recourse against Sponsor and its Selling Agent, and their respective Related Parties. See Section A-22.

The Limited Common Elements appurtenant to each Unit comprise its windows and the entrance doors to the Unit or leading from the interior of the Unit to its Balcony, Terrace, Juliette Balcony or Yard (if and as applicable), but no areas.

The type and number of total rooms and bathrooms of the contiguous indoor area of each Unit are as follows:

Unit	**Type**	**Total Number of Rooms/ Bathrooms***
101	1 Bedroom, Living/Dining Room, Kitchen and Bathroom	1 Room/1 Bathroom
102 to 402	2 Bedrooms, Living/Dining Room, Kitchen, 1 Walk-in Closet, Laundry Area and 2 Bathrooms	3 Rooms/2 Bathrooms
501	2 Bedrooms, 1 Study/Bedroom, Living/Dining Room, Dining Room, Kitchen, Laundry Area, 3 Walk-in Closets, 3 Bathrooms, Foyer and Corridor	5 Rooms/ 3 Bathrooms
PH	2 Bedrooms, 1 Study/Bedroom, Living/Dining Room, Kitchen, Laundry Area, 1 Walk-in Closet, 3 Bathrooms, Foyer and Corridor	4 Rooms/3 Bathrooms

*Each bedroom, study/bedroom, living room/dining room and dining room is counted as one room. A kitchen, laundry area, foyer and corridor are not being counted as a separate room. A bathroom with a bathtub or shower is counted as one bathroom, and a powder room (i.e., a lavatory without either a bathtub or shower) is counted as a half-bathroom.

For purposes of presentation in this Offering Price Schedule, a study/bedroom is being counted as a bedroom.

(3) The offering prices and other terms of sale for Units not under contract are negotiable and may be changed by Sponsor from time to time in accordance with the provisions set forth below in Section I-1 and Section I-2. As a result, a Purchaser may purchase on less favorable terms (including price) than other Purchasers for similar Units.

In addition to the Purchase Price, Purchasers will pay various Closing costs and if a Purchaser fails to Close Title on the Scheduled Closing Date in accordance with the Purchase and Sale Agreement, such Purchaser shall be required to reimburse Sponsor for certain losses and expenses (see Section A-2.5.3 and see Section N-1.1.7 for full discussion).

(4) In accordance with Section 339-i(1)(iv) of the Condominium Act, the Common Interest of each Unit in the Common Elements has been determined based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of the Common Elements for exclusive or shared use, and the overall dimensions of the particular Unit.

(5) These projections are based upon the "Projected Budget for First Year of Condominium Operation - SCHEDULE B" (set forth in Section F), which were made on the assumption that the first year of Condominium operation will start on or about January 1, 2023. The actual first year of Condominium operation may be later (see Section F-2 for discussion). The collection of the full amount of the projected Common Charges set forth in the First Year's Budget will begin at the First Unit Closing and occupancy of a Unit.

Sponsor will amend the Plan to disclose any material increase in the estimated Common Charges or the estimated Common Expenses, as required by Part 20 of the regulations promulgated by the Department of Law.

The estimated Common Charges in this Offering Price Schedule include the costs of water and sewer charges, but do not include the following Unit ownership expenses that each Unit Owner will pay separately: (a) utility company bills for separately metered electricity supplied to each Unit (including electricity for hot water, heating, cooking, lighting and power to operate kitchen appliances, clothes washer and dryer, and the Unit's heating and air conditioning unit); (b) mortgage payments on any loan obtained to purchase the Unit; (c) costs to maintain, repair and keep watertight the interior of the Unit (including: kitchen and bathroom appliances, cabinets, countertops and fixtures (electric and plumbing), individual facilities for heating and air-

conditioning, and all other individual electric, lighting and plumbing fixtures and equipment) and the Unit's outdoor area (i.e., Yard, Terrace, Juliette Balcony or Balcony, if and as applicable); (d) premiums for condominium homeowner's insurance a Sold Unit Owner is required to maintain (see Section A-26.2) and any additional insurance an Owner may wish (or may be required by the Unit's mortgage lender, if financed) to obtain to insure his or her appliances, fixtures, cabinets, furniture, belongings and other personal property against loss from fire or other casualty or to insure against claims for personal injury or property damage arising from incidents in or on the Unit, including the Unit's outdoor area, if applicable (these matters will not be covered under the insurance maintained by the Condominium Board); (e) charges for telephone, Internet and any cable television service an Owner may install; and (f) real estate taxes (see Note (6) below). See SCHEDULE B-1 in Section F-7 for the projected individual costs of electricity of each Unit and the assumptions on which such projections are based.

(6) After the Condominium is divided into individual tax lots and separately assessed and billed for real estate taxes by the taxing authority, each Unit will be taxed as a separate tax lot for real estate tax purposes and each Unit Owner will not be responsible for the payment of, nor will the Owner's Unit be subject to, any lien arising from the non-payment of, taxes on other Units.

The rehabilitation of the Building with newly constructed Units and Common Facilities has been completed and the Property will be reassessed as a *post-completion of rehabilitation assessment* Building on January 5, 2023.

The projected real estate taxes for the first year of operation contained in SCHEDULE A are based on the *post-completion of rehabilitation assessment* of the Building for the July 1, 2023 to June 30, 2024 fiscal tax year and reflect the post-construction taxes.

The first year of Condominium operation is projected to be on or about from January 1, 2023 to December 31, 2023, which spans the last six months of the July 1, 2022 to June 30, 2023 fiscal tax year and the first six months of the July 1, 2023 to June 30, 2024 fiscal tax year. In the opinion of Berger P.C., the Units will be sufficiently completed to reflect their *post-completion of rehabilitation assessment* for the July 1, 2023 to June 30, 2024 tax year and will reflect the post-construction taxes.

For purposes of presentation, the real estate taxes projected in this Offering Price Schedule are based on the following projections of Berger of the estimated *post-completion of rehabilitation* assessed valuation ("**A.V.**"), tax rates and real estate taxes for all Units for the July 1, 2023 to June 30, 2024 fiscal tax year and reflect the post-construction taxes.

	All Units
Estimated 7/1/23 to 6/30/24 A.V.:	$1,774,598
Estimated Tax Rate per $100 of A.V.:	13.361%[1]
Estimated 7/1/23 to 6/30/24 Real Estate Taxes:	**$237,104**[2]

(1) Berger assumes for the 2023/2024 tax year that the Units will have a tax class 2B residential tax rate.

(2) Rounded.

For further details, see Section S-2 and Section S-3. Berger's opinion letter is contained in Section S-9.

SPECIAL RISKS:

For purposes only of presenting an estimate of the real estate taxes of each Unit in this Offering Price Schedule, the projected assessed valuation of the entire Property has been allocated to each Unit in the proportion that its Common Interest bears to the Common Interests of all Units, which is in accordance with DOF policy. However, the method that may be used by the taxing authority to allocate the Property's assessed valuation to and among the Units is uncertain. Berger offers no opinion on the actual method to be used by the DOF, which, in the experience of Berger, has been notoriously inconsistent and may substantially deviate from this method. See Section A-10.

Until the Units are separately assessed and billed for real estate taxes by the taxing authority, real estate taxes assessed to the Property shall be included in the Common Expenses and assessed to the Units Pro Rata to their respective Common Interests. The time period after rehabilitation is completed in which the taxing authority (i.e., the DOF) will separately assess and bill Units for real estate taxes is uncertain and possibly may range from three (3) months to up to one (1) year.

After the Units are separately assessed and billed for real estate taxes, the taxing authority will bill real estate taxes to each Unit in quarterly or semi-annual installments (as applicable).

The projection in this Offering Price Schedule of each Unit's estimated monthly real estate taxes for the projected first year of Condominium operation is solely to illustrate the amount to be budgeted each month for a Unit that closes title at the beginning of the projected first year of Condominium operation. .

If at the time of Closing Title a Unit is not separately assessed and billed for real estate taxes by the taxing authority, then Purchaser and Sponsor will apportion real estate taxes

assessed against the Property in accordance with the Unit's Common Interest, subject to adjustment for any overpayment or underpayment, as explained in "Section N-1.2. Closing Apportionments with Purchasers".

Sponsor, Selling Agent and Berger do not represent, assure or guarantee the actual taxable assessed valuation, tax rate, tax class or real estate taxes for any tax year or the actual apportionment of the taxable assessed valuation by the taxing authority among the Units, or the actual amount of the taxable assessed valuation of each Unit. See "Section S. Real Estate Taxes" for full discussion of the foregoing and see Section S-1.3 for the adjustment with the Condominium Board and Sponsor for any overpayment or underpayment of real estate taxes by a Unit Owner before the Units are separately assessed and billed by the taxing authority and other important real estate tax issues.

If Purchaser obtains financing, Purchaser's debt service will be an additional expense.

The deductibility of mortgage interest (where applicable) and real estate taxes, as explained in the opinion letter of Miller & Miller LLP (see Section T), may vary from year to year due to changes (in the case of a Unit's mortgage, if any) in the interest rate 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 (if any), or from changes in the assessed value, the tax rate or the method of assessing real property.

(7) The Projected Total Carrying Charges in the last two columns are the sum of the projected annual and monthly Common Charges and projected annual and monthly Real Estate Taxes in the adjacent columns.

END OF SECTION E

SECTION F. BUDGET FOR FIRST YEAR OF CONDOMINIUM OPERATION

(SCHEDULE B)

Section F-1. Projected First Year. Sponsor anticipates that the First Unit Closing will occur by January 1, 2023. Purchasers will be offered a right of rescission if: (a) the actual date of closing of title to the first Unit; or (b) the projected date of closing of title to the first Unit occurs later than December 31, 2023, which is twelve (12) months after the projected date for the First Unit Closing. If the Plan is amended to provide for a later projected date for the First Unit Closing, Purchasers will be entitled to an offer of rescission if the First Unit Closing occurs more than 12 months beyond that amended, later date. However, if the First Unit Closing occurs before December 31, 2023, the Sponsor may schedule the closings of title to other Units significantly later than such date. Unless your Purchase and Sale 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. See Section A-4.

The Budget for the first year of Condominium operation (SCHEDULE B) is based on the twelve (12)-month period projected to begin on or about January 1, 2023. The actual date of Condominium operation will begin at the First Unit Closing with a Bona Fide Purchaser, which may be earlier or later.

Any material change to the First Year's Budget will be disclosed in an amendment to this Plan.

Section F-2. Revised Budget; Rescission. If the actual or anticipated date of commencement of Condominium operation is to be delayed more than six (6) months from the budget year projected in this Plan, the Plan must be amended to include a revised Budget disclosing current projections. If such revised projections exceed the original projections by twenty-five percent (25%) or more, or if the actual date is delayed twelve (12) months or more from such projected date Condominium operation will begin, Sponsor must amend this Plan to offer all Purchasers the right to rescind and a period of fifteen (15) days after the date of Presentation of the Amendment to exercise such rescission right. Sponsor must return any Deposit or down payment to Purchasers who timely rescinds within such fifteen (15)-day period, together with any interest earned thereon. Such right to rescind shall be Sponsor's sole liability and Purchaser's sole recourse against Sponsor and its Related Parties (regardless of any losses Purchaser may have sustained or incurred). Sponsor may not declare a Plan effective where there are any material changes to the Budget if these changes have not been disclosed by a duly filed Amendment to this Plan.

Section F-3. Allocation and Apportionment of Expenses. The following First Year's Budget (SCHEDULE B) itemizes the Common Expenses, which are, and always shall be, charged to all Unit Owners Pro Rata to their respective Common Interests.

For purposes only of presentation, the First Year's Budget does not reflect that the real estate taxes assessed to the Property will be included in the Common Expenses until the Units are separately assessed and billed by the taxing authority. During this interim period, the Board shall allocate the real estate taxes to each Unit Pro Rata to its Common Interest, which Lawrence J. Berger, P.C. advises in its real estate tax opinion is in accordance with the current DOF policy (see Section S-9 for the opinion letter). The amounts so allocated and assessed to each Unit shall be subject to adjustment with the Condominium Board for any overpayment or underpayment of real estate taxes, as explained in Section S-1.3.

Section F-4. Budget Procedure. When adopting a Budget for each budget year, the Condominium Board shall determine the Budget items comprising the projected Common Expenses, and shall allocate and apportion all Budget items of projected Common Expenses to each Unit Pro Rata to its Common Interest as provided in this Plan, including this Section F, the following First Year's Budget (SCHEDULE B) and the By-Laws.

Section F-5. Budget Certification. In the opinion of Daisy Management LLC, having offices at 6 East 39th Street, Suite 1204, New York, New York 10016, the projections in SCHEDULE B appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the projected first year of Condominium operation (see DOCUMENT 8B in Part II for Daisy Management LLC certification). Sponsor, Selling Agent and Daisy Management LLC cannot, and do not, represent, assure or guarantee the actual amount of the Common Expenses (or the resulting Common Charges), which may be higher or lower than the estimates in SCHEDULE B.

END OF TEXT ON THIS PAGE

Section F-6. SCHEDULE B

SCHEDULE B
324 WEST 108 CONDOMINIUM
Budget for First Year of Condominium Operation
Projected to be on or about from January 1, 2023 to December 31, 2023 **(Note 1)**

PROJECTED INCOME (Note 2)	
Common Charges	$ 213,166
Total Projected Income	$ 213,166
PROJECTED EXPENSES (Note 3)	
Labor and Related Expenses (Note 4)	$ 50,376
Electricity (Note 5)	$ 12,536
Water Charges and Sewer Rent (Note 6)	$ 18,046
Repairs, Maintenance and Building Supplies (Note 7)	$ 15,000
Service Contracts (Note 8)	$ 19,920
Insurance (Note 9)	$ 26,677
Management Fee (Note 10)	$ 17,000
Professional Fees (Note 11)	$ 10,000
Administrative (Note 12)	$ 18,255
Reserve for Capital Replacements (Note 13)	$ 20,659
Reserve for Contingencies (Note 14)	$ 4,695
Total	**$ 213,166**

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

All Common Expenses are apportioned and assessed to the Units Pro Rata to their respective Common Interests.

Notes To Schedule B

Note 1. Projected First Year of Condominium Operation

All amounts are projections for the first twelve months of Condominium operation, which is assumed for (budget purposes) will begin on or about January 1, 2023, the projected date of First Unit Closing under this Plan. The actual first year of Condominium operation may begin earlier or later (see Section F-2 for requirements to revise the Budget and to offer rescission if the amended projections exceed the original projections by twenty-five percent (25%) or more).

Note 2. First Year's Projected Income

No income will be provided to the Condominium Association from any contracts or leases. The Common Charges payable by Unit Owners and potential interest or investment income earned on the Working Capital Fund and the Reserve for Capital Replacements (if any) will be the only other sources of income for the Condominium Association. For the purpose of presentation in this First Year's Budget, the Projected Income does not include any interest or investment income that might be received by the Condominium Board from investment of the Working Capital Fund, which will be established in increments at and after the First Unit Closing, and the Reserve for Capital Replacements. It is expected that all or part of such Working Capital Fund will be expended during the first or subsequent years of Condominium operation and/or applied for cash flow purposes to cover (for example) unevenness in collection of Common Charges or payment of Common Expenses. The Reserve for Capital Replacements is anticipated to be utilized in future years as the Building and its components age. However, any income from permitted investment grade securities is expected to be minimal based upon current market conditions. Accordingly, such interest or investment income is not expected to be significant. For this reason, and for the further reason that such interest or investment income does not reflect normally anticipated income from operations, no interest or investment income from investment of said Working Capital Fund or Reserve for Capital Replacements has been included in this Budget. Nevertheless, any interest or investment income earned on said Working Capital Fund or Reserve for Capital Replacements (after deducting income taxes based thereon) will be available to pay the Common Expenses.

Note 3. First Year's Projected Common Expenses (Budget: $213,166)

All projected Common Expenses are for the first twelve (12) months of Condominium operation, which is assumed (for budget purposes) will begin on or about January 1, 2023, the projected date of First Unit Closing under this Plan. The actual first year of Condominium operation might begin earlier or later. All amounts in this budget are estimates and approximations. While they are believed to be reasonable, they are not assured or guaranteed.

The Building is being substantially rehabilitated and newly constructed with one additional floor and entirely new Units and facilities, and therefore no historical operating expenses of the Building are available for comparison purposes. The projected Common Expenses in this Budget

are based mostly on: (a) the estimates, certified by Daisy Management LLC of the reasonably anticipated recurring costs of operations for the first twelve (12) months of Condominium operation under existing circumstances; and (b) the assumption that present trends and conditions, to the extent applicable, will continue. Certain of the estimated expenses (where indicated below) are based on proposals that are not binding.

SCHEDULE B does not reflect: (a) real estate taxes for the interim period prior to the separate assessment of Units, which under the By-Laws will be allocated and assessed to each Unit Pro Rata to its Common Interest based upon the real estate tax opinion of Lawrence J. Berger, P.C. and DOF policy (see Section F-3 for discussion); (b) potential major or capital repairs or replacements in future years as all Building facilities will be new; and (c) miscellaneous two and five year inspection fees (see NOTE 12 below). No budget item is guaranteed. Note that since the Building is being substantially rehabilitated and constructed with new facilities, certain components (like the main Roof) and Unit appliances will be covered under a warranty. This budget has been prepared and certified to be adequate by Daisy Management LLC (see DOCUMENT 8C in Part II of this Plan).

Before the First Unit Closing, Sponsor has reserved the right, from time-to-time, to enter into, modify, renew and replace service, maintenance, employment, concessionaire, utility and other agreements and insurance policies that will be binding on the Condominium Board after such First Unit Closing. However, this Plan will be amended to disclose the terms of any service or maintenance contract not set forth in this Budget that would materially increase or decrease the first year's projected Common Charges or is for a term in excess of five (5) years, other than service or utility agreements that customarily are for longer terms (such as cable television, utility and telecommunication agreements, which typically are for initial terms of ten (10) to twenty (20) years). See Sections O-1.15.

The collection of Common Charges of the full amount of the projected Common Charges set forth in the First Year's Budget will begin at the First Unit Closing and occupancy of a Unit. Sponsor will continue to amend the Plan to update any changes in the projected Common Charges or projected Common Expenses in the First Year's Budget, to the extent required by Part 20 of the regulations promulgated by the Department of Law. See Section A-16.

BUDGET FORECASTS ARE INHERENTLY UNCERTAIN AS OPERATING EXPENSES WILL BE AFFECTED BY MANY AND VARIABLE FACTORS AS WELL AS UNFORESEEABLE EVENTS. THE PROJECTED EXPENSES IN THIS BUDGET ARE GOOD FAITH ESTIMATES, BUT CANNOT BE, AND ARE NOT, ASSURED OR GUARANTEED. IN ALL LIKELIHOOD, THE ACTUAL EXPENSES WILL VARY FROM THEIR ESTIMATES.

IF THE TOTAL ACTUAL EXPENSES ARE HIGHER THAN PROJECTED, THEN THE COMMON CHARGES WILL INCREASE TO PAY THE DEFICIT. COMMON CHARGES OF

UNIT OWNERS ARE THE SOLE SOURCE OF REVENUES AVAILABLE TO PAY THE PROJECTED EXPENSES IN THIS FIRST YEAR'S BUDGET.

Note 4. Labor and Related Expenses (Budget: $50,376)

For purposes of estimating all payroll costs in SCHEDULE B, it has been assumed that employees will not be members of an organized labor union. All wage, salary and benefit costs, including applicable payroll taxes, vacation, and sick day reflect that assumption.

The payroll taxes and benefits include FICA, Federal unemployment insurance, New York State unemployment insurance, workers' compensation, and disability insurance at rates currently in effect. The level of staffing and services described in this SCHEDULE B complies with all applicable housing and labor laws and are required at all times to comply with all applicable Laws, Deficiency #14.

including the janitorial requirements stated under the New York City Administrative Code whether or not Sponsor has voting control of the Board.

The wage and salary estimates included in Common Expenses are detailed as follows:

POSITION	WAGES PER PERSON
1 Part Time Superintendent/Handyman	$ 22,682 base pay per annum
1 Part Time Porter/Maintenance	$ 20,800 base pay per annum

The non-resident superintendent/handyman will be available to visit the Building on an as needed basis, but not less often than 3 days a week for a total of 15 hours per week. Tasks will include addressing all building equipment and facilities, maintaining and to the extent capable repairing the Common Element, and supervising the porter. The non-resident superintendent will be on call 24/7. The Managing Agent will provide 24/7 backup emergency service.

The porter is scheduled to work in the building five (5) times a week for four (4) hours at each visit. The porter's duties will include the removal of trash from the refuse room for pick-up at the Sidewalk by the New York City Department of Sanitation, cleaning of the Common Areas, Sidewalk cleaning and snow removal. The weekly schedule of trash removal will be based on City refuse days (currently Tuesday, Thursday, and Saturday), and two additional days, currently set at Monday morning and Friday afternoon. The schedule of the porter is to be arranged between the Condominium Board and the superintendent, based on Building needs.

Vacation, sick days and personal days have been allowed for each of the employees in accordance with the labor laws, and have been included in the total payroll and related expenses. Disability insurance and Federal/State taxes bring the total estimated annual payroll expenses to $50,376.

The Condominium is required to be in compliance with all applicable laws regarding the level of staffing and services to be provided by the Building to Units and their Owners, whether or not the Sponsor has voting control of the Condominium Board.

The Projected Expenses set forth above, as well as the assumptions described herein, are believed to be reasonable and reflect the experience of Sponsor's budget expert, Daisy Management LLC, in managing comparable buildings. However, such projections and the actual Labor and Related Expenses are not assured or warranted.

In the opinion of Daisy Management LLC, the amount of this Budget item appears reasonable and adequate under existing circumstance to meet the reasonably anticipated Labor and Related Expenses for the projected first year of Condominium operation. However, no budget item is guaranteed as to its accuracy, sufficiency or otherwise.

Note 5. <u>Electricity (Budget: $12,536)</u>

The estimates and projections of electricity consumed by the Common Elements, including energy usage for lighting the lobby, cellar and public stairs, and power to operate Common Area heating/air conditioning, pumps, fans, elevator, etc. are as described in a letter, dated December 6, 2021 from Bicaluro Associates P.C. ("**<u>Bicaluro</u>**"), with offices at 1 Bethany Rd., Suite #66, Hazlet, New York, 07730. Bicaluro projects an estimated annual consumption of approximately 48,024 kwh per year at an average rate of $0.226 per kwh. For the purposes of this First Year's Budget, the cost estimated by Bicaluro has been increased by 5% to reflect the anticipated increase in the per kwh cost at the beginning of the Condominium operation, and an additional 10% inflation factor to allow for fluctuation in the per kwh cost that may be incurred during the first year of Condominium operation.

There will be one Con Edison meter servicing Common Elements of the Building. Each Unit Owner will pay directly to the utility provider for electricity consumed in the Owner's Unit for heating, lighting and appliance loads as well as for air conditioning, as measured by the Unit's separate meter (see SCHEDULE B-1 below for estimated costs). No gas service will be provided to the Building, including the Units and the Common Elements.

The actual costs of electricity will depend on the level of consumption and electric rates. Consumption will be affected by various and unpredictable factors, including the severity of the weather and conservation measures (if any) adopted by the Condominium Board. The electric rates will be affected by numerous, unpredictable variables that impact on the cost of oil used by the utility as its primary energy source to generate electricity. Electric prices fluctuate, are volatile and are inherently uncertain. Any projection of future costs therefore is difficult.

In the opinion of Daisy Management LLC, the amount of this Budget item appears reasonable and adequate under existing circumstances to meet the reasonably anticipated electricity expenses to operate the Common Elements of the Building for the projected first year of Condominium operation. However, no budget item is guaranteed as to its accuracy, sufficiency or otherwise.

Note 6. Water Charges and Sewer Rents (Budget: $18,046)

The budgeted amount constitutes a projection of the water charges and sewer rents that will be payable with respect to the Units and the Common Elements.

The budgeted amount is based upon the estimate and projection of consumption and rates as described in said letter, dated December 6, 2021 from Bicaluro, which reflects consumption by the Residential Units and Common Elements of 1,101,424 cu. ft./yr. at an average combined rate of $10.61 per 100 cubic feet for water. For the purposes of this First Year's Budget, the cost estimate provided by Bicaluro has been increased by 5% to reflect the anticipated increase in the per kwh cost at the beginning of the Condominium operation, and an additional 10% to allow for potential fluctuation in the per cubic foot cost that may be incurred during the first year of Condominium operation.

The actual cost of water and sewer services will depend, in part, on the level of water consumption and the rates and formulas for these services as determined by The City of New York. Consumption will depend upon the water usage within the individual Units, which may vary widely depending on the size of Households and individual requirements and habits, which are impossible to predict. Any projection of future costs therefore is difficult.

In the opinion of Daisy Management LLC, the budgeted amount should be sufficient to cover the reasonable costs of water and sewer charges for the first year of Condominium operation. However, no budget item is guaranteed as to its accuracy, sufficiency or otherwise.

Note 7. Repairs, Maintenance and Supplies (Budget: $15,000)

The budgeted amount represents the estimated cost for ordinary maintenance and repairs of the Common Elements, including periodic painting and supplies, such as cleaning supplies, lubricants, bulbs, fixtures, hardware, rubbish compactor bags, etc. used in connection with the operation of the Common Elements.

In the opinion of Daisy Management LLC, the amount budgeted to provide Repairs, Maintenance and Supplies to the Common Elements appears reasonable and adequate under existing circumstances to meet the reasonably anticipated costs for the first year of Condominium operation. No budget item, however, is guaranteed as to its accuracy, sufficiency or otherwise.

Note 8. Service Contracts (Budget: $19,920)

This budget item is for the estimated costs of various services used in or for the Common Elements or all Units, including the following (estimated amounts are rounded and include sales tax at 8.775% where required):

Contractor/Proposal	Type of Service	Estimated First Year's Cost
Kone Elevators	Elevator	$ 7,200
To be determined.	Heating and Cooling Maintenance	$ 3,000
To be determined.	Plumbing – Pumps & Motors	$ 3,500
To be determined.	Sprinkler and Fire Protection	$ 3,300
To be determined.	Landscaping	$ 1,000
To be determined.	Extermination	$ 1,920
Estimated Total		$ 19,920

No maintenance or service contracts have been entered into as of the date of this Plan. The budgeted amounts are based on a proposal received from a contractor and the experience of Sponsor's budget expert, Daisy Management LLC, in operating similar buildings. While this SCHEDULE B includes a reasonable allowance for possible increases in cost which may occur prior to and during the first year of Condominium operation, no assurance is given or warranty is made that the actual cost for these or other services will be in accordance with this projection.

In the opinion of Daisy Management LLC, the amount of this Budget item appears reasonable and adequate under existing circumstances to meet the reasonably anticipated cost of service contracts to operate the Common Elements and provide Building Services to Units for the projected first year of Condominium operation. No budget item, however, is guaranteed as to its accuracy, sufficiency or otherwise.

Note 9. Insurance (Budget: $26,677)

The insurance premiums are based on the letter, dated February 9, 2022, from The Clausen Agency, Inc., with offices at 333 Route 25A, Suite 150, Rocky Point, New York 11778 setting forth the following coverages:

PACKAGE	INSURER WITH A BEST RATING OF "A"
PROPERTY COVERAGES:	
Building	$11,000,000
Building Ordinance or Law/Increased Cost of Construction	$11,000,000 / $110,000
Business Income	Actual Loss Sustained

Equipment Breakdown	Included
GENERAL LIABILITY COVERAGES:	
General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$2,000,000
Personal & Advertising Injury	Included
Each Occurrence	$1,000,000
Fire Damage to Rented Premises	$100,000
Medical Expenses	$5,000
CRIME/FIDELITY INSURANCE	
Employee Dishonesty	$380,000
Forgery/Alteration	Included
Computer Fraud	Included
DIRECTORS & OFFICERS LIABILITY	
Limit	$1,000,000
UMBRELLA LIABILITY:	
Limit	$10,000,000
TOTAL PREMIUM:	**$26,677**

The coverage and pricing for this quote are part of Property, Casualty, D&O and Crime Program for 324 West 108 Condominium. The limits, deductibles and premium indicated are based on current pricing and availability and cannot be guaranteed.

The total premium for this various coverage is estimated at $26,677, which is subject to underwriting review and consideration at the time of placement. This coverage does not include claims for personal injury or property damage resulting from occurrences in individual Units or on a Unit's Balcony, Terrace, Juliette Balcony or Yard, nor does it include coverage of the furnishings, furniture or personal property of Unit Owners.

This quotation is only an estimate and an indication of insurance premiums at rates in effect on February 9, 2022. Because conditions in the insurance marketplace are volatile, it is not

possible to predict what the premiums will be for the first year of Condominium operation. Prospective Purchasers should be aware of the possibility of rate increases.

At First Unit Closing, Sponsor will deliver to the Condominium Board, at the expense of the Condominium Board (payable by all Unit Owners Pro Rata to their respective Common Interests), policies or binders for the insurance coverages set forth above in favor of the Condominium Association. The actual cost of such coverage will depend on the premiums in effect at the First Unit Closing, which possibly may be higher than those projected in this Budget, depending upon various, unpredictable factors.

By carrying a building limit of $11,000,000 (subject to underwriting review at the time of placement as aforesaid), the hazard insurance company will include a provision known as an "Agreed Amount & Replacement Cost" endorsement whereby the carrier agrees to reimburse the insured for losses up to the full amount of the policy, less the deductible, regardless of the actual "replacement value" of the Building. This clause has the effect of "waiving" any co-insurance penalty that the insurer might otherwise invoke. This clause does not mean that the Condominium Association would receive sufficient proceeds to actually rebuild the entire Building in the event of a substantial loss or total destruction. The Condominium Board should periodically review the amount of insurance being carried for building coverage and Common Charges to ensure that the amount of coverage carried is sufficient.

The Condominium will have public liability insurance from and after the First Unit Closing. The insurance coverage will meet the requirements of any mortgage lender that might be procured by Sponsor. The fire, casualty and general liability insurance provide: (a) each Unit Owner is an additional insured party; (b) there will be no cancellation of insurance without notice to the Condominium Board; and (c) to the extent obtainable, a waiver of subrogation, a waiver of invalidity because of the acts of the insured and Unit Owners, and a waiver of pro-rata reduction if Unit Owners obtain additional coverage.

Each Unit Owner should consider the desirability of obtaining additional insurance at the Unit Owner's sole cost for the following coverages, which are not included in the above coverages:

(a) fire or casualty losses to the contents of the Owner's Unit, including appliances, kitchen and bathroom fixtures and any additions, improvements, installations and replacements; and

(b) liability for personal injury or property damage as a result of occurrences within the Owner's Unit or on its appurtenant Balcony, Terrace, Juliette Balcony or Yard (if and as applicable), including water damage legal liability to cover damage arising from leaks or other conditions within the Unit or on its appurtenant Balcony, Terrace, Juliette Balcony or Yard (if and as applicable); and

(c) liability coverage with respect to the Unit's undivided interest in the Common Elements.

Under this Plan and the Condominium By-Laws, each Sold Unit Owner is required to obtain and maintain condominium homeowner's insurance with additions and alterations coverage, personal property coverage and personal liability limits of not less than $300,000.00. This requirement is not applicable to Unsold Unit Owners. See Section A-26.2.

Note 10. Management Fee (Budget: $17,000)

At or prior to the First Unit Closing, the Condominium Board will enter into a management agreement with Daisy Management LLC, having an address at 1460 Broadway, New York, New York 10036, for an initial term of twenty-four (24) full calendar months following the First Unit Closing at a fee of $17,000 a year, payable in advance in equal monthly installments. The agreement automatically will be extended from year to year until canceled by either party at least thirty (30) Days prior to an annual extension. The management fee includes billing and collection services, day-to-day phone availability, on-site inspections and attendance at Board and Unit Owners' meetings. Reference should be made to Section W for further discussion of the terms of the management agreement, including reimbursement of expenses, commissions for placing insurance and fees from Sold Unit Owners on a sale, conveyance, lease, alteration or financing (or refinancing) of a Sold Unit.

In the opinion of Daisy Management LLC, the management fee is at market rate for a condominium comparable to this Building, and appears reasonable and adequate under existing circumstances.

Note 11. Professional Fees (Budget: $10,000)

This Budget expense item includes an estimated allowance of $2,000 to provide minor legal services to be rendered in connection with the operation of the Building such as attendance at Board meetings and negotiation of minor agreements. An additional $2,000 is allocated to other professional fees such as architect's opinion on Condominium Board requests for changes in the building.

The Condominium Association will incur auditing fees in connection with the preparation of the Condominium Association's first year's audited financial statements and its Federal, State, and City income tax and franchise tax returns. An estimated $6,000 has been budgeted for these services based upon a written quote, dated March 10th, 2020, received from Greenberg & Brennan CPA.

In the opinion of Daisy Management LLC, the amount of this Budget item appears reasonable and adequate under existing circumstances to meet the reasonably anticipated cost of legal and auditing fees for the first year of Condominium operation. No budget item, however, is guaranteed as to its accuracy, sufficiency or otherwise.

Note 12. Administrative Expenses (Budget: $18,255)

This Budget expense item includes: miscellaneous two and five year inspection fees, licenses and permits; corporate and franchise taxes; tax filings; office telephone and cell phone charges; office supplies; stationary; postage; reproduction costs for notices, etc., to Unit Owners, staff, etc.; purchase of small equipment (for cleaning and snow removal) and hand tools; miscellaneous expenses; and the Managing Agent's one-time start-up fee of $1,416.66. This Budget does not include the fees for future inspections such as standpipe and sprinkler five-year inspections.

This Budget does not include a provision for income taxes that might be payable by the Condominium Association based on the assumption that the Condominium Association will qualify as a "homeowners association" under the Internal Revenue Code, thereby allowing the Board to elect to be treated as a tax exempt organization and exclude from its taxable income the Common Charges payable by Unit Owners (which is the primary, if not the sole, source of income of the Condominium Association). See Section T-2 and the opinion of special income tax counsel in Section T-6.

The Condominium, however, may be subject to the New York City Unincorporated Business Tax. Daisy Management LLC believes that this Budget item and/or the Budget item for Reserve for Contingencies will be sufficient to pay any Unincorporated Business Tax attributable to the first year of Condominium operation.

This projection is an estimate of Daisy Management LLC based on its opinion of the reasonably anticipated customary miscellaneous expenses of the Condominium Association for the projected budget year under existing circumstances and assuming present trends and conditions, to the extent applicable, will continue. No budget item, however, is guaranteed as to its accuracy, sufficiency or otherwise.

Note 13. Reserve for Capital Replacements (Budget: $20,659)

Many banks and Institutional Lenders require condominium budgets to comply with Fannie Mae (the Federal National Mortgage Association) guidelines in order to extend financing to Purchasers of condominium units, refinancing of existing mortgage loans to unit owners and to provide a line of credit to a condominium board of managers. The Fannie Mae guidelines require (among other things) a budget to include a line item for a reserve for capital replacements of major components of the Building equal to not less than 10% of all budgeted expenses each budget year. The Reserve for Capital Replacements in this Budget is intended to comply with Fannie Mae guidelines. Sponsor and Daisy Management LLC, however, do not represent, assure or guarantee this Budget item complies with Fannie guidelines. The portion of the Common Charges attributable to the Reserve for Capital Replacements is to be maintained in a separate account and used only to replace or otherwise alter major components of the Building in accordance with Fannie Mae

guidelines. Major components of the Building include the Roofs; the exterior Building Walls; the heating, plumbing and electrical Building Systems; the elevator; and the Structural Component of the Building. In no event may the Reserve for Capital Replacements be used for ordinary maintenance or repairs of the Common Elements.

Because the Building is being substantially rehabilitated and newly constructed with an additional floor and entirely new Units outfitted with modern Unit Facilities, no major capital replacements are anticipated during the first five (5) years of Condominium operation. No representation, assurance or guaranty, however, is made or given when such capital expenditures will be required or that the Reserve for Capital Replacement will be sufficient when a capital replacement may be required. Unit Owners will be obligated to pay their share of the cost of ordinary and capital repairs, replacements and/or improvements to the Common Elements as and when required. The Reserve for Capital Replacement is the only reserve fund to be provided under this Plan. See Section A-3.

Note 14. Reserve for Contingencies (Budget: $4,659)

This Budget expense item is to provide a fund for unanticipated operating expenses during the first year of Condominium operation, including an allowance for a possible increase in one or more expense items in this Budget and/or to add to this Budget one or more new expense items. This item is not to provide a reserve for major or capital expenditures.

This projection is an estimate of Daisy Management LLC based upon its experience in residential management and on its opinion of the reasonably anticipated customary contingency expenses of the Condominium Association for the projected budget year under existing circumstances and assuming present trends and conditions, to the extent applicable, will continue. No budget item, however, is guaranteed as to its accuracy, sufficiency or otherwise.

END OF SCHEDULE B

Section F-7. SCHEDULE B-1: Unit Utility Projections

SCHEDULE B-1

Utility Projections of
Bicaluro Associates P.C.

The costs of electricity for lighting, appliances (coffee maker, refrigerator-freezer dishwasher, induction cooktop, convection oven, clothes dryer, washing machine, iron, television and computer), hot water, and space heating and cooling to the Units will be paid directly to the utility provider by each Unit Owner as determined by each Unit's separate electric meter and the then current utility rates and taxes. All other utility costs to provide services to the Units (i.e., water and sewer services) and the Common Elements (i.e., electricity: for lighting; toilet, kitchen and ventilation fans; cellar and lobby heating and air conditioning; duplex booster pump; hot water heaters; elevator; and Building water and sewer services) will be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests. The average individual cost of electricity to each Unit is projected by Bicaluro Associates P.C., with offices at 1 Bethany Road, Suite 66, Hazlet, New Jersey 07730, in a letter dated December 6, 2021, which follows on the next page. The following table contains the projected average annual cost of electricity for each Unit, based on the projected consumption of electricity in kilowatt hours ("**KWH**") as estimated by Bicaluro Associates P.C., and the utility rates at the date of said engineer's letter, to which Daisy Management LLC adds an inflation factor estimated at 10%:

Unit	Projected Electric Consumption	Projected Cost for 1/1/23 to 12/31/23
101	18,239 KWH	$4,761
102 to 402	22,128 KWH	$5,776
501	34,938 KWH	$9,120
PH	32,022 KWH	$8,359

CAVEAT: MANY AND VARIABLE FACTORS, AS WELL AS UNFORESEEABLE EVENTS, WILL AFFECT UTILITY COSTS. THE PROJECTED CONSUMPTION, UTILITY RATE AND COSTS ARE GOOD FAITH ESTIMATES, BUT CANNOT BE, AND ARE NOT, ASSURED OR GUARANTEED. ACTUAL CONSUMPTION WILL BE SEPARATELY METERED AND WILL FLUCTUATE WITH PERSONAL NEEDS, HABITS AND WEATHER CONDITIONS. IN ALL LIKELIHOOD, ACTUAL UTILITY COSTS WILL VARY FROM THESE ESTIMATES.

Bicaluro Associates P.C.
1 Bethany Rd., Suite#66
Hazlet, NJ 07730
T: (732) 521-2052
www.bicaluro.com

December 06, 2021

W 108 Development LLC
c/o Orly Gilat, Principal
253 W 72nd St., Apt. 2001
New York, NY 10023

Attn: Orly Gilat

Job Reference: 324-326 W 108th Street
New York, NY 10025
Energy Usage and Cost Estimate

Dear Orly,

The following is an analysis of the projected energy use for the 324-326 West 108th Street residential building, located in Manhattan. The Building consists of 10 apartments, 6 stories and a cellar plan.

Bicaluro Associates PC disclaims all warranties with regard to the attached information, including all implied equipment selection and use. All equipment information is based on the provided information and design drawings prepared by the engineer of record in charge of the design.

A. ***ABBREVIATIONS USED IN THE REPORT***

- EFLH = Equivalent Full Load Hours (EFLH) means the number of hours, usually expressed for a cooling season, that the compressor or absorption unit must operate at full load under design conditions to satisfy the annual cooling requirements. EFLH is based on an indoor design temperature of 8O°F.
- kWh = kilowatt hour means the common unit of measurement of quantity of electric energy. This amount of energy would be consumed by a 100- watt lamp in ten hours. One kilowatt hour is equivalent to 3413 Btu.
- Therm is one-hundred thousand (100,000) Btu of energy. Natural gas contains approximately 1,000 Btu per cubic foot. Therefore, a therm of natural gas is usually equivalent to about 100 cubic feet. Any gas heating value can be obtained by asking the utility supplier
- Tons = Design ton means the design heat gain divided by 12,000 Btu/hr.

B. ***UTILITY RATES***

The average price of Electricity according to the Bureau of Labor Statistics for September 2021 was as follows:

- Electricity per kWh: $0.226
- Piped Gas $ per therm: $1.321

C. BUILDING EXPENSES (COMMON AREAS)

1. Heating cost (Make up Air Unit MUOA-1)

Average number of days in NYC below 23F outdoor temperature: 16 days
16 days/year x 24 hours/day x 14kW = 5,376 kWh

Fan running of the unit: 10 hours/day x 365 days/year x 3HP x 0.745kW/hp = 8,158 kWh
C = (24 x c X Q/1,000,000) x [DD/(Ti-To)]= cost per year

Sub-total annual electric heating = **13,534 kWh**

2. Common Area lights

Lighting load is based on the architectural drawings dated 12/05/2017:

- Cellar Corridor: 184 W x 8h/day x 365 days = 537.2kWh
- Utilities and Storages: 345 W x 2h/day x 365 days = 251.8kWh
- Exercise Room: 168 W x 4h/day x 365 days = 245.2kWh
- Community Room: 110 W x 4h/day x 365 days = 160.6kWh
- Exterior: 178 W x 6h/day x 365 days = 389.8kWh
- 1st floor Lobby: 195 W x 24 h x 365 days = 1,708.2 kWh
- 1st floor Corridor: 365 W x 8h/day x 365 days = 1,065.8kWh
- 2nd through roof corridors and Trash Room: 490 W x 8h/day x 365 days = 1,430.8kWh
- Stair Lighting: 2 lights/level x 7 levels x 4W/light x 8h/day x 365 days = 163.5kWh

SUB-TOTAL: **~ 5,953 kWh/year**

3. Building toilet, kitchen and ventilation fans

1.25 HP x 0.745kW/hp x 5hr/day x 365day/year = **1,670 kWh/year**

4. Heating and Air conditioning for cellar and 1st floor Lobby- Daikin: RXYQ120TTJU

Condenser: Daikin RXYQ120TTJU (10 ton Heat Pump Unit)

Condenser (cooling input power): = 9 kW
Condenser (heating input power): = 9.92 kW

Interior units:

Ducted AHU-1-1 (Lobby) unit: 1x 380W/unit = 380 W
Ceiling cassette units (C-1&C-2): 2 x 80W/unit = 160 W
Wall Mounted units (C-6/C-7/C-8/C-9&C-10): 5x 40W/unit = 200 W
Ceiling cassette units (C-3&C-4): 2 x 80W/unit = 160 W
Wall Mounted unit (C-5): 1x 30W/unit = 30 W

Sub Total Interior Units (heating/cooling): 960kW or 0.96kW

Sub-Total for operating each unit in cooling mode:
9.96kW x 840EFLH = 8,366.4kWh/year = 700kWh/month

Sub-Total for operating each unit in heating mode:
10.88kW x 960EFLH = 10,444.8kWh/year = 870kWh/month.

Sub-Total for the unit running in heating and cooling mode:
18,811kWh/year = 1,570kWh/month

5. Duplex Booster Pump

6 HP x 0.745kW/hp x 3hr/day x 365day/year = **4,895 kWh/year**

6. Hot Water Heaters

Laundry: 16.6kW x 4 hr/week x 52 weeks/year = 3,453 kWh/year
Restroom: 4.16 x 4 hr/day x 365 day/year = 1,518.4 kWh/year
Janitorial Closet: 4.16 x 4 hr/day x 365 day/year = 1,518.4 kWh/year
Wash Down Chute System: 4.16 x 2 hr/day x 5 day/year = 41.6 kWh/year

Sub-Total for the electric hot water heaters: **6,532 kW/year**

7. Elevator

38kW x 1hr/day x 365day/year x 1 elevator = **13,870 kWh/year**

Sub-Total electrical usage: 48,024 kWh/year
48,024 kWh @ $0.226/kWh **$10,853.42**
Estimated Annual Common Electrical Costs.....**~$10,855.00**
Estimated Monthly Common Electrical Costs.....**$905.00**

8. Building water / Sewer usage

The water consumption per apartment with a family of three was estimated as follows:

Bicaluro Associates P.C.

Re: 324-326 West 108th Street, New York, NY 10025– Projected Electrical Energy usage and cost

RESIDENTIAL UNIT NUMBER	NUMBER OF BEDROOMS/ BATHROOMS #OF BDR/BATHS	# OF PEOPLE PER UNIT	UNITS WITH W/D	TOTAL GALLONS PER UNIT PER DAY	TOTAL GALLONS PER UNIT PER YEAR	SEWER FEE $10.61 PER 100 CU.FT. (748 GAL) / YEAR	SEWER FEE $10.61 PER 100 CU.FT. (748 GAL) /MONTH
101	STUDIO	2	YES	188.6	68,839	$976.45	$81.37
102	2 Bed/2 Bath	3	YES	282.9	103,259	$1,464.67	$122.06
201	2 Bed/2 Bath	3	YES	282.9	103,259	$1,464.67	$122.06
202	2 Bed/2 Bath	3	YES	282.9	103,259	$1,464.67	$122.06
301	2 Bed/2 Bath	3	YES	282.9	103,259	$1,464.67	$122.06
302	2 Bed/2 Bath	3	YES	282.9	103,259	$1,464.67	$122.06
401	2 Bed/2 Bath	3	YES	282.9	103,259	$1,464.67	$122.06
402	2 Bed/2 Bath	3	YES	282.9	103,259	$1,464.67	$122.06
501	3 Bed/2 Bath	5	YES	471.5	172,098	$2,441.12	$203.43
601	3 Bed/3 Bath	4	YES	377.2	137,678	$1,952.89	$162.74

Total for the building: **1,1101,424 gallons/year**

Sewer/Water fee is $10.61/100 cu.ft. (748 gallons) = 1,101,424 gallons/year/ 748 gallons x $10.61 = $15,623

Estimated Annual Residential Water and Sewer Costs.....**$15,623.00**

Estimated Monthly Residential Water and Sewer Costs.....**$1,302.00**

D. ***APARTMENTS INDIVIDUAL USAGE***

The following is an estimate of the electrical consumption and monthly costs for individual apartments. Heating and Air Conditioning costs depend on comfort level and individual usage. The units were estimated to operate 6.7 hours per day for 125 days/year in cooling mode: EFLH: 840 hours.

The units were estimated to operate 4 hours per day for 240 days/year in heating mode: EFLH: 960 hours.

The list of the units and their approximate square footage is presented below:

RESIDENTIAL UNIT NUMBER	NUMBER OF BEDROOMS/ BATHROOMS	APPROXIMATE UNIT SQUARE FOOTAGE
101	STUDIO/1 Bath	650
102	2 Bed/2 Bath	1,058
201	2 Bed/2 Bath	1,170
202	2 Bed/2 Bath	1,072
301	2 Bed/2 Bath	1,169
302	2 Bed/2 Bath	1,072
401	2 Bed/2 Bath	1,103
402	2 Bed/2 Bath	1,072
501	3 Bed/3 Bath	2,034
601	3 Bed/2 Bath	1,491

1. Lighting and Appliances

The below information was estimated based on the HUD and Con Edison appliances use calculators.

STUDIO UNIT: 101

Lighting: 43.95kWh/month
Coffee maker: 9kWh/month
Refrigerator Freezer (30") (16 cu.ft.): 81kWh/month
Dishwasher: 40kWh/month
Induction Cooktop: 56kWh/month
Convection Oven: 66kWh/month
Microwave Oven: 47kWh/month
Clothes Dryer: 135kWh/month
Automatic Washing Machine: 18kWh/month
Iron: 5kWh/month
Television (49" led): 15 kWh/month
Computer: 20kWh/month

Sub-total for lightning and appliances: 535.95kWh/month

2 BEDROOM UNITS: 102, 201, 202, 301, 302, 401 AND 402

Lighting: 89.01kWh/month
Coffee maker: 9kWh/month
Refrigerator Freezer (30") (16 cu.ft.): 81kWh/month
Dishwasher: 40kWh/month
Induction Cooktop: 56kWh/month
Convection Oven: 66kWh/month
Microwave Oven: 47kWh/month
Clothes Dryer: 135kWh/month
Automatic Washing Machine: 18kWh/month
Iron: 5kWh/month
Television (49" led): 15 kWh/month
Computer: 40kWh/month

Sub-total for lightning and appliances: 601.01kWh/month

3 BEDROOM UNITS: 501 AND 601

Lighting: 111.54kWh/month
Coffee maker: 9kWh/month
Refrigerator Freezer (30") (16 cu.ft.): 81kWh/month
Dishwasher: 50kWh/month

Induction Cooktop: 56kWh/month
Convection Oven: 66kWh/month
Microwave Oven: 47kWh/month
Clothes Dryer: 135kWh/month
Automatic Washing Machine: 18kWh/month
Iron: 5kWh/month
Television (49" led): 30 kWh/month
Computer: 60kWh/month

Sub-total for lightning and appliances: 668.54 kWh/month

2. **Electric Hot Water: State, Model ENG40DORT for Unit#101- 1 bath**

Medium average hot water use is 30 gal/person/day
30 gal/person/day x 2 person/apartment = 60 gal/day/apartment- Unit#101
60 gal/day x 365 days = 21,900 gal/year
Incoming water temperature: 42°F
Hot Water Temperature: 140°F
Rise: 98°F
Heating a gallon of water requires 8.33 x 98 = 816.34 Btu at 100% efficiency heater
Electric Water Heater efficiency: 0.90
It takes 816.34/0.90 = 907 BTU to heat a gallon of water with using electricity
907 BTU x 0.000293 kWh/Btu = 0.265kWh
Electricity use = 21,900 gallons/year x 0.265kWh/gallon / 12 months = **485 kWh/month**

3. **Electric Hot Water: State, Model ENG40DORT for Units 102, 201, 202, 301, 302, 401 and 402- 2 baths**

Medium average hot water use is 30 gal/person/day
30 gal/person/day x 3 person/apartment = 90 gal/day/apartment-
90 gal/day x 365 days = 32,850 gal/year
Incoming water temperature: 42°F
Hot Water Temperature: 140°F
Rise: 98°F
Heating a gallon of water requires 8.33 x 98 = 816.34 Btu at 100% efficiency heater
Electric Water Heater efficiency: 0.90
It takes 816.34/0.90 = 907 BTU to heat a gallon of water with using electricity
907 BTU x 0.000293 kWh/Btu = 0.265kWh
Electricity use = 32,850 gallons/year x 0.265kWh/gallon / 12 months = 728 kWh/month

4. **Electric Hot Water: State, Model ENG50DORT for Unit 501-3 baths**

Medium average hot water use is 30 gal/person/day
30 gal/person/day x 5 person/apartment = 150 gal/day/apartment

150 gal/day x 365 days = 54,750 gal/year
Incoming water temperature: 42°F
Hot Water Temperature: 140°F
Rise: 98°F
Heating a gallon of water requires 8.33 x 98 = 816.34 Btu at 100% efficiency heater
Electric Water Heater efficiency: 0.91
It takes 816.34/0.91 = 897 BTU to heat a gallon of water with using electricity
897 BTU x 0.000293 kWh/Btu = 0.262kWh
Electricity use = 54,750 gallons/year x 0.262kWh/gallon / 12 months = 1,213 kWh/month

5. **Electric Hot Water: State, Model ENG50DORT for Unit 601-2 baths**

Medium average hot water use is 30 gal/person/day
30 gal/person/day x 4 person/apartment = 120 gal/day/apartment
120 gal/day x 365 days = 43,800 gal/year
Incoming water temperature: 42°F
Hot Water Temperature: 140°F
Rise: 98°F
Heating a gallon of water requires 8.33 x 98 = 816.34 Btu at 100% efficiency heater
Electric Water Heater efficiency: 0.91
It takes 816.34/0.91 = 897 BTU to heat a gallon of water with using electricity
897 BTU x 0.000293 kWh/Btu = 0.262kWh
Electricity use = 43,800 gallons/year x 0.262kWh/gallon / 12 months = 1,213 kWh/month

6. **Space heating and cooling using split units:**

The apartments are provided with a split heat pump type units for heating and cooling. The estimated usage is based on the HUD manual Chapter 2.

Unit#101:

Condenser: Daikin RXTQ36TAVJU (34,200/37,000 cooling/heating BTU's)
Interior wall mounted unit (FXMQ18PBVJU): 1 x 203W/unit = 203 W = 0.2 kW
Condenser (Cooling/Heating) input Power: 3.13 kW
Total: 3.33 kWh (cooling/heating)

Sub-Total for operating each unit in cooling mode: 3.33kWh x 840EFLH = 2,797kWh/year = 233kWh/month

Sub-Total for operating each unit in heating mode: 3.33 kWh x 960EFLH = 3,196kWh/year = 266kWh/month.

Total for each unit running in heating and cooling mode: **5,993kWh/year = 499kWh/month**

Unit#102,201, 202, 301, 302, 401 & 402:

Condenser: Daikin RXTQ36TAVJU (34,200/37,000 cooling/heating BTU's)
Interior ducted unit (FXMQ30PBVJU): 1 x 297W/unit = 297 W = 0.297 kW
Condenser (Cooling/Heating) input Power: 3.13 kW
Total: 3.42 kWh (cooling/heating)

Sub-Total for operating each unit in cooling mode: 3.42kWh x 840EFLH = 2,872kWh/year = 240kWh/month

Sub-Total for operating each unit in heating mode: 3.42 kWh x 960EFLH = 3,283kWh/year = 275kWh/month.

Total for each unit running in heating and cooling mode: **6,155kWh/year = 515kWh/month**

Unit#501:

Condenser: Two (2) Daikin RXTQ36TAVJU (34,200/37,000 cooling/heating BTU's)
Interior ducted unit (FXMQ30PBVJU) : 2 x 297W/unit = 594 W = 0.594 kW
Condenser (Cooling/Heating) input Power: 3.13kW/unit x 2 units = 6.26 kW
Cooling/Heating input Power: 6.85 kW

Sub-Total for operating each unit in cooling mode: 6.85kWh x 840EFLH = 5,754kWh/year = 480kWh/month

Sub-Total for operating each unit in heating mode: 6.85kWh x 960EFLH = 6,576kWh/year = 550kWh/month.

Total for each unit running in heating and cooling mode: 12,330 kWh/year = **1,030 kWh/month**

Unit#601:

Condenser: Two (2) Daikin RXTQ36TAVJU (34,200/37,000 cooling/heating BTU's)
Interior ducted unit (FXMQ30PBVJU) : 2 x 297W/unit = 594 W = 0.594 kW
Condenser (Cooling/Heating) input Power: 3.13kW/unit x 2 units = 6.26 kW
Cooling/Heating input Power: 6.85 kW
Sub-Total for operating each unit in cooling mode: 6.85kWh x 840EFLH = 5,754kWh/year = 480kWh/month

Sub-Total for operating each unit in heating mode: 6.85kWh x 960EFLH = 6,576kWh/year = 550kWh/month.

Total for each unit running in heating and cooling mode: 12,330 kWh/year = **1,030 Wh/month**

7. Apartments Summary and Estimated Monthly Cost for units:

RESIDENTIAL UNIT NUMBER	GENERAL LIGHTING AND APPLIANCES	ELECTRIC HOT WATER HEATER	AIR CONDITIONING / HEATING	TOTAL CONSUMPTION	ELECTRICAL COST 0.226$/kWh
101	535.95	485	499	1,520	$ 344
102	601.01	728	515	1,844	$ 417
201	601.01	728	515	1,844	$ 417
202	601.01	728	515	1,844	$ 417
301	601.01	728	515	1,844	$ 417
302	601.01	728	515	1,844	$ 417
401	601.01	728	515	1,844	$ 417
402	601.01	728	515	1,844	$ 417
501	668.54	1,213	1,030	2,911	$ 658
601	668.54	970	1,030	2,669	$ 603

Please call our office with any questions you may have.

Very truly yours,

STATE OF NEW YORK
GHEORGHE LUCIAN NICOLESCU
085500
LICENSED PROFESSIONAL ENGINEER

Lucian Nicolescu, PE, LEED AP BD+C

Notes:

1. All estimated energy costs are anticipated to escalate by 5% per year beginning September of 2021.
2. All projected costs shown herein are estimated on the basis of past experience and engineering judgment.
3. The above projected consumption, utility rate and costs are good faith estimates, but cannot be, and are not, assured or guaranteed.
4. The above estimations do not include maintenance cost and operating labor.

Attached: SCHEDULE B-1

SCHEDULE B-1

A. ESTIMATED APARTMENT ELECTRIC ENERYGY COSTS FOR OPERATION OF SPLIT UNITS FOR AIR-CONDITIONING

Estimated electrical costs per year for operation of split units have been calculated using a rate of 0.226 dollars per kilowatt hour.

RESIDENTIAL UNIT NUMBER	NUMBER OF BEDROOMS/ BATHROOMS	APPROXIMATE UNIT SQUARE FOOTAGE	AIR CONDITIONING SEASON	ELECTRICAL COST/YEAR 0.226$/kWh
101	STUDIO/1 Bath	650	2,797	$ 632
102	2 Bed/2 Bath	1,058	2,872	$ 649
201	2 Bed/2 Bath	1,170	2,872	$ 649
202	2 Bed/2 Bath	1,072	2,872	$ 649
301	2 Bed/2 Bath	1,169	2,872	$ 649
302	2 Bed/2 Bath	1,072	2,872	$ 649
401	2 Bed/2 Bath	1,103	2,872	$ 649
402	2 Bed/2 Bath	1,072	2,872	$ 649
501	3 Bed/3 Bath	2,034	5,754	$ 1,300
601	3 Bed/2 Bath	1,491	5,754	$ 1,300

B. HEATING

Estimated electrical costs per year for operation of split units and electric heaters have been calculated estimating a rate of 0.226 dollars per kilowatt hour.

RESIDENTIAL UNIT NUMBER	NUMBER OF BEDROOMS/ BATHROOMS	APPROXIMATE UNIT SQUARE FOOTAGE	HEATING SEASON	ELECTRICAL COST/YEAR 0.226$/kWh
101	STUDIO/1 Bath	650	3,196	$ 722
102	2 Bed/2 Bath	1,058	3,283	$ 742
201	2 Bed/2 Bath	1,170	3,283	$ 742
202	2 Bed/2 Bath	1,072	3,283	$ 742
301	2 Bed/2 Bath	1,169	3,283	$ 742
302	2 Bed/2 Bath	1,072	3,283	$ 742
401	2 Bed/2 Bath	1,103	3,283	$ 742
402	2 Bed/2 Bath	1,072	3,283	$ 742
501	3 Bed/3 Bath	2,034	6,576	$ 1,486
601	3 Bed/2 Bath	1,491	6,576	$ 1,486

END OF SECTION F

SECTION G. OPINION ON COMPLIANCE WITH REAL PROPERTY LAW §339(i)

DouglasElliman EST. 1911 REAL ESTATE

575 MADISON AVE
New York, NY 10022
Off: 212.891.7000 E-fax: 212.891.7209
www.elliman.com

COMPLIANCE WITH REAL PROPERY LAW SECTION 339-(i)

December 15, 2021

Real Estate Financing Bureau
Department of Law, State of New York
28 Liberty Street – 15th Floor
New York, New York 10005

Re: 324 W 108 *Condominium*
*324 West 108th Street, New York, New York (the "**Premises**")*

Gentlemen:

This is with respect to the Plan of Condominium Ownership (the "**Plan**") of the above Premises and the allocation of the Percentage of Common Interest to the respective Units therein.

It is our opinion that the allocation of Percentages of Common Interest allocated to the respective Units as set forth on Schedule A in the Plan are in compliance with the regulations issued pursuant to Real Property Law Article 9-B, Section 339-i.

We have determined that W108 Development LLC, the Sponsor of the Plan, has used the method contained in Section 339-i(1)(iv) of the New York Condominium Act, that is based upon floor space subject to relative value to the other space in the Condominium, the uniqueness of the Unit, the availability of the common elements for exclusive or shared use, and the overall dimensions of the particular Unit.

A principal of Douglas Elliman Real Estate has been engaged in the real estate and the brokerage business for over thirty (30) years in the New York metropolitan area. In addition, Douglas Elliman has been actively associated with the sale and management of residential properties. The company's affiliate currently manages approximately 400 condominium or cooperative apartment buildings in New York City.

This firm has no beneficial interest in the Sponsor and no interest in the profits of this Offering Plan other than the fee for this service.

We hereby authorize the use of our name and this letter in connection with the proposed plan of condominium operation.

Very truly yours,

DOUGLAS ELLIMAN REAL ESTATE

By: _____
Kenneth I. Haber
Executive Vice President and General Counsel

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END OF SECTION G

SECTION H. COMMERCIAL UNITS

The Building will not contain a commercial Unit or any commercial space.

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END OF SECTION H

SECTION I. CHANGES IN PRICES AND UNITS

Section I-1. Changes in Offering Prices. Sponsor shall have the right, in its sole discretion, without the approval or consent of the Condominium Board, Unit Owners or Purchasers, to change offering prices from time to time by a duly filed Plan Amendment when the change in price is an across the board increase or decrease affecting one or more lines of Units or Unit models, or is to be advertised, or is a price increase for an individual Unit or Units. Individual offering prices may be decreased by Sponsor without filing a Plan Amendment. No change in offering price will affect the Purchase Price stated in a fully executed and delivered Purchase and Sale Agreement.

Section I-2. Offering Prices and Price Related Terms are Negotiable. Offering prices and other price-related terms are negotiable on an individual basis, except Sponsor may not change the trust fund and escrow provisions of the Purchase and Sale Agreement or any other provisions in violation of Article 23-A of the General Business Law or Part 20 of the regulations issued by the Department of Law. In addition, Sponsor may not modify a Purchase and Sale Agreement to waive Sponsor's obligations or representations in this Plan or to reduce or abridge any rights Purchasers may have under said Article 23-A.

The following is a sample of individually negotiable price-related terms, in addition to the Purchase Price: the amount of the contract Deposit; the right to cancel the Purchase and Sale Agreement and recover the Deposit if a Purchaser is unable to obtain financing or close by a specified date; the Closing Date and the minimum period required to fix a new Closing Date following an adjournment; free upgraded appliances, fixtures or equipment; free alterations, additions or other improvements to the Unit; waiver of Closing costs and/or delinquency payment for Closing late; longer time periods to pay or perform obligations under the Purchase and Sale Agreement; elimination of "TIME OF ESSENCE" provisions; Sponsor financing (which must be disclosed in this Plan or a Plan Amendment); paying Purchaser's lender to buy down the interest rate; Sponsor paying or guaranteeing Common Charges and/or real estate taxes for a given period; allowances or credits against the Purchase Price for decorations, rent paid under an Interim Use and Occupancy Agreement for the Unit or otherwise; rent abatements or reductions under an Interim Use and Occupancy Agreement for the Unit; consent to harboring pets, or combining two Units; or installing a whirlpool bathtub or other appliances or fixtures; and giving a Purchaser the benefit of any more favorable terms offered or given to another Purchaser.

Prospective Purchasers are not limited to this list and may negotiate for any other price-related terms. Sponsor is not required, however, to sell any Unit at a price or on other terms more favorable than those stated in this Plan or a Plan Amendment.

Section I-3. Impact of Changes on Other Purchasers. No changes in prices or price-related terms will change or otherwise affect the Purchase Price or price related terms under Purchase and Sale Agreements with other Purchasers. Purchasers will not benefit from a more favorable price or price-related terms offered or given to other Purchasers or prospective Purchasers and will not

be excused from Purchaser's obligation to timely consummate the Closing of Title, without a Purchase Price abatement, set-off or credit, and without liability or recourse of any kind against Sponsor or Selling Agent, or their respective Related Parties. As a result, a Purchaser may pay more or less than another Purchaser for a comparable Unit.

Section I-4. Changes in Units. In order to meet the possible demand for Units of different sizes and/or configurations, or to meet particular requirements of Purchasers or prospective Purchasers, or for any other reason or no reason, Sponsor reserves the right from time to time, both before and after the First Unit Closing, to make the following changes to Units, including Units for which no Purchase and Sale Agreement is in effect or whose Purchasers have consented in writing to the changes (collectively, "**Unit Changes**" and individually, "**Unit Change**"), subject to the restrictions set forth in Section I-5 and Section I-6, and the requirement to file an amendment to this Plan and (when required) an amendment to the Declaration to make the Unit Changes set forth in clauses (a) through (d) below in compliance with Part 20; provided, however, no material Unit Change may be made to a Unit under contract without the consent of the Purchaser:

(a) to divide a Unit (a "**Unit Division**") into two or more Units (the "**Subdivided Units**") and in connection therewith: to erect new Boundary Walls enclosing or separating, the Units established on such Unit Division and to alter the Unit Facilities of the original Unit being divided and construct new Unit Facilities to serve each Subdivided Unit;

(b) to combine two or more of Units or Subdivided Units (a "**Unit Combination**"), horizontally and vertically, into one integrated Unit (the "**Combined Unit**") and in connection therewith: to remove the Boundary Walls separating the Units being combined horizontally; to pierce, remove and leave openings in the Boundary Floors and Boundary Ceilings separating the Units being combined vertically; to alter the Unit Facilities of the original Units being combined and construct new Unit Facilities to serve the Combined Unit;

(c) to reconfigure portions of two or more of Units or Subdivided Units (a "**Unit Reconfiguration**"), horizontally and vertically, into reconfigured Units (the "**Reconfigured Units**") and in connection therewith: to raze, remove and relocate the Boundary Walls separating the Units being reconfigured horizontally; to pierce, remove and leave openings in the Boundary Floors and Boundary Ceilings separating the Units being reconfigured vertically; to alter the Unit Facilities that are part of the original Units being reconfigured and construct new Unit Facilities to serve each Reconfigured Unit;

(d) to alter a Unit (each, a "**Unit Alteration**"), to change the number of rooms and bathrooms, the layout, the configuration, and the Unit Facilities.

The facilities affected by a Unit Change shall automatically become part of a Unit involved in the Unit Change if they are accessible from within the interior of the Unit or part of the Common Facilities if they are inaccessible from within the interior of a Unit.

Section I-5. Compliance with Part 20. All Unit Changes by Sponsor shall comply with Part 20, Section 20.3(k), which requires that:

(a) no change will be made in the size or number of Units and/or their respective percentages of Common Interest, and no material change will be made in the size or quality of Common Elements, except by a Plan Amendment and, when applicable, a Condominium Amendment;

(b) unless an affected Purchaser consents, no material change will be made in Unit size, layout, or percentage of Common Interest if a Purchase and Sale Agreement for such Unit has been executed and delivered to Sponsor and Purchaser is not in default; and

(c) 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 then existing Purchasers consent in writing thereto.

Section I-6. Unit Change Requirements. All Unit Changes by Sponsor or a Sold Unit Owner must comply with the following terms and requirements (collectively, "**Unit Change Requirements**") (see Section 12.2 of the Declaration for full details):

(a) until the issuance of the Final Certificate of Occupancy of the Building, all Unit Changes that require an application to a Governmental Authority or the issuance of a Governmental Work Permit or other Government Document shall not be undertaken without the consent of Sponsor (including, if given, such terms and conditions as Sponsor may require in its sole and absolute discretion):

(b) all Unit Changes shall comply with the applicable General Requirements, which include the applicable Work Requirements;

(c) each Unit Division, Unit Combination and Unit Reconfiguration and the resulting change in Common Interest of the Units affected thereby:

(c-1) shall be made: pursuant to a Condominium Amendment to the Declaration and to the Floor Plan(s) of the Unit or Units involved in such Unit Division, Unit Combination or Unit Reconfiguration (as applicable), duly executed, acknowledged and recorded and filed in the City Register's Office at the sole cost and expense of the Owner or Owners making such Unit Change; and

(c-2) when made by Sponsor, must be disclosed pursuant to a filed amendment to this Plan and when necessary, the Declaration; provided, however, no material Unit Change may be made to a Unit under contract without the consent of the Purchaser;

(d) the Common Interest of a Unit involved in a Unit Division or a Unit Reconfiguration shall be apportioned between or among the resulting Subdivided Units or Reconfigured Units Pro Rata to the square footages of the Subdivided Units involved in such Unit

Division or the Reconfigured Units involved in such Unit Reconfiguration; provided, however, that the aggregate Common Interests of all Subdivided Units or all Reconfigured Units shall equal exactly the Common Interest of the Unit being divided or the aggregate of the Units being reconfigured;

(e) the Common Interest of a Unit involved in a Unit Combination shall equal exactly the aggregate of the Common Interests of the Units being combined;

(f) the Common Interests of all Units following a Unit Division, Unit Combination or Unit Reconfiguration shall total one hundred percent (100%) and must be disclosed pursuant to a filed amendment to this Plan and when necessary, the Declaration; provided, however, no material Unit Change may be made to a Unit under contract without the consent of the Purchaser, as provided above;

(g) a Unit Change shall:

(g-1) not change or affect the floor area or size of another Unit or penetrate the interior of another Unit (that is, the space within the Unit's enclosing Boundary Walls, Boundary Floors and Boundary Ceilings) without obtaining the consent of the Owner of such affected Unit, duly executed, acknowledged and recorded with the Condominium Amendment implementing the Unit Change;

(g-2) not change or affect a Building Service to another Unit by more than a *de minimis* extent or the Common Elements serving another Unit for their intended purposes without obtaining the consent of the Owner of such affected Unit, duly executed, acknowledged and recorded with the Condominium Amendment implementing the Unit Change;

(g-3) not change or affect the Common Interest of another Unit without obtaining the consent of the Owner and any mortgagee of such affected Unit, duly executed, acknowledged and recorded with the Condominium Amendment implementing the Unit Change;

(g-4) not use, impair, infringe or otherwise affect the Excess Development Rights without obtaining the consent of Sponsor, duly executed, acknowledged and recorded with the Condominium Amendment implementing the Unit Change; or

(g-5) not prevent or unlawfully impair legal access by another Unit to fire-safety egress stairs, the elevator or the 324 West 108th Street Public Areas; and

(g-6) must be disclosed pursuant to a filed amendment to this Plan as when required by Part 20 of the regulations issued by the Department of Law and when necessary, the Declaration; provided, however, no material Unit Change may be made to a Unit under contract without the consent of the Purchaser, as provided above

(h) no license or use fee or rental or other charge (other than the regular Common Charges and Special Assessments, if any, levied on all Unit Owners) may be levied or imposed by the Condominium Board in connection with any wall, space, Boundary Wall, Floor or Boundary Ceiling or other portion of the Common Elements affected by a Unit Change;

(i) each Unit Change shall be made at the sole cost and expense of the Owner or Owners undertaking the Unit Change;

(j) the obligations, requirements, limitations and restrictions applicable to the use, occupancy, maintenance, repair, restoration and alteration of a Unit shall likewise apply to a Common Area permitted to be enclosed within the interior of a Unit;

(k) the Owner making a Unit Change (including an Unsold Unit Owner) shall indemnify the Condominium Board and all other Unit Owners, and their respective Related Parties from and against all claims, actions, proceedings, liabilities and losses arising from a Unit Change or the Work in performing such Unit Change and any defects in such Work;

(l) the Condominium Board shall reasonably cooperate with the Owner or Owners making a Unit Change;

(m) any Unit Change requiring an application to a Governmental Authority for the issuance of a Governmental Work Permit or other document required by a Governmental Authority shall be signed by only the following:

(m-1) in the case of a Sold Unit, the Condominium Board only (subject to the following clause (m-2)); or

(m-2) in the case of an Unsold Unit or a Unit Change to a Sold Unit pursuant to Sponsor's obligations under this Plan or a Purchase and Sale Agreement, Sponsor or a Sponsor Board Member, in the name and as an authorized signatory of the Board;

(n) all Unit Changes made by Sponsor to its Unsold Units or pursuant Sponsor's obligations under this Plan or a Purchase and Sale Agreement shall comply with all applicable Laws and Part 20, but shall not require:

(n-1) the consent of the Condominium Board or any Unit Owners or their respective mortgagees or lienors;

(n-2) complying with any regulations, rules or other requirements of the Condominium Board for Unit Alterations or other Unit Changes;

(n-3) paying any kind of fee, charge or imposition of the Condominium Board or its Managing Agent or attorneys or other professionals or consultants; and

(n-4) the plans or specifications of the proposed Unit Change being submitted to or reviewed by, or the work being supervised or monitored by, the Condominium Board

or an architect, engineer or other professional or consultant chosen by the Condominium Board; and

(o) no Unit Change to a Sold Unit shall be undertaken that requires an application to a Governmental Authority for the issuance of a Governmental Work Permit or other document of a Governmental Authority without the Owner of such Sold Unit first signing, notarizing and submitting to the Board an alteration agreement for such Unit Change, in form and content required by the Board, together with:

(o-1) the plans and specifications of the Unit Change;

(o-2) such insurance certificates or policies and endorsements, and other documents, instruments as the Board shall require; and

(o-3) payments (in the form and to the order required by the Board) for fees, charges, security or otherwise, as required by the Board.

Section I-7. Rights of Owners of Unsold Units. The respective Owners of Unsold Units shall each have all of the same Sponsor's Rights with respect to such Owner's Unsold Unit as Sponsor has with respect to the Unsold Units owned by Sponsor under this Plan (including the right to make all Unit Changes in accordance with this Section I), the Declaration and the By-Laws, but subject to all of the same restrictions and limitations imposed on Sponsor, including compliance the Part 20, Section 20.3(k) (see Section I-5 above) and the Terms of Unit Changes (see Section I-6 above).

END OF SECTION I

SECTION J. INTERIM USE AND OCCUPANCY AGREEMENT

Section J-1. Sponsor's Exclusive Option to Allow Use and Occupancy by Purchaser. If a Purchaser requests to be given possession of a Unit prior to Closing of Title, Sponsor has the exclusive option (but shall not be obligated) to enter into a "use and occupancy agreement" with such Purchaser for the interim period prior to the Closing of Title (collectively, "**Interim Use and Occupancy Agreement**"), provided a Temporary or Final Certificate of Occupancy has been issued authorizing such Unit for use as a dwelling unit when occupancy is to begin. Unless Sponsor (in its sole and absolute discretion) elects to permit such use and occupancy of the Unit, Purchaser will not have the right to rent, use, occupy, decorate, alter or store belongings or other personal property in the Unit prior to the Closing. If no Interim Use and Occupancy Agreement is offered to Purchaser when Purchaser signs and delivers the Purchase and Sale Agreement, Purchaser will not have the right, nor be obligated, to rent or to use and occupy the Unit and Sponsor will not enter into any lease or use and occupancy agreement for the Unit with anyone else while Purchaser's Purchase and Sale Agreement remains in effect.

Section J-2. No Rent Laws Applicable to Interim Use and Occupancy Agreement. No laws regulating rent or continued occupancy are applicable to the Units or an Interim Use and Occupancy Agreement. As a result, if an Interim Use and Occupancy Agreement for a Unit is signed, the charge or fee for use and occupancy will not be subject to any rent limitations or laws regulating rents and shall be a "free market", unregulated use and occupancy charge or fee as determined by Sponsor, in its sole and absolute judgment.

Section J-3. Cross-Default Provision. The Interim Use and Occupancy Agreement, if permitted by Sponsor, will be on Sponsor's standard form and will provide that a default under the Purchase and Sale Agreement shall automatically be a default under the Interim Use and Occupancy Agreement and the Purchaser, as occupant under the Interim Use and Occupancy Agreement, shall have only the single grace period stated in the Purchase and Sale Agreement to cure the default under both instruments. As a result, if the default under the Purchase and Sale Agreement is not timely remedied within the applicable cure period and the Purchase and Sale Agreement is cancelled, the Interim Use and Occupancy Agreement shall automatically and simultaneously be cancelled. See Section J-4 for further discussion.

The Purchase and Sale Agreement (Document 1 in Part II of this Plan) contains a similar cross-default provision and the single grace period stated in the Interim Use and Occupancy Agreement to cure the default under both the Interim Use and Occupancy Agreement and the Purchase and Sale Agreement. Pursuant to this provision, a default under the Interim Use and Occupancy Agreement is a default under the Purchase and Sale Agreement, but Sponsor may not cancel the Purchase and Sale Agreement based on a default under the Interim Use and Occupancy Agreement unless and until Sponsor obtains an order of eviction or other judgment or order of possession of the Unit from a court of competent jurisdiction or the Purchaser vacates the Unit. Effective on the date such order of eviction is issued or the Unit is vacated (as applicable), the

Purchase and Sale Agreement shall automatically and simultaneously be cancelled, and Sponsor shall be entitled to receive and retain Purchaser's Deposit and any earned interest thereon (and certain other amounts, if applicable, as discussed in Section K-5(a)) without giving the Purchaser any further grace period to cure the default under the Purchase and Sale Agreement.

Section J-4. Thirty (30) days to Vacate. If the Purchase and Sale Agreement is cancelled based on an uncured default or Sponsor's election to abandon or withdraw this Plan, or the Purchaser's exercise of a right of rescission under the Purchase and Sale Agreement or this Plan or a Plan Amendment, the Purchaser shall have only thirty (30) days from cancellation or rescission of the Purchase and Sale Agreement within which to vacate and surrender vacant possession of the Unit to Sponsor, free and clear of all occupants, furniture, furnishings, household items and personal belongings, broom clean, and in the same condition as existed at the start of the Interim Use and Occupancy Agreement (reasonable wear and tear excepted). Pending such surrender of vacant possession, the Purchaser shall pay Sponsor for use and occupancy a sum equal to the use and occupancy charge or fee stated in the Interim Use and Occupancy Agreement, appropriately prorated for the period beginning with the date of cancellation of the Interim Use and Occupancy Agreement and ending on the date of surrender of vacant possession. Sponsor's acceptance of such payment shall not constitute a waiver of Purchaser's obligation to timely vacate the Unit. Upon surrender of vacant possession in accordance with the foregoing, any unapplied security deposited under the Interim Use and Occupancy Agreement will be returned to the Purchaser together with any interest earned thereon. Sponsor will have the right to deduct and retain from such security deposit, any unpaid use and occupancy charge or fee and any costs and expenses incurred to repair any damage or destruction to the Unit (including its contents) and the Common Elements resulting from the Acts or Omissions of the Purchaser, or his or her Immediate Family, agents or contractors, and to restore any damaged or destroyed areas to the condition existing before being damaged or destroyed, together with, if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction any Legal Expenses and Per Diem Interest thereon to enforce and defend this provision and to collect any amounts owed.

SPECIAL RISK: The thirty (30)-day period to surrender vacant possession is a "TIME OF ESSENCE", or deadline, period. If the Purchaser fails to timely surrender vacant possession in accordance with the foregoing before the thirty (30)-day period expires, the Purchaser shall also be liable for all costs and expenses incurred or paid by Sponsor for the delay and to recover vacant possession, including: (a) if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, the Legal Expenses and Per Diem Interest incurred or paid; (b) the carrying costs of the Unit (i.e., a sum equal to the projected or actual Common Charges and real estate taxes for the Unit (as applicable), plus the Unit's allocable share (based on Common Interest) of the debt service on any mortgage on the Unit or Property (as applicable), less the use and occupancy charge or fee for the Unit actually collected by Sponsor; and (c) Per Diem Interest on the Unit's Purchase Price, prorated for the period beginning with the last day of said thirty

(30)-day period and ending on the date Sponsor recovers vacant possession of the Unit, to reimburse Sponsor for loss of potential earnings on investment of the Unit's Purchase Price. Sponsor shall also have the right to deduct and retain from said security deposit (if any) given under the Interim Use and Occupancy Agreement and (in the case of a rescission of the Purchase and Sale Agreement by the Purchaser) the Deposit monies otherwise to be returned to the Purchaser to reimburse Sponsor all of the foregoing costs and expenses. See Section A-12.

END OF SECTION J

SECTION K. PROCEDURE TO PURCHASE

This Section K describes the procedure to purchase a Unit and the essential terms of the Purchase and Sale Agreement. The documents indicated are reproduced in Part II of this Plan.

Section K-1. Procedure to Purchase. To purchase a Unit, the procedure outlined below is to be followed.

Section K-1.1. *Purchase Documents*. The purchase documents to be completed, signed and returned by Purchaser to Sponsor or Sponsor's attorneys (as directed) are as follows:

(a) Purchase and Sale Agreement: Purchaser is to complete information on the first page, sign and return four originals of the Purchase and Sale Agreement on the form reproduced as DOCUMENT 1; and

(b) IRS Form W-8 or W-9: If Purchaser is not subject to back-up withholding rules, Purchaser is to complete, sign and deliver one Internal Revenue Service Form W-8 "Certificate of Foreign Status" (if Purchaser is a non-resident alien or foreign entity) or Internal Revenue Service Form W-9 "Request for Taxpayer Identification Number and Certification" (if Purchaser is a United States citizen or resident alien).

Sponsor's attorney, Paley Group, P.C., will provide copies of these documents to prospective Purchasers or their attorneys for execution and will be available to assist prospective Purchasers and their attorneys, and to answer questions as to completing these documents.

NOTE: The Unit Deed and Closing documents must match exactly the name or names of Purchaser as signed on the Purchase and Sale Agreement. If legal ownership of a Unit is to be in the name of two individuals (e.g., husband and wife), both must sign the Purchase and Sale Agreement, unless the Purchaser is permitted to assign or transfer the Purchase and Sale Agreement. This Plan limits and restricts Purchaser's right to assign or transfer the Purchase and Sale Agreement (see Section K-18 for discussion).

Section K-1.2. *Deposit*. Purchaser is to pay a Deposit in an amount equal to ten percent (10%) of the Purchase Price when Purchaser signs and delivers the Purchase and Sale Agreement to Sponsor or its attorney, which will be the dated the date Sponsor signs and delivers a counterpart Purchase and Sale Agreement to Purchaser or Purchaser's attorney.

Section K-1.3. *Balance of Purchase Price*. The balance of the Purchase Price ("Balance") is to be paid after the filing of the Effectiveness Amendment and at Closing of Title under the Purchase and Sale Agreement.

Section K-1.4. *Instruments*. The Deposit is to be paid by good personal check of Purchaser (non-party checks are prohibited) and the Balance must be paid by certified personal check of Purchaser, or official cashier's or bank check, or electronic wire transfer to Sponsor's designated bank account, at Sponsor's exclusive option. All checks for the Deposit and Balance

must be drawn on (and payable by) a member bank of the New York Clearing House Association, unendorsed and made payable to the direct order of the following party:

(a) for the Deposit: "*Paley Group, P.C., as Escrowee*"; and

(b) for the Balance: "*W 108 Development LLC*" or such other payee(s) as Sponsor may specify on prior notice to Purchaser.

Section K-1.5. *Where and When Delivered*. The Purchase and Sale Agreement and the applicable Internal Revenue Service Form, and the check for the Deposit, are to be delivered or sent together to Sponsor's attorney, Paley Group, P.C., at 801 Second Avenue, Suite 2100, New York, NY 10017, Attention: Marc Paley, Esq. (or such other attorney or legal assistant as may be directed).

Section K-2. Statutory Requirement. Sponsor shall comply with the escrow and trust fund requirements of Article 23-A of the General Business Law of the State of New York (the "**GBL**") Section 352-e(2-b) and Section 352-h, Lien Law Section 1-a(3), and Part 20 of the Department of Law's regulations, and all funds paid by Purchasers shall be handled in accordance with these statutes and regulations.

All Deposits received in connection with the Purchase and Sale Agreement and permitted to be released in accordance with the terms of the Purchase and Sale Agreement or other written agreement between Sponsor and Purchaser, 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.

Section K-3. Terms of Escrow Agreement. The following requirements apply to this offering:

Section K-3.1. *Establishment of the Escrow Account*.

Section K-3.1.1. The Escrow Agent. The law firm of Paley Group, P.C. ("**Escrow Agent**"), with an office at 801 Second Avenue, Suite 2100, New York, New York 10017, telephone number (212) 603--9899, shall serve as Escrow Agent for Sponsor and Purchaser. The Escrow Agent has established an escrow account for the purpose of holding the Deposit made by a Purchaser pursuant to the Purchase and Sale Agreement (attached as Document 1 in Part II of this Plan) for the purchase and sale of a Unit at Signature Bank. ("**Bank**"), at its office located at 261 Madison Avenue, New York, New York 10017, a bank authorized to do business in the State of New York. The escrow account is entitled "Paley Group P.C. Master Escrow Account" ("**Escrow Account**"), which is a master escrow account. The Deposit of Purchaser shall be maintained in a separate sub-account of this master Escrow Account.

Escrow Agent has designated Marc Paley, Esq. as the signatory on the Escrow Account and the sub-account in which the Deposits of purchasers are to be maintained, each of whom is admitted to practice law in the State of New York.

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

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 master Escrow Account is an IOLA account established pursuant to Judiciary Law Section 497. The sub-account of the master Escrow Account in which Deposits are places and maintained is not an "Interest on-Lawyer's-Account". The said subaccounts are 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. Escrow Agent, Sponsor and Selling Agent, and their respective Related Parties, will not be liable for the amount collected on checks given in payment of the Deposit or any other purchase monies, or for any losses resulting from the failure of the Depository. See Section A-1.

Section K-3.2. *Deposits into the Escrow Account*.

Section K-3.2.1. Payment of Deposit. All Deposits received from Purchaser prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be placed into the Escrow Account. All instruments to be placed into the Escrow Account shall be drawn on (and payable by) a member bank of the New York Clearing House Association or a local bank or other Institutional Lender acceptable to Sponsor in its sole discretion, unendorsed and made payable directly to the direct order of "Paley Group, P.C., as Escrowee" pursuant to the terms set forth in this Plan. Any instrument payable to, or endorsed other than as required hereby, and which cannot be deposited into such Escrow Account, shall be returned to Purchaser promptly, but in no event more than five (5) business days following receipt of such instrument by Escrow Agent. In the event of such return of the Deposit, the instrument shall be deemed not to have been delivered to Escrow Agent pursuant to the terms of this Agreement.

Within five (5) business days after the Purchase and Sale Agreement has been tendered to Escrow Agent along with the Deposit, Escrow Agent shall place the Deposit into the subaccount of the Escrow Account. Within ten (10) business days of placing the Deposit in the subaccount of the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, confirming the Deposit. Such notice shall set forth the Bank, the subaccount number, and the initial interest rate earned thereon. The interest rate for the Deposit placed into said sub-account of the master Escrow Account will be a fluctuating rate for such accounts established from time to time by the Bank. Interest shall begin to accrue upon placing the Deposit into the sub-account and collection of the Deposit check or instrument. All interest earned thereon shall be paid or credited to Purchaser at_Closing. The prevailing annual rate of interest as of October 1, 2022 is 0.15%.

The actual initial interest rate will be determined at the time the Deposit check is placed in the subaccount of the Escrow Account and will vary from time to time.

If the Purchaser does not receive notice within fifteen (15) business days after tender of the Deposit, the Purchaser may cancel the Purchase and Sale Agreement within a deadline of ninety (90) days after tender of the Deposit. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, 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 the Deposit and requisite notice was timely mailed to the Purchaser.

Section K-3.3. *Release of Funds*.

Section K-3.3.1. Requirement. Under no circumstances shall Sponsor seek or accept release of the Deposit of Purchaser to Sponsor 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 shall not relieve Sponsor or Escrow Agent of any obligation to Purchaser as set forth in GBL §§ 352-e(2-b) and 352-h.

Section K-3.3.2. Terms to Release Funds. Escrow Agent shall release the Deposit to Purchaser or Sponsor as directed:

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

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

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

If Escrow Agent is not directed to release the Deposit pursuant to the preceding paragraph, and Escrow Agent receives a request by either Sponsor or Purchaser to release the Deposit, then Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If Escrow Agent has not received notice of objection to the release of the Deposit prior to the expiration of the thirty (30)-day period, the Deposit shall be released to the requesting party and Escrow Agent shall provide further written notice to both Purchaser and Sponsor informing them of said release. If Escrow Agent receives a written notice from either Purchaser or Sponsor objecting to the release of the Deposit within said thirty (30)-day period, Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to the preceding paragraph. Notwithstanding the foregoing, Escrow Agent shall have the right at any time to deposit the Deposit contained in the Escrow Account with the Clerk of the county where the Unit is located and shall give written notice to both Sponsor and Purchaser of such deposit. In addition, if the Escrow Agent is uncertain as to Escrow Agent's responsibilities or doubts the

genuineness of any document or signature, Escrow Agent also may refrain from taking any action and continue to hold the escrowed funds until the uncertainty or genuineness is resolved.

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

(x) Purchaser, if Purchaser timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan; or

(y) Purchaser after an amendment abandoning the Plan is accepted for filing by the New York State Department of Law.

Section K-3.4. *Record Keeping*. Escrow Agent shall maintain all records concerning the Escrow Account for seven years after release of the Deposit.

Upon the dissolution of the law firm which was Escrow Agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the New York State Department of Law of such transfer.

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

Section K-3.5. *General Obligations of Escrow Agent*. Under the Purchase and Sale Agreement:

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

(b) a fiduciary relationship shall exist between Escrow Agent and Purchaser, and under the Purchase and Sale Agreement, Escrow Agent acknowledges its fiduciary and statutory obligations pursuant to GBL§§ 352-e(2-b) and 352-h; and

(c) Escrow Agent may rely upon any paper or document which may be submitted to it in connection with its duties under this Agreement and which is believed by Escrow Agent to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution, or validity thereof.

Section K-3.6. *Responsibilities of Sponsor*. Under the Purchase and Sale Agreement:

(a) 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; and

(b) Sponsor shall obtain or cause the Selling Agent 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 Purchase Agreement.

Section K-3.7. *Termination of Escrow Agent*. The agreement with the Escrow Agent to act in such capacity under the Purchase and Sale Agreement shall remain in effect unless and until it is canceled by either:

(a) written notice given by Sponsor to Escrow Agent of cancellation of designation of Escrow Agent to act in said capacity, which cancellation shall take effect only upon the filing of an amendment to the Plan with the Department of Law providing for a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law. Purchaser shall be deemed to have consented to such cancellation; or

(b) the resignation of Escrow Agent, which shall not take effect until Escrow Agent is replaced by a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law, and notice is given to Purchaser of the identity of the successor escrow agent, the Bank in the State of New York where the Deposit is being held, and the account number therefor.

Upon termination of the duties of Escrow Agent as described clause (a) or (b) above, Escrow Agent shall deliver the Deposit held by Escrow Agent and the Purchase and Sale Agreement and any other documents maintained by Escrow Agent relating to the Deposit to the successor escrow agent.

Before funds are transferred to any new escrow account, or if the Escrow Agent is replaced, this Plan must be amended to provide the same full disclosure with respect to any new account, the escrow agent and the escrow agreement as was originally provided.

Section K-3.8. *Successors and Assigns*. This escrow provisions of Purchase and Sale Agreement shall be binding upon Sponsor, Purchaser and Escrow Agent and their respective successors and assigns.

Section K-3.9. *Governing Law*. The Purchase and Sale Agreement, including the escrow provisions contained therein shall be construed in accordance with and governed by the laws of the State of New York.

Section K-3.10. *Escrow Agent's Compensation*. Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

Section K-3.11. *Severability*. If any provision of the Purchase and Sale Agreement, including the escrow provisions contained therein, or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of the Purchase and Sale Agreement, including the escrow provisions contained therein, or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section K-3.12. *Indemnification*. Sponsor agrees to defend, indemnify, and hold Escrow Agent harmless from and against all costs, claims, expenses, and damages incurred in connection with or arising out of the escrow provisions contained in the Purchase and Sale Agreement or the performance or non-performance of Escrow Agent's duties thereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of thereof or involving gross negligence of Escrow Agent. This indemnity includes 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.

Section K-3.13. *Entire Agreement*. The escrow provisions contained in the Purchase and Sale Agreement, read together with GBL §§ 352-e(2-b) and 352-h and the New York State Department of Law's regulations, constitute the entire agreement among Sponsor, Purchaser and Escrow Agent with respect to the subject matter thereof.

Section K-3.14. *Litigation*. Escrow Agent may represent Sponsor in any litigation, whether or not related to the Purchase and Sale Agreement and irrespective of Escrow Agent being in possession of the escrowed funds.

Section K-3.15. *Records on File*. The Escrow Agent shall maintain all records concerning any escrow account for seven years after release of the escrowed funds. Upon the dissolution of the Escrow Agent, the former members or partners of the Escrow Agent 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.

Section K-3.16. *Review and Audit*. 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.

Section K-3.17. *Waiver Void*. Any provision of any Purchase and Sale 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 Section 20.3(o)(3)(xii) of Part 20 and GBL §§352-e(2-b) and 352-h concerning escrow trust funds shall prevail over any conflicting or inconsistent provisions in the Purchase and Sale Agreement, this Plan or any Plan Amendment.

Section K-3.18. *Trust Obligations of Sponsor*. Nothing contained herein shall diminish or impair the Sponsor's statutory obligations to each Purchaser pursuant to GBL §352-h to hold in trust all Deposits, advances or payments made in connection with the offer until consummation of the transaction with such Purchaser. Consummation of the Plan does not relieve Sponsor of its obligations pursuant to GBL §352-h. Funds from any escrow account remain the property of the Purchaser until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the Sponsor or the Escrow Agent upon any bankruptcy, incapacity or death.

Section K-4. Lien Law Section 71-a(3). The Purchase and Sale Agreement and this Plan must comply with Section 71-a(3) of the Lien Law and any other applicable provisions of Law. Said Section 71-a(3) provides, among other things, for the handling of the Deposit and the interest accumulated thereon as set forth in Section K-3. Such Deposit, together with the interest accumulated thereon, shall remain the property of Purchaser, except as otherwise provided in said statute.

Section K-5. "TIME OF ESSENCE" Provisions. The time periods that are expressly stated in the Purchase and Sale Agreement to be "TIME OF ESSENCE" or similar words are absolute deadlines, which cannot be extended by Purchaser, regardless of inability or other excuse for not meeting the specified deadline period, include the following:

(a) if, within a deadline of sixty (60) days after the Unit is separately apportioned for real estate taxes, Purchaser does not give Sponsor written notice to adjust post-Closing any overpayment of real estate taxes apportioned at Closing, Purchaser shall lose such right to adjust any said overpayment of real estate taxes (paragraph 13.1 of the Purchase and Sale Agreement);

(b) if, within a deadline of six months after Closing, Purchaser does not give Sponsor written notice to correct any errors or omissions in the calculation of the items apportioned at Closing, Purchaser shall lose such right to correct any such errors or omissions (paragraph 13.5 of the Purchase and Sale Agreement);

(c) if Purchaser does not give Sponsor and its agents, employees and Construction Parties reasonable continuous access to the Unit to correct any Punch List Work or alleged Latent Construction Defects and Purchaser continues to do so within a deadline of thirty (30) days after being given written notice thereof, Purchaser shall lose such right to require Sponsor correct any Punch List Work or alleged Latent Construction Defects (paragraph 20.4(b) of the Purchase and Sale Agreement);

(d) if, within thirty (30) days after the Unit and personal property are damaged or destroyed, Sponsor does not give Purchaser notice of Sponsor's intention restore the Unit and personal property and Purchaser does not cancel the Purchase and Sale Agreement in a notice to Sponsor within a deadline of seven days after such thirty (30)-day period expires, Purchaser shall lose such right to cancel the Purchase and Sale Agreement (paragraph 21.4 of the Purchase and Sale Agreement);

(e) if Purchaser defaults under the Purchase and Sale Agreement and fails to cure such default within a deadline of thirty (30) days after Sponsor gives Purchaser notice canceling the Purchase and Sale Agreement due to such default, Purchaser shall lose the Deposit and any interest earned thereon (paragraph 22.2 of the Purchase and Sale Agreement);

(f) if Sponsor gives Purchaser written notice of its inability to perform an obligation under the Purchase and Sale Agreement and Purchaser does not, within a deadline of five business

days thereafter, choose either (f-1) to proceed with the Closing without abatement in, credit or set-off against, the Purchase Price or recourse of any kind against Sponsor or its Related Parties or (f-2) to cancel the Purchase and Sale Agreement and recover the Deposit and any interest earned thereon, Purchaser shall conclusively be deemed to have elected to cancel the Purchase and Sale Agreement and recover said monies;

(g) if Purchaser does not receive notice of placement of the Deposit in the Escrow Account within fifteen (15) business days after tender of the Deposit to the Escrow Agent and Purchaser does not give Sponsor, within a deadline of ninety (90) days after such fifteen (15)-business day period expires, written notice canceling the Purchase and Sale Agreement, Purchaser shall lose such right to cancel the Purchase and Sale Agreement (paragraph 25.12) of the Purchase and Sale Agreement); and

(h) if Purchaser is given fewer than three business days to review the Plan and any Plan Amendment and Purchaser does not give Sponsor, within a deadline of seven days after delivering the executed Purchase and Sale Agreement and check for the Deposit to the Escrow Agent, written notice canceling the Purchase and Sale Agreement, Purchaser shall lose such right to cancel the Purchase and Sale Agreement (paragraph 28(b) of the Purchase and Sale Agreement).

See Section 2.3.

Section K-6. Closing Date. After the Effectiveness Amendment is accepted for filing by the Department of Law, Sponsor will from time to time fix the date for Closing of Title to each Unit (the "**Closing Date**") for which Purchase and Sale Agreements have been executed and are still in effect. Sponsor will give each Purchaser not less than thirty (30) days prior written notice of the date, time and location (in New York City) set by Sponsor for Purchaser to Close Title. Purchasers may waive this thirty (30)-day period and close sooner on a date and at a time mutually convenient to Purchaser and Sponsor. After the First Unit Closing is consummated, Purchasers and Unit Owners will be served with a Plan Amendment disclosing (among other matters) the date of the First Unit Closing.

If Purchaser enters into one or more Purchase and Sale Agreements to purchase more than one Unit, all such Units must Close Title simultaneously, provided that a TCO or (at Sponsor's exclusive option) FCO is issued authorizing the such Unit for the use set forth in this Plan.

Section K-7. Projected Date of First Unit Closing. Sponsor anticipates that the First Unit Closing will occur by January 1, 2023. Purchasers will be offered a right of rescission if the actual date of closing of title to the first Unit occurs later than December 31, 2023, which is twelve (12) months after the projected date for the First Unit Closing. If the Plan is amended to provide for a later projected date for the First Unit Closing, Purchasers will be entitled to an offer of rescission if the First Unit Closing occurs more than 12 months beyond that amended, later date. However, if the First Unit Closing occurs before December 31, 2023, the Sponsor may schedule the closings of title to other Units significantly later than such date. Unless your Purchase and Sale 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. See Section A-4.

Sponsor expects the First Unit Closing will occur on or about January 1, 2023, which corresponds to the projected date the first year of Condominium operation is to begin in SCHEDULE B (in Section F). Such projected date is only a target and is not guaranteed. If such date of First Unit Closing is delayed by twelve (12) months or more, this Plan will be amended to offer Purchasers the right, for fifteen (15) days, to rescind the Purchase and Sale Agreement and recover the Deposit, together with any earned interest. Such right to rescind shall be the limit of Sponsor's liability and Purchaser's sole recourse against Sponsor and Sponsor's Related Parties (regardless of any losses Purchaser may have sustained or incurred). Sponsor and Selling Agent do not assure, represent or guarantee when the actual date of First Unit Closing may occur, which may be earlier or substantially later than such projected date, or when the actual date of Closing of Title will occur under a Purchase and Sale Agreement, which may be held substantially later than the actual date of First Unit Closing, depending on the progress of construction, among other things. See Section A-4.

Section K-8. Purchaser's Thirty (30)-day Grace Period. Sponsor must make a written demand for payment after default and allow Purchaser thirty (30) days to make the payment before Purchaser's Deposit shall be forfeited. Such thirty (30) days is a "TIME OF ESSENCE" or deadline period. See Section A-2.4 and see Section K-5.

Section K-9. Power of Attorney. Each Purchaser, by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit, shall thereupon automatically and conclusively be deemed to have irrevocably and unconditionally granted to Sponsor, each Unsold Unit Owner and the members of the Condominium Board (collectively, in their capacity as Board Members, and by resolution adopted by a majority of Board Members attending a duly constituted Board meeting at which a quorum is present), a limited power of attorney to exercise, perform, implement and conduct all affairs, business and transactions given to each of them in the Declaration or the By-Laws, including those set forth in Section 14.3 of the Declaration. Purchaser shall not be required to sign a separate power of attorney.

Section K-10. Period to Review Plan and Plan Amendment. At Sponsor's option, prospective Purchasers will be afforded either: (a) three business days to review this Plan and every filed Plan Amendment (if any) before executing a Purchase and Sale Agreement; or (if afforded fewer than three business days) (b) seven days after delivering an executed Purchase and Sale Agreement to rescind the Purchase and Sale Agreement and have the full Deposit refunded promptly. In the latter case, Purchaser must mail the notice of rescission to Sponsor at the address set forth on the

cover page of this Plan and have the mailing post marked within the seven-day period. The seven-day period to rescind is a "TIME OF ESSENCE" or deadline period, which means that unless Purchaser timely rescinds as provided above, Purchaser may not rescind or recover the Deposit based on being given fewer than said seven-day period. See Section A-2.4 and Section K-5.

Section K-11. Risk of Loss. The risk of loss from fire or other casualty remains with Sponsor unless and until Purchaser is given possession of a Unit pursuant to an Interim Use and Occupancy Agreement or legal title to the Unit has passed to Purchaser, at which time (in either such case) the risk of loss shall be assumed by the Purchaser. Purchaser should consider obtaining, at Purchaser's expense, insurance to insure the Unit, its contents and Purchaser's personal property against such loss. See Section A-2.9 and see Section M-2 for additional discussion.

Section K-12. Purchase and Sale Agreement. A complete copy of the Purchase and Sale Agreement is reproduced as DOCUMENT 1 in Part II of this Plan. Before signing a Purchase and Sale Agreement, prospective Purchasers are urged to consult an attorney or legal adviser for a full understanding of Purchaser's rights, obligations and liabilities under the Purchase and Sale Agreement and this Plan.

Section K-13. No Mortgage Contingency. The Purchase and Sale Agreement is not contingent upon Purchaser obtaining financing (secured or unsecured) to pay the Purchase Price of a Unit or any portion thereof. If Purchaser desires financing, Purchaser assumes and accepts the full and sole risk to obtain and close the loan simultaneously with the Closing of Title to the Unit. Under no circumstance shall Purchaser have the right to cancel the Purchase and Sale Agreement, or to delay the Closing of Title, or to be relieved or excused from paying the Purchase Price (without abatement, set-off or credit, and without liability or recourse of any kind against Sponsor or Selling Agent, or their respective Related Parties) in the event:

(a) Purchaser is unable to arrange financing; or

(b) Purchaser receives a loan commitment letter, but before the Closing of Title:

(b-1) the interest rate or other terms change unfavorably, or a "lock-in" interest rate is lost, because the Closing of Title under Purchaser's Purchase and Sale Agreement fails to occur before the expiration of the period within which the loan must close; or

(b-2) such commitment expires and is not extended or renewed; or

(b-3) is extended or renewed on less favorable terms; or

(b-4) Purchaser is required to make additional payments to the lender to extend the loan commitment period; or

(b-5) the Building fails to qualify for federally insured or provided financing under federal home loan programs (e.g., FHA or Fannie Mae); or

(b-6) the loan commitment terminates because of: (i) an adverse change in Purchaser's financial condition (e.g., an unfavorable change in Purchaser's income, financial condition, employment status, sale of an existing residence, etc.); or (ii) an appraisal of the Unit is not satisfactory to the lender; or (iii) any other lender required condition or factor is not met; or

(c) the lender fails to fund the loan at Closing.

By assuming these risks, Purchaser will not be excused from the obligation to purchase without abatement in, or set-off or credit against, the Purchase Price and without liability or recourse of any kind against Sponsor or the Selling Agent, or their respective Related Parties. Sponsor and Selling Agent do not represent, assure or guarantee a Purchaser's ability to obtain financing or (if obtained) the terms of financing, or whether the Closing of Title will occur before the loan commitment or any lock-in rate expires, or (if it expires) whether the commitment will be extended or the costs to obtain an extension or the terms and conditions thereof, which may be less favorable than the original commitment. See Section A-2.5.

Section K-14. Plan and Plan Amendment Governs. If the provisions of this Plan or any Plan Amendments filed before or after the date of the Purchase and Sale Agreement, but before Closing, conflict or are inconsistent or ambiguous with the Purchase and Sale Agreement, such conflict, inconsistency or ambiguity shall be resolved according to the terms of the Plan and said filed Plan Amendment, which are paramount and shall govern. See Section A 2.12.

Section K-15. Sponsor's Period to Accept or Reject Purchase and Sale Agreement. Within ten (10) business days after a prospective Purchaser delivers to Sponsor, Selling Agent or Sponsor's attorney an executed Purchase and Sale Agreement together with the required purchase documents and check for the Deposit, Sponsor must either accept or reject the Purchase and Sale Agreement and (if rejected) return to Purchaser the Deposit, without interest. If Sponsor fails to sign and return a fully executed Purchase and Sale Agreement to the prospective Purchaser within such ten (10)-business day period, the Purchase and Sale Agreement will be deemed rejected and Sponsor will return or cause to be returned to Purchaser the full amount of the Deposit, without interest. Until the Purchase and Sale Agreement is rejected or deemed rejected by Sponsor, Purchaser is irrevocably bound to purchase and may not revoke or cancel the Purchase and Sale Agreement or recover the Deposit. Sponsor will not be obligated to accept, nor be bound by, the Purchase and Sale Agreement unless and until Sponsor executes and delivers a fully executed Purchase and Sale Agreement to Purchaser. No inference may be drawn that Sponsor has accepted or is bound by a Purchase and Sale Agreement because: (a) a prospective Purchaser is given this Plan, the Purchase and Sale Agreement or other documents; or (b) Sponsor, Selling Agent or Sponsor's attorney accepts delivery of a signed Purchase and Sale Agreement and the Deposit check; or (c) the Deposit check is placed in the Escrow Account (whether or not inadvertent).

Section K-16. No Waiver or Abrogation of Article 23-A of GBL. The Purchase and Sale Agreement, this Plan and any Plan Amendment may not contain, or be modified to contain, a provision waiving Purchaser's rights or abrogating Sponsor's obligations under Article 23-A of the GBL.

Section K-17. Restriction Against Assignment. Purchaser may not assign the Purchase and Sale Agreement without obtaining Sponsor's prior written consent. Sponsor may (in its sole and absolute discretion) permit the Purchase and Sale Agreement to be assigned, for example, to allow Purchaser to add, delete or substitute the name of a member of Purchaser's Immediate Family or to take title in the name of an Entity related to or controlled by Purchaser. If Sponsor consents to an assignment, Sponsor's attorneys must receive at least twenty (20) days prior to the date scheduled by Sponsor for Closing of Title: (a) four originals of an Assignment and Assumption Agreement (on Sponsor's standard form) pursuant to which Purchaser assigns the Purchase and Sale Agreement and Deposit to the new party or parties named as Purchaser, who shall assume all of Purchaser's obligations thereunder; (b) two originals of Internal Revenue Service Form W-8 or W-9 (as applicable) for the new Purchaser; and (c) an unendorsed personal check in the sum of $500, made payable to the order of Sponsor's attorneys, Paley Group, P.C., for services in connection with the assignment. In no event will Purchaser be entitled to delay or postpone Closing of Title to effectuate such name change or assignment.

Section K-18. Events of Default. Purchaser shall be in default if:

(a) at Closing: (a-1) Purchaser fails to pay the Balance of the Purchase Price in accordance with Sections K-1.2, K-1.3 and K-6 above; (a-2) Purchaser fails to pay Purchaser's Closing costs (see Section N-1.1) or Purchaser's Closing apportionments, if in favor of Sponsor (see Section N-1.2); or (a-3) Purchaser fails to properly sign and/or deliver the documents required under the Purchase and Sale Agreement, such as the Unit Deed (see DOCUMENT 3 in Part II), ACRIS documents (e.g., the New York State Real Property Transfer Report and New York City Real Property Transfer Tax Return, New York City Department of Housing Preservation and Development Affidavit in Lieu of Registration Statement, Smoke Detector Affidavit, Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certification of Exemption from the Payment of Estimated Personal Income Tax for the Conveyance of Real Property Located in New York City, and the mortgage tax credit affidavit, if applicable), all of which are required to be duly signed and (where required) notarized in order to convey title to a Unit;

(b) Purchaser's check for the Deposit or any other payment under the Purchase and Sale Agreement is dishonored or fails of collection;

(c) Purchaser becomes an occupant of the Unit under an Interim Use and Occupancy Agreement and a warrant of eviction against Purchaser is issued;

(d) Purchaser fails to pay or perform any of Purchaser's other obligations or agreements under the Purchase and Sale Agreement; or

(e) if Purchaser signs a Purchase and Sale Agreement for more than one Unit, a default under either Purchase and Sale Agreement is automatically a default under the other Purchase and Sale Agreement; in such case, the only time period Purchaser will have to remedy the default is the time period set forth in the Purchase and Sale Agreement that first went into default. If the default is not timely remedied and both Purchase and Sale Agreements are canceled, Sponsor shall have the right to receive and retain as Liquidated Damages the ten percent (10%) Deposit under each Purchase and Sale Agreement together with the interest earned thereon. See Section A-2.2.

Section K-19. Sponsor's Remedies on Purchaser's Default. If Purchaser defaults, Sponsor may not seek specific performance compelling Purchaser to Close Title and pay the full amount of the Purchase Price. Instead, Sponsor's sole remedy shall be to cancel the Purchase and Sale Agreement effective at the end of thirty (30) days from giving Purchaser written notice of the default, unless Purchaser cures the default within such thirty (30)-day period, and to receive and retain as Liquidated Damages the Deposit and the interest earned thereon as set forth in Section A-2.1. Such thirty (30)-day grace period is a "TIME OF ESSENCE" or deadline period. The Liquidated Damages provision is subject to review by a court or other authority having jurisdiction as to whether the liquidated amount is an unenforceable penalty designed to coerce performance of a Purchaser. (See Section A-2.1.)

In the event of a check given in payment of the Deposit fails or is dishonored, Sponsor has the following choices:

(a) to declare the Purchase and Sale Agreement null and void, in which case Sponsor shall cause the failed or dishonored instrument and any other payment given under the Purchase and Sale Agreement to be returned to Purchaser; or

(b) to declare Purchaser to be in default, in which case Purchaser shall have thirty (30) days from giving Purchaser written notice of the default to replace the failed or dishonored instrument, failing which the Purchase and Sale Agreement shall be null and void, of no further force or effect and Sponsor shall cause the failed instrument to be returned to Purchaser.

Section K-20. Purchaser's Remedies on Sponsor's Default or Inability to Perform.

Section K-20.1. *Grace Period*. Purchaser must give Sponsor thirty (30) days written notice of any default by Sponsor under the Purchase and Sale Agreement and allow Sponsor an opportunity to cure the default or (if not reasonably curable in thirty (30) days) such reasonably longer period (not to exceed ninety (90) days) from giving the default notice.

Section K-20.2. *Remedies*. If Sponsor fails to cure the default within the applicable grace period, Purchaser's sole remedy shall be either: (a) to compel Sponsor to specifically perform; or (b) to cancel the Purchase and Sale Agreement and recover Purchaser's Deposit together with any interest earned thereon. Purchaser shall conclusively be deemed to have elected to cancel and recover said sums if Purchaser fails to consummate the Closing of Title on the date or any

postponed date set by Sponsor. Sponsor, however, shall not be excused from a willful default for intentionally causing a title objection to frustrate a sale in bad faith, nor from Sponsor's obligation to obtain a release of a mortgage lien on the Unit. The Sponsor cannot limit any rights which the Purchaser may have pursuant to Art. 23A of the GBL, NYCRR regulations, and the Offering Plan, except as determined in a final decision or order by a court of competent jurisdiction or any governmental agency or by executive order and that Purchaser may be entitled to.

Section K-20.3. *Sponsor's Inability*. If Sponsor is unable, in good faith, to perform Sponsor's obligations or satisfy any condition applicable to Sponsor or the Unit, or title shall not be in accordance with the Purchase and Sale Agreement, Purchaser's sole remedy shall be either: (a) to consummate the Closing of Title without delay and accept such title to the Unit as Sponsor is able to convey without abatement in, or set-off against, the Purchase Price, without escrowing monies and without liability or recourse of any kind against Sponsor or Selling Agent or their respective Related Parties by reason thereof; or (b) to cancel the Purchase and Sale Agreement and recover Purchaser's Deposit together with any interest earned thereon, and Purchaser's costs to search title to the Unit, if any. Purchaser shall conclusively be deemed to have elected to cancel and recover said sums if Purchaser fails to consummate the Closing of Title on the date or any postponed date set by Sponsor.

Section K-21. Release of Claim. Upon cancellation of the Purchase and Sale Agreement and payment of the funds escrowed with the Escrow Agent and any earned interest thereon to the proper party, and (if applicable) recovery of any sums due Sponsor, all rights, obligations and liabilities of Purchaser and Sponsor, and their respective Related Parties, under the Purchase and Sale Agreement, this Plan and any Plan Amendment shall end and all liabilities of each party and Sponsor's employees, agents (including the Selling Agent) and attorneys, and the Escrow Agent, shall be released and discharged, except the parties shall remain liable for those indemnities, obligations and liabilities expressly stated to survive cancellation of the Purchase and Sale Agreement.

Section K-22. Purchaser's Closing Costs and Apportionments. Purchaser's closing costs include (among others) the state and city transfer taxes and the legal fees of Sponsor's attorney for Unit closing services (see Section N-1.1 for details). At Closing, Sponsor and Purchaser shall apportion the Common Charges, real estate taxes and (if applicable) any use and occupancy charge or fee for the Unit. See Sections A-2.5 and 2.6 and Sections N-1.1 and N-1.2 for details.

Section K-23. Closing Payments and Documents.

Section K-23.1. *Closing Payments*. Purchaser's Closing payments consist of the Balance of the Purchase Price, Purchaser's closing costs and the net closing apportionments, if in favor of Sponsor. If Purchaser is permitted to use and occupy the Unit pursuant to an Interim Use and

Occupancy Agreement, any unapplied security will be refunded at the Closing together with any earned interest.

Section K-23.2. *Closing Documents*. The principal documents to be signed or delivered at Closing of Title include:

(a) a bargain and sale deed of the Unit with covenant against grantor's acts to be signed by Sponsor and Purchaser (see DOCUMENT 3 in Part II of this Plan);

(b) ACRIS documents (e.g., the New York State Real Property Transfer Report and New York City Real Property Transfer Tax Return, New York City Department of Housing Preservation and Development Affidavit in Lieu of Registration Statement, Smoke Detector Affidavit, Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certification of Exemption from the Payment of Estimated Personal Income Tax for the Conveyance of Real Property Located in New York City), and the DEP Customer Registration Form for Water and Sewer Billing;

(c) a carbon monoxide detector affidavit to be signed by Sponsor;

(d) a release of lien and UCC-3 Financing Statement with respect to any mortgage on the Unit (other than any mortgage obtained by Purchaser), which are to be obtained by Sponsor (see Section M-7);

(e) a multiple dwelling affidavit to be signed by Sponsor;

(f) Sponsor's certification of non-foreign status;

(g) (if Purchaser is obtaining mortgage financing) a Purchaser's affidavit with respect to the mortgage tax credit (if applicable);

(h) an insurance certificate naming Purchaser as an additional insured party under the Condominium's policy, which is to be obtained by Sponsor; and

(i) a statement on the payment status of Common Charges from the Condominium Board or Managing Agent, which is to be obtained by Sponsor.

See paragraph 14 of Purchase and Sale Agreement (Document 1 in Part II of this Plan) for the full list.

Section K-24. Satisfaction and Discharge. All agreements, obligations and liabilities of Sponsor and Purchaser, and their respective Related Parties, are considered satisfied, released and discharged at consummation of Closing of Title, except only those that are expressly stated in the Purchase and Sale Agreement, this Plan or a Plan Amendment to survive the Closing or are to be paid or performed subsequent to Closing. The foregoing shall not reduce or otherwise abridge any rights of Purchaser under Article 23-A of the General Business Law, or Part 20 of the Department of Law's regulation, or this Plan or any Plan Amendment.

Section K-25. Possession. Purchaser is not entitled to possess, occupy or in any way use the Unit prior to Closing of Title, unless at the time of entering into the Purchase and Sale Agreement, Sponsor elects (at its exclusive option and discretion) to give Purchaser an Interim Use and Occupancy Agreement for the Unit (see "Section J. Interim Use and Occupancy Agreements" for discussion). At Closing, Sponsor will deliver possession of the Unit to Purchaser, vacant, broom clean, and free of rights of others to possession.

Section K-26. State of Title. The Unit and its Common Interest will be conveyed at closing free and clear of all liens, encumbrances and title exceptions other than the "Permitted Encumbrances" described in this Plan (see Section M-4) and repeated in further detail in Exhibit A to the Purchase and Sale Agreement. Purchaser shall accept title to the Unit subject only to the Permitted Encumbrances. The Permitted Encumbrances include: (a) the state of facts shown on a specified survey; (b) any additional states of facts a subsequent survey would show, provided that such additional state of facts would not render title unmarketable or prevent the use of the Unit for the purpose set forth in this Plan; and (c) with respect to any encroachments, Purchaser will be insured, without additional premium, that such encroachments may remain for so long as the Building shall stand. If Sponsor is required to postpone the date scheduled by Sponsor for Closing of Title to remove an objection to title that existed but was not included in a written notice or title report received from Purchaser or Purchaser's attorney at least ten (10) days before the date scheduled by Sponsor for Closing, Purchaser will be at fault for causing the postponement and will incur the delinquent closing costs set forth in Section N-1.1.7. See Section A-2.5.3.

Section K-27. Personal Property Included in Sale. The sale of a Unit includes only the personal property (e.g., appliances, fixtures and other equipment, and finishes) set forth in the Description of Property and Specifications or Building Condition (DOCUMENT 4 in Part II) and summarized in part in Section C-1.4. Each Unit is being sold unfurnished. Furniture, floor coverings, wall coverings, window treatments, furnishings and other decorations, finishes and treatments in or about any model or hallway are for display purposes only and are not included in the sale. There will be no modifications or extras unless agreed to in writing by Sponsor. Unsold Units used from time to time as sales offices or models (if any) are not being offered and are reserved for future sale. In addition, Sponsor reserves the right to sell a model Unit (if any) with its furnishings. This Plan will be amended to disclose the additional price to purchase the furnishings once Sponsor determines to offer a model Unit for sale.

Section K-28. Pre-Closing Inspection of the Unit By Purchaser.

Section K-28.1. *Inspection Date*. Until Sponsor notifies Purchaser in writing that construction of the Unit is sufficiently completed and ready for inspection, Purchaser and Purchaser's representatives shall not, and do not have the right to, inspect or visit the Unit or Building or any portion thereof. At least five days before Closing of Title, Sponsor will notify Purchaser in writing that construction of the Unit is sufficiently completed and is now ready for

inspection. The inspection is to occur on a business day that is at least five days from the giving of such inspection notice, and during hours from 9:00 a.m. to 5:30 p.m., fixed by Sponsor. Sponsor shall endeavor (but shall not be obligated) to fix such date and time as shall be mutually convenient to Sponsor and Purchaser. Purchaser and Purchaser's representatives (if any) are to inspect the Unit on such date and time fixed by Sponsor, accompanied by Sponsor's representative.

Section K-28.2. *Final Inspection Statement*. At conclusion of the inspection, Purchaser is to complete, and Purchaser and Sponsor or Sponsor's representative are to sign and deliver to each other, the Final Inspection Statement (on the form annexed as EXHIBIT B to the Purchase and Sale Agreement) containing all construction Work to be corrected or finished that do not affect the habitability of the Unit (the "**Punch List Work**"), if any. Sponsor shall be obligated to correct or cause to be corrected any personal property included in the purchase and sale (including kitchen appliances, plumbing and electrical fixtures, and other Unit equipment) that are not in working order, provided same are listed on the Final Inspection Statement signed by Sponsor or Sponsor's representative. Sponsor shall not, and shall not be required to, perform any Punch List Work that is not noted on the Final Inspection Statement, other than Work to correct any Latent Construction Defects for which timely notice has been given, as provided in this Plan (see Section O-2.11.3) and in the Purchase and Sale Agreement. Purchaser shall Close Title and pay the full Purchase Price on the date fixed by Sponsor in accordance with the Purchase and Sale Agreement (all: without delay; without abatement in, set-off or credit against, the Purchase Price; and without escrowing monies) notwithstanding:

(a) Purchaser's failure to arrange or attend the Unit inspection prior to the Closing of Title or to complete, sign and deliver the Final Inspection Statement; or

(b) the failure of Purchaser and Sponsor or Sponsor's representative to agree upon the Punch List Work (such disagreement shall not excuse Sponsor to complete or correct any correctly noted Patent Construction Defects listed on the Final Inspection Statement signed by Purchaser and delivered to Sponsor or Sponsor's representative at the time of inspection or at Closing of Title); or

(c) the existence of required Punch List Work not performed or completed (which Sponsor shall complete or correct in accordance with Sponsor's obligations under the Purchase and Sale Agreement), provided only that:

(c-1) the Unit is covered by a Temporary Certificate of Occupancy or (at Sponsor's exclusive option) a Final Certificate of Occupancy, as required herein; any

(c-2) the Unit is substantially completed with available heat, air conditioning and hot water, an operable kitchen and bathroom, and a reasonable means of access to and from the street.

Nothing contained herein shall excuse Sponsor from its obligation to construct the Unit in accordance with the Plans and Specification as disclosed in this Plan and all applicable Laws.

Section K-28.3. *Punch List Work*. Sponsor will endeavor in good faith to complete all correctly specified Punch List Work set forth on the Final Inspection Statement within approximately thirty (30) days after Closing of Title or such longer period as may be reasonable in light of the extent and the nature of the Work involved, but not to exceed ninety (90) days after the Closing unless: (a) delayed due to Unavoidable Causes, in which case such incomplete Work will be completed with reasonable diligence after the Unavoidable Causes delaying the completion shall end; or (b) Purchaser refuses or fails to give Sponsor and its Construction Parties reasonably continuous access to the Unit. SPECIAL RISK: Sponsor shall be excused, released and discharged from its obligation to correct Punch List Work and Latent Construction Defects if such reasonably continuous access is prevented and is not given within a deadline of thirty (30) days after giving written notice requesting access (such thirty (30) days is a "TIME OF ESSENCE" period). See Section A-18.10 above. Sponsor's obligation to perform and complete the required Punch List Work in accordance with the Purchase and Sale Agreement shall survive the Closing of Title.

Section K-28.4. *Prohibitions*. Purchaser's right to inspect does not entitle Purchaser or Purchaser's representatives to do any of the following, which are prohibited: (a) probe, penetrate or disturb the surfaces of the walls, floors or ceilings of the Unit or any portion of the Building; or (b) make any alterations or changes to the Unit; or (c) store any furniture or other belongings in the Unit or elsewhere in the Building prior to Closing.

Section K-29. Prices and Price Related Terms are Negotiable. The offering price and price related terms of the Purchase and Sale Agreement are negotiable (see Section I-2 for full discussion).

Section K-30. Broker. Sponsor shall be responsible for, and shall indemnify Purchaser from and against, all claims and resulting liabilities with respect to, the fee or commissions if and when earned by the Selling Agent and such other participating broker (if any) that may be specified in the Purchase and Sale Agreement, pursuant to a separate agreement with each of them. Apart from said specified participating broker (if any), Purchaser shall be responsible for, and shall indemnify Sponsor from and against, all claims and resulting liabilities with respect to, the fee or commission if and when earned by any broker with whom Purchaser dealt or is alleged to have dealt. Each party's indemnity shall survive the Closing of Title to the Unit or the cancellation of the Purchase and Sale Agreement (as applicable).

Section K-31. Abandonment of Plan. Sponsor has the exclusive right and absolute discretion to abandon this Plan at any time before Sponsor declares this Plan effective or (under certain very limited circumstances) thereafter (see Section L-6 and Section L-7 for discussion). If Sponsor

elects to abandon this Plan, all Purchase and Sale Agreements will automatically be cancelled and the Deposit refunded to Purchasers together with any earned interest.

Section K-32. Purchaser's Representations. The Purchase and Sale Agreement will include certain representations with respect to Purchaser, which will include the following representations to be made before the filing of the Effectiveness Amendment: (a) Purchaser is a Bona Fide Purchaser; (b) Purchaser is not related to the Sponsor, the Selling Agent or the proposed Managing Agent, or to any of their respective principals, by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; and (c) Purchaser is not purchasing as an accommodation to, or for the account or benefit of, Sponsor or a principal of Sponsor.

Section K-33. Litigation. Any suit, action, proceeding, whether legal or equitable, brought in or before any court (whether federal, state or otherwise) or arbitration, mediation or other dispute resolution body having jurisdiction (a "**Litigation**") arising out of the Purchase and Sale Agreement shall be governed by the internal Laws of New York, shall be brought in New York County and shall be determined by the judge presiding at the trial without a jury (which the parties waive).

Section K-34. Purchase and Sale Agreement Is Not a Lien. The Purchase and Sale Agreement and the Deposit are not, and shall not be regarded as, a lien against the Property or the Unit. Purchaser may not record the Purchase and Sale Agreement and will be in default if Purchaser attempts to record it.

Section K-35. Prohibition Against Advertising. Until the Closing of Title, Purchaser is prohibited from advertising or publicizing the availability of the Unit for sale or lease. Any violation of this prohibition shall be a material event of default by Purchaser under the Purchase and Sale Agreement. See Section A-2.7.

Section K-36. Deposit for Plan and Plan Amendment. A prospective Purchaser may be required to deposit one hundred and fifty dollars ($150) to obtain this Plan and any Plan Amendment. The deposit will be held by Sponsor and credited to the Unit's Purchase Price or will be refunded if this Plan and every Plan Amendment (if any) are returned within thirty (30) days in reasonably good, reusable condition.

Section K-37. Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY LAWSUIT ARISING FROM THIS AGREEMENT OR THE PLAN OR AMENDMENTS, OTHER THAN A LAWSUIT IN WHICH A JURY TRIAL CANNOT LEGALLY BE WAIVED. ANY CLAIM FOR WHICH A JURY TRIAL CANNOT LEGALLY BE WAIVED SHALL NOT BE ASSERTED AS A COUNTERCLAIM OR JOINED WITH ANY LAWSUIT IN WHICH A JURY TRIAL IS WAIVED, UNLESS THE FAILURE TO ASSERT IT WOULD PREVENT THE CLAIM FROM BEING MADE LATER. THE PROVISIONS OF THIS PARAGRAPH 34.8 SHALL SURVIVE THE CLOSING OR (IF THE CLOSING DOES NOT OCCUR) THE CANCELLATION OR TERMINATION OF THIS AGREEMENT.

Section K-38. Purchaser's Changes, Extras and Upgrades. Sponsor shall not be obligated to make any changes to the Unit or provide any extras or upgrades that might be requested by Purchaser. Any changes, extras or upgrades requested by Purchaser and agreed to be made by Sponsor shall not be binding on either party unless and until the terms thereof, including the additional amount to be paid and when same is payable by Purchaser are set forth in writing signed and exchanged by Sponsor and Purchaser as part of the Purchase and Sale Agreement. Any additional payment made by Purchaser for any changes, extras or upgrades shall not be part of the Purchase Price and initially be placed in the subaccount with Purchaser's Deposit and may immediately thereafter be withdrawn from the subaccount and used to pay for the agreed upon changes, extras and/or upgrades (as applicable). In such case the additional payment shall be retained by Sponsor and shall not be refundable. In the event the plan is abandoned, all monies placed in the subaccount of the Purchaser and collected by the Sponsor will be refunded to Purchaser.

Section K-39. Legal Expenses. In any litigation between Purchaser and Sponsor, Purchaser will not be obligated to pay Sponsor's legal expenses unless awarded in a final non-appealable order or judgment of a court having competent jurisdiction. See Section A-2.13.

END OF SECTION K

SECTION L. EFFECTIVE DATE

Section L-1. Requirement of Effectiveness. Sponsor's offer to sell and obligations are contingent upon Sponsor electing to declare this Plan effective based upon compliance with the relevant conditions and requirements described below. Sponsor must conform to the following provisions in determining whether, when and how this Plan will be declared effective. Until this Plan is declared effective or abandoned as provided in this Section L, Purchasers shall be irrevocably bound to purchase and cannot cancel the Purchase and Sale Agreement based on this contingency.

Section L-2. Procedure to Declare Plan Effective. The three construction loans to rehabilitate and construct the Building have matured. Sponsor is negotiating an extension of the construction loans and will not declare the Plan effective unless and until the Plan is amended to disclose the construction loans have been extended and the terms of the extension. Thereafter, this Plan may be declared effective by:

(a) a Plan Amendment; or

(b) by notice stating that this Plan is declared effective served on every Purchaser by personal service or by commencement of service by regular mail or registered or certified mail, with or without return receipt requested, in the manner required by Section 20.1(d) of Part 20 of the Department of Law's regulations, and submitting a Plan Amendment to the Department of Law within five days confirming that this Plan was declared effective on a specified date.

The Plan Amendment declaring this Plan effective or disclosing the notice of effectiveness given to Purchasers ("**Effectiveness Amendment**"), as applicable, will also disclose the names of the Purchasers who are being counted toward effectiveness, the Units for which Purchase and Sale Agreements are in effect and will otherwise conform to said Section 20.5(e) of Part 20. The First Unit Closing shall not be fixed until this Plan is declared effective and the Effectiveness Amendment is accepted for filing by the Department of Law.

Section L-3. Minimum Percentage of Sales. This Plan may not be declared effective unless Purchase and Sale Agreements for at least fifteen percent (15%) of the Units offered for sale under this Plan, or two Units (10 Units x 15%, rounded up) have been entered into with Purchasers for personal occupancy or occupancy by a member of Purchaser's family, or for rental investment or resale, who is not the Sponsor, the Selling Agent, or the Managing Agent or a Related Party thereto (a "**Bona Fide Purchaser**").

Section L-4. Purchase and Sale Agreements Excluded from Effectiveness. This Plan will not be declared effective based on Purchase and Sale Agreements:

(a) signed by Purchasers who have been granted a right of rescission that has not yet expired or been waived in writing; or

(b) if the Purchaser was not afforded the protections required by Section 20.3(o)(10) of said Part 20, which provides for a minimum period of three business days for Purchaser to review this Plan and every Plan Amendment before signing the Purchase and Sale Agreement or (if afforded fewer than three business days) seven days to rescind in writing after delivering an executed Purchase and Sale Agreement (see Section K-10); or

(c) with any Purchaser who is the Sponsor, the Selling Agent, or the Managing Agent or is a principal of the Sponsor, the Selling Agent or the Managing Agent, or is related to the Sponsor, the Selling Agent or the Managing Agent or to any principal of the Sponsor or the Selling Agent or the Managing Agent by blood, marriage or adoption or as a business associate, an employee, or a shareholder or a limited partner of a privately held company; except that such a Purchaser other than the Sponsor or a principal of the Sponsor may be included if Sponsor has submitted proof satisfactory to the Department of Law establishing that the Purchaser is bona fide.

Section L-5. Effective When 80% Sold. This Plan must be declared effective when Purchase and Sale Agreements with Bona Fide Purchasers have been accepted by Sponsor for eighty percent (80%), or eight Units (10 Residential Units x 80%) being offered for sale under this Plan.

Section L-6. Abandonment Prior to Effectiveness. Sponsor has the exclusive option and discretion to abandon this Plan any time before it is declared effective. If Sponsor (in its sole and absolute discretion) elects to abandon this Plan, then within five days after Sponsor receives the letter from the Department of Law accepting the filing of a Plan Amendment abandoning this Plan, all monies paid by Purchasers toward the Purchase Price shall be refunded to them in full, together with any interest earned thereon.

Sponsor shall promptly following Sponsor's election to abandon this Plan submit to the Department of Law for filing a Plan Amendment abandoning this Plan together with form RS-3, except if there are no outstanding Purchase and Sale Agreements, Sponsor shall submit to the Department of Law only form RS-3, as required by Section 20.1(l)(2) of Part 20 of the Department of Law's regulations.

Section L-7. Abandonment After Effectiveness. Sponsor may not abandon this Plan after effectiveness for any reason other than:

(a) a defect in title which cannot be cured without litigation or cannot be cured for less than one half of one percent (0.5%) of the total offering price at the date the Plan is declared effective, as reasonably estimated by Sponsor (i.e., $132,265 (rounded), based on the current total offering price of $26,452,900.00 in the Offering Price Schedule, subject to adjustment based on the actual total offering price in effect when the Plan is declared effective);

(b) substantial damage or destruction of the Building by fire or other casualty which cannot be cured for less than one half of one percent (0.5%) of said total offering price at the date the Plan is declared effective, as reasonably estimated by Sponsor; or

(c) the taking of any material portion of the Property by condemnation or eminent domain.

The above stated dollar amount relied upon as a basis for abandonment after effectiveness shall exclude any attorney fees or any such title defects or determinations of any authority or regulatory association which exist on the date of Presentation of this Plan and are either known to Sponsor or are a matter of public record.

Section L-8. Consummation of Plan. Notwithstanding the Plan is declared effective, to consummate the Plan, the Declaration must be recorded and the Floor Plans must be filed in the City Register's Office, the First Unit Closing must be completed with at least one (1) Purchaser under the Plan following Sponsor declaring the Plan effective and the acceptance and filing by the New York Department of Law of a Plan Amendment declaring the Plan effective. If before the Plan is consummated in accordance with the foregoing, all Purchasers being counted toward effectiveness properly and timely terminate their respective Purchase and Sale Agreements pursuant to the terms of said Purchase and Sale Agreements or an offer of rescission contained in a Plan Amendment, the Plan must again be declared effective in accordance with the terms of this Section L. In such event, no Unit closings may be conducted until the acceptance and filing by the New York Department of Law of a Plan Amendment declaring the Plan effective.

END OF SECTION L

SECTION M. TERMS OF SALE

Section M-1. Deed. The type of deed given to Purchasers shall be a bargain and sale deed with covenant against grantor's acts. The form of Unit deed is contained in DOCUMENT 3 of Part II of this Plan.

Section M-2. Risk of Loss. Prior to Closing of Title, the risk of loss or damage to a Purchaser's Unit and its contents from casualty or other cause is assumed by Sponsor, unless Purchaser is given possession pursuant to an Interim Use and Occupancy Agreement or other agreement or Purchaser is at fault for causing the loss or damage, in which case Purchaser shall assume the risk of loss and damage. Sponsor's assumption of the risk of loss does not obligate Sponsor to repair the loss or damage or to restore a Purchaser's Unit or its contents. If Sponsor (in its sole and absolute discretion) elects to repair, or if the First Unit Closing has occurred and the Condominium Board is obligated to repair the loss or damage, the Closing of Title will be postponed to the later to occur of the date fixed by Sponsor for Closing in accordance with the Purchase and Sale Agreement or ninety (90) days from the date the loss or damage occurs in order to permit the repairs to be completed.

If Sponsor assumes the risk of loss, Purchaser shall not be required to Close Title until the Unit and its contents are made habitable in the condition required in the Purchase and Sale Agreement and the Unit has all essential Building Services (e.g., heat, air conditioning and utilities) and a reasonable means of access to and from the street. If Sponsor elects not to repair, the Purchase and Sale Agreement will be canceled and the Deposit returned to Purchaser together with any earned interest thereon.

If Purchaser is given possession under an Interim Use and Occupancy Agreement or is at fault for causing the loss or damage, then Purchaser shall assume the risk of loss to the Unit and its contents, regardless of whether the fire or other casualty causing the loss or damage originates inside or outside of the Unit. In such case, Purchaser shall be obligated to consummate the Closing of Title on the date set by Sponsor in accordance with the Purchase and Sale Agreement, without delay, and pay the full Purchase Price without abatement, set-off or credit, and without liability or recourse of any kind against Sponsor or the Selling Agent, or their respective Related Parties, by reason thereof. Such Purchaser should consider obtaining, at Purchaser's expense, insurance to insure Purchaser against such loss. See Section A-2.8.

Section M-3. Certificate of Occupancy. The Closing of Title to a Unit will take place only after or concurrently with the issuance of a Temporary Certificate of Occupancy or (at Sponsor's exclusive option) a Final Certificate of Occupancy authorizing the residential use of the Unit to be closed.

Section M-4. Title Exceptions. Title to each Unit and its appurtenant interest in the Common Elements and the Association's Assets will be conveyed at the Closing free and clear of all liens, encumbrances and title exceptions other than the encumbrances ("**Permitted Encumbrances**") described below in this Section M-4 (and repeated in further detail in EXHIBIT A to the Purchase

and Sale Agreement contained in DOCUMENT 1 of Part II) and the proposed Unit Deed (contained in DOCUMENT 3 of Part II). Title exceptions may include the state of facts shown on a stated survey and any additional state of facts a subsequent survey would show, provided that such additional state of facts does not render title unmarketable. A summary of all leases, mortgages, liens, encumbrances and title exceptions that will affect the Unit and Property after Closing is set forth below. Each Unit will be conveyed and purchased (without abatement in, set-off or credit against, the Purchase Price and without liability or recourse of any kind against Sponsor or Selling Agent, or their respective Related Parties), subject to the following Permitted Encumbrances, which shall not be objections to title (see EXHIBIT A to the Purchase and Sale Agreement (DOCUMENT 1) for full details); provided none of the Permitted Encumbrances shall render title unmarketable or prevent the use of a Unit for the purposes set forth in this Plan:

(a) Building restrictions and zoning laws and other regulations, resolutions and ordinances, and any amendments thereto, now or hereafter adopted, provided they do not prevent the use of a Unit for the purposes set forth in this Plan.

(b) Any state of facts that an accurate survey or personal inspection of the Land and Building (when rehabilitated and expanded vertically) would show, including encroachments of the Building on adjoining property and/or street, and encroachments of adjoining buildings on the Property, provided that Purchaser's title insurer or agent, or First American Title Insurance Company (the "**Title Insurance Company**"), will insure, at its regular rate, without additional premium, in a fee title policy that such encroachments may remain for so long as the Building shall stand, provided further that such additional state of facts would not prevent the use of Purchaser's Unit for the purpose set forth in this Plan, and provided still further that such additional state of facts does not render title unmarketable.

(c) Any state of facts an accurate survey of the Unit would disclose, including: (c-1) encroachments by the Unit on adjoining Units and on Common Elements; and (c-2) encroachments by adjoining Units or Common Elements on the Unit, provided Purchaser's title insurer or agent, or the Title Insurance Company, will insure, at its regular rate, without additional premium, in a fee title policy that any encroachments of a portion of the Unit upon any other Unit or the Common Elements, or vice versa, may remain for so long as the Building shall stand.

(d) The terms, provisions, burdens, covenants, restrictions, conditions, options, duties, limitations, licenses, powers, easements, encroachments and Rules and Regulations set forth in, or permitted by, the Declaration, the By-Laws and the Rules and Regulations, as any of the foregoing might be amended from time to time, provided that the title insurance policy will insure against loss or damage occasioned by the Unit not being part of a condominium validly created pursuant to Article 9-B of the Real Property Law, as amended.

(e) Consents by Sponsor, the Condominium Board or any former owner of the Land, for the erection of any structure or structures on, under or above any street on which the Land abuts.

(f) Sewer, water, electric, plumbing, heating, gas, telephone, cable, electronic and other utility easements and any and all rights of use in favor of any utility company for construction, use, maintenance, repair, removal, relocation and replacement of utility lines, wires, terminal boxes, mains, pipes, cables, conduits, poles, connections and other equipment and other facilities on, under and across the Land and Building.

(g) Encroachments of stoops, steps, areas, cellar steps or doors, trim, copings, retaining walls, footings, bay windows, balconies, Sidewalk hatches, fences, fire escapes, cornices, foundations, footings, parapets, cornices, chutes, fuel oil lines, drainage and stand pipes, Building Wall fixtures and similar projections, if any, on, over, or under the Property or the street or Sidewalk abutting the Property, and the rights of a Governmental Authority to require the removal of any such projections, and variations between record lines of the Property and retaining walls and the like, if any.

(h) Leases and service, maintenance, management, employment, concessionaire and license agreements, if any, of other Units or portions of the Common Elements or made with or assumed by the Condominium Board, as disclosed or permitted in this Plan or a Plan Amendment or made after the end of the Sponsor Board Control Period.

(i) The lien of any unpaid Common Charge and real estate taxes, which shall be apportioned at the Closing of Title as set forth in the Purchase and Sale Agreement. The lien for any unpaid water charges and sewer rents will be payable by the Condominium Board and included in the Common Charges, and thus are deemed apportioned as part of the Common Charges.

(j) The lien of any unpaid assessment payable in installments, except that: (j-1) Sponsor will pay all such assessments due prior to the Closing Date; and (j-2) Purchaser will pay all assessments (including both a real estate tax assessment and a Condominium Board Special Assessment) due from and after such date. However, the then current installment of an assessment will be appropriately apportioned at Closing.

(k) Unpaid fees or charges of any Governmental Authority for inspections, re-inspections, examinations, services, permits and licenses, which shall be apportioned between Sponsor and the Condominium Board as provided in this Plan or, if arising after the First Unit Closing, shall be payable by the Condominium Board and included in the Common Charges, and thus are deemed apportioned as part of the Common Charges (all such unpaid fees or charges due and payable prior to the First Unit Closing shall be paid by Sponsor as provided in this Plan).

(l) Unpaid costs, charges and amounts owed by the Condominium Board after the First Unit Closing for Work performed by a Governmental Authority, including the New York City Office of Rent and Housing Maintenance, Emergency Services Division, and the New York City

Department of Health (all such unpaid costs, charges and amounts owed prior to the First Unit Closing shall be paid by Sponsor pursuant to this Plan).

(m) Any encumbrance as to which the Title Insurance Company or Purchaser's title insurer or agent would be willing to insure, at Purchaser's expense, at its regular rate and without additional premium, in a fee policy issued by it to Purchaser: (m-1) will not be collected out of, or enforced against, the Unit or its Common Interest if it is a lien; or (m-2) will not prevent the use of the Unit for the purpose set forth in this Plan, whichever is applicable. Any exception that the Title Insurance Company has omitted or insured at its regular rates and without additional premium will not be collected out of, or enforced against, another Unit, in a fee title insurance policy for such other Unit, regardless of which title insurer or agent Purchaser uses, will not be a valid objection to title.

(n) Any declaration or other instrument affecting the Property that the Condominium Board or Sponsor considers necessary or appropriate to comply with any Law, ordinance, regulation, zoning resolution or requirement of the DOB, the City Planning Commission, the Board of Standards and Appeals or any other public or quasi-public Governmental Authority in connection with the demolition, construction, alteration, repair, use, occupancy, operation or restoration of the Building.

(o) Covenants, conditions, easements, leases, agreements of record (if any), provided the Unit under contract shall not be subject to a lease or Interim Use and Occupancy Agreement with other than Purchaser, and provided further that none of same shall prevent the use of the Unit for the purpose set forth in this Plan and excluding any title exception and lien excluded in clauses (p-1) and (p-2) in the following paragraph (p).

(p) Any other covenants, declarations, restrictions, easements or agreements, whether of record or unrecorded, affecting the Property or any portion thereof, and the title exceptions set forth in the title report issued by the Title Insurance Company, provided none of the foregoing prevent the use of a Unit for the purpose set forth in this Plan, and excluding: (p-1) any title exception to be removed in order to insure the valid establishment of the Condominium as provided in this Plan; and (p-2) the lien of any mortgage or UCC-1 financing statement, which are to be released or terminated, respectively, from the Unit.

(q) Any violations against the Property (other than the Unit) that are the obligation of the Condominium Board after the First Unit Closing or another Unit Owner to correct (all such violations existing at the First Unit Closing shall be corrected by Sponsor pursuant to this Plan).

(r) The Certificate of Occupancy (whether Temporary or Final Certificate of Occupancy) of the Building, provided it authorizes use of the subject Unit in question for the purpose set forth in this Plan.

(s) Leases, Interim Use and Occupancy Agreements and rights of tenants and occupants of other Units and portions of the Property other than the subject Unit in question, as

tenants only, and any lease, Interim Use and Occupancy Agreement, tenancy and occupancy of Purchaser's Unit by Purchaser, as and if provided in the Purchase and Sale Agreement.

(t) Any lien (including any mortgage lien) or other encumbrance granted, created or obtained by Purchaser.

(u) Easements for ingress and egress for construction, installation, operation and maintenance of municipal service facilities and utilities.

(v) Any easement or right of use required by Sponsor or its designee to obtain a Temporary or Final Certificate of Occupancy or any part thereof. Any other covenants, restrictions, easements or other encumbrance (other than for the payment of money), provided that they do not prohibit the existence and use of a Unit for the purpose set forth in this Plan.

(w) Any lien, encumbrance or *lis pendens* either: (w-1) for which the instrument required to remove said encumbrance of record is delivered at or prior to the Closing Date to the proper party or to Purchaser's title insurer or agent together with the required recording or filing fee; or (w-2) as to which Purchaser's title insurer or agent, or the Title Insurance Company, will insure that the lien, encumbrance or l*is pendens* will not be collected out of, or enforced against, the Unit.

(x) Party walls and party wall agreements, if any.

(y) Judgments, bankruptcies or other returns against other persons having names the same as or similar to Sponsor or any of Sponsor's principals, provided Sponsor or any such principals, as the case may be, deliver to Purchaser or Purchaser's title insurer or agent, or the Title Insurance Company, an affidavit showing that such judgments, bankruptcies or other returns are not against Sponsor or any such principals, as the case may be.

(z) Uniform Commercial Code financing statements or conditional bills of sale, provided that: (z-1) such statements were filed on a date more than five years prior to the Closing Date; (z-2) Sponsor executes and delivers to Purchaser an affidavit setting forth that the property covered thereby is no longer in the Unit or is fully paid for; or (z-3) a tenant is the debtor thereunder.

(aa) Service, labor, concessionaire and maintenance agreements with the Condominium Board as disclosed or permitted in this Plan or a Plan Amendment, or made after the end of the Sponsor Board Control Period.

(bb) Liens of mortgages created by Sponsor and related financing statement (UCC-1), provided the Unit is released and discharged from same at Closing.

(cc) Zoning Lot Certification, dated 2/2/2016, recorded on 3/10/2016 in CRFN: 2016000085852; Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been

merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(dd) Zoning Lot Description and Ownership Statement made by W 108 Development LLC, dated 2/4/2016, recorded on 3/10/2016 in CFRN: 201600084853; Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(ee) Declaration of Zoning Lot Restrictions made by 108 W Development LLC, date 4/10/2019, recoded on 4/17/2019 in CRFN: 2019000123154. Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(ff) Zoning Lot Development and Cantilever Agreement, dated as of 4/10/2019, between 108 W Development LLC and 328W108 LLC, recorded on 4/17/2019 in CRFN: 2019000123155; Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(gg) Zoning Lot Certification, dated 4/2/2019, recorded on 4/17/2019 in CRFN: 2019000123156; Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been

merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(hh) Zoning Lot Description and Ownership Statement, made by 328 W 108 LLC and W 108 Development LLC, dated 4/10/2019, recorded on 4/17/2019 in CRFN 2019000123157; Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(ii) Waiver of Declaration of Zoning Lot Restrictions made by Axos Bank, dated 3/22/2019, recorded on 4/17/2019 in CRFN 2019000123158; Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(jj) Waiver of Declaration of Zoning Lot Restrictions made by First Republic Bank, dated 2/5/2019, recorded on 4/17/2019 in CRFN 2019000123159; Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Zoning Lot Development Agreement (ZLDA) whereby the two buildings at 324-326 West 108th Street (Lot 62) and the building at 328 West 108th Street (Lot 60) have been merged into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. The purpose of the merger of these two lots into a single zoning lot permits Sponsor to add a floor to Sponsor's building, which would not otherwise be possible. The merging of the two zoning lots into a single zoning lot has no implication on the taxes on the Building and will not adversely impact the Condominium.

(kk) Standard printed exceptions contained in the form of fee title insurance policy then issued by the title insurance company insuring Purchaser's title to the Unit.

(ll) Franchise taxes and New York City business corporation taxes of any organization in the chain of title, provided that Purchaser's title insurer or agent, or the Title Insurance Company, would be willing to insure at its regular rate, without additional premium, in a fee policy that such taxes will not be collected out of the Unit.

There is a $2,590 civil judgment related to a fuel bill owed by a former owner of the Property who is unrelated to Sponsor and Sponsor's principals. Sponsor had paid and believed the judgment had been removed or record. Sponsor shall remove such judgment and any other title objection that impacts the marketability of title before the first conveyance of a Unit under this Plan. See Sections A-37 and X-1.2.

Section M-5. Personal Property. The conveyance of a Unit includes all personal property located within the Unit on the date the Purchase and Sale Agreement is signed or is to be installed in the Unit by Sponsor pursuant to this Plan (see Section C-1.4 and DOCUMENT 4 in Part II), and a Purchaser's undivided interest, in common, in all personal property located within, and part of, the Common Elements on the date the Declaration is filed or is to be installed in the Common Elements pursuant to Sponsor's Building Plans and Specifications (see said DOCUMENT 4 for summary) that is owned by Sponsor.

Section M-6. Condominium Documents. The Declaration, By-Laws and Floor Plans for the Condominium and such other documents as required by Law, will be recorded or filed by Sponsor, at its expense, prior to the first conveyance of title to a Unit in accordance with the Condominium Act. The place of recording or filing is the New York County City Register's Office.

Section M-7. Existing Mortgages. If existing mortgages are not satisfied at or prior to the First Unit Closing, then at the time of first conveyance of the Unit, each mortgagee will either: (a) consent to the formation of the Condominium and acknowledge that its lien will be limited to Unsold Units; (b) subordinate the lien of its mortgage to the Declaration of Condominium; or (c) release its lien on the Unit and its Common Interest being conveyed.

Sponsor has obtained three (3) construction loans, which have matured. Sponsor is negotiating an extension of the construction loans and will not declare the Plan effective unless and until the Plan is amended to disclose the construction loans have been extended and the terms of the extension. See Section O-2.7 below for terms of Sponsor's mortgage loan financing.

If the actual date to commence Condominium operation is delayed twelve (12) months or more from the January 1, 2023 projected start date Condominium operation, Sponsor must amend this Plan to offer all Purchasers the right to rescind and a period of fifteen (15) days after the date of Presentation of the Amendment to exercise such rescission right. Sponsor must return any Deposit or down payment to Purchasers who timely rescinds within such fifteen (15)-day period, together with any interest earned thereon. See Section F-2.

END OF SECTION M

SECTION N. UNIT CLOSING COSTS AND APPORTIONMENTS

Section N-1. Closing Costs and Apportionments.

Section N-1.1. *Purchaser's Closing Costs.* At Closing, Purchaser shall pay the Closing costs, fees and charges listed below.

Section N-1.1.1. New York City and New York State Transfer Taxes. Under the Purchase and Sale Agreement, the purchaser is obligated to pay the transfer taxes imposed by law on the Sponsor. Before 2021, in computing the New York State transfer tax, the amount of such transfer tax imposed on Sponsor being paid by Purchaser is added to the consideration (i.e., purchase price), which is a tax on a tax (also called "grossed-up consideration"). New York State Tax Law Section 1404(a) was amended in 2021 to exclude from the computation of the State transfer tax said amount of the State transfer tax imposed on Sponsor being paid by Purchaser. The amendment to Section 1404(a) can be accessed at the following web address: https://www.nysenate.gov/legislation/laws/TAX/1404 [nysenate.gov].

The Section 1404(a) amendment to the New York State Tax Law does not apply to the New York City Real Property Transfer Tax (New York City Administrative Code § 11-2102), which continues to calculate the New York City transfer tax on the grossed-up consideration.

The current applicable residential New York State transfer tax of consideration is as follows: 0.4% thereof up to less than $3 million and 0.65% thereof from $3 million or more. The current residential New York State transfer imposes on the purchaser payment of a so-called "mansion tax" and a recently enacted "supplemental tax" added thereto, which equals:

1.00% of consideration of $1 million to less than $2 million

1.25% of consideration of $2 million to less than $3 million

1.5% of consideration of $3 million to less than $5 million,

2.25 of consideration of $5 million to less than $10 million

3.25% of consideration of $10 million to less than $15 million

3.5% of consideration of $15 million to less than $20 million

3.75 of consideration of $20 million to less than $25 million

3.9%. of consideration of $25 million and above

The current applicable residential New York City transfer tax of grossed-up consideration is 1% thereof up to $500,000 and 1.425% thereof over $500,000.

In addition, if Purchaser buys two or more Units, the New York City transfer tax for all Units will be computed at the then applicable commercial tax rate, which currently is higher than the residential rate. However, the New York State "mansion tax" is not applicable to transfers of commercial real estate. See Section A-2.6.1.

Section N-1.1.2. Title Insurance. If Purchaser elects to insure title to the Unit, Purchaser will pay a premium for title insurance based upon the Purchase Price of the Unit. The premium may vary depending upon the title insurer or agent, which Purchaser is free to choose without penalty.

At the date of this Plan, the premiums for title insurance available from First American Title Insurance Company of New York, having offices at 633 Third Avenue, New York, New York 10017 (telephone: (212) 922-9700) are stated below.

Amount of Insurance	Owner's Policy	Loan Policy
First $35,000 or less	$402	$344

Each additional (or fraction thereof):

Amount Insured		Owner's Policy	Loan Policy
From:	To:		
$35,001	$50,000	$6.67	$5.55
$50,001	$100,000	$5.43	$4.54
$100,001	$500,000	$4.36	$3.64
$500,001	$1,000,000	$3.98	$3.31
$1,00,001	$5,000,000	$3.66	$3.05
$5,000,001	$10,000,000	$3.25	$2.77
$10,000,001	$15,000,000	$3.07	$2.55
$15,000,000	and Up	$2.76	$2.31

Section N-1.1.3. Governmental Recording Charges and Fees, and Title Insurer's Service Fee. Purchaser will pay the governmental charges to record the Unit Deed and (if Purchaser is obtaining financing) the lender's mortgage, which at the date of this Plan are in the amount of $225.00 for each document, plus $5.00 per page (including the cover page) and a filing fee of $125.00 for the ACRIS forms.

Purchaser will pay the service fee of Purchaser's title insurer or agent to record these documents and to prepare the ACRIS forms, which will vary depending upon title insurer or agent. First American Title Insurance Company of New York service fees at the date of this Plan are $25.00 to record each document and $150.00 to prepare the ACRIS forms.

Section N-1.1.4. Working Capital Contribution. At Closing, Purchaser will make a contribution the Condominium Association's Working Capital Fund in an amount equal to two months' projected Common Charges for each Unit being purchased, as shown in the Offering Price Schedule in Section E, as such projection may change in a Plan Amendment filed prior to the First Unit Closing. Sponsor will advance an initial contribution to the Working Capital Fund at the First

Unit Closing and will be reimbursed for such payment from the first Working Capital Fund contributions made by Purchasers of Units under this Plan. See Section V-2.

Section N-1.1.5. Mortgage Loan Fees and Costs. If Purchaser obtains a mortgage loan, Purchaser will be responsible to pay all fees and costs required by the lender. These will include the following (if and as applicable): (a) mortgage broker's fee; (b) commitment or origination fee; (c) appraisal fee; (d) lender's attorney fee; (e) mortgage loan title search and insurance fee; (f) mortgage recording tax; (g) flood certification fee; and (h) any other closing costs of the lender. Purchaser also may be required to deposit with the mortgage lender monthly amounts for the Unit's real estate taxes and insurance premiums. For example, possibly a sum equal to one-twelfth (1/12) of the estimated annual real estate taxes and tax assessments which are assessed or to be assessed against the Unit, together with one-twelfth (1/12) of the annual fire and casualty insurance policy premiums for the Unit, and/or other amounts.

The mortgage recording tax at the date of this Plan is in the amount equal to 1.05% for mortgage loans of less than $500,000 and 2.175% for mortgages in the amount of $500,000 or greater. The mortgagee pays an amount equal to 0.25% of the face amount of the mortgage and the tax is reduced for Residential Units by $30.00 if the mortgage principal exceeds $10,000. No representation or warranty is made with respect to the amounts of such closing costs and expenses or the availability or cost of mortgage loans from any sources.

If Purchaser is entitled to a savings in the mortgage recording tax, whether such savings results from an assignment of an existing mortgage on the Unit being conveyed to Purchaser or pursuant to Section 339-ee of the Condominium Act, Purchaser shall assign to Sponsor an amount equal to such savings.

Section N-1.1.6. Closing Fees Payable to Sponsor's Attorney. At Closing, Purchaser shall pay the following fees to Paley Group, P.C., Sponsor's attorney:

(a) $3,000.00 if Purchaser Closes without mortgage financing; or

(b) $3,500.00 if Purchaser Closes with mortgage financing,

to pay for services to arrange the attendance of all parties at Closing, to prepare the closing report of payments to be made and documents to be executed and/or delivered at Closing, and to attend the Closing;

Section N-1.1.7. Sample of Purchasers Closing Costs. The Closing costs, fees and charges to be paid by Purchaser and their estimated amounts based on an assumed Purchase Price of $2,500,000, an assumed mortgage loan of 80% of the Purchase Price, or $2,000,000, and the rates in effect on the date of this Plan, are as follows (amounts are rounded and approximate):

(a) New York State transfer tax (at the rate of 0.4% x the total consideration, rounded up to the nearest $500, plus a so called Mansion Tax of 1.25% of the taxable consideration, if the taxable consideration is $2,000,000 to $2,999,999):	$41,250
(b) New York City transfer tax (at the rate of 1% of the taxable consideration of $500,000 or less, or at the rate of 1.425% of an taxable consideration of more than $500,000):	$35,625
(c) estimated governmental recording fees and charges for the Unit Deed (assuming 8 pages plus cover page), and Purchaser's mortgage (assuming 20 pages plus cover page) (fees at the rate of $225 per instrument and $5 a page), the New York State equalization and assessment form ($75), the UCC 1 Financing Statement (filing and service fees of $50) and miscellaneous recording, document and title insurer service fees (estimated at $275)[1]:	$900
(d) mortgage recording tax at the rate of 1.05% of the mortgage (if less than $500,000) or 2.175% of the mortgage (if $500,000 or more); minus $30 and minus 0.25% payable by the mortgage lender (before deducting the savings arising from the statutory credit, which is payable to Sponsor):	$38,470
(e) premium for simultaneous fee ($10,213) and mortgage title insurance ($7,912)[2]:	$18,125
(f) projected mortgage loan fees and costs (based on the following assumptions and estimates): loan commitment fee at 1% of loan amount; $750 for appraisal; $300 for loan application; $150 for document preparation; $50 for UCC-1 filing fee; $5,000 for lender's legal fee; $4,254.87 for three months real estate taxes and $3,850 for one year's premiums for insurance, and $500 allowance for potential miscellaneous expenses:	$34,855
(g) Working Capital Payment (equal to two months' projected Common Charges):	$3,393
(h) legal fees to Sponsor's designated attorney[3]:	$3,500
(i) allowance for gratuity to closer for title insurer and contingencies:	$350
Total Projected Closing Costs:	$176,468

(1) Governmental recording fees and charges may vary from time to time. Title insurer's service charges may vary and differ, depending upon the title insurer or agent·

(2) Based on 70% bulk rate.

(3) $3,000 without financing plus $500 if financed (See Section A-11).

Purchaser's actual Closing costs, fees and charges will be based on the applicable governmental and title insurer rates in effect on Purchaser's Closing Date. The foregoing projections are believed to be reasonable, but are not assured or guaranteed. A number of unknown and varying factors (e.g., mortgage financing costs and escrows if Purchaser is obtaining financing) will affect the actual Closing costs, fees and charges, which may vary, perhaps substantially, from the above projections.

If Purchaser's Institutional Lender or its attorney refuses to hold the closing at the office of Sponsor's attorney, Purchaser will pay a travel fee to Sponsor's attorney of $350 (if the closing is held in Manhattan) or $500 (if the closing is held elsewhere in New York City). See Section A-11.

If Purchaser is at fault for not closing title on the date set by Sponsor in accordance with this Plan and the Purchase and Sale Agreement, Purchaser will pay the following additional "delinquent closing costs" at Closing of Title: (a) Purchaser shall pay Sponsor Per Diem Interest

on the Purchase Price, prorated for each day's delay from the date set by Sponsor for Closing through the end of the day prior to the actual Closing Date, to compensate Sponsor for loss of potential earnings on investment of the Purchase Price; (b) Purchaser shall reimburse Sponsor for the Unit's Common Charges and real estate taxes for the period of such delay, after deducting any use and occupancy charge or fee or rent received and collected from Purchaser if Purchaser is given possession prior to Closing; and (c) Purchaser shall pay Sponsor's designated attorney $250 for each default notice, and $250 for each time the Closing is rescheduled. See Section A-11 above.

Section N-1.2. *Purchaser's Closing Apportionments*. At Closing, Purchaser and Sponsor shall apportion as of end of the preceding day: (a) real estate taxes for the Unit for the tax period within which the Closing occurs; (b) Common Charges; and (c) (if Purchaser is given possession of the Unit prior to Closing) the rent or use and occupancy charge or fee (as applicable) payable for the Unit for the month of Closing (based on the actual number of days in such month). Common Charges will commence at the First Unit Closing. Accordingly, Common Charges will not be apportioned for only those Units that Close Title on the day of the First Unit Closing; however, the Purchasers of such Units may be required to pay at Closing the Common Charges for the Unit (including real estate taxes, if the Unit is not separately assessed and billed) for the remaining days of the month in which the Closing occurs and/or for the ensuing month.

Until the Units are separately assessed and billed by the taxing authority for real estate taxes, the real estate taxes assessed to the Property will be included in the Common Expenses and allocated and assessed to each Unit Pro Rata to its Common Interest (see Section S-1 for full discussion). If title closes before said separate assessment and billing for real estate taxes, the apportionment for real estate taxes assessed to the Property will be based on the Unit's Common Interest or, if paid to the Condominium Board, as part of the Unit's Common Charges (see below for requirement to adjust any overpayment or underpayment of the amount so apportioned).

The net amount resulting from these apportionments will be paid to the proper party at the Closing of Title. If the payment is to be made to Sponsor, it will be in addition to Purchaser's payments for the Purchase Price and Closing costs.

Installments for any Special Assessments for real estate taxes or for Common Expenses will be paid by the party owning the Unit at the time the installments are payable. However, the then current installment of any Special Assessment for real estate taxes or Common Expenses for the period in which the Closing occurs will be equitably apportioned as of the end of the day preceding the Closing (based on the actual number of days in the installment period) and paid to the appropriate party at Closing.

The "Customs in Respect of Title Closings" recommended by The Real Estate Board of New York, Inc., as amended to date, will apply to all apportionments, except as may otherwise expressly be provided in this Section N-1.2. Any errors or omissions in computing the

apportionments discovered after Closing will be corrected and payment made to the proper party promptly after receipt of a written notice detailing the calculation of the amount owed, provided notice thereof is given within a deadline of six months following the Closing Date. SPECIAL RISK: The six-month period to send such notice is a "TIME OF ESSENCE" period (see Section A-2.3 above). This provision will survive the Closing of Title.

If at Closing of Title the Unit is not separately assessed and billed for real estate taxes, Purchaser and Sponsor will adjust any overpayment or underpayment of the real estate taxes apportioned at closing when the Unit is so separately assessed and billed by the taxing authority. The adjustment shall be based on the formula set forth in Section S-1.3.

The amount of the overpayment or underpayment is required to be paid within ten (10) days after Purchaser (in the case of an underpayment by Purchaser) or Sponsor (in the case of an overpayment by Purchaser) is sent written notice detailing the calculation of the amount owed, provided such notice is sent within a deadline of sixty (60) days after the Unit is separately assessed and billed for real estate taxes. The sixty (60)-day period to send such notice is a "TIME OF ESSENCE" period (see said Section A-4 above). This means that if notice is not timely sent within such sixty (60)-day deadline period, no adjustment will be made. The notice must be accompanied by suitable proof of the real estate tax for the Unit (such as a real estate tax bill or title report). If the amount due is not paid within said ten (10)-day period, then the party owed payment will be reimbursed by the other party: (a) Per Diem Interest on the unpaid amount, computed from the end of the ten (10)-day period until payment is received (to compensate for loss of potential earnings on investment of the amount past due); and (b) if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, the Legal Expenses and Per Diem Interest thereon to enforce and defend this provision and to collect the amounts owed. The obligation to adjust the apportionment for real estate taxes and to pay the appropriate party will survive the Closing of Title.

Section N-1.3. *Sponsor's Closing Costs*. Sponsor's closing costs, fees and charges shall include: (a) all fees and governmental charges to record the Declaration of Condominium and file the tax lot Floor Plans establishing the Condominium regime on the Property; and (b) the payments to the lender holding a mortgage on the Property (if any) to obtain a release of the mortgage lien from the Unit being conveyed and the related UCC-3 Termination Statement releasing the lien on fixtures in the Unit. Sponsor will also pay all other amounts as required elsewhere in this Plan (see Section O-2).

Section N-1.4. *Sponsor's Closing Apportionments with Condominium Board*. At the First Unit Closing, Sponsor and the Condominium Board will apportion as of the end of the immediately preceding day, all Building expense items customarily apportioned in New York City by a seller and purchaser of a multiple dwelling (apart from real estate taxes), including: (a) all payments and obligations relative to the Building's staff; (b) the payments under any assignable

service, maintenance and concessionaire agreements; (c) the premiums for transferable insurance policies; (d) the water charges and sewer rents based on the fiscal or calendar year for which assessed; (e) the cost of unused Building supplies on hand, at Sponsor's cost (including sales tax) (the Managing Agent will verify the inventory of such supplies); (f) the charges for electricity for the Common Elements and deposits with utility companies; (g) the fees of any Governmental Authority for inspections, permits and licenses; (h) the management fee; and (i) the fee to the Realty Advisory Board on Labor Relations, Inc. or similar real estate industry group (if any and if applicable).

The "Customs in Respect to Title Closings" recommended by The Real Estate Board of New York, Inc., as amended to date, will apply to these apportionments, except as may otherwise expressly be provided in this Section N-1.4. Any error or omission in computing the apportionments discovered after the First Unit Closing will be corrected and payment made to the proper party promptly after receipt of a written notice detailing the calculation of the amount owed, provided such notice is sent within a deadline of six months following the election of an Independent Board Member. The six-month period to send such notice is a "TIME OF ESSENCE" period (See Section A-2.3). This provision will survive the First Unit Closing.

If the closing apportionments results in a "net amount" to be paid by the Condominium Board to Sponsor, the Condominium Board will pay such net amount to Sponsor at the First Unit Closing from the Initial Working Capital Fund and (if insufficient) the balance owed shall be paid, without interest, in twelve (12) equal, consecutive monthly installments on the first day of the month, starting with the first full calendar month after the First Unit Closing, or sooner as, when and from the first Working Capital Payments paid by Purchasers are received by Sponsor that otherwise would have been delivered to the Board, all pursuant to a promissory note to be signed and delivered by the Condominium Board at said First Unit Closing. If the net amount of the closing apportionments is in favor of the Condominium Board: (a) Sponsor's reimbursable payment of the Initial Working Capital Fund will be credited against the net amount owed and (if insufficient) the deficiency will be paid by Sponsor to the Condominium Board at the First Unit Closing and added to the Working Capital Fund; and (b) an amount equal to such credit that otherwise is to be reimbursed to Sponsor from the first Working Capital Fund contributions of Purchasers of Units from Sponsor will not be paid to Sponsor and instead will be paid to the Condominium Board. See Section A-17.

The Plan Amendment filed after the First Unit Closing will disclose the net amount of the closing apportionments set forth above and whether in favor of the Condominium Board or Sponsor.

Section N-2. Mortgage Tax Credit. A mortgage tax credit is provided in RPL §339-ee and is calculated on the mortgage recording taxes (except for a certain special additional mortgage recording tax) paid on a blanket mortgage whose proceeds were applied (for example) to capital

expenditures or expenses to develop or to purchase the Property. The statutory credit applicable to each Unit is prorated in accordance with the Unit's percentage of Common Interest. The statutory credit is not available where the first Unit is sold more than two years after the blanket mortgage is recorded.

Under this Plan and the Purchase and Sale Agreement, as to each blanket mortgage, including a construction loan mortgage encumbering the Property that is recorded before the First Unit Closing, Purchaser is required to reimburse Sponsor at Closing of Title an amount equal to any savings on the mortgage recording tax resulting from a mortgage tax credit available to Purchaser with respect to any mortgage on the Unit obtained by Purchaser at Closing of Title. The net result to Purchaser of such payment (if any) to Sponsor is to eliminate any benefit to Purchaser for the statutory mortgage tax credit and, in effect, for Purchaser to pay overall an amount equal to the mortgage recording tax on Purchaser's mortgage as though there were no such credit. See Section N-1.1.7(d) above for illustration of estimated mortgage recording tax.

Section N-3. Fees of Sponsor's Attorney and Lender's Attorney. At Closing, Purchaser will pay Sponsor's closing attorney, Paley Group, P.C., a fee of $3,000 (if Purchaser closes without a mortgage loan) or $3,500 (if Purchaser closes with mortgage financing) for services in connection with the Closing (including preparation of the notice scheduling the date of Closing of Title, calculating the Unit's closing apportionments, preparing or obtaining applicable Unit closing documents, arranging and coordinating the attendance of all applicable parties at Closing, and attending the Closing). See Section A-2.5.2. If Purchaser is obtaining financing, customarily a lender may require Purchaser to pay the fee of lender's attorney, which will vary. An estimated fee of $5,000 is projected to be paid by Purchaser for lender's legal fee in Section N-1.1.7(f). Such estimated amount is not assured or guaranteed.

Section N-4. Real Estate Taxes. Until the Units are separately assessed and billed for real estate taxes, the real estate taxes assessed to the Property shall be included in the Common Expenses and charged to each Unit Pro Rata to its Common Interest as set forth in footnote (6) to the Offering Price Schedule. After the Units are separately assessed and billed for real estate taxes, Unit Owners will be entitled to be reimbursed for any overpayment of taxes or obligated to pay the Condominium Board for an underpayment (as applicable). See Section S-1.3 below and Section 9.1.7 of the By-Laws for discussion.

END OF SECTION N

SECTION O. RIGHTS AND OBLIGATIONS OF THE SPONSOR

Section O-1. Sponsor's Rights Generally. This Section O summarizes many of the most material of Sponsor's Rights under this Plan and the Condominium Documents and shall apply to all Units owned by Sponsor at the time in question, including Unsold Units and Units acquired by Sponsor, whether such acquisition results from a Purchaser's exercise of a right of rescission or a right to sell back to Sponsor or (if this Plan is amended to offer Sponsor financing) a mortgage foreclosure by Sponsor or a deed given to Sponsor in lieu of such foreclosure or otherwise. All Units acquired by Sponsor shall be regarded as Unsold Units for all purposes, other than for determining the expiration of the Sponsor Board Control Period or the Sponsor Veto Control Period. All of Sponsor's Rights shall be binding upon, and enforceable by Sponsor against, the Condominium Board and all other Unit Owners, but subject to the limitations, restrictions and requirements applicable to Sponsor's Rights as contained in this Plan or the Condominium Documents.

Sponsor's Rights shall inure to the benefit of each and every Sponsor Designee as Owner of an Unsold Unit, who will succeed to all of Sponsor's Rights and only those Sponsor's Obligations that apply to each Unsold Unit owned by such Designee. All of Sponsor's Rights shall be binding upon, and enforceable by a Sponsor Designee against, the Condominium Board and all other Unit Owners, but subject to the limitations, restrictions and requirements applicable to Sponsor's Rights as contained in this Plan or the Condominium Documents. Each Designee shall have the same right to designate a person as a Sponsor Designee in the same manner as Sponsor provided herein. See Section A-27.7.

An Unsold Unit shall retain its status and character as an Unsold Unit until it is conveyed to a Bona Fide Purchaser under this Plan.

The following summary of Sponsor's Rights is not intended to be exhaustive and should be read in conjunction with the other Sections of this Plan. All references to Sponsor in this Section O-1 shall include each and every Sponsor Designee with respect to the Unsold Unit(s) owned by such Designee, unless otherwise expressly stated.

Section O-1.1. *Right to Sell or Rent*. Sponsor will endeavor in good faith to sell all of the Units in a reasonably timely manner, preferably to Purchasers for personal occupancy by themselves or members of their Immediate Families, but Sponsor reserves the unfettered right to sell Units to Purchasers for rental investment or resale. To that end, Sponsor has engaged a Selling Agent to market and multi-list the Units for sale. Because of the uncertainty and volatility of market conditions and subject to obtaining the prior written consent of Sponsor's Construction Lender, Sponsor has the unfettered right to rent Units for an indefinite period after, but not before, the Plan is consummated with the First Unit Closing, except Sponsor may enter into an Interim Use and Occupancy Agreement for a Unit with the Purchaser of such Unit.

Sponsor's construction financing does not contain provisions regarding the minimum number or percentage of Units which must be under contract before the Plan may be declared effective, or a minimum release price set by the lender or a required minimum payment per sale which must be made to the lender in order for the lender to release its lien from the Unit being sold, nor are there any limits or requirements imposed by the lender for Sponsor to rent rather than sell Units. Before this Plan is declared effective, Sponsor intends to refinance the existing mortgage loan with financing that will contain provisions requiring the lender's lien to be released upon the consummation of the sale of each Unit and will file a Plan Amendment with the Department of Law disclosing the forgoing terms of the loan, if and to the extent contained therein.

See Section A-9.1.

Section O-1.2. *Sponsor's Right to Change Prices*. Sponsor shall have the right, in its sole discretion, without the approval or consent of the Condominium Board, Unit Owners or Purchasers, to change offering prices from time to time. Sponsor will amend the Plan when the change in price is an across the board increase or decrease affecting one or more lines of Units or Unit models, or is to be advertised, or is a price increase for an individual Unit or Units. See Section I-1 for full discussion.

Section O-1.3. *Sale, Lease, Sublease and Mortgage*. Subject to compliance with Sponsor's construction financing, Sponsor shall have the unfettered right to sell, convey, lease Unsold Units from time to time:

(a) free of the Condominium Board's Right of First Refusal to purchase or lease the Unsold Unit;

(b) without the consent of the Condominium Board or Unit Owners;

(c) without complying with any kind of condition, requirement or restriction, other than the requirements to not rent Unsold Units:

(c-1) until after the First Unit Closing, other than to a Purchaser of the Unit under an Interim Use and Occupancy Agreement; and

(c-2) for an initial term of less than six months;

(d) without complying with any requirements as to the form of a lease, sublease, mortgage or other instrument (except each lease and sublease shall expressly provide that it is subordinate to the Condominium Documents);

(e) without Sponsor or a Purchaser, tenant or subtenant paying any fee, charge, "flip tax", "exit fee", "entrance fee", imposition or expense to the Condominium Board or its Managing Agent or attorneys (however, this will not excuse the payment of any applicable governmental taxes charged by Law, such as the New York City and New York State transfer taxes, which shall be payable by the Purchaser pursuant to the Purchase and Sale Agreement); and

(f) without the proposed Purchaser, Owner, tenant or subtenant (as applicable) submitting an application, financial or bank statement, copies of income tax returns, references or other documents or attending a personal interview or complying with any requirements, restrictions or otherwise.

See Section A-27.6.

Section O-1.3.2. Board Certificates. Within ten (10) days after written notice of a proposed sale, conveyance, lease or mortgage of an Unsold Unit is hand delivered or mailed to the Condominium Board or an Independent Board Member or the Managing Agent, the Condominium Board shall duly sign and return to Sponsor, and Sponsor shall receive within said ten (10)-day period:

(a) (in the case of a proposed sale or lease) a certificate that the transaction is exempt from the Condominium Board's Right of First Refusal; and

(b) a certificate as to:

(b-1) the amount and status of payment of Common Charges, Special Assessments and other payments (if any) for the applicable Unsold Unit, or of any other indebtedness of Sponsor to the Condominium Board;

(b-2) whether a notice of default under, or violation of, the Condominium Documents by the Sponsor has been given and (if given) whether or not it has been corrected; and

(b-3) whether to its best knowledge an event is known to have occurred which with notice or the passage of time or both would constitute violation of, the Condominium Documents by Sponsor.

Each such certificate must be satisfactory in form and content to, and shall be prepared by an attorney designated by, Sponsor.

Section O-1.4. *Sponsor's Right to Make Unit Changes*. Sponsor shall have the right to divide, combine, reconfigure and alter Unsold Units in compliance with the requirements set forth in Part 20, Section 20.3(k), as explained fully in Sections I-4 and I-5, and in accordance with the Unit Change Requirements enumerated in Section I-6.

Section O-1.5. *Sponsor's Right for Use and Occupancy of Unsold Units*. In accordance with Section 10.7.2 of the Declaration:

(a) the Unsold Units are exempt from all restrictions and requirements in the Condominium Documents as to use and occupancy of Units, other than the requirement to comply with applicable Laws and the restriction against Prohibited Uses;

(b) the Unsold Units may be used as models and offices for their sale, rental, management, operation, marketing, advertising and promotion, and for any other lawful purpose, other than Prohibited Uses;

(c) the permitted uses of Unsold Units may be noisy, emit odors, involve heavy traffic and cause other effects that need not necessarily be compatible with the primary use of the Building for dwelling purposes;

(d) the Condominium Board and the other Unit Owners shall not have the right to:

(d-1) approve or consent to the tenants or other Unit Users of Unsold Units;

(d-2) impose any fees, charges or impositions on Sponsor or Unit Users of Unsold Units; or

(d-3) impose any restrictions, limitations, requirements on the use or any changes in the use, or the operation of, or the business conducted in, the Unsold Units, or any portions thereof;

(e) the Unsold Units may be occupied by any one or more persons approved by Sponsor, regardless of their relationship and any lack of relationship to Sponsor; and

(f) Sponsor shall have the unfettered right, at its sole cost and expense, to change the use and configuration of its Unsold Units from time to time; provided, however, the permitted use and enjoyment of a Sold Unit shall not change or be impaired in a material respect without obtaining the consent of the Owner thereof.

See Section A-34.

Section O-1.6. *Sponsor's Right to Access and Use Common Elements and Sidewalk*. Sponsor shall have the unfettered right (other than the requirement to comply with the applicable Work Requirements), at its sole cost and expense:

(a) to access the Common Elements and Units:

(a-1) to complete the construction, equipping and outfitting of the Building (including the Common Elements and the Units) in accordance with Sponsor's Plans and Specifications and Sponsor's obligations under this Plan or a Purchase and Sale Agreement or a lease of an Unsold Unit; and

(a-2) to renew a TCO and to obtain a Final Certificate of Occupancy authorizing the use and occupancy of all Units for their permitted uses under this Plan and the Declaration;

(b) to access the Common Elements and to have priority and preferential use of the Common Elements (including in particular, but not limited to, the Building Walls, the 324 West 108th Street Public Areas and the elevator), and the Sidewalk in connection with the following:

(b-1) to sell, rent, operate, manage, use and occupy Unsold Units and in connection therewith to provide access for ingress and egress to sales and rental personnel, outside brokers, prospective Purchasers and renters, Construction Parties, decorators and other persons authorized by Sponsor;

(b-2) to install, maintain, repair, restore and alter Communications Facilities on Roofs and their related Structures and equipment rooms and non-public portions of the Common Elements and to permit licensees to so do;

(b-3) to install, maintain and repair furnishings, wall and floor coverings and other decorations in the Common Areas or public areas, such as the 324 West 108th Street Public Areas and other portions of the Common Areas;

(b-4) to install, maintain, repair, restore, alter and operate one or more signs, objects, structures, extensions and enclosures of any size, content, composition, material, design, illumination, character, color and/or appearance deemed appropriate by Sponsor in, on or from the Building Walls, the Sidewalk, in or on the 324 West 108th Street Public Areas, and other portions of the Common Elements;

(b-5) to station sales and rental staff in the 324 West 108th Street Public Areas and all other common or public portions of the Common Elements; and

(b-6) to maintain, repair, restore and alter Unsold Units; and

(c) to make all determinations with respect performance of matters in clauses (a) and (b) above, including:

(c-1) all Construction Parties and construction specifications, materials and other details;

(c-2) to temporarily interrupt electrical, water, plumbing, heating, cooling, hot water, ventilation and other Building Services during the course of such Work without Sponsor or its Related Parties or Construction Parties being responsible or accountable for any claims, litigations, liabilities or losses to an Owner or tenant of a Unit or to the Condominium Board that are attributable to such temporary interruption in Building Services; but shall give, or cause the Managing Agent to give, the affected Unit Owners reasonable advance oral or written notice before so doing (except no notice need be given in the case of an Emergency); and

(c-3) to transport, stage and store materials, equipment and supplies on and across the Common Areas and the Sidewalk.

Section O-1.7. *Sponsor's Right to Obtain Cooperation of Condominium Board*. The Condominium Board shall fully and freely cooperate with Sponsor in connection with the exercise and performance of Sponsor's Rights (including any disposition of one or more Unsold Units),

except those out-of-pocket costs in connection with any governmental application, petition, license, form or other document to be filed with, or submitted to, or given by, a Governmental Authority (each, a "**Government Document**") or a pleading, affidavit, petition, application, motion, deposition, interrogatory or other document utilized in connection with any litigation (each, a "**Litigation Document**") to be borne by Sponsor as set forth below. In furtherance of such cooperation, within ten (10) days after written request therefor is hand delivered or mailed to the Condominium Board or an Independent Board Member or the Managing Agent, the Condominium Board shall properly complete, sign and return to Sponsor, and Sponsor shall receive within said ten (10)-day period, any requested Government Document or Litigation Document. In connection therewith:

(a) Sponsor shall pay or reimburse the Condominium Board for the governmental fees and charges in connection with a Government Document or the or court costs in connection with a Litigation Document, respectively, executed at the request of Sponsor under this Section O-1.7;

(b) Sponsor shall have the exclusive right to conduct and make all decisions in connection with the litigation that is the subject of the Litigation Document, including the right to select the attorney and to negotiate and determine the terms of any compromise or settlement thereof (provided, however, any compromise or settlement shall fully and unconditionally release and discharge the Board and its Related Parties and Unit Owners in writing from all liabilities with respect to such litigation by all plaintiffs or petitioners or counter-claimants or cross-claimants in such litigation (such release and discharge to be in form and content as shall be acceptable to Sponsor (whose acceptance may be denied, withheld, conditioned or delayed without cause or explanation and without any manner of liability or recourse against Sponsor or its Related Parties) in its sole and absolute discretion) and acceptable to the Board, which acceptance shall not be unreasonably conditioned, withheld, denied or delayed ("**Reasonably Acceptable**");

(c) Sponsor shall pay all legal fees and disbursements (other than those of any separate attorney the Condominium Board may retain), court costs and other expenses of such litigation; and

(d) Sponsor shall indemnify the Condominium Board, its Related Parties, and all Unit Owners (each an "**Indemnified Party**"), from and against all claims resulting from the Condominium Board's execution of a Government Document or Litigation Document, and from and against any authorized Work performed by contractors or other workers engaged by or on behalf of Sponsor pursuant to a Government Document, and from and against any action or inaction taken or omitted at the request of Sponsor in accordance with this Section; but under this indemnity:

(d-1) Sponsor shall have the exclusive right to conduct and make all decisions in connection with any claim for which indemnity is sought hereunder, including the right to select the attorney and to negotiate and determine the terms of any compromise or

settlement thereof; provided, however, any compromise or settlement shall fully and unconditionally release and discharge the applicable Indemnified Party in writing from all liabilities with respect to such claim by all claimants, plaintiffs, petitioners, counter-claimants or cross-claimants, if and as applicable (such release and discharge to be in form and content as shall be acceptable to Sponsor and Reasonably Acceptable to the Board);

(d-2) the applicable Indemnified Party shall fully cooperate and make available to Sponsor and Sponsor's attorneys such information, documents and witnesses under the control or in the possession or employ of the Indemnified Party as are reasonably related to the defense of the claim; and

(d-3) the failure of said Indemnified Party to strictly comply with the foregoing clauses (d-1) and (d-2) shall automatically release and discharge Sponsor from Sponsor's obligation to indemnify the Indemnified Party hereunder.

Section O-1.8. *Sponsor's Right of Board Control and Representation*. Until the first meeting of Unit Owners following the First Unit Closing, Sponsor shall exclusively designate the sole Board Member. At and after the first meeting of Unit Owners held during the Sponsor Board Control Period, Sponsor (as Owner of Unsold Units) shall exclusively appoint two Sponsor Board Members, who will constitute a majority of all three Board Members and thereby have voting control of the Condominium Board. At all elections held after the end of the Sponsor Board Control Period, for so long as there is at least one Unsold Unit, Sponsor (as Owner of one or more Unsold Units) shall exclusively designate one Sponsor Board Member. At such time, a majority of the Condominium Board shall be Independent Board Members (i.e., persons who are not related to Sponsor or its principals, whether by blood, marriage or adoption, or as a business associate, an employee, a shareholder or a limited partner), thereby giving Sold Unit Owners voting control of the Board. These provisions are explained more fully in "Section P. Control By The Sponsor". See Section A-7.1.

The Sponsor Board Member(s) shall have the exclusive right to designate certain officers of the Board after the end of the Sponsor Board Control Period. Such officers may only act in connection with the operation and affairs of Unsold Units (unless otherwise expressly authorized by the Independent Board Members) and may be removed "with" or "without" cause by only the Sponsor Board Member(s), who alone shall have the right to fill such vacancy. See also Section Q-5.1. Similarly, the Sponsor Board Members may be removed "with" or "without" cause by only Sponsor, who alone shall have the right to fill any vacancy of a Sponsor Board Member (whether resulting from removal, resignation, death, incompetency, incapacity or otherwise). See Section Q-5.2.

Section O-1.9. *Sponsor's Right of Veto Control*. Sponsor shall have the right to veto certain actions of the Condominium Board during only the Sponsor Veto Control Period (i.e., the period ending on the earlier of: (a) the date that the Common Interests appurtenant to the Unsold

Units constitute less than 25% of the aggregate Common Interests of all Units; or (b) the fifth (5th) anniversary of the First Unit Closing). Sponsor's Right to veto applies generally to Board actions to raise Common Charges (including Special Assessments) or to borrow money for non-essential purposes as explained more fully in Section P-2.1.

Section O-1.10. *Sponsor's Right For Tenants of Unsold Units To Receive Building Services*. The Condominium Board shall provide to each tenant and occupant of an Unsold Unit, and such tenant and occupant shall receive, without discrimination, all of the same Building Services and Common Facilities as are provided to all Sold Unit Owners. No fee, charge, imposition or other shall be levied or imposed by the Condominium Board or Unit Owners against the tenant, occupant or Owner of an Unsold Unit (including Sponsor) for Building Services and Common Facilities (other than regular Common Charges assessed to Sponsor and all other Unit Owners Pro Rata to their respective Common Interests). Building Services will include the services of the concierge/doorman, a visiting superintendent, and a part-time porter. Common Facilities will include all Building Systems serving or benefitting the Unsold Units (such as utilities, ventilation, intercom and plumbing), and all amenities (such as the lobby, elevator, and the community recreation room, the exercise room, the community Terrace and the patio).

The Condominium Board shall diligently and in good faith remove any violation noted or issued against the Building if failure to do so: (a) delays the renewal of a TCO or the issuance of a FCO, or an amended or new Certificate of Occupancy desired by Sponsor; or (b) is grounds to reduce or withhold the rent or a use and occupancy charge or fee of a tenant or occupant of an Unsold Unit. The Condominium Board shall also be obligated to maintain and operate the Building after the end of the Sponsor Board Control Period in substantially the same or better manner and condition as maintained and operated during the Sponsor Board Control Period (subject to said Sponsor's Right to veto certain expenses during only the Sponsor Veto Control Period).

Section O-1.11. *Sponsor's Rights of Indemnity and Self-Help*. If the Condominium Board violates any of Sponsor's Rights, including a failure to perform or comply with its obligations under this Plan, a Plan Amendment or the Condominium Documents (such as those relating to the repair, maintenance, alteration or restoration (after a casualty or a taking by eminent domain or condemnation) of the Building or any portion thereof), then: (a) the Condominium Board shall indemnify Sponsor from and against any claims and all resulting liabilities; and (b) Sponsor shall have the right (but not the obligation) to correct such violation and to perform such defaulted obligation in the name, and at the expense and for the account, of the Condominium Board, which shall be allocated and apportioned to all Unit Owners Pro Rata to their respective Common Interests.

This indemnity and right of self-help will apply only if: (a) the Board's violation occurs while the Independent Board Members constitute a majority of the Board Members; and (b) (in

the case of a violation issued or noted by a Governmental Authority against the Building) Sponsor is not obligated to correct the violation under this Plan.

In addition, before Sponsor undertakes any Work to be paid or reimbursed by the Condominium Board:

(a) Sponsor must first send to any Independent Board Member written notice of Sponsor's election to do the Work at the cost and expense of the Condominium Board; and

(b) the Condominium Board must be given the following deadline period to commence the Work from sending said notice:

(b-1) thirty (30) days if, in Sponsor's Business Judgment, the Work will cost under $100,000); or

(b-2) sixty (60) days if, in Sponsor's Business Judgment, the Work will cost $100,000 or more); or

(b-3) ninety (90) days from receipt of any proceeds of insurance (in the case of a casualty) or of any award (in the case of a taking by eminent domain or condemnation); and

(c) the Condominium Board must be allowed to complete the Work with commercially reasonable diligence and continuity to completion.

In the event the Condominium Board does not begin the Work within the applicable deadline time period or the Condominium Board does not complete the Work with commercially reasonable diligence and continuity to completion, Sponsor may (but is not obligated) to proceed to do the Work in the name, and at the cost and expense, of the Condominium Board. In the event Sponsor elects to do the Work, the Condominium Board shall reimburse Sponsor for Sponsor's costs and expenses within a deadline of ten (10) days after written demand therefor is made. Sponsor's demand shall be accompanied by a reasonably detailed statement of the costs and expenses to be reimbursed and copies of any supporting bills. If full payment is not received by Sponsor within said ten (10)-day period, the Condominium Board shall pay Sponsor Per Diem Interest on the amount owed (computed from the first day after the ten (10)-day deadline period through the date payment is received by Sponsor) to reimburse Sponsor for loss of potential earnings from investment thereof. In addition, if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, the Condominium Board shall reimburse Sponsor for the Legal Expenses and Per Diem Interest thereon (computed from the date each item of Legal Expenses is incurred or paid through the date payment is received by Sponsor) to pursue, enforce and defend this indemnity and to collect the amounts owed.

Section O-1.12. *Sponsor's Rights with Respect to Condominium Amendments*.

Section O-1.12.1. Sponsor's Right to Amend. Sponsor shall have the right to amend the Condominium Documents without the consent of the Condominium Board or representatives of Unit mortgage lenders, and without the express consent of other Unit Owners, who shall conclusively be deemed to have automatically, irrevocably and unconditionally given their consent to Sponsor amending the Declaration in order to:

(a) reflect Unit Changes to Unsold Units and (if applicable) to:

(a-1) apportion the Common Interest of the Unit being divided between or among the resulting Subdivided Units;

(a-2) allocate the Common Interests of the Units being combined to the Combined Unit; and

(a-3) apportion the Common Interests of the Units being reconfigured between or among the resulting Reconfigured Units,

all as more fully provided in Sections I-4 to I-6; and

(b) conform to objections made by:

(b-1) an Institutional Lender in connection with an existing or proposed Unit mortgage; or

(b-2) a Governmental Authority having jurisdiction over the Condominium Association or the Property; or

(b-3) a title insurance company insuring title to a Unit; or

(c) to correct any inconsistencies, ambiguities or scrivener's errors in the Declaration, the By-Laws and/or the Floor Plans.

However, such Condominium Amendment may not change the use or Common Interest of a Sold Unit, or require a Sold Unit to physically be modified, nor adversely affect the priority or validity of the lien of any purchase money mortgage or Institutional Lender's mortgage on a Sold Unit, unless the Owner of the affected Sold Unit or said mortgage lender (as applicable) consents in writing to the Condominium Amendment. See Section A-27.2.

Section O-1.12.2. Condominium Amendments Requiring Sponsor's Consent. A Condominium Amendment that:

(a) unreasonably interferes with any disposition of an Unsold Unit; or

(b) adversely affects any of Sponsor's Rights; or

(c) imposes any new, additional or different fee, charge, imposition or cost or expense (whether or not discriminatory) against Sponsor or a Purchaser, tenant or occupant of an Unsold Unit; or

(d) changes the permitted use, occupancy, Common Interest or value of an Unsold Unit,

shall not be valid or enforceable without Sponsor's prior written consent, duly executed, acknowledged and recorded together with such Condominium Amendment.

Section O-1.13. *Sponsor's Right to Grant Easements, Licenses and Leases*. For so long as Sponsor owns any Unsold Unit, Sponsor shall have the right, on behalf of all Unit Owners, to grant easements, licenses and leases to all or any portion of the Common Areas of the Property as Sponsor deems necessary or desirable to: (a) properly operate and maintain the Common Elements; (b) promote and protect the general health, safety, security, protection or welfare of Owners or occupants of one or more Units; (c) to comply with applicable Laws or requirements of a Governmental Authority having jurisdiction; or (d) to install, maintain, repair, restore and operate Communications Facilities and other utility services (as provided in Section 11.9 of the Declaration). See Section A-27.5.

However, no easements, licenses and leases may be granted that would with reasonable likelihood unreasonably interfere with the use or occupancy of Units for their permitted purpose under this Plan. A utility provider or other person who is granted an easement, license or lease and its Construction Parties shall have and be given reasonable access to, from, over, across and on the Units and the Common Elements in connection with Work to be performed in furtherance thereof.

Section O-1.14. *Sponsor's Right to* Consent *to Certain Sold Unit and Board Alterations*. Until all Unsold Units are sold and conveyed to Bona Fide Purchasers or the FCO is issued (whichever is the later to occur), no Sold Unit Owner may alter the Sold Unit or decorate its windows (other than with window shades, blinds, curtains and other window treatments that are light colored or have light colored backings facing the outdoors in conformity with the Rules and Regulations appended to the By-Laws and any amendment thereto adopted from time to time by the Condominium Board, which amendment shall be subject to obtaining the prior written consent of Sponsor while Sponsor owns any Unsold Unit) or other portion of a Sold Unit exposed to public view (including, if applicable, its Terrace or Juliette Balcony, Terrace doors or Glass Terrace Walls) without obtaining the prior written consent of Sponsor in each instance. In addition, until issuance of a FCO authorizing the use of all Units for use as dwellings, the Sold Unit Owners and the Condominium Board may not undertake an alteration that requires the issuance of a Governmental Work Permit from the DOB or other governmental authorization without obtaining the prior written consent of Sponsor in each instance (the foregoing does not apply to repairs required to avoid injury to person or property damage or to comply with Laws).

Section O-1.15. *Sponsor's Right to Enter into Agreements Binding on Board*. Sponsor reserves the right, prior to the First Unit_Closing, to renew, extend and modify existing employment, management, maintenance, utility, telecommunications and other leases, licenses and service agreements (if any) and to enter into new leases, licenses and service agreements for the Building on such terms as Sponsor deems desirable. All such leases, licenses and service agreements will be binding on the Condominium Board, but this Plan will be amended to disclose any leases, licenses and service agreements that will materially increase the projected Common Charges or are for a term longer than five years, other than utility, telecommunications and similar Service Agreements that customarily are for terms longer than five years. See Section W-3 for discussion.

Section O-2. Sponsor's Obligations. All of Sponsor's Obligations set forth in this Section O-2 and elsewhere in this Plan (collectively, "**Sponsor's Obligations**") are contingent upon Sponsor extending the maturity date of the construction loans (see Section A-19.1 for full discussion and declaring this Plan effective, the Effectiveness Amendment being duly filed by the Department of Law and this Plan being consummated with the First Unit Closing (see "Section L. Effective Date"). The foregoing shall not excuse Sponsor from Sponsor's obligations to comply with Article 23-A of the General Business Law or Part 20 of the Department of Law's regulations. The Condominium Board shall have the exclusive right to enforce Sponsor's obligations, other than those of Sponsor's Obligations that the Department of Law has the exclusive right to enforce under said Article 23-A and Part 20, or obligations of Sponsor under the Purchase and Sale Agreement for a Unit, which are enforceable by only the Purchaser thereof.

Sponsor's undertaking to endeavor in good faith to sell rather than rent all Units in a reasonably timely manner is subject to Sponsor's unfettered right reserved by Sponsor to rent rather than sell as discussed more fully in Section A-9.1 and see Section O-1.3.

Section O-2.1. *Sponsor's Obligation to Defend and Indemnify Condominium Board and Unit Owners*. Sponsor shall defend (with an attorney selected by Sponsor) and indemnify the Condominium Board, its Related Parties, and all Unit Owners (i.e., each an Indemnified Party) from and against any suits or proceedings arising out of Sponsor's Acts or Omissions; provided and on condition that any Independent Board Member on behalf of the Condominium Board or the affected Unit Owner shall promptly notify Sponsor in writing of any suit or proceeding for which indemnity is sought, but in no event shall Sponsor receive such notice, together with any complaint or petition (as applicable) as to which Sponsor is not directly served with process therein, later than five full business days before an answer is required to be served or filed. Said five-business day period is a deadline or "TIME BEING OF ESSENCE" period (See Section A-2.4).

Sponsor shall have the exclusive right to conduct and make all decisions in connection with any claim for which indemnity is sought hereunder, including the rights to select the attorney and

to negotiate and determine the terms of any compromise or settlement thereof; provided, however, the applicable Indemnified Party shall be fully and unconditionally released and discharged in writing from all liabilities with respect to such claim by all claimants, plaintiffs, petitioners, counter-claimants or cross-claimants, as applicable (such release and discharge to be in form and content as shall be acceptable to Sponsor.

The Indemnified Party shall fully cooperate and make available to Sponsor and Sponsor's attorneys such information, documents and witnesses under the control or in the possession or employ of the Indemnified Party as are reasonably related to the defense of the claim. Failure of the Indemnified Party to strictly comply with the foregoing shall automatically release and discharge Sponsor from Sponsor's obligation to indemnify the Indemnified Party.

Section O-2.2. *Survival of Sponsor's Representations and Obligations*. All representations by Sponsor under this Plan, all obligations of Sponsor pursuant to the GBL, and such additional obligations of Sponsor under this Plan which are to be performed subsequent to the First Unit Closing or under a Purchase and Sale Agreement will survive delivery of the deed.

Section O-2.3. *Sponsor's Obligation for Carrying Costs of Unsold Units*. Sponsor agrees to pay all Common Charges, Special Assessments and real estate taxes with respect to its Unsold Units (see Section R-3.4 for the Board's statutory lien on each Unit for unpaid Common Charges and the Board's remedies, including foreclosure of such lien). Sponsor represents that it has the financial resources to meet its obligations with respect to Unsold Units and will fund its financial obligations to the Condominium Association from sales of Unsold Units, the net avails from rentals of Unsold Units, the unfunded portion of a mortgage loan (if any), and existing cash reserves and/or payments from Sponsor's members, if and to the extent made available. No bond or other security has been furnished to secure Sponsor's Obligations. See Section A-19.

Section O-2.4. *No Obligation for Damages to a Unit*. If a Purchaser's Unit is damaged from a casualty or other cause occurring before title passes to Purchaser, Sponsor will have the right, but not the obligation, to repair the damage. If the damage is not repaired by Sponsor and the Condominium Board or Purchaser is not responsible to repair as provided below, the Purchase and Sale Agreement will be cancelled and the Deposit returned to Purchaser together with any earned interest. Purchaser shall not have the right to cancel the Purchase and Sale Agreement or recover the Deposit if Sponsor or the Board (as applicable) repairs the damage or if Purchaser is given possession of the Unit prior to Closing of Title pursuant to an Interim Use and Occupancy Agreement or otherwise, or Purchaser is at fault for causing the loss or damage. See Section M-2 for full discussion.

Section O-2.5. *Sponsor's Obligation for Property Insurance*. Sponsor shall procure, at the expense of the Condominium Board, fire and casualty insurance pursuant to an "agreed amount replacement value" policy as reflected in SCHEDULE B (in Section F). The effect of an agreed amount replacement value policy is to waive any co-insurance claim of the insurer, but does not

mean that the Condominium Association would necessarily realize sufficient insurance proceeds to rebuild or restore the Building in the event of a substantial or total destruction. The insurance provided in SCHEDULE B to be maintained by the Condominium Board does not include coverage for: (a) fire or casualty losses to a Unit or its contents, including decorations, appliances, cabinets and electric or plumbing fixtures (kitchen, bathroom or otherwise), or personal belongings; or (b) liability for occurrences within or on a Unit, including a Terrace, Juliette Balcony, Balcony or Yard. Each Sold Unit Owner is required to obtain and maintain condominium homeowner's insurance with additions and alterations coverage, personal property coverage and personal liability limits of not less than $300,000.00 (this requirement is not applicable to Unsold Unit Owners). See Section A-26.2. Unit Owners should consider the desirability of obtaining liability coverage for their respective undivided interests in the Common Elements to the extent the insurance maintained by the Condominium Board for incidents in, on or caused by the Common Elements is inadequate or the risk is not insured. See the "Insurance" Note to SCHEDULE B for all insurance coverages to be obtained by the Condominium Board.

Section O-2.6. *Sponsor's Obligation on Dissolution or Liquidation*. In the event of the dissolution or liquidation of Sponsor or the transfer of ten (10) or more Units or twenty percent (20%) or more of the total number of Units in the Condominium, whichever is less, the principals of Sponsor will provide financially responsible Entities or individuals who will assume the status and all of the obligations of Sponsor for those Units under this Plan, applicable Laws or regulations. The foregoing does not apply to the sale and conveyance of Unsold Units to Bona Fide Purchasers.

Section O-2.7. *Sponsor's Construction Financing*. Sponsor has obtained construction financing from CPIF Lending, LLC, having offices at 1910 Fairview Avenue East, Suite 200, Seattle, Washington 98102. A summary of the loans, which are secured by mortgages against the Property, are as follows:

(a) an acquisition loan in the Principal amount of $9,401,000.00, bearing interest at the annual rate of 10%, payable interest only until maturity on February 12, 2022 (subject to one 6-month extension);

(b) a project loan in the principal amount of $755,921.00, bearing interest at the annual rate of 10%, payable interest only until maturity on February 12, 2022 (subject to one 6-month extension); and

(c) a building loan in the principal amount of $3,743,079.00, bearing interest at the annual rate of 10%, payable interest only until maturity on February 12, 2022 (subject to one 6-month extension).

These construction loans have matured. Sponsor is negotiating an extension of the construction loans and will not declare the Plan effective unless and until the Plan is amended to

disclose the construction loans have been extended and the terms of the extension. See *Section A-19.1.*

If the actual date to commence Condominium operation is delayed twelve (12) months or more from the January 1, 2023 projected start date Condominium operation, Sponsor must amend this Plan to offer all Purchasers the right to rescind and a period of fifteen (15) days after the date of Presentation of the Amendment to exercise such rescission right. Sponsor must return any Deposit or down payment to Purchasers who timely rescinds within such fifteen (15)-day period, together with any interest earned thereon. See Section F-2.

The loans, if and when extended, and other financial sources available to Sponsor are in an amount sufficient to complete construction of the Building in accordance with Sponsor's Plans and Specifications. These mortgage loans require the lender to release the lien of the construction mortgages from Units as they are sold and conveyed in exchange for a release price equal to 100% of the net proceeds of sale (i.e., after deducting the reasonable and actual costs and expenses of such sale paid to third-parties who are not affiliates of Sponsor or Orly Gilat, including broker's commissions, legal fees and transfer and recording taxes (but excluding income taxes attributable to such sale). See *Section A-1.5.*

Section O-2.8. *Sponsor's Construction Obligation*. Sponsor is obligated to construct, equip and outfit the Building (including the Units and Common Elements) in accordance with Sponsor's Plans and Specifications filed with, and approved by, the DOB and identified in this Plan. Sponsor has the right to substitute equipment or materials and make modifications of layout or design; provided, however. Sponsor may not:

(a) substitute equipment or materials of lesser quality or design; or

(b) change the size, location of the Building or Units or other improvements if such changes affect the percentage of Common Interests or adversely affect the value of any Unit to which title has closed or for which a Purchase and Sale agreement has been executed and is in effect, unless all affected Unit Owners and P consent in writing to such change.

A report describing some of the more material aspects of the Plans and Specifications, prepared by Sponsor's architect, is contained in Part II of this Plan as DOCUMENT 4.

Section O-2.8.1. Construction Changes. Sponsor has the right to make the following changes (collectively, the "**Construction Changes**") in accordance with the following requirements (collectively, the "**Construction Change Requirements**"):

(a) to make Unit Changes in accordance with Section I-4, but subject to compliance with Section I-5 and Section I-6; and

(b) to substitute equipment or materials and make modifications of layout and design comprising the Building Systems and Unit Facilities; provided, however, Sponsor may not:

Section O-2.8.1.1. substitute equipment or materials of lesser quality and design; or

(b-2) change the size or location of the Building or Units or other improvements or Common Elements if such changes affect the percentage of Common Interests or adversely affect the value of any Unit to which title has closed or for which a Purchase and Sale Agreement has been executed and in effect unless all affected Unit Owners and Purchasers consent in writing to such change.

Subject to the foregoing, Sponsor may make immaterial or minor Construction Changes without consent of Unit Owners or Purchasers and without prior notice or Condominium Amendment. This Plan, however, will be amended to disclose any material Construction Changes as required by Article 23-A of the General Business Law and Part 20 of the Department of Law's regulations.

Section O-2.9. *Certificate of Occupancy*. Prior to the First Unit Closing, Sponsor must obtain, at Sponsor's exclusive option, either an FCO or a TCO of the Building. In accordance with customary practice for substantially rehabilitated or newly constructed residential projects, Sponsor plans to Close Title to Units covered by a TCO, rather than a FCO. A TCO is customarily issued for three months at a time.

The DOB advises purchasers of houses and apartments, who close title with only a TCO in place, to consult with their attorneys or engineers to assure that sufficient funds are escrowed or otherwise secured for a sponsor to obtain a FCO. See Section O-2.10 for security to be given by Sponsor to obtain the FCO. It is strongly recommended that buyers consult the "DOB Website/Common Tips" for its recommendation when buying units in a building that does not have a FCO.

Sponsor will endeavor in good faith: (a) to continuously renew or extend the TCO until the issuance of a FCO for all Units; and (b) to complete or substantially complete the construction of the Common Elements to the extent sufficient to permit the issuance of a FCO of the Building within two years after the issuance of the original TCO. Under Section 301 of the MDL, a TCO may only be renewed or extended for a maximum of two years from the date of its original issuance. If a TCO expires before the issuance of a FCO, the Building will be in violation of the MDL, subjecting occupants to potential eviction by the applicable Governmental Authority having jurisdiction, and subjecting the Board and Unit Owners to potential penalties provided by Law. In practice, however, the DOB has often renewed or extended a TCO beyond the two-year limitation contained in the MDL, provided the customary requirements for granting the renewal or extension are met. Sponsor and Selling Agent do not assure, represent or guarantee that the TCO will continuously be renewed or extended beyond said two-year limit or until a FCO is issued. Sponsor, however, is obligated to obtain the FCO before the TCO expires, unless extended. Purchasers are advised to visit the DOB website (Factsheet on Certificates of Occupancy at

http://www.nyc.gov/html/dob/downloads/pdf/co_factsheet.pdf) for recommendations when buying units in a condominium that does not have a FCO. See Section A-28.

Since the issuance of a FCO may be delayed until alterations (if any) undertaken by Unit Owners are completed or substantially completed, Sponsor's prior written consent must be obtained before any alteration may be performed that requires an alteration application to be filed with, or a Governmental Work Permit or other governmental authorization to be issued by, the DOB or other Governmental Authority (see Section 5.7.2(l) of the By-Laws for full discussion, including the rights and remedies of Sponsor to avoid delaying the issuance of a FCO).

Section O-2.10. *Security for Permanent Certificate of Occupancy*. Sponsor is required to maintain all Deposits and funds paid on account of the Purchase Price in the special escrow account required by General Business Law Section 352-e(2-b) unless Sponsor's engineer, architect or other qualified expert certifies that a lesser amount will be reasonably necessary to complete the Work to the Common Elements and the Building Services to be provided to all Units needed to obtain a FCO, in which case the sum exceeding the amount so certified by Sponsor's engineer, architect or other qualified expert may be released from the special escrow account. Alternatively, Sponsor must deposit with an Escrow Agent an unconditional, irrevocable letter of credit or post a surety bond in the amount so certified, or in an account that, when added to the Deposits being maintained in the special escrow account, will equal not less than the amount so certified. Sponsor may also use as collateral to similarly secure its obligation to obtain a FCO other collateral acceptable to the Department of Law (e.g., cash deposit or (if acceptable) the unfunded portion of a mortgage loan) and disclosed in a Plan Amendment before being used as collateral. As the Work progresses, Deposits held for Units conveyed to Purchasers may be released to Sponsor from time to time, provided the remaining Deposits maintained in the special escrow account, together with such other collateral acceptable to the Department of Law, shall be not less than the amount then so certified to be reasonably necessary to complete all remaining Work for the Units and the Common Elements in order to obtain a FCO.

Section O-2.11. *Sponsor's Obligation for* Construction Defects.

Section O-2.11.1. Building Construction Standard. The quality of the workmanship and materials to rehabilitate the Building with newly constructed Units and Common Facilities will meet or exceed any relevant specific standards required by any applicable building code or, if no such standard is required, the workmanship and materials will meet or exceed the standards of locally accepted building practices for substantially rehabilitated or newly constructed buildings located in the locale of the Property and containing Common Facilities and amenities comparable to this Building (the "**Building Construction Standard**").

Section O-2.11.2. Definitions. The meanings of the terms used in Section O-2.11.3 and Section O-2.11.4 are as follows:

The term "**Construction Defect**" means a defect in construction caused by substantially improper workmanship or material that substantially varies from Sponsor's Plans and Specifications for the Building (as modified by Construction Changes, if any, made in accordance with Construction Change Requirements) or a defect in design which renders a portion of the Building (including the Common Elements and Units, and the facilities serving each) unsafe or inoperable.

The term "**Defect Notice**" means a written notice of a Construction Defect.

The term "**Latent Construction Defect**" means a Construction Defect that is not a Patent Construction Defect.

The term "**Minor Construction Defect**" means any of the following:

(a) all Construction Changes made in accordance with Construction Change Requirements;

(b) all minor variations from: Sponsor's Plans and Specifications, the Floor Plans of a Unit or a description of the construction of the Building (including the Units and Common Elements) set forth in this Plan;

(c) all variations necessitated by site conditions, or by construction, job or governmental requirements, provided all Construction Change Requirements are met to the extent applicable;

(d) all Construction Defects covered by assignable, unexpired warranties or other undertakings (however denoted) from manufacturers, contractors, suppliers or others that are assigned to, or benefit (without assignment), a Unit Owner or the Condominium Board;

(e) any condition caused by normal use, wear, tear, deterioration, settlement or shifting, or aging or seasonal variations; and

(f) all minor conditions or defects involving color, alignment, fit, noise, drafts, cracks, chips, scratches, breaks, curling, warpage or other imperfections.

All changes must be disclosed in an amendment to this Plan and when necessary the Declaration as required by Article 23-A of the General Business Law and Part 20 of the Department of Law's regulations.

The term "**Patent Construction Defect**" means a Construction Defect that is visible or readily ascertainable on inspection (without intrusive examination behind walls, floors or ceilings).

Odors, noise, fumes, vapors and similar inconveniences transmitted from one Unit to another Unit, or from a Unit to a Common Elements, or from a Common Element to a Unit, are common occurrences in multi-family dwellings and are not Construction Defects.

Section O-2.11.3. Sponsor's Obligation to Correct Construction Defects. Sponsor's only obligations and liability for Construction Defects are as follows:

(a) (in the case of a Unit) to repair, replace or otherwise correct in the manner determined by Sponsor (in its sole judgment) only those:

(a-1) Patent Construction Defects in a Purchaser's Unit and Patent Construction Defects in the Common Elements that affect Purchaser's Unit as to which a reasonably detailed Defect Notice signed by Purchaser and received by Sponsor within a deadline of six months from the Closing of Title to the Unit; or

(a-2) Latent Construction Defects in Purchaser's Unit and Latent Construction Defects in the Common Elements that affect Purchaser's Unit as to which a reasonably detailed Defect Notice signed by Purchaser and received by Sponsor within a deadline of one year following the Closing of Title to the Unit;

(b) (in the case of the Common Elements) to repair, replace or otherwise correct in the manner determined by Sponsor (in its sole judgment) only those Construction Defects (both Patent and Latent) in the Common Elements that are listed in a reasonably detailed Defect Notice signed by any Independent Board Member and received by Sponsor within a deadline of one year from the later of issuance of a Certificate of Occupancy of the Building or completion of that portion of the Common Elements which is claimed to be defective.

Nothing contained herein shall reduce or otherwise abridge any rights of Purchaser under Article 23-A of the General Business Law, or Part 20 of the Department of Law's regulation nor excuse Sponsor from Sponsor's obligations to comply with Article 23-A of the General Business Law or Part 20 of the Department of Law's regulations.

All Defect Notices are to be sent by certified mail (return receipt requested) to both: Sponsor, W 108 Development LLC, at 119 West 72nd Street #401, New York, NY 10016; and simultaneously to Sponsor's attorneys, Paley Group, P.C., at 801 Second Avenue, Suite 2100, New York, NY 10017.

SPECIAL RISK: All deadline time periods stated above are "TIME OF ESSENCE" periods. See Section A-19.8.2.

Minor Construction Defects, whether affecting a Unit Property and/or the Common Elements or existing at the time of the Closing of Title to a Unit or arising thereafter: (a) shall not be corrected or repaired by Sponsor; (b) shall not be the basis of any claims against, or costs or expenses, or losses, recoverable from, Sponsor, a Sponsor-Related Party or Sponsor's Construction Parties, or attorneys; and (c) shall not excuse a Purchaser from Purchaser's obligations under the Purchase and Sale Agreement to pay the full Purchase Price, without abatement, set-off or credit and without provision for escrowing monies or liability or recourse of any kind against Sponsor or

Sponsor's Related Parties (it being intended and agreed that the Units shall be sold and conveyed, and purchased and acquired by Purchasers, subject thereto).

Sponsor's Obligation to repair, replace or otherwise correct Construction Defects (whether Patent Construction Defects or Latent Construction Defects) extends only to the first Purchaser of a Unit under this Plan and survives the Closing of Title to the Unit, but excludes all subsequent Owners of the Unit, regardless of whether such subsequent Owners succeed to title by sale, or by conveyance following a mortgage or lien foreclosure or by deed in lieu thereof or similar involuntary conveyance, or by operation of Law (including Laws or process of descent or inheritance), or by merger, consolidation, liquidation, dissolution, distribution or otherwise.

Section O-2.11.4. Remedy. If Sponsor defaults in Sponsor's Obligations to correct a Construction Defect, the sole right and remedy of a Purchaser (if the Construction Defect pertains to Purchaser's Unit Property) or the Condominium Board (if the Construction Defect pertains to the Common Elements) is for specific performance to compel Sponsor to repair, replace or otherwise correct such Construction Defect in the manner determined by Sponsor (in its sole judgment) and in no event will Sponsor, a Sponsor-Related Party, or Sponsor's Construction Parties, or Sponsor's attorneys, be liable for any losses resulting therefrom. The foregoing, however, shall not limit liability for losses based on common law fraud or arising under Article 23-A of the General Business Law or Section 63 of the Executive Law.

The Condominium Board or (during only the Sponsor Board Control Period) the Independent Board Member shall have the exclusive right to enforce Sponsor's Obligations to correct Construction Defects in the Common Elements, or Sponsor's failure to complete the construction of the Building in accordance with Sponsor's Plans and Specifications as identified in this Plan, subject to the right of Sponsor to substitute equipment or materials and to make modifications of layout or design on the conditions set forth in Section O-2.8, or Sponsor's failure to obtain a FCO in accordance with the requirements of this Plan. Sponsor Board Members shall be recused from all deliberations and decisions with respect to the foregoing and the number of Board Members for quorum and voting purposes shall be reduced accordingly. Any provisions that give the Sponsor control of the enforcement of the Sponsor's obligations are not lawful. If there are Independent Board Members and there is a vote on whether to sue the Sponsor, the Sponsor Board Members cannot lawfully vote on that issue.

Sponsor shall conclusively be regarded as having satisfied Sponsor's Obligations to repair, replace or otherwise correct Construction Defects if the corrective Work is done in accordance with the Building Construction Standard as determined in the sole judgment of Sponsor's architect, engineer or contractor (who shall not be a principal of Sponsor). SPECIAL RISK: Sponsor shall be excused, released and discharged from Sponsor's Obligations for Construction Defects in a Unit Property or the Common Elements if reasonably continuous access thereto by Sponsor and Sponsor's Construction Parties is prevented and is not given within a deadline of thirty (30) days

("TIME OF ESSENCE") after written notice thereof is mailed by certified mail (return receipt requested) or hand delivered, respectively, to the Purchaser (in the case of Purchaser's Unit Property) or an Independent Board Member (in the case of the Common Elements). See Section A-18.10.

Except for Sponsor's Obligations to correct Construction Defects in a Unit Property or the Common Elements set forth above, Sponsor does not warrant the workmanship or materials of construction of the Unit or the Common Elements.

Regardless of any limitations in a warranty or in this Plan, Sponsor is obligated to construct the premises in accordance with all applicable Laws and the DOB approved Plans and Specifications as identified in this Plan. Any conflict between disclaimers in this Plan and Sponsor's obligation to construct the premises in accordance with all applicable Laws and the DOB approved Plans and Specifications as identified in this Plan shall be resolved in favor of the latter.

Section O-2.11.5. No Housing Merchant Implied Warranty. Article 36-B of the General Business Law entitled "Warranties on Sale of New Homes" does not apply to substantially rehabilitated or newly constructed condominium units in buildings taller than five stories and, therefore, does not apply to the Residential Units. Except as set forth in Section O-2.11.3, Sponsor does not warrant the materials or workmanship of any Unit Property or the Common Elements. Sponsor's obligation, regardless of any limitations in the warranty or in this Plan, is to construct the premises in accordance with all applicable codes and filed plans and specifications, and that any conflict between the disclaimers and 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.

Regardless of any limitations in a warranty or in this Plan, Sponsor is obligated to construct the premises in accordance with all applicable Laws and the DOB approved Plans and Specifications as identified in this Plan. Any conflict between disclaimers in this Plan and Sponsor's obligation to construct the premises in accordance with all applicable Laws and the DOB approved Plans and Specifications as identified in this Plan shall be resolved in favor of the latter.

Section O-2.12. *Assignment of Warranties*. Any transferable and unexpired warranties, guaranties or bonds of manufacturers, contractors or material suppliers: (a) with respect to facilities (including appliances) installed in, and part of, a Unit Property, will be assigned by Sponsor to the Purchaser of such Unit at the Closing of Title; or (b) with respect to facilities installed in, and part of, the Common Elements, will be assigned by Sponsor to the Condominium Board at the First Unit Closing or (if installed thereafter) with reasonable promptness after installation. Sponsor shall have no responsibility or liability for items covered by said transferable and unexpired warranties, guaranties or bonds or said assignments by Sponsor to a Purchaser or to

the Condominium Board (as applicable). The instrument transferring or assigning said warranties, guaranties or bonds will be made and given (and will so expressly state are being made and given) without any kind whatsoever of guaranty, warranty or representation by, or liability or recourse of any kind against, Sponsor or its Related Parties, and shall be subject to all faults, defects, risks, damages, imperfections, conditions and need for repairs or corrections.

Section O-2.13. *Sponsor's Obligation to Pay for Work and to Remove Mechanics' Liens*. Sponsor agrees to pay for: (a) the authorized and proper Work involved in the rehabilitation and construction of the Building with an additional floor and newly constructed Units and Common Elements that Sponsor is obligated to complete under this Plan, (b) the establishment of the Condominium and (c) the sale of the Units, and will cause mechanics' liens with respect to such construction to be promptly discharged or bonded. Alternatively, at Sponsor's option, Sponsor may cause a Purchaser's title insurer to affirmatively insure Purchaser and Purchaser's mortgage lender (if any), at its regular rate and without additional premium, that any such mechanics' liens shall not be collected from, or enforced against, Purchaser's Unit and its appurtenant Common Interest.

Section O-2.14. *Sponsor's Obligation to Deliver "As Built" Plans to Condominium Board*. With reasonable promptness after issuance of the FCO, Sponsor will deliver to the Condominium Board or its Managing Agent a set of "as built" plans used for the major components of the Building Systems and the maintenance manuals for the Building's mechanical equipment to the extent provided by the applicable manufacturer, vendor or contractor. See Section A-30.

Section O-2.15. *No Bond or Security for Sponsor's Obligations*. No bond or other security has been, nor will be, furnished to secure Sponsor's Obligations, including Sponsor's Obligations to complete the rehabilitation and construction of the Building with an additional floor and newly constructed Units and Common Elements. (See Section A-19).

Section O-2.16. *Sponsor's Access and Obligation to Repair Damages*. Sponsor has a right of access to, and priority use of, the Common Elements (including the elevator) and Units to complete the construction, equipping and outfitting of the Building (including the Common Elements and Units), as provide in Section O-1.6. Sponsor, however, may not unreasonably interfere with the quiet enjoyment of a Unit or the permitted use of a Unit set forth in this Plan. When such access or use ends, Sponsor must repair all damages caused by Sponsor's access to, or use of, the Common Elements or Units so as to restore the affected Common Elements or Units (as applicable) to as near as commercially reasonable and economically practicable to their condition existing immediately prior to such access or use.

Section O-2.17. *Sponsor's Working Capital Fund Obligation*. Sponsor will make a reimbursable advance payment to the Initial Working Capital Fund in accordance with "Section V. Working Capital Fund".

Section O-2.18. *Sponsor's Obligation for Offering and Sales Expenses*. Sponsor will pay all expenses in connection with the preparation, filing and distribution of this Plan and every Plan Amendment promulgated by Sponsor, and the offering for sale of Sponsor's Unsold Units. These expenses include: (a) the filing fees of the Department of Law; (b) fees and disbursements of Sponsor's Construction Parties and attorneys; (c) printing costs; (d) commissions earned by the Selling Agent and any participating broker; and (e) all the Closing of Title expenses to be paid by Sponsor under the Purchase and Sale Agreement (if any).

Section O-2.19. *Sponsor's Obligation for Establishing the Condominium*. Prior to the First Unit Closing, Sponsor will pay all expenses to prepare, record and file the Condominium Documents with the appropriate Governmental Authority. See Section M-6.

Section O-2.20. *Sponsor's Obligation for First Unit Closing*. Sponsor will fulfill all obligations to be paid or performed by Sponsor at or prior to the First Unit Closing as set forth in this Plan, including the following:

(a) obtaining, at the expense of the Condominium Association, the insurance coverages set forth in SCHEDULE B (in Section F);

(b) establishing the Condominium (see Section O-2.19);

(c) obtaining the consent and limitation of lien, or subordination of lien, or release of lien from holders of existing mortgages not satisfied at the First Unit Closing (if any), as provided in Section M-7;

(d) advancing the Initial Working Capital Fund;

(e) apportioning Building expenses with the Condominium Board and (if in favor of the Board) paying the net amount owing to the Condominium Board (see Section N-1.4); and

(f) assigning to the Condominium Board on behalf of Unit Owners (without guaranty, warranty or representation; without liability or recourse of any kind against Sponsor or its Related Parties; and subject to all faults, risks, damages, conditions, imperfections and need for repairs, unless otherwise expressly provided in this Plan) the following:

(f-1) all personal property and facilities comprising the Common Elements;

(f-2) all service, maintenance and employment agreements for the Building in accordance with SCHEDULE B - First Year's Budget in Section F (the Condominium Board shall sign and deliver to Sponsor an agreement (prepared by Sponsor's attorney and in substance satisfactory to Sponsor) assuming all Building agreements and indemnifying Sponsor from all claims and resulting liabilities arising under them for events accruing on or after the First Unit Closing); and

(f-3) any warranties, guaranties or bonds of third-parties relating to the Common Elements that are transferable and have not yet expired.

Regardless of any limitations in a warranty or in this Plan, Sponsor is obligated to construct the premises in accordance with all applicable Laws and the DOB approved Plans and Specifications as identified in this Plan. Any conflict between disclaimers in this Plan and Sponsor's obligation to construct the premises in accordance with all applicable Laws and the DOB approved Plans and Specifications as identified in this Plan shall be resolved in favor of the latter.

Section O-2.21. *Sponsor's Obligation on Documents for Inspection and Delivery to Condominium Board*. Sponsor will comply with the requirements of "Section Z. Documents on File". These include: (a) the requirement for six years from the First Unit Closing to make available for public inspection (without charge) and copying (at a reasonable charge) this Plan, a Plan Amendment filed by Sponsor and certain other documents and exhibits referred to in this Plan or filed with the Department of Law; and (b) the requirement to deliver to the Condominium Board a copy of the recorded Declaration (and By-Laws) establishing the Condominium.

Section O-2.22. *Sponsor's Obligation for Violations*. Sponsor, at its sole cost and expense, will be obligated to correct within a reasonable period of time after the First Unit Closing (subject to delays due to Unavoidable Causes) any violation noted or issued against the Property that are outstanding at the First Unit Closing, other than violations caused by Acts or Omissions of a Purchaser under a Use and Occupancy Agreement (if any), unless Sponsor is otherwise required to correct the conditions causing such violations under said Interim Use and Occupancy Agreement. At the First Unit Closing, Sponsor will escrow with Paley Group, P.C. an irrevocable and unconditional letter of credit, or cash, or equivalent security, to secure the foregoing obligation. The amount escrowed will be sufficient to correct such violations as estimated by an independent architect or engineer selected by Sponsor. The escrowed monies or security will be released to Sponsor or reduced (as applicable) as the corrective Work progresses, provided that the balance left in escrow is sufficient to complete the remaining Work as estimated by said architect or engineer. Any interest on the sums escrowed will not be part of the escrowed funds and will belong and be paid to Sponsor when earned and collected. See Section A-37.

Section O-2.23. *Sponsor's Obligation for Official Inspection Certificates, Permits and Reports*. Sponsor, at its sole cost and expense, will be obligated to obtain any required official inspection certificate or permit for the Common Facilities, and to update those thereof that expire at or prior to the First Unit Closing, including (to the extent applicable) those with respect to air resources, oil storage, elevator, sprinkler Building System, boiler and fire protection. Sponsor will further be obligated to pay and perform all Work required to obtain such new or updated official inspection certificates and permits. The Condominium Board will be solely responsible to pay and perform these obligations with respect to official inspection certificates and permits that expire or are first to be obtained subsequent to the First Unit Closing.

END OF SECTION O

SECTION P. CONTROL BY THE SPONSOR

Section P-1. Sponsor's Voting Control.

Section P-1.1. *Voting Control Period*. Sponsor, as Owner of Unsold Units, shall have the right to exclusively appoint and designate the following number of Sponsor Board Members to serve on the Condominium Board and thereby have voting control of the Condominium Board:

(a) only one Sponsor Board Member until the first meeting of Unit Owners following the First Unit Closing; and

(b) thereafter, two Sponsor Board Members, who will constitute a majority of all three Board Members.

Sponsor's voting control of the Condominium Board will end on the earlier to occur of five years from the First Unit Closing or whenever the Unsold Units constitute less than twenty-five percent (25%) of all Units in number and Common Interest (i.e., the Sponsor Board Control Period). Prospective Purchasers should be aware that as a result of Sponsor's voting control over the Board during the Sponsor Board Control Period, Owner-occupants and Sponsor may have inherent conflicts on how the Property should be managed because Owner-occupants purchase Units as a home and Sponsor owns the Unsold Units as an investment. See Section A-7.1.

At all Board elections held after the end of the Sponsor Board Control Period, the Independent Board Members shall constitute a majority of the Board Members. As a result, Sponsor may no longer exercise voting control of the Board. However, Sponsor shall continue to have the right to nominate and vote (without limitation or restriction) for all candidates to serve as Independent Board Members, both before and after the end of the Sponsor Board Control Period. In addition, for as long as Sponsor owns at least one Unsold Unit, Sponsor shall have the right to exclusively appoint and designate one Sponsor Board Member. See Section Q-1 for discussion of number, composition and election of the Board Members.

The first meeting of Unit Owners is to be called to be held within approximately sixty (60) days after second anniversary of the First Unit Closing or whenever the Sold Units constitute eighty percent (80%) or more in number and Common Interest of all Units, whichever is the first to occur. At such first meeting, the Unit Owners will elect or designate (as applicable) a new three-member Condominium Board, comprising two Sponsor Board Members and one Independent Board Member.

Within approximately thirty (30) days after the expiration of the Sponsor Board Control Period, Sponsor will cause the Condominium Board to call a special meeting of Unit Owners to elect one additional Independent Board Member (i.e., a person who is unrelated to Sponsor and Sponsor's principals) to replace one Sponsor Board Member (who will resign effective at the date of such election) (see Section Q-1.4). At such time, the Independent Board Members will constitute a majority of all Board Members.

There is no requirement under the By-Laws for a majority of the Board Members to be Owner-occupants or members of their Household who are not related to Sponsor or its principals at all elections held after the end of the Sponsor Board Control Period. As a result, Owner-occupants may never gain voting control of the Board. See Sections A-9.2 and Q-1.3.

Section P-1.2. *Consequences of Sponsor's Voting Control*. As a result of Sponsor's voting control of the Board during only the Sponsor Board Control Period, Sponsor will be able to control the decisions to be made by the Condominium Board, including those concerning:

(a) the Building Services and Common Facilities, which are, nonetheless, to be maintained and provided in accordance with the Building Standard and the level of standards, quality and requirements of Sponsor in accordance with, and as stated in, this Plan;

(b) the amount of the Common Charges, which are, nonetheless, to be in an amount sufficient to provide the level of Building Services and Common Facilities set forth in this Plan; and

(c) the expenditures of the Working Capital Fund (which may be used to pay the Common Expenses in connection with the operation of the Common Facilities and the provision of Building Services to the Units, and to defray increases in Common Charges, but may not be used to reduce Common Charges below the projected Common Charges in SCHEDULE B, the First Year's Budget), as explained in "Section V. Working Capital Fund".

Section P-2. Sponsor Veto Control.

Section P-2.1. *Veto Control*. During only the Sponsor Veto Control Period (defined in Section P-2.3) and subject to the limitations contained in Section P-2.2, the Condominium Board and the Unit Owners (as to any vote or action by them) must obtain Sponsor's prior written consent to do any of the following ("**Sponsor Veto Control**"):

(a) to raise Common Charges or levy a Special Assessment in order to do any of the following:

(a-1) to make an alteration to the Common Elements or the Association's Assets (the latter include any Unit owned or held under a lease or otherwise by the Condominium Board or its Affiliated Nominee or Designee);

(a-2) to establish a fund for reserves for unanticipated expenses and/or contingencies (i.e., Reserve for Contingencies) in excess of five percent (5%) of the projected annual Common Expenses for any budget year of Condominium Operation;

(a-3) to change or eliminate the Reserve for Capital Replacements set forth in this Plan and required to be included in each budget in accordance with Section 8.5.4 of the By-Laws;

(a-4) to increase, decrease, eliminate or otherwise change the number, type, classification or working hours of the Building's service staff from those set forth in the First Year's Budget, except as otherwise permitted in the First Year's Budget;

(a-5) to increase, decrease, eliminate or otherwise change Building Services by (for example) entering into contracts for new or additional services or maintenance work not included in said First Year's Budget, or failing to provide any service or maintenance contracts set forth in such First Year's Budget, or otherwise; or

(a-6) to increase, decrease, eliminate or otherwise change the amounts or types of insurance coverage from those provided in said First Year's Budget; or

(b) to borrow money on behalf of the Condominium Association; or

(c) exercise the Right of First Refusal to purchase or lease a Unit.

See Section A-7.2.

Sponsor will have the exclusive right to exercise Veto Control during only the Sponsor Veto Control Period while Sponsor owns one or more Unsold Units. If Sponsor no longer owns any Unsold Units, each successor Unsold Unit Owner (if any) will have the same right of Veto Control as Sponsor during only the Sponsor Veto Control Period.

Section P-2.2. *Limitations on Veto Control*. Sponsor may not exercise Veto Control over expenses described in the First Year's Budget (SCHEDULE B in Section F) or over expenses required: (a) to comply with applicable Laws or regulations; (b) to remedy a governmental notice or violation; or (c) to remedy a Work order by an insurer of the Building. See Section A-7.2.

Section P-2.3. *Veto Control Period*. The Sponsor Veto Control Period will end on the *earlier* of: (a) the date that the Common Interests appurtenant to the Unsold Units constitute less than 25% of the aggregate Common Interests of all Residential Units; or (b) the fifth (5th) anniversary of the First Unit Closing under this Plan.

Section P-2.4. *Sponsor Control Over Certain Work*. Subject and subordinate to the limitations in Section P-2.2, the Board and Sold Unit Owners shall not apply to any Governmental Authority for a Governmental Work Permit or other governmental license or authorization, or undertake any Work that requires the issuance thereof, prior to the issuance of a Final Certificate of Occupancy without obtaining the prior written consent of Sponsor in each instance. See Section A-7.3.

END OF SECTION P

SECTION Q. BOARD OF MANAGERS

The affairs of the Condominium will be governed and administered by the Condominium Board. This Section Q discusses the number, composition, eligibility, elections, term, indemnity, compensation and removal of Board Members and officers; the voting rights of Unit Owners; the requirements to amend the Declaration and By-Laws; the requirements for Board meetings; and the requirements for quorum and decisions of the Board and Unit Owners. The powers, obligations and duties vested in the Condominium Board in the Declaration, the By-Laws and the Condominium Act are discussed in "Section R. Rights and Obligations of the Unit Owners and the Board of Managers".

Section Q-1. Condominium Board.

Section Q-1.1. *Number and Composition*. Initially, the Condominium Board will consist of one Board Member, who will be elected (i.e., appointed and designated) exclusively by Sponsor and will conduct all business and affairs of the Condominium Association until the first meeting of Unit Owners is held after the First Unit Closing to elect or designate (as applicable) a three-member Condominium Board, which will consist of two Sponsor Board Members and one Independent Board Member during only the Sponsor Board Control Period. At all elections held after the end of the Sponsor Board Control Period, the Independent Board Members will comprise a majority of all three Board Members, and only one Sponsor Board Member shall be designated by Sponsor to serve on the Board for so long as there is at least one Unsold Unit. Sponsor will cause the Board to call a special meeting of Unit Owners to be held within approximately thirty (30) days after the end of the Sponsor Board Control Period to elect one additional Independent Board Member who will replace one Sponsor Board Member, who will resign effective on the qualification and election of such Independent Board Member. See Section P-1.1.

Section Q-1.2. *Eligibility*. Each Independent Board Member must be either a Sold Unit Owner (including a Sponsor-Related Party who acquires a Sold Unit for the bona fide use and occupancy of such Sponsor-Related Party or the Sponsor-Related Party's Immediate Family) or any of the following: (a) a Sold Unit mortgage lender; (b) an officer, director, shareholder, partner, member, principal, employee, trustee, executor, administrator or beneficiary of a corporation, partnership, company, trust, estate or other Entity that owns a Sold Unit or is a Sold Unit mortgage lender; (c) a person designated by a sovereign government, consulate or other governmental instrumentality that owns a Sold Unit; (d) a permitted occupant of a Sold Unit; or (e) an adult member of the Immediate Family of a Sold Unit Owner or any of the foregoing. Any Entity serving as a Board Member either shall have been organized under New York law or shall have designated the New York Secretary of State for service of process.

If the Condominium Board perfects a lien against a Sold Unit, the eligibility of an Independent Board Member who is associated with such Unit will automatically be suspended.

Unless the lien is satisfied or discharged by bond or otherwise, such Board membership will automatically cease thirty (30) days thereafter. See Section A-11.

There is no eligibility requirement for a Sponsor Board Member, who may be an Entity or individual at least 18 years old, regardless of relationship or lack of relationship to Sponsor. Sponsor, as Owner of Unsold Units, may appoint the same person to serve as the two Sponsor Board Members during the Sponsor Board Control Period and be counted as a separate Board Member for each Board seat held by such person for quorum and voting purposes.

Section Q-1.3. *No Residency Requirement*. The By-Laws do not contain a residency requirement nor require a majority of the Condominium Board to be Owner-occupants or members of an Owner-occupant's Household who are not related to Sponsor or its principals at all elections held after the end of the Sponsor Board Control Period. As a result, this Plan may not result in the establishment of a Condominium in which a majority of Unit Owners are Owner-occupants who are unrelated to Sponsor. Consequently, Purchasers for their own occupancy may never gain control of the Condominium Board. See Section A-9.2.

Section Q-1.4. *Board Elections*. At all meetings of Unit Owners to elect or designate (as applicable) the Board from and after the First Unit Closing, Sponsor, as Owner of one or more Unsold Units, shall always have the right to nominate and vote (without restriction or limitation) for the Independent Board Member(s). However, at all such elections held after the end of the Sponsor Board Control Period, the Independent Board Members shall comprise a majority of the Board Members. As a result, Sponsor will lose voting control of the Condominium Board at such time.

During the Sponsor Board Control Period, Sponsor may (at its exclusive option) choose not to nominate or vote for the Independent Board Member at a meeting of Unit Owners to elect new Board Members without waiving or otherwise prejudicing Sponsor's Right to nominate and vote for the Independent Board Member at future elections of the Board Members held during the Sponsor Board Control Period.

The Sponsor Board Member(s) shall be appointed and designated exclusively by Sponsor as Owner of one or more Unsold Units.

Section Q-1.5. *Term*. All Board Members elected at and after the first meeting of Unit Owners following the First Unit Closing will serve for a term of one year and until their successors are elected or designated and qualified. There is no limit on the number of terms, successive or otherwise, a Board Member may serve.

Section Q-1.6. *Board Meetings.*

Section Q-1.6.1. Regular Meetings. The Condominium Board is to hold at least four regular meetings each budget year, but a majority of the Board Members may determine to meet

more often. The date, time and place of each regular meeting will be fixed by a majority of the Board Members.

Section Q-1.6.2. Special Meetings. The President of the Condominium Association may call a special meeting of the Condominium Board, but must call a special meeting on the written request of two or more Board Members. Written notice of a special meeting is to be given to each Board Member at least two business days (in the case of notice sent by hand, e-mail, telecopier or telegram) or five business days (in the case of a notice sent by mail) prior to the date set for the meeting. A Board Member may waive this notice requirement and will be considered to have waived the notice by attending the meeting.

Section Q-1.7. *Quorum*. To transact business:

(a) attendance (in person or by telephone) of a majority of all Board Members will be required to constitute a quorum for any business relating solely to one or more of the following: (a-1) the Common Elements; (a-2) the Association's Assets; (a-3) the Common Expenses; or (a-4) the Common Charges; or (a-5) any other mater involving the affairs of the entire Property or the whole Condominium Association to be conducted by the Board as provided in the Condominium Documents; or

(b) the Sponsor Board Member(s) or (at the exclusive option of Sponsor) Sponsor in lieu of the Sponsor Board Member(s), without attendance by any Independent Board Member, shall have the unfettered right to make any determination and transact any business relating solely to one or more Unsold Unit Properties.

Section Q-1.7.2. Board Decisions. A majority of those Board Members attending a duly constituted Board meeting at which a quorum is present will decide all matters relating solely to one or more of the following: (a) the Common Elements; (b) the Association's Assets; (c) the Common Expenses; or (d) the Common Charges; or (e) any other mater involving the affairs of the entire Property or the whole Condominium Association to be conducted by the Board as provided in the Condominium Documents.

The Sponsor Board Member(s) will decide any business relating solely to operation or affairs of the Unsold Units or their respective appurtenant Limited Common Elements and do not affect the Common Elements, the Limited Common Elements appurtenant to a Sold Unit, the Association's Assets, the Common Expenses or the Common Charges.

Each Board Member shall have only one vote on any matter to be voted by such Board Member, except a person appointed to serve as two Sponsor Board Members shall have one vote for each such Board membership.

The decisions and transactions of the Condominium Board and the Sponsor Board Member(s) (as to the decisions and transactions authorized in the Condominium Documents to be made or transacted by such Sponsor Board Member(s) on behalf or in the name of the

Condominium Board) shall have the equivalent status of the decisions and transactions of a cooperative housing corporation as to which the so-called Business Judgment Rule articulated in *Levandusky v. One Fifth Ave Corp*. (75 NY2d 530 [1990]) shall apply, except said Business Judgment Rule shall not apply to any decisions or transactions affecting, directly or indirectly, the Sponsor or other Owner of an Unsold Unit, the Sponsor's Rights or an Unsold Unit, which shall be subject to scrutiny and determined solely on the merits by a court, arbitration panel or other forum having jurisdiction, without any deference, weight or favorable assumption being given to the Condominium Board. See Section A-31.

Section Q-1.8. *Unit Owners' Decisions*. At any meeting of Unit Owners at which a quorum is present, the vote of a majority in number and Common Interest of those Unit Owners attending the meeting (in person or by proxy) will constitute the decision of the Unit Owners, unless a different number and/or percentage is required by the Declaration or By-Laws or the Condominium Act. The Condominium Board and its Affiliated Nominee or Designee shall have no voting rights with respect to any Units owned by each of them and such parties and Units shall be excluded from the base number of Owners, Units and Common Interests for quorum and voting purposes in determining any matter to be voted upon by Unit Owners.

Section Q-1.9. *First Meeting of Unit Owners*. Sponsor will cause the Condominium Board to call the first meeting of Unit Owners to be held no later than approximately sixty (60) days after the second anniversary of the First Unit Closing. If prior thereto, the number and Common Interest of the Sold Units constitute eighty percent (80%) or more in number and Common Interest of all Units, such first meeting will be called to be held within approximately thirty (30) days after such eighty percent (80%) threshold is exceeded. At such first meeting, the Unit Owners will elect or designate (as applicable) a new three-member Condominium Board.

Section Q-1.10. *Election of Officers*. At the organizational meeting of the newly elected three-member Condominium Board at which a quorum is present, the majority of those Board Members present shall elect a President, Vice President, Secretary and Treasurer, comprising the principal officers of the Condominium Association. The Condominium Board shall also have the right to elect such other officers and assistant officers as it deem appropriate. After the end of the Sponsor Board Control Period and for so long as Sponsor owns a Unit, the Sponsor Board Member shall exclusively elect a co-Vice President and an Assistant Secretary.

The officers will be elected annually at the organizational meeting of each new Condominium Board. The President must be a Board Member. There are no qualifications to be met by the other officers, who need not be Board Members. No officer is required to be a Unit Owner or have any interest in a Unit.

Generally, each of the officers will have all of the same powers, obligations and duties of the equivalent officer of a stock corporation organized under the Business Corporation Law of the State of New York. However, the officers elected exclusively by the Sponsor Board Member after

Sponsor loses voting control of the Board may act only in connection with the operation and affairs of the Unsold Units, unless otherwise authorized by the Independent Board Members.

Section Q-1.11. *Annual Meetings*. Each annual meeting of Unit Owners is to be called to be held within approximately thirty (30) days of the anniversary of the previous annual meeting of Unit Owners, unless changed by the Condominium Board to be held on a different date, in the Board's sole judgment.

Section Q-1.12. *Special Meetings*. Under the By-Laws (see Section 4.2), the President shall call a special meeting of the Unit Owners whenever so directed by a duly adopted resolution of the Condominium Board or upon receipt by the Secretary of a petition calling for such a meeting signed by any two Board Members or by the Owners of not less than twenty-five (25%) percent of the Common Interests of all Units; provided, however, the same Board Members or the same Unit Owners shall not have the right to call for more than one special meeting of Unit Owners for the same or a related purpose in any twelve (12)-month period. Within ten (10) business days after receipt of such resolution or petition (as applicable), the President shall call such special meeting to be held within the next twenty (20) days, unless the purpose of a meeting (whether regular or special) is to consider an amendment to the Declaration or the By-Laws, or to remove an Independent Board Member, in which case the following shall apply. Notice in writing of such meeting shall be given to all Unit Owners at least thirty (30) days prior to the date fixed for such meeting, which notice shall be accompanied by a copy of the text of said proposed amendment or the basis of removal of the Independent Board Member (as applicable). The President shall call such meeting to be held not sooner than thirty-one (31) days nor later than sixty (60) days following receipt by the Secretary of a Board resolution or a petition signed by the requisite percentage of Unit Owners. If the President fails to so timely call such special meeting, then any Board Member who voted for such resolution or any Unit Owner who signed such petition (as applicable) may so call such meeting by a notice of meeting, except that such notice need not be given by the Secretary. No business shall be transacted at such special meeting except the business reasonably related to purposes stated in the notice of special meeting or said petition.

Section Q-2. Initial Board Member and Officers. The initial Board Member and officers of the Condominium, who will be elected exclusively by Sponsor, will be a principal of Sponsor or will have an employment, business or family relationship to Sponsor or Sponsor's principal and will serve at the will of Sponsor. Sponsor's current intention is to designate the following individuals as the initial Board Member and officers of the Condominium:

Orly Gilat	---	Board Member/ President and Treasurer
Nimrod Ginsburg	---	Vice President and Secretary

Orly Gilat and Nimrod Ginsburg are principals of Sponsor.

Sponsor reserves the right to elect different persons to serve as the initial Board Member and/or officers of the Condominium Board and to remove them and substitute other persons without prior notice or filing a Plan Amendment. Any other person so appointed and designated or substituted by Sponsor will likely have an employment, business or family relationship to Sponsor or the principal of Sponsor.

The initial Condominium Board Member (and any substitute Board Member elected by Sponsor) will conduct all affairs of the Condominium until the three-member Condominium Board is duly elected at the first meeting of Unit Owners. Only Unit Owners (that is, Purchasers who Close Title and Sponsor, as Owner of the Unsold Units) shall be entitled to attend and vote at the meeting.

Section Q-3. Indemnification and Personal Liability. The Unit Owners will severally (Pro Rata to their respective Common Interests) indemnify the Board Members and officers from and against all claims and resulting liabilities arising from their Acts or Omissions in their capacity as Board Members and officers, but such indemnity shall be non-recourse (i.e., without personal liability) and limited to the legal and equity interest of the Owner in his or her Unit and its appurtenant Common Interest ("**Non-Recourse, Limited and Several Liability**"). However, a Board Member or officer will not be indemnified for claims or liabilities arising from his or her bad faith, breach of a fiduciary duty or obligation, self-dealing, dishonesty, fraud, theft, gross negligence, willful misconduct, illegality or similar misconduct (each, "**Malfeasance**"). All amounts payable under this indemnity (including if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, Legal Expenses) are to be paid in advance as part of the Common Expenses and directly from the Common Charges paid by the Unit Owners.

A Board Member or officer will not be liable to the Unit Owners for errors of judgment, negligence or otherwise, but will be liable for any Malfeasance action or inaction or omission. A Board Member (including a Sponsor Board Member) or officer will not be regarded as having committed Malfeasance because of any contract or transaction entered into by the Condominium Board and such Board Member or officer or a person related to, or affiliated with, such Board Member or officer (including Sponsor), provided, however, such contract or transaction is: (a) disclosed in this Plan or a Plan Amendment; or (b) approved by a majority of non-interested Board Members and is at competitive or lower rates for goods sold or services rendered in the same county as the Property.

Each contract or other document executed by the Condominium Board will provide (if obtainable and not prohibited by Law) that: (a) the liability of each Unit Owner shall be Non-Recourse, Limited and Several Liability; and (b) no Board Member or officer will be liable thereunder except as a Unit Owner in accordance with the foregoing.

No Board Member or officer will be liable for interruption of any Building Services or for any injury to person, or loss or damage to property occurring in or on the Common Elements, the

Association's Assets or a Unit and caused by the elements, a Unit Owner or any other person, or resulting from water leaks, theft or otherwise.

Section Q-4. No Compensation. No Board Member or officer will be paid any compensation by the Condominium Association for serving as a Board Member or officer, or on any committee of the Condominium Association.

Section Q-5. Removal, Resignation and Vacancy of Officers and Board Members.

Section Q-5.1. *Removal of Officers*. An officer may be removed at any time "with" or "without cause" by an affirmative vote of a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present, except an officer appointed and designated exclusively by the Sponsor Board Member may be removed "with" or "without" cause and without explanation by only the Sponsor Board Member or for Malfeasance by a majority of all Board Members at a duly constituted meeting of the Condominium Board at which a quorum is present, excluding the Sponsor Board Member(s) for quorum and voting requirements.

Section Q-5.2. *Removal of Board Members*. An Independent Board Member may be removed "with" or "without" cause, and a Sponsor Board Member may be removed solely for Malfeasance, by a vote of a majority in number and Common Interest of Owners of Sold and Unsold Units cast at a duly constituted meeting of Unit Owners at which a quorum is present. In determining such majority vote, the Units and Common Interests owned by the Board Member to be removed, or a Related Party to such Board Member shall be excluded from the count of the base number of Unit Owners and Common Interests for quorum and voting purposes.

Any Independent Board Member or Sponsor Board Member who is to be removed shall be given a written explanation of the basis of removal at least seven business days in advance of the meeting of Unit Owners and a reasonable opportunity to be heard at the meeting before the vote is taken.

A Sponsor Board Member serves at the will of Sponsor or the Unsold Unit Owner or Owners (as applicable) who appointed and designated such Sponsor Board Member and may be removed "with" or "without" cause and without explanation by only Sponsor or said Unsold Unit Owner or Owners (as applicable).

The Condominium Board or its Affiliated Nominee or Designee shall have no voting rights with respect to any Unit each of them may own.

Section Q-5.3. *Resignation of Officers*. Each officer may resign at any time by giving written notice to the Condominium Board (or to a Sponsor Board Member in the case of the officers elected exclusively by the Sponsor Board Member). The President will be regarded as having resigned whenever such officer ceases to be a Board Member.

Section Q-5.4. *Resignation of Board Members*. An Independent Board Member may resign at any time by giving notice to the remaining Independent Board Members or (if none) to a

Sponsor Board Member. A Sponsor Board Member may resign by giving notice to the Sponsor or appropriate Unsold Unit Owner or Owners (as applicable) who appointed and designated such Board Member.

An Independent Board Member who shall cease to be qualified for membership pursuant to the terms of By-Laws shall conclusively be deemed to have automatically resigned as a Board Member effective as of the date upon which such qualification shall cease.

Section Q-5.5. *Officer Vacancy*. Any vacancy in an office will be filled by vote of a majority of the Board Members attending a regular or special meeting of the Board called for such purpose (in the case only of an officer elected by the Condominium Board) or filled exclusively by the Sponsor Board Member with respect to a vacancy of an officer elected exclusively by the Sponsor Board Member after Sponsor loses voting control of the Board.

Section Q-5.6. *Board Member Vacancy*. A vacancy on the Condominium Board, whether resulting from removal, resignation, death, incompetency, incapacity or otherwise, will be filled as follows.

(a) in the case of a vacancy of an Independent Board Member during the Sponsor Board Control Period: the two remaining Sponsor Board Members will designate a new Independent Board Member;

(b) in the case of a vacancy of an Independent Board Member after the end of the Sponsor Board Control Period: only the remaining Independent Board Member will designate a new Independent Board Member; or

(c) in the case of a vacancy of a Sponsor Board Member: Sponsor or other appropriate Unsold Unit Owner, whoever originally elected the vacating Sponsor Board Member, will have the exclusive right to designate a new Sponsor Board Member to fill such vacancy.

In the case of a removal of an Independent Board Member, the Owners of Sold and Unsold Units will have the right to pre-empt the Board Members and elect the replacement at the same meeting the removal is voted upon or at a subsequent special or annual meeting of Unit Owners called for such purpose.

The person elected to fill the vacancy will serve as a member of the Condominium Board for the remainder of the term of the Board Member being replaced.

Section Q-6. Computation of Votes. Each Unit Owner (including Sponsor and other Owners of Unsold Units) shall be entitled to cast one vote at all meetings of the Unit Owners for each percentage of Common Interest appurtenant to each Unit owned by such Owner (e.g., 955 votes for 9.55% of Common Interest).

When voting for the election of Board Members, each candidate for whom a Unit Owner votes will receive the total number of votes that such Unit Owner is entitled to cast (no more or

less), or 955 votes per candidate in the preceding example. Unit Owners may not cumulate, split or otherwise transfer votes from one candidate to another.

The election of the Independent Board Members will be determined by "plurality" of the votes cast by the Owners of the Sold and Unsold Units (including Sponsor as Owner of Unsold Units) at a duly constituted meeting of Unit Owners at which a quorum is present. Thus, the candidates receiving the highest number of votes at the meeting will be elected to serve as the Independent Board Members even though one or more of them may receive less than a majority of the votes cast. The Sponsor Board Member(s) shall be appointed and designated in a writing delivered either at the meeting of Unit Owners or in advance of the meeting to the Managing Agent or any officer of the Condominium Board.

No Unit Owner may nominate or vote for the election of Board Members during the period the Condominium Board has perfected a lien against such Owner's Unit for unpaid Common Charges or Special Assessments. The Units and their appurtenant Common Interests of all Owners who are precluded from voting shall be excluded when computing the aggregate number and/or Common Interests (as applicable) of all Units and Owners for quorum and voting purposes. However, such Owner will resume these rights upon satisfying such indebtedness or discharging the lien by bond or otherwise.

Section Q-7. Condominium Amendments. The percentage of Common Interest needed to amend the By-Laws and to change the Declaration are contained in Section Q-7.1. Certain Condominium Amendments to the By-Laws or the Declaration that require the consent of affected parties are listed in Section Q-7.2.

Section Q-7.1. *Required Percentage of Common Interest.*

Section Q-7.1.1. Condominium Board. The Condominium Board shall have the right to record Condominium Amendments to the Declaration and the By-Laws in the City Register's Office with the vote of not less than sixty-six and two-thirds percent (66-2/3rds%) or eighty percent (80%) (in the case of decision to withdraw from the Condominium Act or restore following a substantial casualty), of all Unit Owners, in number and Common Interest (fractions shall be rounded up) at a duly convened meeting of Unit Owners at which a quorum is present, or in writing in lieu of a meeting.

Section Q-7.1.2. Sponsor. Sponsor and each Unsold Unit Owner shall have the exclusive right to record the following Condominium Amendments to the Declaration and the By-Laws, and (in case of Unit Changes) to file Amendments to the Floor Plans, in the City Register's Office, without obtaining the consent of the Condominium Board (which shall not be required) and without obtaining the express vote or consent of other Unit Owners, all of whom shall conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Condominium Amendments by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit:

(a) to implement a Unit Change to its Unsold Unit;

(b) to reflect changes required by: an Institutional Lender holding, or having issued a written commitment for, a Unit mortgage; a Governmental Authority having jurisdiction over the Property or the Condominium Association; or a title insurer of a Unit; or

(c) to comply with the Condominium Act; or

(d) to correct any inconsistencies or ambiguities between, or scrivener's errors in, the Declaration, these By-Laws and/or the Floor Plans.

The Condominium Board shall also have the right to record Condominium Amendments to the Declaration and the By-Laws for the purposes listed in clauses (b), (c) and (d) above, subject to obtaining the consent of Sponsor until the Final Certificate of Occupancy is issued, but without obtaining the express vote or consent of other Unit Owners, all of whom shall conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Condominium Amendments by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit.

Section Q-7.1.3. Sold Unit Owners. The Owner of a Sold Unit being divided into two or more Sold Units or the Owner or Owners of the Sold Units being combined into one Sold Unit or being reconfigured, as applicable, shall have the right to record Condominium Amendments to the Declaration and to file amendments to the Floor Plans of such Sold Unit(s) in the City Register's Office to reflect such Unit Division to said Owner's Sold Unit or Unit Combination or Unit Reconfiguration to said Owner's or Owners' Sold Units (as applicable) and the proper apportionment of the Common Interest of the Sold Unit being divided, or the combining of the Common Interests of the Sold Units being combined or the proper apportionment of the Common Interests of the Sold Units being reconfigured (as applicable), in each case subject, however, to obtaining the consent of Sponsor until the Final Certificate of Occupancy is issued, and subject further, to obtaining the reasonable consent of the Condominium Board, but without obtaining the express vote or consent of other Unit Owners, all of whom shall conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such amendments by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit.

Section Q-7.2. *Required Consents*. The following Condominium Amendments cannot be implemented without the consent of the affected party indicated, duly executed, acknowledged and recorded in the Register's Office with such Amendment:

(a) a Condominium Amendment that in any manner amends the appurtenant Common Interest or the size or configuration, or the permitted use or occupancy, of a Unit shall not be enforceable against the Owner of such Unit without the consent of such Owner;

(b) a Condominium Amendment that would with reasonable likelihood adversely affect the priority, validity or enforceability of the lien of a purchase money mortgage or a mortgage held by an Institutional Lender placed on a Unit in compliance with the By-Laws (each,

a "**Permitted First Mortgage**") or is of a materially adverse nature to mortgagees shall not be enforceable against the holder of such mortgage or Institutional Lenders holding federally financed Permitted First Mortgages comprising at least 51% of the Common Interests of Units subject to mortgages without the consent of such mortgage holder or said Institutional Lenders; provided, however, said consent of an Institutional Lender holding a federally financed Permitted First Mortgage shall conclusively be deemed to have been given when such Institutional Lender fails to submit a written response to a written proposal to said materially adverse Amendment within sixty (60) days after it receives proper notice of the proposal sent by certified or registered mail, return receipt requested;

(c) a Condominium Amendment that in any manner:

(c-1) interferes with a potential or proposed sale, lease, mortgage or other Disposition of an Unsold Unit;

(c-2) amends the rights of Sponsor or an Unsold Unit Owner;

(c-3) imposes any new, different or discriminatory charge, fee or other imposition against or on Sponsor or an Unsold Unit Owner, or a tenant of an Unsold Unit;

(c-4) limits, restricts, abridges, infringes, prejudices, imposes conditions or new requirements or otherwise amends or changes the permitted use or occupancy of an Unsold Unit;

(c-5) adversely affects the value, marketing or other disposition of an Unsold Unit; or

(c-6) adversely affects a tenant of all or part of an Unsold Unit or causes Sponsor or other Owner of such Unsold Unit to incur or suffer any additional obligation or cost or expense with respect to any tenant of all or part of such Party's Unsold Unit,

shall be null and void *ab initio*, and of no force or effect without the consent of Sponsor or the Owner of such Unsold Unit (as applicable); or

(d) in any manner:

(d-1) impedes, delays or otherwise adversely affects the issuance of a Temporary Certificate of Occupancy or the final Certificate of Occupancy of the Building or the extension of a previously issued Temporary Certificate of Occupancy of the Building; or

(d-2) limits, restricts, abridges, infringes, prejudices or otherwise affects the Excess Development Rights or the benefits derived therefrom,

shall be null and void *ab initio* without the consent of Sponsor.

Section Q-7.3. *Expenses and Signatories.*

Section Q-7.3.1. Condominium Board. Condominium Amendments implemented by the Condominium Board shall be prepared, signed, acknowledged and recorded in the City Register's Office by the Condominium Board as part of the Common Expenses assessed to all Owners Pro

Rata to their respective Common Interests, and shall be duly signed and acknowledged by either the President or the Vice-President, and by either the Secretary or an Assistant Secretary of the Condominium Association; together with (if applicable) a certification by either the Secretary or an Assistant Secretary, duly signed, acknowledged and recorded together with said Condominium Amendment, certifying that the required percentage of Unit Owners (in number and/or Common Interest; if and as applicable) have, or are conclusively be deemed to have automatically, unconditionally and irrevocably to have, voted for, or consented to, such Amendment.

Section Q-7.3.2. Sponsor or an Unsold Unit Owner. Condominium Amendments implemented by the Sponsor shall be prepared, signed, acknowledged and recorded in the City Register's Office by Sponsor or said Unsold Unit Owner (as applicable), at such party's sole cost and expense and (if requested by Sponsor or said Unsold Unit Owner, as applicable) shall include a certification by either the Secretary or an Assistant Secretary of the Condominium Association certifying that the vote or consent to such Amendment by the Condominium Board is not required and the required percentage of Unit Owners (in number and/or Common Interest; if and as applicable) are conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Condominium Amendment.

Section Q-7.3.3. Sold Unit Owner. Condominium Amendments implemented by a Sold Unit Owner shall be prepared and duly signed, acknowledged and recorded in the City Register's Office by:

(a) a Sold Unit Owner, at the such Owner's sole costs and expense; or (at the exclusive option of the Condominium Board)

(b) the Condominium Board for the account and at the sole costs and expense of such Sold Unit Owner.

Section Q-7.4. *Filing with Condominium Association*. A conformed copy of a Condominium Amendment shall be filed promptly with the Secretary or an Assistant Secretary of the Condominium Association or the Condominium Association's Managing Agent by the applicable party recording the Condominium Amendment and shall be made available by the Condominium Board at the Property or the office of the Managing Agent for inspection (without charge) and copying (at a reasonable charge) by all: Unit Owners; Unit mortgage lenders; authorized tenants of Units; authorized prospective Unit purchasers, mortgage lenders and tenants; and authorized representatives of each of the foregoing. The failure to so do shall not affect the validity of enforceability of such Condominium Amendment.

END OF SECTION Q

SECTION R. RIGHTS AND OBLIGATIONS OF THE UNIT OWNERS AND THE BOARD OF MANAGERS

Section R-1. Sale or Lease of Units by Unit Owners. This Section R summarizes the material rights and obligations of Unit Owners and the Condominium Board with respect to the sale or lease of Units by Unit Owners under the By-Laws.

Section R-1.1. *Rights and Restrictions on Sale or Lease*. Each Unit Owner shall have the right to sell, transfer or convey his or her Unit or (if such Owner is an Entity) to sell, transfer or assign all or part of a direct or indirect controlling interest in such Entity-Owner (i.e., an owner of a majority of the legal, equity or beneficial interest of an Entity that owns a Unit or the owner of the controlling number of votes to transact business of such Entity) at any price, or to lease such Owner's Unit at any rent, but must comply with the restrictions under the By-Laws summarized below.

Section R-1.1.1. Sale Restrictions. The following restrictions apply to sell, transfer or convey a Unit, or the controlling interest the Unit's Entity-Owner:

(a) the Owner of the Unit must be current in the payment of all Condominium Charges levied by the Condominium Board against the Unit;

(b) the deed conveying the Unit shall expressly state or provide, and notwithstanding the failure to so expressly state or provide, shall conclusively be deemed to irrevocably and unconditionally state and provide as follows with the same force and effect as though set forth at length in the deed:

> The Unit is subject to the Powers, Duties, easements, requirements, burdens, encroachments, limitations and restrictions contained in the Declaration establishing the 324 West 108 Condominium, located at 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York, and the By-Laws and the Rules and Regulations attached thereto, which are hereby incorporated herein with the same force and effect as though set forth at length. The acceptance of the deed by Grantee shall constitute an acceptance, ratification and assumption of all of the terms of the Condominium Documents. All capitalized terms used herein shall have the meanings given to them in said Declaration (including the Exhibits thereto).

(c) the conveyance of title to a Unit shall be for the entire Unit and its appurtenant Common Interest;

(d) the sale, transfer or conveyance of a Unit or a controlling interest in the Owner thereof to an International Organization or whose managing members, directors, officers or principals (if and as applicable) are International Organizations shall be subject to the International Organization (among other things) waiving diplomatic immunity and designating an agent for service of legal process and, if requested by the Condominium Board, at or before recording the deed of conveyance or the assignment and transfer of a controlling interest (as applicable), the

International Organization shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the International Organization irrevocably and unconditionally confirms and agrees that such waiver of diplomatic immunity and designation of agent for service of legal process are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense; and

(e) the sale, transfer or conveyance of a Unit or a controlling interest in the Owner thereof to at or prior to the date of Sale or conveyance of a Unit or an assignment or transfer of a controlling interest in an Owner thereof to a Foreign Person or whose managing members, directors, officers or principals (if and as applicable) are Foreign Persons, shall be subject to the Foreign Person (if an Entity) (among other things) designating the Secretary of State of the State of New York as agent for service of legal process on it or (if an individual) signing and delivering to the Condominium Board an instrument (in form and substance acceptable to the Board) designating an attorney admitted to practice and maintaining an office in the State of New York as agent for service of legal process on such individual.

The failure to comply with any of these restrictions shall be grounds for the Condominium Board, among other rights and remedies available at law and in equity and those contained in the By-Laws, to withhold giving the certificate of waiver or exemption from the Board's Right of First Refusal to purchase the Unit and an estoppel certificate certifying as to the status of payment by the Unit Owner of Condominium Charges and the status of any violations by the Unit Owner of the Condominium Documents, without any manner of recourse against the Board or other Unit Owners or their respective Related Parties by reason thereof.

Section R-1.1.2. Lease Restrictions. The following restrictions apply to lease a Sold Unit or (where expressly stated) an Unsold Unit:

(a) the proposed lease of a Sold Unit or an Unsold Unit shall not be consummated unless and until the Owner of such Unit is current in the payment of all Condominium Charges levied by the Condominium Board against the Unit;

(b) the lease of a Sold Unit, but not the lease of an Unsold Unit, shall expressly state and provide, and shall conclusively be deemed to irrevocably and unconditionally state and provide, as follows with the same force and effect as though set forth at length in the lease, and the failure to so expressly state and include these provisions on the lease shall not affect their validity or enforceability:

> This Lease is subject to the Declaration establishing the 324 West 108 Condominium, located at 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York, and the Exhibits attached thereto (including the By-Laws, the Rules and Regulations and the Glossary), which are hereby incorporated herein with the same force and effect as though set forth at length. The meanings given to the terms contained in the Rules of Construction in Section 1.2 of the Declaration and defined in the Glossary shall apply when such terms are used herein. The

acceptance of this Lease by tenant shall constitute an acceptance, ratification and assumption of, and an agreement to comply with, all of the terms of the Condominium Documents.

In the event of any inconsistency between the terms of this Lease and the terms of the Condominium Documents, the inconsistency shall be resolved in accordance with the terms of the Condominium Documents, which are paramount and shall govern and control.

This Lease cannot be amended or extended without obtaining the Discretionary Consent of the Condominium Board in each instance.

Tenant cannot transfer or assign tenant's interest in this Lease or sublet the Unit demised hereunder or any part thereof without obtaining the Discretionary Consent of the Condominium Board in each instance.

The Unit demised under this Lease shall be used and occupied only as a private one-family dwelling and incidental home occupations permitted by Laws by tenant and tenant's Household and Unit Users, in accordance and on the terms set forth in Section 10.7 of the Declaration, and for no other purpose, and in compliance with the other requirements and restrictions set forth in the Declaration, including the General Requirements contained in Section 10.1 thereof, and the By-Laws.

Pursuant to RPL §339-kk and the Plan, upon written notice to tenant from the Condominium Board that landlord-Owner has failed to make payments due the Condominium Board for Common Charges, Special Assessments or other Additional Common Charges (including late fees) for the Unit within sixty (60) days of the expiration of any grace period after they are due, tenant shall immediately and thereafter make all rental payments under this Lease directly to the order of the Condominium Board at the address listed in the notice. At such time as tenant receives written notice from the Condominium Board that landlord-Owner is once again current in payments of Common Charges, Special Assessments or other Additional Common Charges (including late fees), all rental payments shall be made payable to the order of landlord-Owner. Tenant's rental payments to the Condominium Board in accordance with the foregoing shall be an absolute defense in any action or nonpayment proceeding commenced by landlord-Owner against tenant for such rent in accordance with RPL §339-kk. Landlord-Owner covenants and agrees not to undertake any action or proceeding in violation hereof or RPL §339-kk.

The Condominium Board shall have the Power to terminate or cancel this Lease and to bring summary proceedings to evict or remove the tenant hereunder in the name of the landlord-Owner in the event of: (i) a violation by tenant of any of the provisions of the Declaration, the By-Laws or the Rules and Regulations, as each may be amended from time to time, unless remedied within the applicable grace period (if any); (ii) a foreclosure by the Condominium Board of said landlord-Owner's Unit in which the demised premises forms a part pursuant to the lien granted to the Condominium Board by Section 339-z of the Condominium Act;

or (c) the purchase or acquisition of said Unit by the Condominium Board or its nominee or designee, whether pursuant to Article 8 of the By-Laws or otherwise.

The foregoing provisions of this Lease are for the benefit of, and shall be enforceable by, the Condominium Board as a third-party beneficiary and cannot be amended without the Discretionary Consent of the Condominium Board and any purported change thereto shall be null and void *ab initio*.

(c) each lease of a Sold Unit, but not a lease of an Unsold Unit:

(c-1) shall be in the then current prevailing form of lease of a residential condominium unit for non-regulated multiple dwellings in The City of New York (or other printed form of lease approved in writing by the Condominium Board, in its sole and absolute discretion), subject to such modifications as may be approved in writing by the Condominium Board (in its sole and absolute judgment);

(c-2) shall be for a term of not less than one year (unless the Condominium Board consents in writing to a shorter term or the lease is to a member of an Owner's Immediate Family or an officer, director, shareholder, member, partner, trustee, executor, administrator, guardian, legal representative, beneficiary, government official or employee of a corporation, limited liability company, partnership, trust, sovereign government, consulate or other Entity which owns the Unit, or a member of the Immediate Family of any of the foregoing);

(c-3) shall not be amended, renewed or extended without obtaining the Discretionary Consent of the Condominium Board in each instance; and

(c-4) tenant shall not assign tenant's interest in such lease or a Controlling Interest in tenant, or sublet the Unit demised thereunder or any part thereof, without obtaining the Discretionary Consent of the Condominium Board in each instance;

(d) each lease of a Sold Unit or an Unsold Unit shall be for the entire Unit and not a portion thereof;

(e) at or prior to entering into a lease with a Foreign Person, or assigning or transferring a lease to a Foreign Person, of a Sold Unit or an Unsold Unit whose managing members, directors, officers or principals (if and as applicable) are Foreign Persons, all such Foreign Persons shall comply with the terms of Article 20 of the Declaration and, if requested by the Condominium Board, at or before executing the lease or the assignment or transfer of the lease, the Foreign Person shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the Foreign Person irrevocably and unconditionally confirms and agrees that the provisions of said Article 20 are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense; and

(f) any lease or assignment or transfer of a lease of a Unit to an International Organization or whose managing members, directors, officers or principals (if and as applicable)

are International Organizations shall comply with the provisions of Article 19 of the Declaration and, if requested by the Condominium Board, at or before executing the lease or the assignment or transfer of the lease, the International Organization shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the International Organization irrevocably and unconditionally confirms and agrees that the provisions of said Article 19 are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense.

The failure to comply with any of these lease restrictions shall be grounds for the Condominium Board, among other rights and remedies available at law and in equity, and those contained in the By-Laws, to withhold giving the certificate of waiver or exemption from the Board's Right of First Refusal to purchase the Unit and an estoppel certificate certifying as to the status of payment by the Unit Owner of Condominium Charges and the status of any violations by the Unit Owner of the Condominium Documents, without any manner of recourse against the Board or other Unit Owners or their respective Related Parties by reason thereof.

Section R-1.1.3. Fees and Deposits. The Condominium Board shall have the right to collect, before the consummation of any sale, transfer, conveyance, lease or sublease of a Sold Unit (but not an Unsold Unit):

(a) a reasonable charge to cover the reasonable fees and expenses of the Condominium Board and/or the Managing Agent and/or any attorney retained by the Condominium Board in connection therewith;

(b) a reasonable charge to cover said reasonable fees and expenses in connection with a mortgage financing or mortgage refinancing of a Sold Unit if any Board action is requested in connection therewith; and

(c) a refundable security deposit in an amount fixed by the Board for potential damage to the Common Elements on moving into or out of a Sold Unit in connection with a sale, conveyance, lease or sublease of such Sold Unit.

The security deposit will initially be set at $2,500.00 and may change from time to time by the Condominium Board, but may not be increased without obtaining the prior written consent of Sponsor during only the Sponsor Veto Control Period. No such move-in or move-out security deposit or other fee or charge may be imposed on a tenant of an Unsold Unit without obtaining the prior written consent of Sponsor in each instance.

The proposed fees payable by such Sold Unit Owner to the Managing Agent in this Plan and said security deposit are conclusively deemed to be reasonable. See Section W-1.3. These charges shall constitute Additional Common Charges payable by the Sold Unit Owner. Any security deposit collected by the Board shall be refunded to the party making the deposit with reasonable promptness following the move, after deducting therefrom the costs and expenses to

repair any damage to the Common Elements caused by the move and to restore as near as commercially reasonable and economically practicable the affected Common Elements to the condition existing immediately prior to the move. The security deposit shall not limit the amount recoverable in the event it is insufficient to fully pay the costs and expenses to repair and restore the affected Common Elements.

Section R-1.1.4. Unsold Units. The only lease restrictions applicable to Sponsor and other Unsold Unit Owners are: (a) to initially rent an Unsold Unit for a term of not less than six months (See Section A-15); and (b) to subordinate to the lease to Condominium Documents].

Section R-1.1.5. Rent Laws Inapplicable. The terms of the lease of a Sold or Unsold Unit, including the rent, will not be subject to any existing state or local law regulating rent or rights of tenants for continued occupancy.

Section R-1.1. *Right of First Refusal*. The Condominium Board has a Right of First Refusal to purchase or lease a Sold Unit on the same terms set forth in a fully executed agreement to purchase or lease such Unit, subject to:

(a) obtaining the prior written consent of Sponsor during only the Sponsor Veto Control Period; and

(b) certain modifications to the purchase or lease agreement that do not affect the price or rent if the Board exercises the Right of First Refusal, unless the proposed sale or lease is exempt from the Right of First Refusal (see Section R-1.2.10 below).

In the case of a Sold Unit owned by corporation, limited liability company, partnership or other Entity, the Board's Right of First Refusal shall apply to the sale, transfer or assignment, directly or indirectly, of the controlling interest, or a majority of the equity or beneficial interests, in such Entity ("**Controlling Interest**"). All references to the sale of a Sold Unit shall mean the sale of all, or the controlling, or a majority of the equity or beneficial interests in, a selling Entity-Owner (if and as applicable). The material terms of the Board's Right of First Refusal are set forth below.

Section R-1.1.2. Notice Period. Within twenty (20) business days after the Condominium Board receives the fully executed purchase or lease agreement together with such documents required by the Board relating to (among other items) the housing, credit, income taxes, and the employment history of the purchaser or tenant (as applicable), the Condominium Board is to notify the Sold Unit Owner in writing whether or not it intends to exercise its Right of First Refusal. The Board may not elect to purchase or lease a Unit without obtaining the prior consent of a majority in Common Interest of those Unit Owners attending a duly constituted meeting of Unit Owners called for such purpose at which quorum is present (excluding the selling or leasing Sold Unit Owner for quorum and voting purposes), or in writing signed by a majority in Common Interest of all Unit Owners (excluding the Common Interest of the selling or leasing Sold Unit Owner). If the Board declines to exercise its Right of First Refusal or fails to send notice of its election to

purchase or lease within said twenty (20)-day period, the Sold Unit Owner shall have ninety (90) days thereafter to consummate the transaction, failing which the Condominium Board will again have the Right of First Refusal to purchase or lease (as applicable) the Unit.

Section R-1.1.3. Closing Period. If the Condominium Board elects to purchase or lease a Sold Unit pursuant to its Right of First Refusal, the Board will have sixty (60) business days after giving notice of its election within which to consummate the transaction. The Condominium Board may (at its option) purchase or lease the Sold Unit in its own name or in the name of its nominee or designee, affiliated or non-affiliated, corporate or otherwise.

Section R-1.1.4. Funds to Acquire. The Board may obtain funds to purchase a Unit (including the expenses of closing title) from the following sources, or any combination of them:

(a) a loan secured by a mortgage on only such Unit or as authorized by Section 399-jj of the Condominium Act; provided, however, in either case that the prior written consent is obtained from Sponsor (during only the Sponsor Veto Control Period) and the loan documents shall expressly provide that the Unit Owners shall have Non-Recourse, Limited and Several Liability under the loan; and/or

(b) a Special Assessment imposed on the Unit Owners (other than the selling Unit Owner).

Section R-1.1.5. Funds to Maintain and Operate. The funds to maintain, repair, restore, alter, and otherwise operate and make any disposition of a Unit purchased or leased by the Condominium Board (or its Affiliated Nominee or Designee) shall be derived from rents realized from any tenant to whom such Unit is leased or subleased, if any. If no such rents are realized or are insufficient, such funds or any deficit shall be derived and paid from the Common Charges assessed to all Unit Owners Pro Rata to their respective Common Interests (other than the Unit owned by the Board in the case of a Unit purchased by the Board under its Right of First Refusal).

Section R-1.1.6. Permissible Uses. A Unit purchased or leased by the Condominium Board, or its nominee or designee, may be used only for dwelling purposes and permitted home occupations allowed by Law, which are the same uses applicable to Sold Units.

Section R-1.1.7. Resale or Leasing of Unit Held by Board. The Condominium Board shall make all decisions on behalf of the Unit Owners as to the resale or leasing of a Unit purchased by the Board (or its Affiliated Nominee or Designee) or the subleasing of a Unit leased by the Board (or its Affiliated Nominee or Designee), as well as all decisions concerning the use, occupancy, operation and mortgaging of such Unit while owned or leased by the Board (or its Affiliated Nominee or Designee); subject, however, to compliance with the same restrictions on use and occupancy applicable to Sold Units (see Section R-7) and the requirement to obtain the consent of Sponsor as to borrowing set forth in Section R-1.1.4(a) above). The Condominium Board and its Affiliated Nominee or Designee shall have no voting rights with respect to any Units owned by

each of them and such parties and Units shall be excluded from the base number of Owners, Units and Common Interests for quorum and voting purposes.

Section R-1.1.8. Proceeds on Disposition. All rents and any other revenues derived from a Unit while owned or leased by the Condominium Board (or its Affiliated Nominee or Designee), after paying the costs and expenses to own or lease and operate such Unit, and all proceeds realized on the resale of a Unit owned by the Board (or its Affiliated Nominee or Designee) shall be applied to defray the Common Expenses or other appropriate purpose determined by the Condominium Board.

Section R-1.1.9. No Discrimination. The Condominium Board may not discriminate against any person on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability, marital status or other ground prohibited by Law, whether in connection with the exercise of the Board's Right of First Refusal, the leasing or subleasing of any Unit purchased or leased, the resale of any Unit purchased, or otherwise.

Section R-1.1.10. Exempt Transactions. The following sales, transfers, conveyances and leases are exempt from the Condominium Board's Right of First Refusal:

(a) (if the Sold Unit Owner is an individual) a sale, transfer, conveyance or lease of such Owner's Unit from its Owner to: (a-1) an adult member of such Owner's Immediate Family; or (a-2) a trust for the benefit of such Owner or a member of such Owner's Immediate Family; or (a-3) a corporation, partnership, limited liability company or other Entity in which such Owner owns the Controlling Interest;

(b) (if the Sold Unit Owner is an Entity) a sale, transfer, conveyance or lease of such Owner's Unit from its Owner to: (b-1) any Entity in which such Owner owns the Controlling Interest; or (b-2) individuals and/or Entities who collectively own the Controlling Interest in such Unit Owner;

(c) a transfer, conveyance or lease of any Unit from its Owner to any person who acquires title to, or a lease of, such Owner's Unit as a gift or as an heir, legatee or distributee under the Owner's will or by intestacy;

(d) (if the Sold Unit Owner is an individual who is judicially declared incompetent) a transfer, conveyance or lease from such Owner to such Owner's legal guardian or representative;

(e) a sale, transfer or conveyance of any Unsold Unit, or a lease or sublease of any Unsold Unit, by Sponsor or other Unsold Unit Owner to any person, or any such transaction of any Unit to Sponsor or other Unsold Unit Owner;

(f) a sale, transfer, conveyance, lease or sublease of any Unit to the Condominium Board (or its nominee or designee) or from the Condominium Board (or its Affiliated Nominee or Designee) to any person;

(g) a sale, transfer or conveyance of any Unit from a court-appointed referee or other officer or other person conducting a lien foreclosure sale of a mortgage, or the lien of the Condominium Board under Section 339-z of the Condominium Act, or other lien foreclosure sale, to any person;

(h) a transfer or conveyance of any Unit by deed in lieu of foreclosure from a Unit Owner to a holder of a Permitted Mortgage or its nominee, or to the Condominium Board, or its nominee or designee; and

(i) a sale, transfer, conveyance or lease of any Unit acquired by a holder of a Permitted Mortgage or its nominee, or by the Condominium Board or its Affiliated Nominee or Designee, to any person.

Section R-2. Mortgaging of Units by Unit Owners. Each Unit Owner shall have the right to mortgage his or her Unit with one or more mortgages held by any lender or lenders, subject to compliance with the following restrictions and requirements:

(a) the mortgage must cover both the Unit and its appurtenant Common Interest;

(b) the Unit Owner shall give the Condominium Board written notice of the name and address of the mortgage lender and (if requested by the Board) a conformed copy of the executed note and mortgage (failure to do so shall not affect the validity or enforceability of the mortgage, but the mortgage lender shall not have certain protections and benefits with respect to (for example) the right to receive a copy of a default notice for non-payment of Common Charges or the right to cure such default);

(c) the Unit Owner shall give the Condominium Board written notice when a mortgage is satisfied and (if requested by the Board) a conformed copy of the executed satisfaction of mortgage instrument; and

(d) no Sold Unit Owner shall mortgage or grant a security interest in his or her Unit unless and until all unpaid Common Charges and Special Assessments (if any) are paid and all unpaid liens on the Unit are satisfied or bonded, other than the mortgage liens made in compliance with the By-Laws. See Section A-15.

This last restriction in clause (d) shall not affect the validity or enforceability of a mortgage, but to the extent not prohibited by the Condominium Act or other applicable Law shall affect the priority of its lien, which shall be subject to all then existing unpaid Common Charges and Special Assessments previously assessed against the Unit.

Section R-3. Common Charges and Special Assessments.

Section R-3.1. *Determination and Apportionment of the Common Charges and Special Assessments*. The Common Charges and Special Assessments to pay the Common Expenses shall be determined by the Condominium Board, and apportioned and assessed to the Unit Owners Pro

Rata to their respective Common Interests in accordance with the following provisions. (See also Section B-7.4.1.)

Section R-3.1.1. Budget Procedure. At least ten (10) days before the start of each budget year of the Condominium Association, the Condominium Board is to prepare, adopt and distribute to all Unit Owners a budget of Condominium Operation for the ensuing budget year.

Section R-3.1.2. Payment of Common Expenses. The amount apportioned and assessed to the Units constitute their Common Charges, which will be payable monthly in advance on the first day of each month, unless otherwise determined by the Board. The Condominium Board has the right to levy Special Assessments to pay Common Expenses, which will be payable in a lump sum or in such periodic installments, with or without interest, as shall be determined in the sole discretion of the Condominium Board.

Section R-3.1.3. Failure to Adopt Budget. The failure of the Condominium Board to adopt a budget for a new budget year will not be regarded as a waiver of Common Charges nor excuse Unit Owners from their obligation to continue to pay Common Charges and Special Assessments (if any) based on the last adopted budget pending the adoption of the new budget.

Section R-3.1.4. Revised Budget. The Condominium Board may revise a budget one or more times during any budget year, but may not retroactively increase the amount of Common Charges previously billed. The Board, however, may include a deficiency for a prior period (whether in the same budget year or a previous budget year) in the Common Expenses for the then current budget year.

Section R-3.1.5. Budget Surplus. If the budgeted Common Charges exceed the actual Common Expenses in any completed budget year, the Condominium Board will determine whether to apply the surplus to defray the projected Common Expenses of the next succeeding budget year or to distribute all or a portion of the surplus to the then existing Unit Owners, in which case such distribution shall be apportioned among them Pro Rata to their respective Common Interests. If the Condominium Board fails to make such determination within four months after the end of such completed budget year in which the surplus was generated, the entire surplus shall be applied to defray the projected Common Expenses of the budget year next succeeding such completed budget year.

Section R-3.2. *Reserves for Capital Replacements and Contingencies*. The Condominium Board shall include in each budget a reserve for capital replacements of a major component of a Common Element (the "**Reserve for Capital Replacements**"). Any material change to the Reserve for Capital Replacements, including an increase or decrease in the 10% budget line for this item, must be disclosed in a filed Plan Amendment.

The budget also includes a separate reserve for unanticipated Common Expenses or an allowance for an increase in one or more items of Common Expenses or for potential new or

additional Common Expenses, or other contingencies (collectively, "**Reserve for Contingencies**"); provided, however, that during only the Sponsor Veto Control Period, the Board must obtain the prior written consent of Sponsor to eliminate the Reserve for Capital Replacements contained in the First Year's Budget, or to establish a Reserve for Contingencies in excess of five percent (5%) of the projected annual Common Expenses for any budget year following the First Year's Budget. See also Section P-2.1.

Section R-3.3. *Liability for Common Charges and Special Assessments*. Each Unit Owner shall be personally liable for payment of Common Charges and Additional Common Charges, including Special Assessments, levied against his or her Unit. Such personal liability shall terminate with respect to only future Common Charges and Additional Common Charges, including Special Assessments, upon: (a) the consummation of a sale or conveyance of the Unit in accordance with the provisions of the By-Laws; (b) the acquisition of the Unit by a purchaser at a mortgage or lien foreclosure sale of a Permitted Mortgage, or by deed given in lieu thereof; or (c) the conveyance of the Unit to the Condominium Board (or its nominee or designee), without consideration, and free and clear of all mortgages, liens, encumbrances, leases and occupancies. None of the foregoing transactions shall terminate an Owner's personal liability for unpaid Common Charges or unpaid Additional Common Charges, including unpaid Special Assessments. No Unit Owner will be exempt from such personal liability by waiving the use and enjoyment of the Common Elements or by not using or abandoning his or her Unit.

Section R-3.4. *Board's Lien and Remedies Under RPL §§339-z and 339-aa.*

Section R-3.4.1. RPL §339-z. Pursuant to RPL §339-z:

(a) the Condominium Board, on behalf of Unit Owners, shall have a lien on each Unit for unpaid Common Charges and unpaid Special Assessments, together with interest thereon (see Section R-3.7); and

(b) the Board's lien shall be prior to all other liens, except the Board's lien shall be subordinate to: (b-1) liens for real estate taxes; and (b-2) a lien of a recorded first mortgage and shall not affect the priority, validity or enforceability of a recorded first mortgage on any Unit.

During the Sponsor Board Control Period, Sponsor will cause the Condominium Board to file the lien under RPL §339-aa on any Unsold Unit for which Sponsor is more than thirty (30) days in arrears of Common Charges or Special Assessments (see Section R-3.6 below).

Section R-3.4.2. RPL §339-aa. Pursuant to RPL §339-aa:

(a) the lien under RPL §339-z shall be effective from and after the filing of a verified notice of lien in the City Register's Office, and will remain effective for six years or until all unpaid sums with interest thereon have been paid in full, whichever occurs first;

(b) the Condominium Board shall have the right to foreclosure the lien by suit brought in the name of the Board (or its nominee or designee), acting on behalf of the Unit Owners, in like manner as a foreclosure of a mortgage of real property;

(c) in such foreclosure suit, the delinquent Unit Owner shall be required to pay a reasonable rental for the Unit for any period prior to the sale pursuant to judgment of foreclosure and sale;

(d) the Condominium Board, acting on behalf of the Unit Owners, shall have the power in its name, or in the name of its nominee or designee, to bid on the Unit at said foreclosure sale, and to acquire and hold, lease, mortgage (subject to obtaining the requisite prior written consent of Sponsor as provided in Section R-1.2(c)) the Unit, but not to cast the votes appertaining to the Unit; and

(e) the Condominium Board may also bring suit to recover a monetary judgment for unpaid Common Charges and unpaid Special Assessments without foreclosing or waiving the lien, and may pursue both the lien foreclosure and monetary judgment suits at the same time.

Section R-3.5. *Common Expenses*. If the Owner of a Unit is delinquent in payment of Common Charges or Special Assessments, all of the foregoing actions by the Condominium Board shall be on behalf and for the account of the non-delinquent Unit Owners. Accordingly, all costs and expenses, and if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, Legal Expenses, incurred by the Board in any such suit to foreclose the lien and/or recover a money judgment shall be assessed to the non-delinquent Unit Owners Pro Rata to their respective Common Interests. The net proceeds realized by the Board from such lien foreclosure sale or money judgment (i.e., after payment of costs and expenses, and Legal Expenses) shall be applied first to reimburse said non-delinquent Unit Owners for the amount so assessed.

If a Unit is acquired by the Board or its Affiliated Nominee or Designee, all costs and expenses in connection with the ownership, operation and disposition of such Unit shall be included in the Common Expenses and charged to all other Unit Owners (i.e., Units owned by other than the Board or its Affiliated Nominee or Designee) Pro Rata to their respective Common Interests. Similarly, all revenue derived from the ownership, operation and disposition of such Unit shall be applied to defray the Common Expenses or as otherwise determined by the Condominium Board for the benefit of the Unit Owners.

Section R-3.6. *Actions after 30 days*. The Condominium Board is required to take prompt action to collect any Common Charges or Special Assessments that remain unpaid for more than thirty (30) days. During the Sponsor Board Control Period, Sponsor will cause the Condominium Board to file the lien under RPL §339-aa on any Unsold Unit for which Sponsor is more than thirty (30) days in arrears of Common Charges or Special Assessments. See Section R-3.4.1 and Section R-3.4.2 above.

Section R-3.7. *10-day Grace Period; Delinquency Payments.* Common Charges shall be due and payable on the first day of each month, unless otherwise specified by the Condominium Board. If Common Charges are not paid within the first ten (10) days of a month, then the delinquent Sold Unit Owner (but not an Unsold Unit Owner) shall pay on demand the following:

(a) Per Diem Interest on the unpaid amount, computed from the due date until full payment is received;

(b) a late charge in an amount set by the Condominium Board, but not to exceed $0.05 on each overdue dollar; and

(c) all costs and expenses, together with, if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, Legal Expenses and Per Diem Interest thereon (computed from the date each item of Legal Expenses is paid or incurred until the date full payment thereof is received), incurred by the Board to collect all amounts owed and to enforce or defend this provision and to foreclose its lien and/or recover a money judgment.

If a Sold Unit Owner (but not an Unsold Unit Owner) fails to pay Condominium Charges within thirty (30) days from the date due two or more times within any consecutive twelve (12)-month period, the Board shall have the right, in addition to all other rights and remedies, to require such delinquent Sold Unit Owner to pay to the Condominium Board, as security for payment of Common Charges and any Special Assessments, a sum equal the projected Common Charges payable for the ensuing twelve (12) months (hereafter, the "**Security Deposit**"). The Security Deposit shall be maintained in a segregated interest or (at the exclusive option of the Board) non-interest bearing bank account designated by the Board. Any interest earned thereon shall be added to the Security Deposit.

The Condominium Board shall have the right to apply the Security Deposit to pay the Common Charges and any Special Assessments or other Additional Common Charges that are not paid within ten (10) days of the due date and to pay or reimburse the Board for any amounts payable by such delinquent Sold Unit Owner pursuant to the By-Laws or the Declaration in connection with the exercise and performance of the Board's rights and remedies under the By-Laws or the Declaration. If the Condominium Board uses the Security Deposit, a reasonably detailed written notice thereof shall be sent to said Sold Unit Owner, who shall pay to the Condominium Board, and the Condominium Board shall receive, within ten (10) days from giving such notice, a sum equal to the amount so used. At all times, the Security Deposit shall be an amount equal to the projected Common Charges payable for the ensuing twelve (12) months. In the event of a deficiency (whether due to an application of the Security Deposit or an increase in the Common Charges or otherwise), said Sold Unit Owner shall pay to the Condominium Board, and the Condominium Board shall receive, the shortfall within ten (10) days after giving written notice thereof to said Sold Unit Owner.

The remaining amount of the Security Deposit, and any interest earned thereon, shall be refunded to said Sold Unit Owner: (a) upon the sale and conveyance of the Sold Unit; or (b) at the end of twelve (12) consecutive months during which said Sold Unit Owner remains current and in good standing in the timely payment of all Common Charges and Additional Common Charges, and the timely performance of all other obligations under the By-Laws and the Declaration.

Section R-4. Repairs.

Section R-4.1. *Repairs to Units and Limited Common Elements*. Each Unit Owner shall be obligated, at his or her expense, to repair and maintain his or her Unit and Limited Common Elements (see Section B-5.7.1 and Section B-7.3 for summary of included items) in accordance with the Building Standard.

Section R-4.2. *Repairs to Common Elements, Association's Assets and Sidewalk*.

Section R-4.2.1. Common Elements and Association's Assets. The Condominium Board, acting on behalf and for the account of all Unit Owners, shall be obligated to repair and maintain the Common Elements, whether within, bordering or adjacent to Units or elsewhere in or on the Building or Property, and (if any) the Association's Assets, in accordance with the Building Standard.

Section R-4.2.2. Sidewalk. The sidewalk immediately adjacent to, and fronting, the Property ("**Sidewalk**") is owned by The City of New York and is not part of the Property. The Condominium Board, as the governing body of the Condominium Association is required to keep the Sidewalk clean and free and clear of snow, ice, debris and water accumulation and properly maintained and repaired. The costs and expenses incurred by the Board to maintain and repair the Sidewalk in accordance with the foregoing shall be included in the Common Expenses and allocated and assessed to all Unit Owners Pro Rata to their respective Common Interests.

All uses of the Sidewalk permitted by applicable Law shall be determined by the Condominium Board, subject to certain promotional easements and rights reserved to Sponsor (see Section O-1.6). Sponsor and other Unsold Unit Owners (if any) shall have preference and priority over the Board and Sold Unit Owners to use the Sidewalk, and may exercise such preferential and priority use and benefit freely, other than the restriction to not unreasonably interfere with normal pedestrian passage and the requirement to comply with the applicable Work Requirements.

Section R-4.3. *Furnishings and Decorating of Sold Units*. Each Sold Unit Owner, at his or her expense, is to comply with the following restrictions and requirements:

(a) at least 80% of the indoor floor areas of the Sold Unit (other than the kitchen, pantry (if any), bathrooms, powder room (if any) and closets) must be covered with carpeting, rugs or equally effective noise reducing material Reasonably Acceptable in writing by the Condominium Board, unless the Board waives this requirement in writing, in its sole and absolute discretion [CAVEAT: though this requirement is intended to reduce or reasonably minimize the transmission

of noise between floors, it will not make a Unit soundproof against noise transmitted between floors or carried through common shafts or ducts];

(b) a Sold Unit's Balcony, Terrace, Juliette Balcony or Yard (if and as applicable) may not be enclosed, partitioned, landscaped, furnished or decorated, without obtaining in each instance the prior written consents of both Sponsor (until issuance of the Final Certificate of Occupancy of the Building and the sale of all Unsold Units to Bona Fide Purchasers) and the Condominium Board;

(c) the portions of the Sold Unit exposed to public view (including, if applicable, windows, entrance doors, Balcony, Terrace, Juliette Balcony and Yard, including their respective Structures), may not be painted, covered or otherwise decorated without obtaining in each instance the prior written consents of both Sponsor (while there is any Unsold Unit) and the Condominium Board; except window shades, blinds, curtains and other window treatments will be permitted if they are light colored or have light colored backings facing the outdoors in conformity with the Rules and Regulations appended to the By-Laws, as amended from time to time by the Condominium Board (each amendment to the Rules and Regulations shall be subject to obtaining the prior written consent of Sponsor while Sponsor owns any Unsold Unit);

(d) the interior and exterior sides of a Sold Unit's windows and (if applicable) glass doors leading to its Balcony, Terrace, Juliette Balcony or Yard, are to be washed and cleaned in accordance with applicable Laws; and

(e) a Storage Locker shall be used only for the storage of personal effects of the Owner or a Unit's tenant registered on the records of the Condominium Association in accordance with the By-Laws, and in no event shall any food or other perishable item, or any flammable or explosive item, or any item that would impose a health or safety threat or cause noxious odors, dirt or other sanitary problems or create a nuisance, be stored in a Storage Locker.

The foregoing restrictions and requirements are not applicable to Unsold Units, which may be furnished and decorated freely, without the consent of the Board or other Unit Owners.

Section R-4.4. *Acts or Omissions*. Any repair or maintenance to the Common Elements necessitated by the Acts or Omissions an Owner or tenant of a Unit, or such party's Construction Parties, shall be repaired by the Condominium Board at the expense and for the account of such Unit Owner (all amounts expended by the Board for the repair shall be charged to said Unit Owner as Additional Common Charges). Such Unit Owner's liability, however, shall be reduced by the amount of any insurance proceeds received and collected by the Condominium Board in connection therewith.

Section R-4.5. *Access to Units*. Each Unit Owner must grant access to his or her Unit by the Condominium Board and its agents, employees and Construction Parties for the following purposes:

(a) to conduct inspections for the presence of any vermin, insects or other pests and to take such measures as may be necessary to control or exterminate any such vermin, insects or other pests, and read meters and submetered;

(b) to maintain, repair, restore, alter and operate all Common Areas and Common Facilities now or hereafter comprising the Common Elements and to provide Building Services to each and every Unit in accordance with the Condominium Documents; and

(c) to perform all Work necessary:

(c-1) to fulfill the obligations of the Board under the Condominium Documents or applicable Laws;

(c-2) to prevent damage or destruction to a Unit Property or the Common Elements, or any portion thereof, or to prevent bodily injury or death;

(c-3) to remedy violations of Governmental Authorities noted or issued, or conditions that would constitute such violations even though not yet noted or issued against:

(c-3.1) the Property that affect the Common Elements; or

(c-3.2) a Unit Property, unless timely remedied by the Owner thereof in accordance with the Condominium Documents;

(c-4) to remedy any violation by a Unit Owner under the Condominium Documents that has continued beyond the grace or cure period, if any, provided for therein; or

(c-5) to remedy any condition causing an Emergency that, in the Business Judgment of the Board, threatens or affects a Unit Property, the Common Elements or a Building Service, or the life, health, safety, protection or security of one or more Owners or tenants of Units; and

(d) to grant easements affecting the Common Elements or to provide Building Services to one or more Units that the Condominium Board, in its Business Judgment, deems necessary or desirable or appropriate.

Access is to be granted on giving the Unit Owner advance written notice of not less than five business days, except in an Emergency, access may be immediate without advance notice.

Section R-5. Alterations. The rights and obligations of Unit Owners and the Condominium Board with respect to alterations (including additions and improvements), the requirements for consents and for the alteration, and applicable aesthetic controls are summarized below.

Section R-5.1. *Alteration Rights and Obligations of Unit Owners*. Each Unit Owner shall have the right to alter his or her Unit (including the Unit Areas and Unit Facilities) and its Limited Common Elements, subject to the obligation to perform the alterations:

(a) in accordance with Building Standard and all applicable Work Requirements;

(b) with commercially reasonable diligence and continuity to completion; and

(c) with Unit Facilities that shall be consistent in design, compatibility, aesthetics and architectural integrity and appearance to the original items being altered.

Section R-5.1.1. Alterations Not Requiring Board Consent. The consents of the Condominium Board or Sponsor shall not be required for the following alterations (hereafter, "**Ordinary Work**"):

(a) furnish, paint or otherwise decorate the indoor portions of a Sold Unit; and

(b) any other alteration to a Sold Unit that does not:

(b-1) require an application to a Governmental Authority or the issuance of a Governmental Work Permit;

(b-2) affect the aesthetics, architectural integrity or exterior appearance of the Building;

(b-3) affect the Structural Components of the Building;

(b-4) affect any Building Systems or Building Services affecting another Unit or the Common Elements serving another Unit;

(b-5) affect any interior or exterior waterproofing of the Building; or

(b-6) have an acoustical impact on another Unit or the Common Elements.

Section R-5.1.2. Alterations Requiring Board Consent. All other alterations to a Sold Unit and its Limited Common Elements shall require the prior written consent of the Condominium Board and if given, the Condominium Board shall have the right to condition its consent on the applicable Sold Unit Owner entering into an alteration agreement, on the form adopted by the Board, with such modifications as may be required by the Board, in its sole Business Judgment, setting forth the terms and conditions for performing the alteration, including the following:

(a) the Board's customary Work rules (as to staging, construction worker access, protection of walls and floors, construction noise mitigation, loading of construction materials, debris removal, construction personnel access, security, hours, days, containment of dust and dirt, and the like);

(b) insurance requirements;

(c) an indemnity in favor of the Condominium Board and all other Unit Owners, and their respective Related Parties;

(d) a security deposit;

(e) submission of plans and specifications of the alteration acceptable to the Board's architect and/or engineer and prepared by an architect/engineer acceptable to the Board;

(f) a period within which the alteration must be completed or substantially completed;

(g) requirements to perform the alteration:

(g-1) in accordance with Building Standard and all applicable Work Requirements;

(g-2) by duly licensed contractors and subcontractors to the extent required by Laws and prosecuted with commercially reasonable diligence and continuity to completion; and

(g-3) using new or replacement Common Facilities that shall be consistent in design, compatibility, aesthetics and architectural integrity and appearance to the original items being altered;

(h) rights and remedies of the Board to (among others) suspend the alteration and perform corrective Work at the expense of the Owner who or whose tenant undertakes the Work and violates the alteration agreement;

(i) payment of all governmental and other fees; and

(j) paying or reimbursing as directed by the Board) for the reasonable costs and expenses incurred by the Board in connection with the preparation, review and execution of the alteration agreement, including the fees and charges of any architect, engineer, consultant or other expert engaged by the Board to review the proposed plans and specifications of the alteration and to monitor the alteration, and the fees and charges of the Managing Agent (whose fee for alterations to a Unit Property set forth in Section W-1.3 shall be deemed reasonable) and any attorney retained by the Board in connection with such alteration agreement and the performance of the Work (all such costs and expenses shall be added to and constitute Additional Common Charges payable by such Sold Unit Owner.

No approvals or consents of the Condominium Board or Sold Unit Owners are required for alterations or decorations to Unsold Units or their Limited Common Elements, which may be made freely, other than the requirements to comply with applicable Work Requirements.

Section R-5.2. *Alteration Rights and Obligations of Condominium Board*. The Condominium Board shall have the right to alter the Common Elements, the Association's Assets (if any) and the Sidewalk, subject to the obligation to perform the alterations:

(a) in accordance with Building Standard and all applicable Work Requirements;

(b) by duly licensed contractors and subcontractors to the extent required by Laws and prosecuted with commercially reasonable diligence and continuity to completion; and

(c) using new or replacement Common Facilities that shall be consistent in design, compatibility, aesthetics and architectural integrity and appearance to the original items being altered.

The costs and expenses of said alterations to the Common Elements, the Association's Assets (if any) and the Sidewalk shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section R-5.3. *Alterations Requiring Sponsor's Consent.*

Section R-5.3.1. Alterations Requiring Consent. Subject to the limitations in Section P-2.2, until Sponsor has fulfilled its obligation under the Plan to obtain a Final Certificate of Occupancy of the Building authorizing the use of the Units for their intended purposes as set forth in this Plan and the Declaration, the Condominium Board and Sold Unit Owners shall not undertake any of the following alterations or other Work without obtaining the prior written consent of Sponsor in each instance:

(a) any Work that requires an application to a Governmental Authority for a Governmental Work Permit from the DOB, or a Certificate of No Effect or a Certificate of Appropriateness (as applicable) from the Landmarks Commission (if applicable), or other governmental license or authorization;

(b) any Work or decoration affecting a Sold Unit's windows (other than window shades, blinds, curtains and other window treatments that are light colored and have light colored backings facing the outdoors in conformity with the Rules and Regulations, as they may be duly amended from time to time by the Condominium Board) or other portion of a Sold Unit exposed to public view; and

(c) any Work affecting all or a portion of a Building System serving one or more other Units, or serving the Common Elements.

Section R-5.3.2. Requirements for Consent. Sponsor shall have the right to condition giving its consent on the applicable Unit Owner, at such Owner's sole cost and expense, or Condominium Board as a Common Expense charged to all Unit Owner's Pro Rata to their respective Common Interests (as the case may be), giving Sponsor, at least twenty (20) business days before the Work is scheduled to begin:

(a) a reasonably detailed written notice of the Work, copies of DOB approved plans and specifications of the Work acceptable to Sponsor, prepared by an architect and/or engineer

acceptable to Sponsor, and such further information as Sponsor may require, in its sole Business Judgment;

(b) copies of all required Governmental Work Permits of Governmental Authorities having jurisdiction of the Work and a Certificate of No Effect or a Certificate of Appropriateness from the Landmarks Commission;

(c) a policy or original certificate of insurance for such insurance coverage and amounts, and issued by such insurer, as shall be Reasonably Acceptable to Sponsor (any dispute as to such insurance shall be resolved by arbitration pursuant to these By-Laws), and providing that Sponsor shall be given at least thirty (30) days' advance written notice by the insurer before such insurance coverage is terminated, cancelled or expires; and

(d) if requested by Sponsor, said Unit Owner or the Condominium Board (as applicable) shall post a bond or other security acceptable to Sponsor, in such amount and issued by such insurer or other issuer acceptable to Sponsor, in order to secure the diligent and lien-free completion of such Work and compliance with all applicable Laws.

Section R-5.3.3. Requirements for Work. If Sponsor consents to the Work:

(a) any revision to the DOB approved plans and specifications shall be subject to obtaining the prior written consent of Sponsor and, if given, Sponsor receiving a copy of the DOB approved revision to the approved plans and specifications before implementing the Work contained in the revision;

(b) the Work shall be performed by duly licensed contractors and subcontractors to the extent required by Laws, and shall be prosecuted with commercially reasonable diligence and continuity to completion in compliance with all DOB approved plans and specifications, DOB approved revisions thereto, and in conformity with all Governmental Work Permits and the Certificate of No Effect or the Certificate of Appropriateness (as applicable);

(c) Sponsor and its representatives, upon oral or written demand, shall be given reasonable access to the Unit or the Common Elements (as applicable), from time to time, to inspect and monitor such Work as it progresses;

(d) after the completion of the Work, shall promptly and diligently endeavor to obtain from the appropriate Governmental Authorities and give to Sponsor and the Board, all required governmental approvals, sign-offs and certificates (including, if applicable, a letter of completion from the DOB), and promptly and diligently endeavor to close all related open applications;

(e) the Unit Owner or the Condominium Board (as applicable) undertaking the Work shall indemnify Sponsor, on the terms more fully set forth in Article 27 of the Declaration, from and against any and all claims, litigations, liabilities and losses arising, directly or indirectly, from Work or the failure to comply with any of the requirements set forth in this Section R-5.3, including:

(e-1) any violation of Laws;

(e-2) any delay in obtaining a Temporary Certificate of Occupancy or an extension of a previously issued Temporary Certificate of Occupancy or the Final Certificate of Occupancy of the Building; or

(e-3) the failure to make all appropriate filings with Governmental Authorities in connection with the Work; and

(f) the Owner or the Condominium Board (as applicable) undertaking the Work shall pay or reimburse Sponsor (as directed by Sponsor) for the reasonable costs and expenses incurred or paid by Sponsor to Sponsor's Construction Parties and counsel to:

(f-1) review the plans and specifications of the Work, the related Governmental Work Permits, Certificate of No Effect or Certificate of Appropriateness (as applicable); and

(f-2) inspect and monitor the Work.

Section R-5.3.4. Revocation. Sponsor reserves the right at any time to revoke its consent in writing, without any manner of recourse against Sponsor or its Related Parties, for failure to comply with any of the requirements contained herein in this Section R-5.3 or if the continuance of the Work or any condition arising therefrom would (in Sponsor's sole and absolute discretion) delay the extension of a previously issued Temporary Certificate of Occupancy or the issuance of said Final Certificate of Occupancy. If Sponsor revokes its consent, immediately after being given the revocation notice, said Unit Owner or the Condominium Board (as applicable) shall cease all Work, remove any such condition and restore such Unit Owner's Unit Property or the Common Elements (as applicable) to the condition existing before commencing the Work, all as and to the extent required by Sponsor.

Section R-5.4. *Aesthetic Controls and Architectural Restrictions*. A Sold Unit Owner shall be required to obtain the consent of Sponsor or (after Sponsor no longer owns a Unit and the Final Certificate of Occupancy of the Building is issued) the Condominium Board to alter or otherwise change the aesthetics, architectural integrity or appearance of an exterior Building Wall, a Sold Unit's window or entrance door, unless required by Laws. Any permitted alteration or change (including design and materials) shall be consistent in all material respects to the original aesthetics, architectural integrity and appearance of such exterior Building Wall, Unit window or entrance door as determined in the sole Business Judgment of Sponsor or (after Sponsor no longer owns a Unit and the Final Certificate of Occupancy is issued) in the sole Business Judgment of Condominium Board. In no event shall any exterior glass surface of any windows of a Sold Unit be colored or painted.

In order to protect the structural integrity and weather tightness of the Building and the safety of lower floors as well as the Sidewalk, and to preserve the architectural and aesthetic

harmony of the Building's façade and minimize possible unsightliness, a Sold Unit's private Terrace, Juliette Balcony, Balcony or Yard (if and as applicable), and related Structures enclosing these outdoor areas, may not be replaced, removed or otherwise altered or decorated without obtaining in each instance the prior written the reasonable consent of the Board and (until there are no Unsold Units or the Final Certificate of Occupancy of the Building is issued, whichever is the later to occur) the consent of Sponsor in each instance. The foregoing restrictions do not apply to Unsold Sold Units (including their windows exterior doors, private Terrace, Juliette Balcony, Balcony or Yard, and related Structures enclosing these outdoor areas, if and as applicable). Sponsor or other Owner of an Unsold Unit shall have the unfettered right to alter and decorate their respective Unsold Units, other than the requirement to comply with the applicable General Requirements.

No fence, partition, furniture, furnishing, barbecue or grilling facility, plants, trees, flowers, hedges, shrubs or other gardening item, planters or containers, structures or other objects shall be installed or placed in or on said outdoor area of a Sold Unit, unless in compliance with applicable Laws and after first obtaining in each instance the reasonable consent of the Board and (until there are no Unsold Units and the Final Certificate of Occupancy of the Building is issued) the consent of Sponsor.

Any plants, trees, flowers, hedges, shrubs or other gardening item permitted to be installed on a Sold Unit's Balcony, Terrace, Juliette Balcony or Yard (if and as applicable) shall be contained in free standing, removable boxes of wood, lined with metal or other materials impervious to dampness and standing on supports at least two inches from the surface, and if adjoining a Boundary Wall, at least three inches from such element. The wood boxes shall have suitable weep holes to draw off water and only light weight soil shall be used. In special locations, such as a corner abutting a Boundary Wall or the like, plants may be contained in masonry or hollow tile walls which will be at least three inches from such Boundary Wall, with a floor of drainage tiles and suitable weep holes at the sides to draw off water.

No trees taller than six (6) feet will be allowed on a Balcony or Terrace, including its container and supports. The Owner of such Sold Unit shall have the duty, at such Owner's sole cost and expense, to properly maintain the containers, the drainage tiles and weep holes in operating condition in accordance with the Building Standard, and all gardening items properly pruned so that the height of tree shall not be taller than the footage indicated above and all gardening items shall not hang over the railings, parapets or other Structures, or otherwise outside the borders of the Unit's Balcony, Terrace, Juliette Balcony or Yard (if and as applicable).

Each Unit Owner shall notify the Condominium Board or the Managing Agent, if any, in writing when a child under the age of eleven (11) years lives or resides (even temporarily) in the Unit. Such Unit Owner shall be obligated to install, at said Unit Owner's sole cost and expense, window guards (or safety "stops" lieu of window guards, designed specifically to prevent a child

from falling out of the window) in all windows of the Unit in accordance with applicable Laws. The design and composition of the window guards to be installed on windows of Sold Units shall conform to the architectural features of the Building as determined solely by the Condominium Board and Sponsor. Each Unit Owner shall maintain all window guards (or stops) installed in, on or to the Unit and shall not remove them until permitted by applicable Laws. The installation and removal of the window guards (or stops) shall be performed in accordance with all applicable Work Requirements, which (among others) require a Sold Unit Owner (but not an Unsold Unit Owner, who is exempt from this requirement): (a) signing the Building's standard alteration agreement with such modifications as the Board may determine to be appropriate (in its sole Business Judgment); and (b) obtaining the prior written reasonable consents of the Condominium Board and Sponsor. In the event of any disagreement between the Board and Sponsor (whenever its consent is required), the decision of Sponsor shall be paramount and control. See Sections A-35 and A-36.

Section R-6. Insurance.

Section R-6.1. *Insurance Coverage Provided by Condominium Board.* The Condominium Board shall obtain and maintain the following insurance coverage.

Section R-6.1.1. Fire and Casualty Insurance. Fire and casualty insurance with all risk coverage, vandalism and malicious mischief endorsements or such other endorsements as may be contained in the First Year's Budget (SCHEDULE B), insuring the Common Elements, including the Boundary Walls separating the Units from the Common Elements and (if applicable) from each other, the Limited Common Elements and the Association's Assets, and covering the interests of the Condominium Board and all Unit Owners and their mortgagees, as their respective interests may appear, in an amount equal to 100% of the full replacement value of the portions of the Property required to be insured against loss or damage pursuant to this clause (exclusive of foundations and footings), without deduction for depreciation.

The fire and casualty insurance coverage shall be not less than an amount which shall be sufficient for the insurer to waive any co-insurance requirement or is based on an "Agreed Value" or "Agreed Amount" replacement cost (or comparable term) endorsement. In addition, such fire and casualty policies shall contain (if available):

(a) waivers of: (a-1) subrogation in favor of Owners and designated tenants of Units; (a-2) any defense based upon co-insurance or other insurance; (a-3) invalidity arising out of the acts of an insured party; and (a-4) pro rata reduction of liability;

(b) a provision that any adjustment of loss will be made by the Condominium Board and that all proceeds will be paid to the Condominium Board or (at the option of the Board) an Institutional Lender having both an office in the City and State of New York and a capital surplus and undivided profits of $100,000,000 or more (an "**Insurance Trustee**") appointed pursuant to

the By-Laws where the Board is to restore the damaged Common Areas and Common Facilities in accordance with the By-Laws;

(c) a New York Standard Mortgagee provision in favor of each mortgagee registered on the records of the Condominium Association in accordance with the By-Laws (a "**Registered Mortgage**"), subject, however, to the preceding loss payment provisions in favor of the Condominium Board or (at the option of the Board) Insurance Trustee; and

(d) a provision preventing the policy from being canceled or substantially modified unless at least ten (10) days' prior written notice is given to the Condominium Board.

The property casualty insurance shall not cover the decorations or finishes of walls, floors or ceilings of the Common Elements (unless otherwise determined by the Condominium Board) or of any Unit not owned, leased or otherwise held by the Board (or its Affiliated Nominee or Designee), or the contents of any such Unit, including its appliances, kitchen and bathroom fixtures (electric, electronic, plumbing or otherwise), furniture, furnishings, cabinets, countertops, decorations and other personal property. Each Unit Owner is to obtain these insurance coverages at his or her expense (see Section R-6.1.9) and should also consider the desirability of obtaining liability coverage for the Unit's undivided interest in the Common Elements to the extent the insurance maintained by the Condominium Board for incidents in, on or caused by the Common Elements is inadequate or the risk is not insured.

Section R-6.1.2. Flood and Earthquake. Flood and earthquake coverage in amounts, terms and rates to be determined by the Board to be commercially reasonable, adequate and available.

Section R-6.1.3. Acts of Terrorism. Insurance covering Acts of Terrorism (as defined in the Terrorism Risk Insurance Act of 2002), including any extensions and changes thereof (collectively, "**TRIA**"), but only so long as TRIA is in effect or such insurance is available at reasonable commercial rates and terms; it being understood that if TRIA is no longer in effect and such insurance is not available at reasonable commercial rates and terms, the Condominium Board shall have the right, in its sole Business Judgment, to cease maintaining said TRIA insurance.

Section R-6.1.4. Commercial General Liability. Commercial General Liability coverage written on the Insurance Services Office form - 1986 or later (containing the so called "occurrence clause"), or equivalent comprehensive general liability coverage, with respect to ownership, operation, maintenance, use and control, insuring against liability for injury or damage to persons or property in or upon the Common Elements, the Limited Common Elements, the Sidewalk and the Association's Assets, including all Units or other property (if any) owned, leased or otherwise held by the Condominium Board, or its Affiliated Nominee or Designee (the Condominium Board may, in its discretion, obtain umbrella liability insurance in such amounts in excess of that (if any) provided in the First Year's Budget as the Condominium Board may determine from time to time.

The liability coverage shall be in such amounts as the Condominium Board may determine from time to time, but shall not be reduced below the amount set forth in the First Year's Budget without obtaining the consent of Sponsor during only the Sponsor Veto Control Period. The Condominium Board shall review the amounts of liability coverage at least once each budget year.

The liability policies shall list as co-insureds: (a) the Condominium Board and each and every member and officer thereof; (b) the Managing Agent or manager (if any); (c) each agent and employee of the Condominium Board; (d) each Unit Owner; and (e) (if required by the terms of a Registered Mortgage, the holder of such Registered Mortgage, as their respective interests may appear.

Such insurance shall not cover liability of a Unit Owner arising from occurrences within or on the Owner's Unit (including its Balcony, Terrace, Juliette Balcony or Yard, if and as applicable, or Storage Locker), which may be separately insured by a Unit Owner. This exception shall not apply to any Unit owned, leased or otherwise held by the Condominium Board or its Affiliated Nominee or Designee.

Section R-6.1.5. Boiler and Machinery Insurance. The Condominium Board shall obtain and maintain boiler and machinery insurance on facilities constituting part of the Common Elements, the Limited Common Elements or the Association's Assets (including any Unit owned, leased or otherwise held by the Board, or its Affiliated Nominee or Designee), in not less than the amount set forth in the First Year's Budget without obtaining the consent of Sponsor during only the Sponsor Veto Control Period; but not any facilities that are part of any other Unit (which may be separately insured by the Owner of such Unit).

Section R-6.1.6. Workmen's Compensation. The Condominium Board shall obtain and maintain workmen's compensation insurance, New York State disability benefits insurance and employer's liability coverage covering any employees hired by the Condominium Board. Each Unit Owner shall be solely responsible to obtain and maintain, at his or her sole cost and expense, the foregoing insurance for its own employees or contractors.

Section R-6.1.7. Other Insurance. The Condominium Board shall also obtain and maintain the following insurance to the extent available at reasonable rates:

(a) business interruption insurance, including loss of rents in an amount equal to the Common Charges for at least twelve (12) months;

(b) water damage legal liability insurance;

(c) elevator liability and collision insurance;

(d) non-owned and hired automobile liability insurance;

(e) combination crime insurance, including blanket employee dishonesty, forgery or alteration, covering the members and officers of the Condominium Board, the Managing Agent (if any) and employees (if any) handling funds of the Condominium Board;

(f) officers and directors liability insurance for officers and members of the Condominium Board, including Employment Practices Liability insurance and third party discrimination;

(g) such other or additional insurance as the Condominium Board shall determine from time to time, in its sole Business Judgment; and

(h) such insurance with respect to the Units, the Common Elements, the Limited Common Elements and the Condominium Association as would be reasonably required and which are commonly insured against for such properties most similar to the Property, similarly situated to a prudent lender originating commercial mortgage loans for securitization similar to a then existing mortgage on an Unsold Unit at the time in question, which insurance shall in all cases comply in all respects with the insurance requirements expressly contained in said then existing mortgage for so long as it encumbers an Unsold Unit.

Section R-6.1.8. Insurance Covering Work Performed by Board. In connection with Work performed by or on behalf of the Condominium Board, if not already covered by insurance policies then maintained by the Condominium Board, the Condominium Board shall also obtain and maintain installation floater coverage in an amount equal to the cost of the contract for any Work performed by or on behalf of the Condominium Board on the Property or cause its contractors to maintain equivalent insurance, naming the Condominium Board, all Unit Owners and the Registered Mortgagees as their interests may appear, except that such insurance shall not be required if the estimated cost of such Work is less than One Hundred Thousand Dollars ($100,000).

Section R-6.1.9. Insurance Obtained by Sold Unit Owner. Each Sold Unit Owner shall be required to obtain and maintain condominium homeowner's insurance with additions and alterations coverage, personal property coverage and personal liability limits of not less than $300,000.00. This requirement does not apply to Unsold Unit Owners.

A Unit Owner, at such Owner's sole cost and expense, shall maintain, or cause to be maintained by its contractor or otherwise, the following insurance during its performance of any Work, other than Ordinary Work (or such alternate amounts as may be required by the Board based upon the type of Work) during its performance of any Work:

(a) Workmen's Compensation and Disability Benefits Insurance as required by the Laws of the State of New York and Employer's Liability Insurance;

(b) Commercial General Liability and Products/Completed Operations Coverage to the extent such insurance coverage is not included in a policy maintained by the Condominium Board,

including the Condominium Board, its agents, successors and assigns, and any tenant of the Unit as additional insureds with a minimum limit of $5,000,000.00 per occurrence;

(c) Additional Commercial General Liability coverage extensions required: This Insurance is Primary and Non-Contributory as respect to coverage afforded the additional insurance and will be applicable to both the premises and completed operations coverage; Contractual Liability; and Waiver of Subrogation in favor of the Condominium Board and its Related Parties and Unit Owners; and

(d) Installation floater coverage in an amount equal to the cost of the contract for any Work performed in the Common Elements, naming as additional insureds the Unit Owners, the Condominium Board, and any mortgagee of the Unit Owner performing such Work, as their interests may appear, except that such insurance shall not be required if the estimated cost of the Work in the Common Elements is less than One Hundred Thousand Dollars ($100,000) and is covered by insurance policies maintained by the Condominium Board.

Section R-6.1.10. Insurance Obtained by Sponsor. At or prior to the First Unit Closing, Sponsor shall obtain, at the expense of the Condominium Board, the insurance coverages set forth in the First Year's Budget (SCHEDULE B in Section F). See SCHEDULE B for details of the coverages, deductible amounts and estimated premiums. In subsequent years of Condominium operation, the Condominium Board shall make all determinations concerning the insurance to be obtained (including coverages, insured amounts and amounts deductible), subject to compliance with the By-Laws and Sponsor's Veto Control during only the Sponsor Veto Control Period.

Section R-6.2. *Insurance Proceeds*. In the event of:

(a) a casualty in which three-fourths or more of the Building (including the Units, the Building's Structural Components and the Building Services comprising the Common Elements) is destroyed or substantially damaged so as to require re-construction, the Unit Owners shall conclusively be deemed to have irrevocably and unconditionally duly resolve to proceed with the repair and restoration, regardless of the adequacy of the net insurance trust funds to repair and restore the destruction and/or damage, unless not less than eighty percent (80%) in number and Common Interest (fractions shall be rounded down) of all Unit Owners elect to withdraw the Property from the Condominium Act in accordance with the Declaration; or

(b) a casualty in which less than three-fourths of the Building (including the Units, the Building's Structural Components and the Building Services comprising the Common Elements) is destroyed and/or substantially damaged so as to require re-construction, the Board shall repair and restore the destruction and/or damage to the Common Elements and the Limited Common Elements.

If the Building is to be repaired or restored, the net proceeds of insurance shall be paid to the Condominium Board or (at the option of the Board if such proceeds exceed $1,000,000) to an Insurance Trustee appointed by the Condominium Board and applied for such purpose.

Section R-6.2.1. Insufficient Net Proceeds of Insurance. If the net proceeds of insurance shall be insufficient to repair or restore the affected Common Elements, Limited Common Elements, Association's Assets and (to the extent insurable by the Board) Units, the Board shall assess the deficiency as Additional Common Charges as follows:

(a) in the case of said deficiency to repair and restore the destroyed or damaged Common Elements: the deficit shall be assessed as a Common Expense to all Owners, Pro Rata to their respective Common Interests; or

(b) in the case of said deficiency to repair and restore the destroyed or damaged Units or Limited Common Elements: the deficit shall be assessed as Additional Common Charges to each of the respective Owners of such Units or to each of the respective Owners of the Units to which such Limited Common Elements are appurtenant, in each case Pro Rata to their respective Common Interests.

Section R-6.3. *Abatement in Common Charges*. If, through no fault of a Unit Owner or for which a Unit Owner is accountable under the Condominium Documents, a destruction or damage renders a Unit wholly or partially unusable for the purposes permitted in the Declaration, or the means of reasonable access thereto is prevented, the Common Charges otherwise payable by such Unit Owner shall proportionately abate until such Unit shall again be rendered useable for the purposes permitted in the Declaration and/or until the means of reasonable access thereto shall be restored, as the case may be. The amount of abatement shall be determined by the Condominium Board based on:

(a) the net amount not recovered by the Board and the affected Owner from insurance maintained by each;

(b) the resulting increase in Common Charges to other Unit Owners not being unduly economically burdensome; and

(c) equitable considerations, as determined by the Board in its discretion, reasonably exercised.

If the destruction or damage shall be caused by an Act or Omission of the Unit Owner or for which a Unit Owner is responsible or accountable pursuant to Condominium Documents, the Common Charges otherwise payable by such Owner shall abate to the extent only of any proceeds of business interruption or similar insurance actually collected by the Condominium Board with respect to such Owner's affected Unit.

If the Common Charges of a Unit is abated, such abatement shall not excuse the other Unit Owners from the obligation to pay the full amount of the Common Expenses assessed by the Board

to such Unit Owners, including their respective Pro Rata share of the amount abated to the affected Unit.

Section R-7. Restrictions on Occupancy and Use. The restrictions on occupancy and use of Units are summarized below and set forth in the Declaration (see Section 10.13).

Section R-7.1. *Limitation on Pets*. No bird, reptile or other animal shall be permitted, raised, bred, kept, or harbored in Sold Units, other than domestic dogs and domestic cats (not to exceed four (4) in the aggregate), unless, in each instance, the same shall have been expressly permitted in writing by the Condominium Board or the Managing Agent. Any such consent, if given, shall be revocable at any time by the Condominium Board or the Managing Agent, in its sole discretion. No Sold Unit shall be used for the breeding of animals or pets for commercial purposes. No dangerous or poisonous reptiles, insects or other animals shall be kept in any Sold Unit. A permitted pet whose behavior is a nuisance to occupants of other Units or is the cause of an unsanitary condition or an offensive odor to occupants of other Units shall be removed unless such behavior or condition is corrected within fifteen (15) days after giving written notice thereof and is not repeated more often than twice in any twelve (12)-month period. The foregoing restrictions do not apply to Unsold Units.

Section R-7.2. *Aesthetic Controls*. Sold Units must comply with the following aesthetic requirements: (a) the glass surfaces of a Unit's window or a door leading to a Terrace, Juliette Balcony, Balcony or Yard shall not be painted, colored or otherwise covered without obtaining the prior written consents of both the Condominium Board and (while there is any Unsold Unit) Sponsor; (b) all window shades, blinds, curtains and other treatments must be light colored or have light colored backings facing the outdoors in conformity with the Rules and Regulations, as they may be duly amended by resolution of the Condominium Board from time to time (subject to obtaining the prior written consent of Sponsor while Sponsor owns any Unsold Unit); (c) no Unit windows or door (including hardware and saddles) leading to a Balcony, Terrace or Yard may be replaced, removed or otherwise altered without obtaining the prior written consents of both the Condominium Board and (while Sponsor owns any Unsold Unit or until issuance of the Final Certificate of Occupancy, whichever is the later to occur) Sponsor; (d) no radio antennae, satellite dishes or other communication devices may be installed in, on, or to, or projected from, a Unit window, Terrace, Juliette Balcony, Balcony or Yard, or any Structures enclosing these areas, or other area visible from the street; (e) no "For Sale", "For Rent" or other signs may be installed in, on or to, or otherwise displayed from a Unit's window, Terrace, Juliette Balcony, Balcony or Yard, or any Structures enclosing these areas, or other areas visible from the street; (f) no Balcony, Terrace, Juliette Balcony or Yard shall be enclosed, altered or partitioned, without obtaining the prior written consents of both the Condominium Board and (while there is any Unsold Unit or until issuance of the Final Certificate of Occupancy, whichever is the later to occur) Sponsor in each instance; (g) no Balcony, Terrace, Juliette Balcony or Yard may be landscaped, furnished, painted or otherwise decorated with any planter, structure, object or otherwise without obtaining the prior

written consents of both the Condominium Board and (while there is any Unsold Unit) Sponsor in each instance; and (h) all permitted gardening items located on a Balcony, Terrace, Juliette Balcony or Yard shall be properly pruned so that they shall not hang over the railings, parapets or other Structures, or otherwise outside the borders of the Unit's Balcony, Terrace, Juliette Balcony or Yard (if and as applicable); and (i) the height of a tree on a Balcony or Terrace shall not be taller than six feet, including its container and supports. The foregoing restrictions are not applicable to Unsold Units. In no event may a Balcony, Terrace, Juliette Balcony or Yard be enclosed in a manner that would use, impair, infringe or otherwise affect the Excess Development Rights reserved exclusively to Sponsor without obtaining the consent of Sponsor. See Section A-14 and Section A-23.

Section R-7.3. *Permitted Use*. Sold Units are to be used only for dwelling and incidental home occupation purposes permitted by Law. These limitations are more restrictive than those applicable to Sponsor's Unsold Units, which may be used for all lawful purposes (other than Prohibited Uses), including as models and offices for the sale, promotion, rental, operation and management of Unsold Units.

A Sold Unit's Balcony, Terrace or Yard (if and as applicable) may be used only for lounging, sunbathing and other passive recreational activities, and for no other purpose, and may be used and occupied only in accordance with the same Unit Users applicable to the interior of the Unit.

A Juliette Balcony is a decorative element of a Building Wall and may not be used by an Owner or tenant of a Sold Unit to install therein, thereon or therefrom:

(a) satellite dishes, antennae of similar Communications Facilities; or

(b) flower, plant or other horticulture containers, structures or other objects, unless in compliance with applicable Laws and after first obtaining the reasonable consent of the Board and (until there are no Unsold Units and the Final Certificate of Occupancy of the Building is issued) the consent of Sponsor in each instance.

A Storage Locker shall be used only for the storage of personal effects of the Owner or a tenant of a Unit to which it is appurtenant, and in no event shall any food or other perishable item, or any flammable or explosive item, or any item that would impose a health or safety threat or cause noxious odors, dirt or other sanitary problems or create a nuisance, be stored in a Storage Locker.

Section R-7.4. *Occupancy Restrictions*. In order to provide for the congenial occupancy of the Property and to protect the value of Units, occupancy of Sold Units shall be limited to the following:

(a) if owned or leased by one or more individuals: occupancy shall be limited to the individual Owner or a tenant registered on the records of the Condominium Association, or such

Owner's or tenant's (as applicable) Household and (for a limited period) Guests of such Owner or tenant (as applicable); or

(b) if owned or leased by a corporation, partnership, limited liability company, trust, consulate, sovereign government, or other Entity: occupancy shall be limited to an individual who is an officer, director, shareholder, member, partner, fiduciary, trust grantor or beneficiary, principal or employee designated by such Entity, and said designee's Household and for a limited period of time temporary Guests.

The Condominium Board, however, may, in its sole discretion, permit Sold Units to be occupied by other persons. The foregoing restrictions on occupancy do not apply to Unsold Units, which may be occupied by anyone, regardless of relationship or lack of relationship with the respective Owners of such Units.

Section R-7.5. *Restrictions on Illegal or Offensive Uses.*

Section R-7.5.1. Prohibited Uses. No Sold Unit may be used for any Prohibited Uses, namely:

(a) any use or alteration of, or matter kept in or on, a Sold Unit or its appurtenant Limited Common Element, that, in the Business Judgment of the Board, would impair or threaten the structural integrity of the Building, or damage to the Common Elements or another Unit Property, or the life, health, safety, protection or security of Owners or tenants of Units;

(b) any use that violates applicable Laws (as such Laws may change from time to time as a result of a statutory change, a zoning variance, a new or amended Certificate of Occupancy of the Building or otherwise);

(c) any use of, or matter kept in or on, a Sold Unit or its Limited Common Element, whether permitted or suffered, that increases the rate of insurance of the Property, or results in, or in the Business Judgment of the Board would result in, the cancellation or notice of cancellation of insurance maintained by the Board;

(d) any use of a Sold Unit that increases or, in the Business Judgment of the Board, would increase, the rate of insurance for the Property above the rate in effect at the date of recording the Declaration, unless the Unit Owner responsible for such increase pays the additional premium therefor as a Specially Allocated Expense;

(e) any use inconsistent with or in violation of its permitted use;

(f) any use of, or practice permitted or suffered in, on or to a Sold Unit or its Limited Common Element, a Common Element, a vault or the Sidewalk that, in the Business Judgment of the Board, is an unreasonable and substantial annoyance or nuisance to an Owner or a tenant of another Unit or an unreasonable, substantial and repeated interference with the peaceful possession

or proper use and enjoyment of a Unit or the Common Elements for their intended or permitted purposes as stated in the Condominium Documents;

(g) any use of a Common Element causing or comprising waste;

(h) any use involving the storage, purchase, sale, disposal or release or other disposition of any hazardous, explosive, toxic or radioactive material, matter, substance or waste that is or becomes regulated under applicable Law, including: asbestos; polychlorinated biphenyls (i.e., "PCBs"); radioactive substances; petroleum, petroleum-based derivatives and hydrocarbons; urea formaldehyde; and any "hazardous substance" or "hazardous waste", as defined in and regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, 6903, 6921, et seq., as each statute may hereafter be amended from time to time, or any other existing or hereafter enacted or promulgated new applicable federal, state or local Law, but excluding from the foregoing the following:

(h-1) petroleum products for mechanical equipment of a Unit or Common Element that are properly used and stored in accordance with applicable Law or the Condominium Documents; and

(h-2) cleaning, heating and lubricating products in general use in first-class, high quality residential buildings located in the vicinity of the Building and similar to the Building's amenities; provided, however, such products are properly used and stored in accordance with applicable Laws);

(i) any use of a Unit or any portion thereof by any International Organization, unless such International Organization waives its sovereign or diplomatic immunity in conformity with the terms contained in the Declaration; and

(j) any change in use that would require a new or amended Certificate of Occupancy that would affect the permitted use of another Unit.

Section R-7.5.2. Other Restrictions. No barbecuing shall be allowed in a Unit or on its appurtenant Terrace, unless permitted by Law. No barbecuing shall be allowed on a Juliette Balcony.

To safeguard against noise disturbances:

(a) at least 80% of a Sold Unit's floors (excluding kitchen, pantry (if any), bathrooms, powder room (if any) and closets) shall be carpeted or otherwise covered with an equally effective noise reducing material [CAVEAT: though this requirement is intended to reduce or reasonably minimize the transmission of noise between floors, it will not make a Unit soundproof against noise transmitted between floors or from an adjacent hallway or carried through common shafts or ducts];

(b) loud playing of musical instruments, sound systems, radios, television sets or other devices in a Sold Unit that disturb or annoy other occupants of the Building shall not be permitted between midnight and the following 8:00 a.m. and in no event shall singing or practicing musical instruments be allowed in Sold Units before 9:00 a.m. or after 10:00 p.m.;

(c) repairs and alterations to Sold Units shall be performed on such days and during such hours as shall be determined by the Condominium Board;

(d) a Balcony, Terrace and Yard may not be used for sleeping, dining or any other any type of "living" or habitable space, or as an office (see Section A-14.3); and

(e) a violation of the smoking policy, which (among other requirements):

(e-1) bans smoking, e-smoking, smoke and vapors in and on the indoor and outdoor Common Areas and on Balconies, Terraces and the Yard, but not within the interior of Units;

(e-2) requires the Owner, at his or her sole cost and expense, to abate any smoke or vapors to emanate from Owner's Unit to a Common Area or another Unit;

(e-3) applies to Owner, Owner's tenant and all Permitted Users of Owner's Unit;

(e-4) makes Owner responsible and accountable for a violation of this smoking and e-smoking ban attributable to the Owner's tenant or other Permitted User of Owner's Unit;

(e-5) if violated by an Owner or Owner's tenant or other Permitted User of Owner's Unit, permits the Board to impose on Owner a fine of $75.00 a day, a $250 charge for notice of violation sent by the Board's counsel, and to pay all losses paid or incurred by the Board to remedy the violation.

See Sections A-32 and A-42 for discussion.

Section R-7.6. *Limitations on Guest Privileges*. The Owner's Household and temporary Guests will be permitted to occupy the Unit even though the Owner or Owner's tenant (as applicable) is absent; provided, however, at least one Household member of the Owner or tenant aged 18 years or older is simultaneously in occupancy overnight. No transient or short-term occupancy or stay, similar to a hotel, motel, dormitory, bed and breakfast, boarding house (other than Guests) shall be accommodated in a Sold Unit or any room of a Sold Unit at any time.

Section R-7.7. *Limitations in Utilization of Common Elements*. The Common Elements are for the use and enjoyment in common by all Unit Owners and their respective tenants for all purposes for which they are reasonably intended, suited and capable, subject to the Board's Governance Rights. The Condominium Board shall have the right to determine, and to amend the Rules and Regulations governing, the use of the Common Elements, including moving into and out of the Building to assure reasonable access to, and use of, other portions of the Common

Elements by other Unit Users. The Condominium Board shall not impose or collect any fee, charge or other imposition in connection with a move into or out of the Building, or such use of the Common Elements, other than a security deposit from Owners and tenants of Sold Units only (but not Unsold Units), which may be applied to pay the costs and expenses to repair damage to the Common Elements attributable to such move. The unapplied amount of such security deposit shall be refunded to the applicable Owner or tenant of a Sold Unit with commercially reasonable diligence after completion of the move. The amount of the security deposit shall be determined by the Board, in its Business Judgment.

See Section O-1.6 for summary of rights of Sponsor to use the Common Elements.

Section R-7.8. *Limitations in Certificate of Occupancy and Zoning Law*. The Temporary Certificate of Occupancy to be issued as and when Units are completed, and the Final Certificate of Occupancy to be issued upon completion of all Units, will limit the use of Residential Units as one-family dwellings and any incidental home occupation allowed by Law. The foregoing use is permitted by the current zoning for the Property, which is zoned R8B, which permits residential and community use as of right.

Section R-8. Remedies. The remedies available to the Condominium Board and Sponsor in the event of a violation of the Declaration or the By-Laws for other than non-payment of Common Charges or Special Assessments are contained in Article 16 of the By-Laws and include the remedies set forth below.

Section R-8.1. *Self Help*: If a Unit Owner fails to cure a violation within thirty (30) days (or ninety (90) days if not reasonably susceptible to cure within thirty (30) days) after being given written notice of the violation, Sponsor or (if Sponsor fails to act with commercially prompt diligence) the Condominium Board shall have the right (but will not be obligated) to remedy the violation for the account and at the expense of the Unit Owner. All amounts owed to the Board shall constitute Additional Common Charges payable by such Unit Owner. In the event of an Emergency, the foregoing remedy of self-help may be exercised immediately, without prior notice and without allowing the Unit Owner a cure period.

Section R-8.2. *Abatement and Enjoinment*. In the event that any Unit Owner shall violate any of the provisions of the Condominium Documents on such Owner's part to be observed, fulfilled or performed, Sponsor (until there is no Unsold Unit and the Final Certificate of Occupancy is issued) or (if Sponsor fails to act with commercially prompt diligence) the Condominium Board shall have all rights and remedies available at law and in equity, including the right to enjoin, abate or otherwise remedy the continuance or repetition of any such violation, and to compel specific performance, by appropriate Litigation.

Section R-8.3. *Violation of Sponsor's Rights*. The violation of any of the terms of the Condominium Documents or the Plan with respect to any of Sponsor's Rights thereunder shall give to Sponsor the right of self-help and the right to enjoin, abate or remedy the continuation or

repetition of any such violation by appropriate Litigation on the terms set forth in Article 16 of the By-Laws. If the Board violates Sponsor's Rights, Sponsor will have these same remedies against the offending Board when the Independent Board Members constitute a majority of all Board Members.

Section R-9. Arbitration. Any dispute between or among the Unit Owners or one or more Unit Owners and the Condominium Board arising out of the Declaration or the By Laws for which arbitration is expressly required shall be submitted to expedited arbitration (referred to as "**Baseball Arbitration**"), and not court action or proceedings, conducted in The City of New York, unless all parties to the dispute unanimously agree to resolve their dispute in any other manner.

All disputes shall be submitted for resolution by three arbitrators, unless otherwise mutually agreed to by all parties involved in the arbitration.

Under Baseball Arbitration, each party to the dispute will have the right to submit a memorandum supporting the party's position in the dispute and a memorandum rebutting the position of the other party or parties to the dispute. A majority of the arbitrators shall determine the memorandum they believe is the most accurate or correct position on the question at issue without adding to, subtracting from or otherwise modifying such memorandum.

The losing disputant or disputants in the arbitration shall pay all costs and expenses of such arbitration, together with, if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction, Legal Expenses and Per Diem Interest thereon of the disputant who submitted the winning memorandum. If the Condominium Board is involved in the arbitration, then:

(a) the amounts owed to the Board shall constitute Additional Common Charges; or

(b) the amounts to be paid by the Condominium Board shall constitute a Common Expense and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section R-10. Rules and Regulations. Unit Owners will be required to comply with the Rules and Regulations attached to the By-Laws (see DOCUMENT 7 in Part II of this Plan), as they may be amended from time to time by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present. The Condominium Board shall have the right from time to time to amend the Rules and Regulations without recording a Condominium Amendment, including details of the operation and use of the Common Elements and Limited Common Elements, and certain activities or prohibitions against offensive conduct of Owners or tenants of Units. No change to the Rules and Regulations shall by binding upon, or enforceable against Sponsor or an Owner or tenant of an Unsold Unit.

Any changes to the Rules and Regulations shall become effective against, and binding upon, Owners and tenants of Units on the tenth (10th) day (or such later date as may be specified by the Board) after a copy of the complete text thereof shall be given to each and every Owner

then of record. The Owner shall be responsible to give to the tenant of Owner's Unit a copy of the Rules and Regulations and all changes thereto.

A violation or failure to comply with the Rules and Regulations, as duly amended from time to time, shall constitute a violation of the By-Laws, entitling the Condominium Board to all of the same remedies against the offending Owner as are contained in the By-Laws.

Section R-11. <u>Termination of Condominium</u>. The Condominium will terminate in the event of:

(a) 75% or more the portion of the Property of the rentable square footage of the Building is taken by condemnation or eminent domain or the portion taken would not, under then existing economic conditions and Laws, readily accommodate a new or reconstructed building of a type and size generally most similar to the Building existing at the date of the taking;

(b) a withdrawal of the Property from the Condominium Act authorized by not less than 80% in number and Common Interest (fractions shall be rounded down) of all Unit Owners; or

(c) a casualty in which three-fourths or more of the Building is destroyed or substantially damaged so as to require re-construction and not less than 80% in number and Common Interest (fractions shall be rounded down) of all Unit Owners elect to withdraw the Property from the Condominium Act.

The vote to withdraw from the Condominium Act shall not be effective or counted without obtaining the consent of the holder of each Registered Mortgage on such Owner's Unit, if such Registered Mortgage so expressly provides. Sponsor and all other Owners of Unsold Units (if any) shall not vote its interests appurtenant to any Unsold Unit for withdrawal unless at least 80% in number and Common Interest (fractions shall be rounded down) of all other Unit Owners have voted in favor of such withdrawal, at which time Sponsor and said other Owners of Unsold Units may vote either in favor of, or against, withdrawal from condominium ownership, as each sees fit.

The Condominium Board and its Affiliated Nominee or Designee shall have no voting rights with respect to any Units owned by each of them and such parties and Units shall be excluded from the base number of Owners, Units and Common Interests for quorum and voting purposes in determining whether such 80% threshold is met.

Any action to terminate the legal status of the Property as a condominium under the Condominium Act after the occurrence of one of the foregoing termination events shall be subject to obtaining the consent in writing of Institutional Lenders holding Fannie Mae, FHA or other federally insured, guaranteed or financed Permitted First Mortgages comprising at least 51% of the Common Interests of Units subject to mortgages. The rights of such Institutional Lenders of federally, insured, guaranteed or financed Permitted First Mortgages are subject to any superior rights of a governmental condemning authority under applicable Law.

In the event of said taking by condemnation or eminent domain, the award of the taking authority shall be distributed among all Owners Pro Rata to the respective then existing fair market values of the Units and their respective appurtenant Common Interests as determined by the taking authority. Each Unit Owner shall have the right to pursue a separate claim against the taking authority for its share of the award, which may include an award for all individual Unit Facilities and custom changes and improvements that are appurtenant to the Owner's Unit as well as for relocation and moving expenses and similar allowances designed to facilitate relocation of a displaced business concern.

In the event of the withdrawal from condominium ownership, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common. In such case, the net proceeds of sale resulting from such action for partition, together with the net proceeds of any insurance maintained by the Board, after deducting all reasonable costs and expenses together with any Legal Expenses paid or incurred by the Board in connection therewith (including the costs and expenses to secure and fence in the Property boundary, raze and remove the Building (if and to the extent necessary) and otherwise make the Building secure and safe), shall be regarded as one fund and shall be divided among all of the Unit Owners Pro Rata to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid out of such Owner's share of such funds, such amounts as may be necessary to discharge all unpaid liens on said Owner's Unit in the order of the priority of such liens.

Section R-12. Incurring Debt.

Section R-12.1. *Terms to Incur Debt.* The Condominium Board may not borrow any sum during the Sponsor Veto Control Period without first obtaining Sponsor's prior written consent therefor. Thereafter, the Condominium Board may incur debt in accordance with RPL Section 339-jj, which permits the Condominium Board to incur debt for maintenance, repairs, additions, improvements, replacements, working capital, bad debts and unpaid Common Expenses, depreciation, obsolescence or similar purposes, provided that:

(a) such debt is incurred no earlier than the fifth (5th) anniversary of the First Unit Closing, except under the By-Laws all Owners shall conclusively be deemed to have irrevocably and unconditionally waived said five-year restriction on incurring debt by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit to the full extent such waiver is permitted by Laws; and

(b) a majority in Common Interest of Unit Owners consent to the incurrence of such debt.

Section R-12.2. *Security for Debt.* Any debt incurred by the Board in accordance with this Plan, the By-Laws and said Section 339-jj may be secured by the Board as follows:

(a) the Board may assign the rights in and to future income and Common Charges;

(b) the Board may create a security interest, mortgage or other encumbrance on funds or other real or personal property held by the Board,

(c) the Board may agree the Common Charges received and to be received by the Board shall constitute trust funds for the purpose of paying the debt; and

(d) the Board may agree to increase Common Charges at lender's direction to the extent necessary to pay any amount when due under the debt instruments.

Section R-13. Real Property Law Section 339-kk. Under RPL §339-kk, if an Owner rents his or her Unit and fails to pay Common Charges, Special Assessments or other Additional Common Charges (including late fees) within sixty (60) days of the expiration of any grace period after they are due, upon notice thereof to the tenant, all rental payments from the tenant shall immediately and directly be payable to the Condominium Board. The Owner may dispute the Condominium Board's claim to the rental payments and present facts supporting the Owner's position at the next scheduled meeting of the Condominium Board, which must be held within thirty (30) days of the date that such Board receives notice that such Owner seeks to dispute such claim.

Payment of rent by the tenant to the Condominium Board in accordance with the foregoing shall relieve the tenant from the obligation to pay the rent to the Owner and shall be an absolute defense in any nonpayment proceeding commenced by the Owner against the tenant for the rent.

At such time as such delinquent Owner is again current in payments for Common Charges, Special Assessments and other Additional Common Charges (including late fees), notice of such fact shall be given within three business days thereafter to said tenant and Owner. Thereafter, all rental payments shall be made payable to the Owner or such Owner's designated agent.

Nothing in RPL §339-kk limits any rights of the Unit Owner or the Condominium Board existing under any other Laws or agreement, nor excuses the obligations of the Owner to the tenant under the lease and applicable Laws.

Section 339-kk does not address certain issues, including the following:

(a) the priority of rights between the Condominium Board and a holder of a mortgage secured by the Unit of a delinquent Owner or the assignee of a collateral assignment of rents given by such Owner to collect rents from such Owner's tenant;

(b) the remedies of the Condominium Board if the tenant fails or refuses to make rental payments to the Board after giving the required notice under Section 339-kk; and

(c) the remedies of a delinquent Owner if such Owner disputes the Condominium Board's claim to rental payments and thereafter the Board fails, refuses or delays in scheduling the required meeting at which the delinquent Owner is entitled to present facts supporting such Owner's position or said meeting is held but the Board rejects such Owner's position.

Sponsor makes no representation with respect to the foregoing issues or the income tax consequences while the rental payments from such Owner's tenant are being collected by the Condominium Board, or otherwise. Prospective Purchasers are advised to consult their own attorneys or advisers with respect to Section 339-kk and its impact on them.

END OF SECTION R

SECTION S. REAL ESTATE TAXES

Section S-1. Separate Assessment of Units. Each Unit will be assigned a separate tax lot upon the recording and filing of the Condominium Documents in the City Register's Office. After the Units are separately assessed and billed for real estate taxes, each Unit will be taxed as a separate tax lot for real estate tax purposes and the Unit Owner will not be responsible for the payment of, nor will his or her Unit be subjected to, any lien arising from the nonpayment of, taxes on other Units.

Section S-1.1. *Delay in Separate Assessments*. Generally, the Units will not be separately assessed and billed for real estate taxes by the taxing authority for a period of approximately six months following the recording and filing of the Condominium Documents. Until then, real estate taxes will continue to be assessed to the entire Property, which shall be included in the Common Expenses and apportioned and assessed among the Units by the Condominium Board Pro Rata to their respective Common Interests as explained below.

Section S-1.2. *Procedure to Pay Real Estate Taxes to Board*. While the real estate taxes are assessed to the entire Property, each Unit Owner will pay his or her share of such taxes to the Condominium Board as part of the Unit's Common Charges, which is allocated and apportioned to all Units Pro Rata to their respective Common Interests. This is the same method used to determine each Unit's projected real estate taxes in the Offering Price Schedule. Berger P.C. reports in its opinion letter that this is the current method used by the New York City Department of Finance. Berger P.C. cautions that it is uncertain if DOF will apportion based upon common interest percentage. DOF may also apportion based upon square footage, taking into account extrinsic indicia of value, including location, square footage, amenities, income producing potential and then existing leases of particular units, data set forth in the Offering Plan, or a combination of methods. Berger P.C. does not represent, assure or guarantee that any particular apportionment methodology will be employed by. Accordingly, the actual apportionment of the assessed valuation among the Units may change and vary, perhaps substantially, from the projections used in estimating the real estate taxes of Units in the Offering Price Schedule. See Section A-10.

Section S-1.3. *Adjustments*. Once the Units are separately assessed and billed for real estate taxes, the Condominium Board and each Unit Owner whose Unit was not separately billed for real estate taxes at the Closing of Title will have the right to adjust any overpayment or underpayment of such real estate taxes. The adjustment shall be based on the real estate taxes attributable to the Unit and paid by the Unit Owner as part of the Common Charges and the ratio that the initial actual separate assessed valuation of such Unit bears to the aggregate initial actual separate assessed valuations of all Units, in each case inclusive of any real estate tax exemption or abatement, if applicable, and the tax rate applicable to the Unit at Closing of Title.

Written notice setting forth a calculation of the amount due must be sent within a deadline of sixty (60) days after the Unit is separately assessed and billed for real estate taxes. Such sixty (60)-day period is a "TIME OF ESSENCE" period. If notice is not timely sent, no adjustment will be made. Any underpayment owing to the Condominium Board will be regarded as Additional Common Charges and, if not paid, will entitle the Condominium Board to all the rights and remedies in the case of nonpayment of Common Charges. Any overpayment to the Condominium Board will be credited against (that is, reduce) the next due payments of Common Charges or (at the sole option of the Condominium Board) refunded to the Unit Owner.

With respect to each Unit that closes title before the Unit is separately assessed and billed for real estate, the Purchaser of such Unit and Sponsor will each have the same right, for only said sixty (60)-day deadline period ("TIME OF ESSENCE"), to adjust any overpayment or underpayment of real estate taxes apportioned at Closing in accordance with the foregoing.

Section S-2. 2022/2023 Tentative Assessed Valuations.

Section S-2.1. *20221/20232 Tentative Assessed Valuation*. The tentative assessed valuation of the Property for the July 1, 2022 to June 30, 2023 fiscal tax year before completion of construction and rehabilitation of the Building is provided below for informational purposes only.

Tax Year	Land	Total	Tax Class
7/1/2022 to 6/30/2023	$159,337	$928,821	2B[1]

(1) Currently classified based upon 7 to 10 Residential Units. After the Declaration is recorded, Berger P.C. advises in it opinion letter that the Property should be reclassified as tax class 2C.

CAVEAT: The assessed valuations for the 2022/2023 fiscal tax year does not reflect the higher assessment to be applicable upon completion of construction and rehabilitation and is being provided for informational purposes only.

Section S-2.2. *Method to Determine Assessment*. Real estate taxes are set by the DOF based on its determination of a property's fair market value. Berger P.C. explains in its opinion letter (reproduced at the end of this Section S) the various methods that might be utilized by the property division of said DOF to assess a property to determine its fair market value. See Section S-5 for restrictions or limitations on assessments of condominium units under state laws.

Section S-3. Projected Real Estate Taxes in SCHEDULE A. The first year of Condominium operation is projected to begin on or about January 1, 2023, which corresponds to the last six (6) months of the 7/1/22 to 6/30/23 fiscal tax year when a *pre-completion of construction and*

rehabilitation taxable assessed valuation of the Property will be in effect, and the first six (6) months of the 7/1/23 to 6/30/24 fiscal tax year, when a *post-completion of rehabilitation* taxable assessed valuation of the Property is expected to be in effect. The projected real estate taxes in SCHEDULE A is based on the projected 7/1/23 to 6/3024 *post-completion of rehabilitation* taxable assessed valuation of the Property and reflects the post-construction taxes.

In estimating the real estate taxes for July 1, 2023 to June 30, 2024 fiscal tax year, Berger P.C. estimates as follows:

Estimated Tax Rates

Tax Year	Residential (Class 2)
2023/2024	13.361 %

2023/2024 Tax Year (After Completion of Rehabilitation and Construction) (First Full Tax Year)

Projected Actual Assessed Valuation (residential units):	$ 1,774,598
Taxes Payable @ 13.361%:	**$ 237,104**

Based upon information provided by Sponsor, Berger P.C. estimates on January 5, 2023 the post-completion of rehabilitation assessed valuation of the Property will be determined and the estimated 7/1/23 to 6/30/24 post-completion of rehabilitation real estate taxes for all Units will be $237,104 (based upon as estimated A.V. of $1,774,598 and an estimated tax rate of 13.361% per $100 of A.V.). See Section A-10. For further details, see Berger P.C.'s opinion letter in Section S-9.

SPONSOR, SELLING AGENT AND BERGER P.C. DO NOT REPRESENT, ASSURE OR GUARANTEE THE ACTUAL ASSESSED VALUATION, TAX RATE, TAX CLASS, REAL ESTATE TAXES OR THE PORTION OF THE PROPERTY'S ASSESSED VALUATION TO BE ALLOCATED OR APPORTIONED TO EACH UNIT BY THE TAXING AUTHORITY, WHICH WILL LIKELY VARY, PERHAPS SUBSTANTIALLY, FROM THE ESTIMATES IN THIS PLAN AND BERGER P.C.'S OPINION.

Section S-4. Changes in Assessed Valuation. A property's actual assessed valuation may change from year to year based on: (a) improvements to the property, which would increase its actual assessed valuation and be taxable in full in the year the actual assessed valuation is increased; or (b) an increase or decrease in market value of the property, which would correspondingly increase or decrease its actual assessed valuation. After the Declaration is recorded, the Units are expected to be reclassified as tax class 2C property and will pay taxes based on the tax class 2C tax rate. Properties, including the subject Property, classified in tax class 2A,

2B, or 2C do not benefit from a transitional assessment and therefore do not benefit from any five-year assessment phase-in period

Section S-5. Real Property Law §339-y and Real Property Tax Law §581. The conversion of the Property to condominium ownership and the sale of Units under this Plan are not expected to have a material effect on the Property's assessment based on the impact of two statutes. They are: (a) Real Property Law §339-y(1)(b), which prohibits the aggregate of the assessment of condominium units plus their common interests from exceeding the total valuation of the property as though it was assessed as a single parcel; and (b) Real Property Tax Law §581, which requires a property owned on a condominium basis to be assessed no higher than it would have been had it not been owned on a condominium basis. The intended effect of these laws is to prevent the total assessments of all units and their common interests in a property that is owned as a condominium from exceeding the total valuation of the property had it instead been operated as a rental. Since laws are subject to varying interpretations, Sponsor, Selling Agent and Berger P.C. cannot, and do not, represent, assure or guarantee how these laws will be applied to the assessed valuations of the Units.

Section S-6. Tax Certiorari Proceedings. Proceedings are pending to reduce the Property's real estate taxes. The tax years involved, the Index Numbers and the captions of the proceedings are as follows:

Tax Year	Index No.	Caption
2017/18	258532/2017	W 108 Development LLC vs Tax Commission of the City of New York and the Commissioner of Finance of the City of New York (filed 10/12/17 with the New York County Supreme Court)
2019/20	256854/2019	W 108 Development LLC vs Tax Commission of the City of New York and the Commissioner of Finance of the City of New York (filed 10/4/19 with the New York County Supreme Court)
2020/21	252712/2020	W 108 Development LLC vs Tax Commission of the City of New York and the Commissioner of Finance of the City of New York (filed 9/28/20 with the New York County Supreme Court)
2021/22	253874/2021	W 108 Development LLC vs Tax Commission of the City of New York and the Commissioner of Finance of the City of New York (filed 10/4/21 with the New York County Supreme Court)

Sponsor shall exclusively pay all cost and expenses of these proceedings and exclusively receive all benefits derived therefrom. The current status of all of the proceedings are pending with no additional information. The tax estimates provided in the plan, including the Schedule A, Notes thereto, Real Estate Taxes section and Tax Expert's Opinion Letter reflect the current estimates and are not based on any potential future impact of the tax certiorari proceedings which cannot be determined at this time. The Plan will be amended to disclose the material updates pertaining to the certiorari proceedings.

Sponsor reserves the right to seek to reduce the Property's real estate taxes for all fiscal tax years that begin prior to the First Unit Closing. Any refund, reduction or savings in real estate taxes for a tax year preceding the Closing of Title to a Unit will be paid and belong entirely to Sponsor. Any refund, reduction or savings in real estate taxes for the tax year in which the Closing of Title to a Unit is consummated, after deducting the Legal Expenses and related costs and expenses attributable to obtaining such refund, reduction or savings, will be apportioned between the Purchaser of such Unit and Sponsor in accordance with the respective portions of the tax year that each owns the Unit. The Legal Expenses and related costs and expenses of the application and (if applicable) proceeding to reduce taxes will not be charged to a Purchaser unless the tax year at issue relates to such Purchaser's period of ownership and the Purchaser's taxes are refunded, reduced or otherwise saved. In such case, the amount charged may not exceed the amount of the Purchaser's refund or the amount in taxes not paid based on a reduction or savings in real estate taxes (as applicable).

If Sponsor's application and (if applicable) the proceeding to reduce real estate taxes results in a refund, reduction and/or savings in an Owner's real estate taxes for a tax year subsequent to the tax year title closes, such Owner will reimburse Sponsor for his or her Pro Rata share of the Legal Expenses and related costs and expenses incurred to obtain such favorable result. However, in no event will the amount to be reimbursed exceed the amount of the refund or the amount not paid by reason of such reduction or savings. The Unit Owner is to reimburse Sponsor within ten (10) days after Sponsor sends said Owner a written demand for payment, which will include a detailed statement of all Legal Expenses and related costs and expenses incurred and the basis for their apportionment to the Owner.

Section S-7. By-Laws Provision on Review of Assessment. Under the By-Laws (see Section 2.4.2(u)), the Condominium Board is authorized to act as agent for Unit Owners to seek reductions in the tax assessments with the taxing authority. The Board's authority includes applying for administrative and judicial review of the tax assessment and negotiating and settling with the taxing authority. A Unit Owner may revoke the Board's agency by written notice, which must be received before the Board commences any litigation on behalf of the Unit Owner. Sponsor and Selling Agent cannot, and do not, represent, assure or guarantee that the Condominium Board will exercise this authority or the outcome of any tax assessment reduction application or proceeding brought by the Condominium Board.

Section S-8. Real Estate Tax Benefits.

Section S-8.1. *RPTL Section 425 (STAR) Exemption*. Under RPTL Section 425 (known as the school tax relief or "STAR" exemption) an Owner who qualifies for this tax benefit is required to register with the New York State Tax Department. To qualify for the benefit, the combined income of the Owner and spouse (if any) cannot exceed $500,000.00 and the Unit must be the primary residence of at least one Owner. The benefit will be received in the form of a check.

The approximate benefit is a $293 tax reduction for the 2021/2022 fiscal tax year. The benefit is enhanced for seniors aged 65 years or older whose combined income does not exceed more than $92,000. The enhanced STAR is only available to units which serve as the primary residence of one or more of the Owners thereof. The approximate enhanced benefit is a $650 tax reduction. Corporations, partnerships, and limited liability companies are not eligible. A married couple can receive only one STAR benefit regardless of how many properties they own, unless legally separated. This benefit has been excluded from the estimated real estate taxes set forth in the Berger P.C. opinion and this Plan.

Section S-8.2. *RPTL Section 467-a Tax Abatement*. Since its enactment in 1996, RPTL Section 467-a (known as the Coop/Condo Tax Abatement) has provided partial tax abatement to owners of residential cooperative and condominium units. RPTL Section 467-a provides for a partial tax abatement to qualified condominium unit owners in a property that has an average unit assessed value less than or equal to $60,000 or in which an applicant has submitted an affidavit certifying that all building service employees employed or to be employed at the property who work at least eight (8) hours a week shall receive the prevailing wage for the duration of such property's tax abatement. The Condominium Board must file with the Commissioner of DOF by February 15th immediately preceding the July 1st to June 30th fiscal tax year a completed application for the entire Property. The tax benefit is based upon 17.5% of the net property taxes due on eligible dwelling units with an average assessed valuation greater than $60,000.

In order for a Unit Owner to qualify for the benefit:

(a) the Owner must have filed a real property transfer tax form or deed with the New York City Division of Land Records at *www.nyc.gov/acris*;

(b) the Unit is required to be the primary residence of the Owner;

(c) the Unit must be purchased on or before January 5 to qualify for the abatement for the upcoming tax year (if the Unit is purchased after January 5, the Owner can apply for the next tax year);

(d) the Owner cannot own more than three Units in the Property and one of the Units must be the owner's primary residence;

(e) the Unit Owners cannot be receiving real estate tax exemption benefits under Section J-51 (i.e., Section 11-243 of the New York City Administrative Code) or Real Property Tax Law Sections 420-c, 421-a, 421-b or 421-g;

(f) Units owned by a business (e.g., a limited liability company) are not eligible;

(g) Units held by Sponsor or its successor in interest are not eligible; and

(h) a Unit owned by a trust is eligible only if the Unit is the primary residence of the beneficiary of the trust, trustee, or life estate holder.

The Condominium Board must file a complete application for the entire premises with the Commissioner of the DOF by February 15th immediately preceding the July 1st to June 30th fiscal tax year. The burden of proof is on the applicant to show that the requirements for granting an abatement have been met.

SPECIAL RISK. In order for a Unit Owner to be eligible for the Condo Tax Abatement for a fiscal tax year starting July 1 and ending June 30, the deed conveying a Unit to such Owner must be recorded by January 5th preceding such fiscal tax year. Accordingly, Unit Owners will not be eligible to receive the Condo Tax Abatement benefits for the current July 1, 2022 to June 30, 2023 fiscal tax year. For fiscal tax year July 1, 2023 to June 30, 2024, the deed to a purchaser must be recorded by January 5, 2023. However, the current version of RPTL 467-a is set to sunset on June 30, 2023. Consequently, Unit Owners who otherwise meet the qualifications listed in clauses (a) through (h) above will receive the Condo Tax Abatement benefits for the July 1, 2023 to June 30, 2024 fiscal tax year *only if* the statute is renewed in its current form.

There is no guaranty that RPTL 467-a will be renewed or if renewed, that the benefit will not be reduced or eliminated as it relates to tax year 2023/2024 and thereafter.

Since the average assessment per Unit for tax year 2023/24 is estimated to be greater than $100,000 per Unit, in order for Unit Owners to be eligible for the Condo Tax Abatement, the Condominium Board will be required to submit an affidavit stating that Building service employees who work at least eight (8) hours per week are paid the prevailing wage for the duration of the Property's tax abatement. Under this Plan, Building service employees who work at least eight (8) hours per week are scheduled to be paid the prevailing wage for the duration of the Property's tax abatement. The budget in the Offering Plan accounts for paying such Building service employees the prevailing wage. However, in the event that DOF determines that prevailing wages are required to be paid to Building employees, and such wages are not paid, then no Unit Owners will qualify for any abatement pursuant to RPTL §467-a. Therefore, there is no guaranty that Unit Owners will qualify for the Condo Tax Abatement for 2023/2024 or thereafter.

This Plan will be amended to reflect the status of RPTL Section 467-a when publicly available. The Plan will also be amended to disclose any change to the Condominium's ability to qualify for the Condo Tax Abatement. See Section A-10.2.

SPONSOR, SELLING AGENT AND BERGER P.C. DO NOT REPRESENT, ASSURE OR GUARANTY THAT THIS PROVISION WILL BE RENEWED OR THAT THE BENEFIT WILL NOT BE REDUCED OR ELIMINATED AS IT RELATES TO TAX YEARS 2022/2023 AND THEREAFTER.

Section S-9. Berger P.C. Opinion. The opinion of Berger P.C. of the estimated *pre-completion of construction and rehabilitation* assessed valuation of the Property, the estimated *post-completion of rehabilitation* assessed valuation of the Property, the projected allocation of such estimated valuation to the Units, the estimated tax rates applicable to the Units for the

2022/2023 and the 2023.2024 fiscal tax years, and the application of the RPTL Section 425 (STAR) exemption and RPTL Section 467-a partial tax abatement programs, starts on the next page.

LAW OFFICES
LAWRENCE J. BERGER, P. C.
240 MADISON AVENUE
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LAWRENCE J. BERGER
STEVEN E. RESNICK
HARVEY I. SHIFF

SETH J. GOLDBERG
LESLIE R. PERLMAN
JEREMY A. FRIEDMAN

October 27, 2022

W 108 Development LLC
119 West 72nd Street, #401
New York, New York 10023
Attention: Ms. Orly Gilat

Re: 324 West 108th Street
Block: 1892 Lot: 60, Manhattan

Dear Sir or Madam:

You have requested a projection of real estate tax liability after construction and rehabilitation of the building is completed and the condominium declaration has been recorded. The first post-construction tax year with the projected full assessed value will be tax year 2023/24.

It has been the practice of the Property Division of the Department of Finance of the City of New York ("DOF") to increase the assessed valuation of newly constructed and rehabilitated buildings after construction and rehabilitation has been completed. While there is a formula that has been utilized by DOF in reassessing such properties in the past, it has not been employed consistently and it is therefore not possible to estimate or determine the post-completion of construction and rehabilitation assessed valuation of this property with any degree of certainty. However, the estimates presented below are based upon current policies and practices of that department and upon analysis of comparable neighboring properties as presently assessed per square foot of total building area.

These estimates assume that the assessed valuation will be increased solely due to the construction and rehabilitation being completed by you (the "Sponsor"). All prospective purchasers are advised that although the following estimates of the assessed valuation upon conversion of this property to condominium ownership are good-faith estimates, such assessed valuation, when actually made, may be less or greater than as estimated below.

You have advised us of the following facts, and made the following representations:

1. Upon completion of the condominium conversion, the site will be improved with a six-story residential elevator building containing ten (10) residential units comprising approximately 19,954 square feet combined (all measurements are approximate). Residential Unit 101 will be located on part of the First Floor. Residential Unit 102 will also be located on part of the First Floor and will have a 423 square foot Yard. Residential Units 201 and 202 will be located on the Second Floor. Residential Unit 201 will contain two Juliette Balconies in the total amount of 89 square feet. Residential Units 301 and 302 will be located on the Third Floor. Residential Unit 302 will have two 40 square foot Balconies. Residential Units 401 and 402 will be located on the Fourth Floor. Residential Unit 402 will have two 40 square foot Balconies. Residential Unit 501 will be located on the Fifth Floor and will have a Terrace in the total amount of 239 square feet. PH Unit will be located on the Sixth Floor and will have two Terraces in the total amount of 653 square feet. There will be a 1,541 square foot Community Roof Terrace for use by all Residential Units. All Residential Units will have as part of their respective units a designated storage locker located in the cellar.

2. The cellar will contain a resident exercise room, community/recreation room, bicycle storage, laundry room, maintenance rooms plus meter rooms. The entire cellar will be denominated as a Common Element., except for the portion that houses storage lockers that are part of each Residential Unit. The cellar floor also contains a powder room and a trash room.

3. All units of the property will be condominium units. All ten units will be offered for sale.

4. The material construction and rehabilitation to the property are as follows: a new 6th Floor is being added to the building. A new elevator and elevator shaft are being added. The rear façade is being reconfigured to provide Balconies and/or Terraces, and/or Juliette Balconies to some of the units.

5. In order for the Department of Buildings to approve a work permit for the 6th floor addition, a Zoning Lot Declaration was recorded merging lots 60 and 62 into a single Zoning Lot for purposes of calculation of total development rights on the combined lot.

6. Construction and rehabilitation will be completed after January 5, 2022.

7. No application will be filed with the Department of Housing, Preservation and Development of the City of New York ("HPD") for any real estate tax abatement or exemption benefits.

8. All "building service employees" who work at least eight hours per week will be paid prevailing wages in accordance with RPTL §467-a(1)(j) and (k), as set forth on page 7 *infra*.

ASSESSED VALUATION

The 2022/23 Final Assessed Valuation for the property is as follows:

	Land	Total	Tax Class
Actual	$ 159,337	$ 928,821	2B[1]

There are three recognized appraisal methods which are employed by DOF to determine the full market value of income producing real property. These methods are the original cost method, the capitalization of income approach, and the sales price comparison method.

The original cost method is based on the theory that the value of a given property is reflected by its cost of construction plus the acquisition cost of the underlying land. This method of valuation is considered a highly significant indicator of value with respect to new buildings. Relevant data used in the cost method include material and labor ("hard") costs, and financing, engineering, architectural, testing and professional fees, and construction period taxes ("soft") costs.

The capitalization of income method is based upon the proposition that the annual net income generated by a property, when divided by the rate of return an investor at a given time would accept for his money in a competing investment, yields a close estimate of the market value of the property.

The sales price comparison method is founded upon the belief that value can be ascertained by surveying market prices. Market value has been defined as that price which a property would bring in a competitive and open market, wherein both buyer and seller are acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. However, the sale prices of individual units may not be the basis for arriving at the assessed valuation of a residential building owned as a condominium or as a cooperative housing corporation (see New York State Real Property Tax Law ("RPTL") § 581, and Real Property Law § 339-y).

Since tax year 1982/1983, RPTL § 1805 (3) has mandated that increases in assessed valuation due to appreciation in value must be phased in over a five-year period, resulting in a "transitional assessment". However, **properties, including the subject property, classified in tax class 2A, 2B, or 2C do not benefit from a transitional assessment and therefore do not benefit from any five-year assessment phase-in period. See RPTL §1805(4).**

As discussed above, a Zoning Lot Declaration has been recorded merging subject lot 62 and adjacent lot 60 into a single zoning lot. Each of those lots will remain separate and independent for tax assessment purposes. Tax lot 62 (and any subsequent condominium lots which may be apportioned therefrom) will be assessed reflecting the land and improvements which comprise tax

[1] The subject premises is currently classified in Tax Class 2B (7-10 residential units).

lot 62, as set forth in more detail hereinbelow.

In arriving at the assessed valuation for each unit in the condominium, the building is first assessed as an entirety. This overall assessment is then apportioned among the respective units, each of which will be assigned a tax lot designation by the DOF and included in the description of each unit in the condominium declaration and on the unit's floor plans, which will be recorded and filed, respectively, with the office of the City Register. The apportionment may be based upon the proportion that the common interest percentage of each unit in the common elements bears to the total common interest percentage of all units in the common elements. A DOF memorandum advised that since 2007, DOF's methodology has been to allocate the value of the building to the individual units based on the percentage interest in common elements.

It is uncertain if DOF will apportion based upon common interest percentage. DOF may also apportion based upon square footage, taking into account extrinsic indicia of value, including location, square footage, amenities, income producing potential and then existing leases of particular units, data set forth in the Offering Plan, or a combination of methods (hereinafter, "Proportionate Valuation"). Where DOF apportions based upon common interest percentage, the Proportionate Valuation will equal the common interest percentage. We do not represent, assure or guarantee that any particular apportionment methodology will be employed by DOF. We have not reviewed nor do we endorse the common interest percentages stated in the Offering Plan or condominium declaration.

If construction and rehabilitation are complete prior to January 5, 2023, then tax year 2023/2024 will reflect the first post-completion of construction assessed value. Once construction is concluded, an overall **full** assessed valuation for Tax Year 2023/2024 (including "land" and "building") of $1,774,598 or approximately $88.93 per square foot of gross residential building area (19,954 sf) is projected. Prospective purchasers are advised that this valuation estimate assumes that the taxing authority is assessing a post-completion of construction, completed, occupied building and is not intended to reflect any "progress" or interim valuation. In the event construction is delayed for any reason, it is possible that the 2023/24 assessed valuation may be somewhat lower than as estimated herein.

SPECIAL RISK: This condominium will contain ten (10) residential units and should be classified in Tax Class 2C. In order to determine the post-completion of construction assessed valuation, this office relied on Sponsor's representations regarding the amount of construction costs. Currently, DOF adds 15% of estimated construction costs to the prior year's assessed value. If DOF uses a higher estimate of construction costs than reported by Sponsor and relied upon in this letter, then the assessed valuation may be significantly higher. Our records indicate there are currently renovated buildings in the area in Tax Class 2B that are assessed at or above $130 per sf.

TAX LIABILITY

Real property taxes are payable semi-annually, on July 1 and January 1 (the City operates on a fiscal year commencing July 1 and ending June 30).

The City Council finalized the tax rate for 2021/2022 at 12.235%, and tax bills for fiscal year 2022/2023 have been rendered using that same rate.

2023/2024 Tax Year (After Completion of Construction and Rehabilitation)
(First Full Tax Year)

Projected Actual Assessed Valuation (residential units):	$ 1,774,598
Est. Taxes Payable @ 13.361%:	$ 237,104

The tax liability of a particular unit, assuming (a) the overall Actual Assessed Valuation as stated above; and (b) the Proportionate Valuation calculated in accordance with the guidelines set forth above; and (c) tax rates as estimated above, are projected as follows for fiscal year July 1, 2023 through June 30, 2024:

Est. tax liability for individual residential unit = $ 237,104 x Proportionate Valuation

NOTE: ***The assessed valuation for fiscal year July 1, 2022 through June 30, 2023, represents an interim valuation and does not reflect the full completed construction and rehabilitation. The Assessed Valuation reflecting completed construction and rehabilitation will not be made until tax year 2023/2024, assuming construction is completed by January 5, 2023. In the event that construction and rehabilitation are not completed, and a temporary or final Certificate of Occupancy covering all habitable spaces in the building is not issued, by January 5, 2023, then tax year 2023/24 may be another interim valuation year. If tax year 2023/2024 is an interim valuation year, then the full physical increase may not be reflected until tax year 2024/2025.***

TAX ABATEMENT AND EXEMPTION BENEFITS TO QUALIFIED CONDOMINIUMS AND ELIGIBLE RESIDENTIAL UNIT OWNERS

For Informational Purposes Only

The following abatement and tax relief benefits are presently available to qualified cooperatives and condominiums and their shareholders and unit owners who meet the eligibility requirements of RPTL § 425 ("STAR Credit") and RPTL §467-a ("Coop/Condo Abatement").

STAR

New York State changed the STAR application process as of tax year 2016/2017. New STAR applicants must register with the New York State Tax Department to receive a STAR credit. Any purchaser in this condominium will be considered a new applicant under this program. New applicants who qualify will receive a STAR credit in the form of a check. The property tax exemption closed to new applicants effective March 15, 2015. Only the credit is now available. It is recommended that applicants register promptly upon taking title. Registrations will be accepted for three years from the income tax filing deadline for the year that the credit covers. In order to qualify for the Basic STAR program, the following is required: (1) the combined income of all resident owners and of any owner's resident spouse cannot be more than $500,000 and (2) the property must be the primary residence of at least one owner. The approximate benefit for fiscal tax year 2021/2022 is a $293 tax reduction. The dollar value of the credit will generally be the same as the former property tax exemption. The benefit is enhanced for seniors 65 or older whose combined income does not exceed more than $92,000. The enhanced STAR is only available to units which serve as the primary residence of one or more of the owners thereof. The 2021/2022 approximate enhanced benefit is a $650 tax reduction. Corporations, partnerships, and limited liability companies are not eligible. A married couple can receive only one STAR benefit regardless of how many properties they own, unless legally separated. The Basic and Enhanced Star benefit amounts will vary from year to year.

COOP/CONDO ABATEMENT

Since its enactment in 1996, the Condo Abatement has provided partial tax abatement to owners of residential units held in cooperative or condominium ownership.

The New York State Legislature has agreed to extend RPTL § 467-a (Coop/Condo Abatement) for homeowners that occupy their apartment as their primary residence, with some additional requirements. Commencing with tax year ***2022/23***, the new law will provide partial tax abatement to eligible residential unit owners of qualified cooperatives and condominiums. The statute states, in pertinent part, as follows:

> (j) "Qualified property" means (i) a property with an average unit assessed value of less than or equal to sixty thousand dollars; or (ii) a property with an average unit assessed value of more than sixty thousand dollars and less than or equal to one hundred thousand dollars, and less than thirty dwelling units; or (iii) a property with respect to which an applicant has submitted an affidavit certifying that all building service employees employed or to be employed at the property shall receive the applicable prevailing wage for the duration of such property's tax abatement. RPTL §467-a(1)(j).

Beginning in 2022/23, no dwelling unit in a property other than Qualified property, as defined above, shall be eligible to receive a tax abatement under this section.

In the event that the average assessed valuation exceeds $100,000/unit, the legislation requires an affidavit certifying the payment of prevailing wages to building service workers will be required, and will be deemed public records, that may be produced before a court or administrative tribunal. The New York State Department of Labor has the power to conduct an investigation and hearing and file a final determination to enforce the law and make sure employees are properly paid.

Building service employees are defined in the statute as follows:

> (k) "Building service employee" means any person who is regularly employed at a building who performs work in connection with the care or maintenance of such building. "Building service employee" includes, but is not limited to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, elevator operator and starter, and window cleaner, but shall not include persons regularly scheduled to work fewer than eight hours per week in the building. RPTL §467-a(1)(k).

If the billable assessed value of a Qualified property, as defined above, is reduced after the assessment roll becomes final, any abatement already granted pursuant to this section shall be adjusted accordingly. The difference between the original abatement and the adjusted abatement shall be deducted from any credit otherwise due.

The Cooperative and Condominium Tax Abatement benefit is based upon seventeen and one-half percent (17.5%) of the net property taxes due on eligible dwelling units with an average assessed valuation greater than $60,000. In order to qualify for this Coop/Condo Abatement, the following requirements must be met:

- New condominium owners must have filed a real property transfer tax (RPTT) form or deed with the Division of Land Records at www.nyc.gov/acris.
- The co-op or condo unit must be the owner's primary residence. Co-op shareholders and condominium unit owners must inform the board or managing agent if the apartment is the homeowner's primary residence to receive the abatement. The Commissioner of Finance shall by rule require the unit owner or shareholder of a dwelling unit to certify the primary residence of such unit owner or shareholder.
- The unit must be purchased on or before January 5 to qualify for the abatement for the upcoming tax year. If the unit was purchased after January 5, the homeowner can apply for the next tax year.
- Condominium owners cannot own more than three residential units in any one development and one of the units must be the owner's primary residence.
- Property must be classified as a Class 2 property.
- Properties that are part of the Urban Development Action Area Program (UDAAP) cannot receive the abatement
- Co-op or condo owners cannot be receiving any of the following exemptions:
    - J-51 exemption

  - 420-c, 421-a, 421-b or 421-g exemptions
  - cooperative properties are not eligible for the clergy exemption
- The co-op or condominium property cannot be:[2]
  - Housing Development Fund Corporation (HDFC);
  - Limited Divided Housing Companies, Redevelopment Company;
  - Mitchell-Llama; or
  - in the Division of Alternative Management Programs (DAMP) Program.
- Units owned by a business (limited liability company) are not eligible.
- Units held by sponsors or their successors in interest are not eligible.
- Units owned by a trust are eligible only if the unit is the primary residence of the beneficiary of the trust, trustee, or life estate holder.

The board of managers must have filed a complete application, for the entire premises, with the Commissioner of DOF by February 15th immediately preceding the July 1st to June 30th fiscal tax year. The burden of proof is on the applicant to show that the requirements for granting an abatement have been met.

NOTE: NONE OF THE UNITS IN THE SUBJECT CONDOMINIUM WILL QUALIFY FOR THE CONDO TAX ABATEMENT IN TAX YEAR 2022/23 SINCE TITLE HAD NOT PASSED FROM SPONSOR ON OR BEFORE JANUARY 5, 2022.

SPECIAL RISK: THE CURRENT VERSION OF RPTL 467-A IS SET TO SUNSET ON JUNE 30, 2023. IN ORDER FOR THE SUBJECT CONDOMINIUM TO RECEIVE CONDO TAX ABATEMENT BENEFITS, THE FOLLOWING THREE EVENTS WILL NEED TO OCCUR:

1. **THE STATUTE WILL NEED TO BE RENEWED FOR TAX YEAR 2023/24. THERE IS NO GUARANTY THAT THIS PROVISION WILL BE RENEWED OR THAT THE BENEFIT WILL NOT BE REDUCED OR ELIMINATED AS IT RELATES TO TAX YEAR 2023/2024 AND THEREAFTER.**

2. **SINCE THE AVERAGE ASSESSMENT PER UNIT FOR TAX YEAR 2023/24 IS ESTIMATED TO BE GREATER THAN $100,000 PER UNIT, THE CONDOMINIUM WILL NEED TO SUBMIT AN AFFIDAVIT STATING THAT BUILDING SERVICE EMPLOYEES WHO WORK AT LEAST EIGHT (8) HOURS PER WEEK ARE PAID THE PREVAILING WAGE FOR THE DURATION OF SUCH PROPERTY'S TAX ABATEMENT (SEE "QUALIFIED PROPERTY", RPTL §467-a (1)(j), ABOVE AND "BUILDING SERVICE EMPLOYEE", RPTL §467-a(1)(k), ABOVE.**

[2] Ineligibility is based upon the receipt of other tax benefits such as the DAMP Tax Cap or an Article XI tax exemption.

3. **IN ORDER FOR A UNIT OWNER TO BE ELIGIBLE FOR THE CONDO TAX ABATEMENT FOR A FISCAL TAX YEAR STARING JULY 1 AND ENDING JUNE 30, THE DEED CONVEYING A UNIT TO SUCH OWNER MUST BE RECORDED BY JANUARY 5TH PRECEDING SUCH FISCAL TAX YEAR. FOR FISCAL TAX YEAR JULY 1, 2023 TO JUNE 30, 2024, THE DEED TO A PURCHASER MUST BE RECORDED BY JANUARY 5, 2023. PURCHASERS WHOSE DEEDS ARE RECORDED THEREAFTER AND BY JANUARY 5, 2024 WILL FIRST BECOME ELIGIBLE FOR THE CONDO TAX ABATEMENT FOR THE JULY 1, 2024 TO JUNE 30, 2025 FISCAL TAX YEAR.**

SPECIAL NOTE: IN THE EVENT THAT DOF DETERMINES THAT PREVAILING WAGES ARE REQUIRED TO BE PAID TO BUILDING EMPLOYEES, AND SUCH WAGES ARE NOT PAID, THEN NO UNIT OWNERS WILL QUALIFY FOR ANY ABATEMENT PURSUANT TO RPTL §467-A.

This letter was prepared at the Sponsor's request. The figures set forth herein are approximations derived from material submitted by the Sponsor and are subject to variation. We have not passed upon the accuracy of any figures or estimates contained in the plan, and offer no warranties of the amount of any STAR, or Coop/Condo Abatement benefits for any period.

The above projections do not take into account any future increases in the assessed valuation of the property, any real estate tax rate or potential changes in the current ratio of assessed value to market value. The opinions expressed above are based on our interpretation of the RPTL, the Administrative Code of the City of New York, and the applicable rules and regulations of DOF in effect as of the date hereof. While we believe our opinions are well founded, they are not intended, and should not be construed as representations or warranties. You should be aware that the laws, regulations and practices of DOF upon which this opinion is predicated may in the future be revised in a manner adverse to your interests, or that there may be an adverse interpretation of the law or regulations by one or more agencies of the City of New York, or Courts of competent jurisdiction.

The foregoing analysis is based upon our experience with DOF and the Tax Commission of the City of New York, and their assessment policies regarding newly constructed and substantially rehabilitated properties held in condominium ownership. Application of a particular approach to valuation by an individual assessor may yield a different result. This would necessitate commencement of real property tax review proceedings at the Tax Commission or Supreme Court level to bring the assessment in line with the estimates presented herein. The Annual deadline to file a Real Estate Tax Protest Application with the Tax Commission is March 1 by 5 P.M. (City Charter §163 (b) and City Charter §1510). The Annual deadline to file a New York State Supreme

Court Petition is no later than 11:59 P.M. on October 24 (City Charter §166).

We hereby consent to the inclusion of this letter in the Offering Plan to convert the subject premises to condominium ownership.

Very truly yours,

Lawrence J. Berger, P.C.

Lawrence J. Berger, P.C.

SECTION T. OPINIONS OF COUNSEL

Section T-1. Opinion on Tax Deductions to Unit Owners. The following is a summary of the opinion of Miller & Miller LLP ("**Miller LLP**"), Sponsor's special income tax attorney.

The amounts for real estate taxes together with state and local income taxes deductible from federal income taxes for each taxable year before 2026 by an Owner of a Residential Unit used for personal use shall be limited to an aggregate of $10,000.00 (or $5,000.00 in the case of a married individual filing a separate tax return), but real estate taxes shall not be deductible for alternative minimum tax purposes.

The amount of interest deductible on debt to acquire and is secured by a Residential Unit used as a principal or second residence is limited to maximum of $750,0000.00 (or $375,000.00 in the case of a married individual filing a separate tax return), but interest on any other debt will not be deductible.

From and after 2026, the above limitation on deductions for real estate taxes together with state and local income taxes cannot be known at this time. In the case of the deductibility of interest, under present law, the debt to acquire a Unit will increase to $1,000,000.00 (or $500,000.00 in the case of a married individual filing a separate tax return) and other debt up to $100,000.00 (or $50,000.00 in the case of a married individual filing a separate tax return) will be allowed.

New York State and New York City income taxes are generally imposed in the same manner as federal income taxes.

The Miller LLP opinion does not address the tax consequences of owning a Unit in a trade or business, or for investment or production of income, or ownership of a Unit by a Foreign Person. See Section T-6 for the full discussion of the income tax consequences of owing a Unit.

Section T-2. Tax Status of Condominium Association. The following is a summary of the Miller LLP opinion on the tax status of the Condominium Association.

If the Condominium Association qualifies as a homeowners association under Section 528 of the Internal Revenue Code, the Condominium Board may elect to be treated as a tax exempt organization and exclude from its taxable income the Common Charges and Special Assessments payable by Unit Owners. The Condominium Association, however, would be subject to federal income tax at the rate of 30% on any other net income it might have after deducting only operating expenses and other deductible amounts directly applicable to such income, but is not allowed to deduct any loss carryovers or certain organizational costs that it might have.

To qualify as a homeowners association, the following requirements under said Section 528 must be met:

(a) the condominium association must be organized and operated to provide for the acquisition, construction, management, maintenance and care of "association property";

(b) 60% or more of its gross income for the taxable year must consist of common charges and assessments from owners of residential units;

(c) 90% or more of its expenditures for the taxable year must be for the acquisition, construction, management, maintenance and care of "association property";

(d) no part of its net earnings may inure to the benefit of any private person (other than by acquiring, constructing, or providing for management, maintenance and care of "association property" or by rebates of excess common charges and assessments); and

(e) at least 85% of the square footage must be used as residences on the last day of the taxable year.

The "association property" would include the Units and the Common Elements. Assuming the Condominium Association meets the 80% income test and the 90% expenditure test for any given taxable year (which cannot be determined at this time), there is no reason that the Condominium Association would not qualify as a "homeowners association" under said Section 528.

The treatment under Section 528 is elective on an annual basis and is not always advantageous. If not treated as a Section 528 homeowners association, the Condominium Association would be subject to federal income tax at the corporate rate on amounts by which its gross income (which includes Common Charges and Special Assessments received from Unit Owners) exceeds its operating expenses and other deductible amounts for that taxable year. Because the Condominium Association is expected to own little or no depreciable property, the Condominium Association would be paying taxes at the corporate rate for amounts set aside for contingencies or operating reserves.

Regardless of whether the Condominium Association elects to be treated as a Section 528 homeowners association for any particular year, the amounts received by the Condominium Association from Unit Owners as contributions to capital or held for capital improvements would not be includible in gross income and therefore would not be taxable.

See Section T-6 for the full discussion of the income tax treatment of the Condominium Association.

Section T-3. Caveat. A prospective Purchaser is advised to read the tax opinion, preferably with the assistance of his or her attorney, accountant or tax adviser, for a complete understanding of the tax consequences of owning a Residential Unit under this Plan.

Section T-4. Disclaimer. THE TAX OPINION OF MILLER LLP SET FORTH BELOW IS BASED ON EXISTING LAW, REGULATIONS AND RULINGS APPLIED TO THE FACTS

AND DOCUMENTS REFERRED TO IN THE OPINION, BUT IS NOT A REPRESENTATION, ASSURANCE OR GUARANTEE BY MILLER LLP THAT RESIDENTIAL UNIT OWNERS WILL BE ENTITLED TO THE INCOME TAX DEDUCTIONS OR OTHER TAX BENEFITS REFERRED TO IN THE TAX OPINION. NO ASSURANCE CAN BE GIVEN THAT THE TAX LAWS OR THE REGULATIONS OR RULINGS ISSUED THEREUNDER, OR ANY JUDICIAL INTERPRETATION THEREOF, UPON WHICH MILLER LLP BASES ITS OPINION WILL NOT CHANGE. IN NO EVENT WILL Sponsor (OR ITS RELATED PARTIES), MILLER LLP OR SELLING AGENT BE LIABLE IF THERE ARE CHANGES IN THE FACTS ON WHICH COUNSEL RELIED IN ISSUING ITS OPINION, OR IF THERE ARE CHANGES IN THE APPLICABLE STATUTES, REGULATIONS, RULINGS OR DECISIONAL LAW ON WHICH COUNSEL RELIED WHICH CAUSE THE CONDOMINIUM ASSOCIATION TO NOT MEET OR TO CEASE MEETING THE REQUIREMENTS OF SECTION 528, AS AMENDED, OR NEW YORK STATE OR NEW YORK CITY TAX LAWS, AS AMENDED, OR UNIT OWNERS TO NOT BEING ENTITLED TO, OR TO CEASE BEING ENTITLED TO, INCOME TAX DEDUCTIONS.

THE SUMMARIES OF THE TAX DEDUCTIONS TO UNIT OWNERS AND THE TAX TREATMENT OF THE CONDOMINIUM ASSOCIATION IS ONLY THE OPINION OF MILLER LLP. MILLER LLP, Sponsor AND SELLING AGENT CANNOT, AND DO NOT, REPRESENT, ASSURE OR GUARANTEE: THE TAX CONSEQUENCES OF OWNERSHIP OF ANY UNITS OFFERED UNDER THIS PLAN; THE TAX STATUS OF THE CONDOMINIUM; THE TAX TREATMENT OF THE COMMON CHARGES, SPECIAL ASSESSMENTS, WORKING CAPITAL FUND CONTRIBUTIONS OR OTHER RECEIPTS OF THE CONDOMINIUM ASSOCIATION; OR THE TAX CONSEQUENCES OF THIS PLAN. NO ONE HAS BEEN AUTHORIZED TO MAKE ANY STATEMENTS OTHER THAN THOSE CONTAINED HEREIN.

Section T-5. RPL Section 339-i Opinion. The opinion of Paley Group, P.C. Sponsor's attorney as to assigning the percentage of Common Interest to each Unit in compliance with RPL Section 339-i is set forth in Section T-7.

END OF TEXT ON THIS PAGE

Section T-6. <u>Opinion on Income Tax Deductions to Owners of Residential Units and Tax Status of the Condominium</u>

The opinion of Miller LLP starts on the next page.

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May 22, 2020

W 108 Development LLC
119 West 72nd Street, #401
New York, NY 10023

324 West 108 Condominium

Ladies and Gentlemen:

In connection with the offering of condominium units (each, a "Unit") at 324 West 108th Street, New York, New York, in a condominium to be known as "324 West 108 Condominium" (the "Condominium"), pursuant to a plan of which you are the Sponsor (the "Plan"), you have requested our opinion concerning (1) the probable income tax treatment of the unit-owners association to be created upon the establishment of the Condominium (the "Association") and (2) the deductibility for Federal, New York State and New York City income tax purposes of certain real estate tax and interest expenses expected to be incurred by purchasers under the Plan.

The following is based on our review of the proposed Declaration and By-Laws of the Condominium, as well as the Internal Revenue Code of 1986, as amended (the "Code"), the Tax Law of the State of New York, the Administrative Code of the City of New York, the applicable regulations or rules promulgated thereunder, the current positions of the Internal Revenue Service and other administrative agencies, judicial decisions, and such other materials as we deemed relevant. It is emphasized, however, that legislative, judicial or administrative changes may be made that would require modification of the views expressed herein, and that the Internal Revenue Service or other administrative agencies may disagree with the views expressed herein.

Taxation of the Association

It is assumed that the Association, which will be an unincorporated association, will be treated as a corporation for income tax purposes. There are two sets of rules that might be applicable.

****
Please be aware that any United States federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed herein.
****

Under Code §528

There is a Code section – §528 – under which a condominium association can be taxed under a special set of rules. Briefly summarized, under Code §528 a condominium association is not subject to Federal income tax on amounts received from its members (the unit-owners) as common charges and assessments. It is, however, subject to Federal income tax at the rate of 30% on any other net income that it might have (deducting only operating expenses and other deductible amounts directly applicable to such income) and is not allowed to deduct any loss carryovers or certain organizational costs that it might have.

Treatment under Code §528 is elective, and elections can be made or not made on a year-by-year basis. An important point is that treatment under Code §528 is not always advantageous. Thus, it will be necessary for the Association to determine, with respect to each taxable year as to which the Association does qualify, whether or not to elect Code §528 treatment. Presumably, such decisions will be made with the advice of the Association's accountants at the time.

In order for a condominium association like the Association to qualify to elect to be a "homeowners association" for a taxable year, it must satisfy the following five requirements:

(i) It must be organized and operated to provide for the acquisition, construction, management, maintenance and care of "association property."

(ii) 60% or more of its gross income for the taxable year must consist of common charges and assessments from the owners of residential units.

(iii) 90% or more of its expenditures for the taxable year must be for the acquisition, construction, management, maintenance and care of "association property."

(iv) No part of its net earnings may inure to the benefit of any private person (other than by acquiring, constructing or providing management, maintenance and care of "association property" or by rebates of excess common charges and assessments).

(v) At least 85% of the total square footage of all units must be used as residences on the last day of the taxable year.

As applied to the Association, "association property" would include the Units and the Common Elements. Assuming that the Association meets the 60% income test and the 90% expenditure test for any given taxable year, which obviously cannot be determined at this time, we see no reason that the Association would not qualify for that year as a "homeowners association" within the meaning of Code §528.

Not under §528

If the Association is not taxed as a "homeowners association" under Code §528 the Association will be subject to Federal income tax each taxable year on any amount by which its "gross income" for that year – which would include common charges and assessments received from the owners of Units – exceeds its operating expenses and other deductible amounts for that taxable year. Because the Association is expected to own little or no depreciable property, it likely will not be entitled to significant deductions for depreciation, so that the Association will in general, absent Code §528 qualification and election, be taxed at usual corporate rates on any amounts set aside as contingency or operating reserves.

In General

It should be noted that, regardless of whether or not an association like the Association qualifies and elects to be treated as a "homeowners association" for any particular taxable year, amounts that such an association receives as contributions to capital are not includible in its "gross income" and therefore are not subject to income tax. Code §118; Rev. Rul. 75-371, 1975-2 C.B. 52. Similarly treated are amounts that such an association collects and holds as agent for its unit-owners, for instance, amounts to be used for capital improvements. Rev. Rul. 75-370, 1975-2 C.B. 25. Also, under certain circumstances amounts that such an association receives from its unit owners but does not currently need can be excluded from that year's "gross income" and treated as collected in the following year. Rev. Rul. 70-604, 1970-2 C.B. 9.

Deductions by the Unit-Owners

The owner of a condominium unit used for personal purposes is in general allowed income tax deductions for real estate taxes imposed on the unit and interest paid on indebtedness incurred to acquire the unit, but subject to severe limitations as described below.

Deductibility of Real Estate Taxes by Unit-Owner

Each Unit will constitute a parcel of real estate. N.Y. Real Prop. Law §339-y. Accordingly, the owner of each Unit will incur liability for real estate taxes imposed by the City of New York. Real estate taxes are in general deductible for regular income tax purposes by the owner of the subject property. Code §164. The Internal Revenue Service has recognized that the normal real estate rules apply to condominium units similar to the Units. Rev. Rul. 64-31, 1964-1 C.B. 300. As a result, real estate taxes with respect to Units should be deductible in the same manner and to the same extent as they are with respect to residences not in condominium form.

Attention is particularly called to the fact that, notwithstanding the foregoing, in the case of an individual and a taxable year beginning before 2026, the aggregate amount of real property taxes on all property (with exceptions not generally applicable to personal purposes as opposed

to income-seeking purposes), together with all state and local income taxes, is limited to $10,000 ($5,000 in the case of a married individual filing a separate return). Code §164(b)(6). Obviously, it cannot be known at this time whether that limitation will continue thereafter.

Also, real estate taxes on property held for personal use are not deductible for alternative minimum tax purposes. Code §56(b)(1)(A).

Deductibility of Interest by Unit-Owner

Any interest charges incurred by the Association will not be deductible by the owners of Units.

If a purchaser incurs debt in order to acquire the Unit, interest on that debt may be deductible depending on certain factors. In general, interest on indebtedness is deductible, subject to certain limitations. Code §163. A major limitation of particular concern for purchasers of Units is that interest on debt incurred for personal purposes as opposed to income-seeking purposes is in general not deductible by an individual unless it meets the definition of "qualified residence interest," and then is deductible only within the limits mentioned below.

Code § 163(h)

In order to constitute "qualified residence interest," the underlying debt must in any event be secured by the taxpayer's principal residence or a second residence. The below-described limits apply to both residences in the aggregate.

> As to debt incurred to acquire the residence(s), the amount is, for taxable years beginning before 2026, limited to $750,000 ($375,000 in the case of a married individual filing a separate return). Under present law, those amounts are to increase thereafter to $1,000,000 and $500,000, but there can of course be no assurance that the law will not change.
>
> As to additional debt, no such debt may be taken into account for taxable years beginning before 2026. Under present law, it will thereafter be possible to include such debt up to $100,000 ($50,000 in the case of a married individual filing a separate return), but there can of course be no assurance that the law will not change.

Accordingly, it is possible that a purchaser for personal occupancy, even if the Unit is subject to a purchase-money mortgage, may not be able to deduct all the interest charges incurred on debt taken on in order to acquire the Unit.

Purchasers of Units should also be aware that under Code §461(g), prepaid interest may not be deductible in the year in which paid, and that "points" paid to a lender in connection with financing may not in all circumstances be deductible when paid.

In General

This letter does not discuss the eligibility to deduct real estate taxes or mortgage interest in the case of taxpayers other than individuals, and does not address potential limitations on deductibility of such taxes and interest under provisions of the Code not discussed herein, including but not limited to the limitations on itemized deductions in Code §68, the "at-risk" rules of Code §461, and the passive loss rules of Code §469. Furthermore, the statements expressed herein might not be applicable to nonresident alien individuals.

* * * * * * *

New York State and New York City income taxes are generally imposed in the same manner as the Federal income tax.

It must be borne in mind that this opinion is not to any extent a guarantee. It is based on our understanding of the existing rules of law applied to the facts of which we have been apprised. Also, the undersigned will in no event be liable if there are changes in applicable statutes, regulations, decisional law, or administrative pronouncements on which the undersigned relied. No assurance can be given that the laws on which this opinion is based will not change, and we are taking on no obligation to advise anyone of any changes that might occur.

No opinion is expressed as to any legal or tax consequences other than as specifically set forth herein. Each person contemplating the purchase of a Unit should of course consult with his, her or its own legal and tax advisors.

We consent to the inclusion of this letter in the Plan.

Sincerely,

MILLER & MILLER LLP

By: Joel E. Miller

Joel E. Miller

Section T-7. <u>Opinion Regarding Compliance with Real Property Law Section 339-i</u>

The opinion of Paley Group, P.C. starts on the next page.

Paley Group, P.C.
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October 26, 2022

W 108 Development LLC
119 West 72nd Street, #401
New York, New York 10023

Re: Compliance with Real Property Law Section 339-i(1)(iv)
Condominium Offering Plan, 324 West 108 Condominium
324 West 108th Street, New York, New York (the "Condominium")

Ladies and Gentlemen:

You have requested our opinion regarding the allocation of common interests to the Units at the above referenced Condominium as required by NYCRR Section 20.3(y)(5). Except where otherwise indicated, the terms used in this opinion have the same meaning as in the Offering Plan for the referenced project (the "Plan").

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

Based upon our review of the foregoing, we have determined that Common Interests were allocated pursuant to the method set forth in Real Property Law Section ("RPL") 339-i (1)(iv), i.e., based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit.

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

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

We hereby authorize the use of this opinion, or a reproduction thereof, in the Plan and references to our name in the Plan.

Very truly yours,

Paley Group, P.C.

T10A

END OF SECTION T

SECTION U. RESERVE FUND

Section U-1. Reserve Fund. Since the Building is being substantially rehabilitated and newly constructed with an additional floor and entirely new Units outfitted with modern Unit Facilities, only a Reserve for Capital Replacements is included in the budget for the projected first year of condominium operation (see Section A-4). No major capital replacements are anticipated during the first five (5) years of Condominium operation. No representation, assurance or guaranty, however, is made or given when such capital expenditures will be required or that the Reserve for Capital Replacement will be sufficient when a capital replacement may be required. Unit Owners will be obligated to pay their share of the cost of ordinary and capital repairs, replacements and/or improvements to the Common Elements as and when required. See Section A-3.

The Reserve for Capital Replacements in each annual budget of Condominium operation is to equal ten percent (10%) of all other budgeted expenses. Any change in such ten percent (10%) amount shall be disclosed in an amendment to this Plan as long as Sponsor owns an Unsold Unit. In addition, during only the Sponsor Veto Control Period, the prior written consent of Sponsor is required to change or eliminate the Reserve for Capital Replacements set forth in the First Year's Budget (see Section F-6) and required to be included in each budget in accordance with Section 8.5.4 of the By-Laws. See Section P-2.1.

While Sponsor has voting control of the Condominium Board, the Reserve for Capital Replacements may not be used to reduce the projected Common Charges in this Plan.

Neither the Department of Law nor any other governmental agency has passed upon the adequacy of the adequacy of the Reserve for Capital Replacements.

Section U-2. Budget Reserves for Contingencies. Under the By-Laws, a budget adopted by the Condominium Board may include a reserve for unanticipated operating expenses, including an allowance for a possible increase in one or more expense items and/or to add one or more new expense items. Any such reserve amounts may not exceed, in the aggregate, five percent (5%) of the projected annual Common Expenses for the then current budget year without obtaining the prior written consent of Sponsor (during only the Sponsor Veto Control Period).

Section U-3. Sources to Finance Capital Items. The potential means and options available to the Condominium Board to finance any needed or desired capital expenditures, such as to restore or replace Building components or Building Systems, will be:

(a) the Reserve for Capital Replacement to the extent sufficient for such purpose (see Section P-2.1),

(b) a loan from a bank or other lender, subject to obtaining Sponsor's prior written consent during only the Sponsor Veto Control Period; and

(c) a Special Assessment levied on all Unit Owners.

The ability of the Condominium Board to borrow monies on a secured or unsecured basis will depend upon a number of factors, including then existing economic conditions, the policies of the proposed lender (including an "Owner-occupancy" quota that may be required), the creditworthiness of the Condominium Association, the physical condition of the Property, obtaining Sponsor's prior written consent during only the Sponsor Veto Control Period, and complying with RPL §339-jj (see Section R-12). Neither Sponsor nor the Selling Agent represents, assures or guarantees that the Condominium Board will be able to obtain a secured or unsecured loan at any time.

To the extent all other sources mentioned above in clauses (a) and (b) are insufficient or unavailable to pay for a needed or desired capital item, the Condominium Board will be required to increase the Common Charges or levy a Special Assessment, or a combination thereof on the Unit Owners. If a Unit Owner wishes to obtain a loan to pay a Special Assessment, such Owner's ability to arrange a loan will depend on the requirements of the lender, including the lender being satisfied with, among other things: (a) said Owner's income and credit; (b) the appraised value of his or her Unit; (c) the number of Units that are occupied by their Owners; and (d) the physical condition of the Owner's Unit and the Building.

END OF SECTION U

SECTION V. WORKING CAPITAL FUND

Section V-1. Amount of Working Capital Fund. The Condominium Association is to be provided with a fund for operating and working capital (the "**Working Capital Fund**") that ultimately will be in the projected total amount of approximately $60,648 (rounded), which equals two months' projected Common Charges of all Units as set forth in the Offering Price Schedule. If this Plan is amended prior to the First Unit Closing to increase or decrease the projected Common Charges of Units, the total amount of the Working Capital Fund will correspondingly increase or decrease.

Section V-2. Funding of Total Amount of Working Capital Fund. At Closing of Title, each Purchaser of a Unit is to make a payment to the Condominium's Working Capital Fund (the "**Working Capital Payment**") in an amount equal to two months' projected Common Charges for each Unit being purchased, based on the estimated monthly Common Charges shown in the Offering Price Schedule, as such projection may change prior to the First Unit Closing in a Plan Amendment. At the First Unit Closing, Sponsor will make a *reimbursable advance* payment to the Condominium's Working Capital Fund of $17,000 (the "**Initial Working Capital Fund**"). Sponsor is to be fully reimbursed for such advance of the Initial Working Capital Fund from the first Working Capital Payments received from Bona Fide Purchasers of Units. The Working Capital Payment from each Purchaser will be made directly to the order of Sponsor at the Closing of Title until Sponsor is fully reimbursed for payment of the Initial Working Capital Fund. Thereafter, all subsequent Working Capital Payments from Purchasers will be made payable directly to the Condominium Board or Managing Agent, as directed, and given to Sponsor at the Closing of Title for forwarding to the Managing Agent.

Accordingly, the total amount of the Working Capital Fund will be fully funded only when and if title to all Units are conveyed to Bona Fide Purchasers under this Plan. Sponsor and Selling Agent cannot, and do not, represent, assure or guarantee when or whether the total amount of approximately $34,860.00 will be paid into the Working Capital Fund, which will depend entirely on the time taken to sell and convey all Units under this Plan.

The Working Capital Payment is to be made only by a Bona Fide Purchaser under this Plan (whether for personal occupancy or for rental investment or resale), but not by anyone to whom such Purchaser resells or conveys the Unit, or who succeeds to such Purchaser's interest in the Unit after Closing of Title.

No Working Capital Payment will be made by a Sponsor Designee as Owner of an Unsold Unit, but a Bona Fide Purchaser to whom a Sponsor Designee sells such Unsold Unit (whether for personal occupancy or for rental investment or resale) will be required to make said Working Capital Payment.

Section V-3. Use of Working Capital Fund. The initial Working Capital Fund will be used as follows:

(a) to pay to the extent sufficient the net amount (if any) owed Sponsor for that portion of the Building expenses to be apportioned with the Condominium Board at the First Unit Closing (which will be disclosed in the Plan Amendment filed after the First Unit Closing as explained in Section N-1.4); and

(b) the balance (if any) will be used for all appropriate purposes for the benefit of the Unit Owners as will be determined by the Condominium Board.

Sponsor anticipates that the Initial Working Capital Fund will be sufficient to pay the net amount of apportionments of Building expenses, if in favor of Sponsor. If the net amount of the closing apportionments is in favor of Sponsor and exceeds the Initial Working Capital Fund, the excess will be repaid, without interest, in twelve (12) equal, consecutive monthly installments on the first day of each month, starting the month immediately following the First Unit Closing.

The Working Capital Fund (including the Initial Working Capital Fund to the extent sufficient) may also be used for operating or working capital and to defray increases in the Common Charges, but may not be used to reduce the projected Common Charges in the First Year's Budget (SCHEDULE B in Section F-6) while the Sponsor Board Members constitute a majority of the Condominium Board. The Condominium Board will usually require operating or working capital to overcome normal cash shortages in operations. The cash shortages may occur from unevenness in the collection of Common Charges or in the payment of budgeted expenses (such as higher heating costs during the fall and winter months), or both. The Working Capital Fund may also be used to make needed repairs and/or alterations, from time-to-time.

Sponsor will control the permitted expenditures from the Working Capital Fund while the number of Sponsor Board Members constitute a majority of the Condominium Board. As a result, all or part of the Working Capital Fund may be spent during the period Sponsor has voting control over the Condominium Board.

Section V-4. Sources to Finance Capital Items. For potential means and options available to the Condominium Board to finance any needed or desired capital expenditures, such as restoration or replacement of Building components or Common Facilities, or to remedy major Building defects, see Section U-3.

Section V-5. Adequacy of Working Capital Fund. The amount of the Working Capital Fund is based strictly upon the amount of the projected Common Charges of the Units in the First Year's Budget (SCHEDULE B), as such projection may be revised prior to the First Unit Closing in a Plan Amendment (see Section V-1 for details). Accordingly, the Working Capital Fund is not intended, and should not be relied upon, as being adequate to make potential future needed or desired repairs or alterations.

Sponsor and Selling Agent cannot, and do not, represent, assure or guarantee that the Initial Working Capital Fund and any supplemental Working Capital Payments from Purchasers will be

adequate for operating or working capital purposes at any time. If additional monies are required for operating or working capital, the Board may increase the Common Charges (including levying a Special Assessment on the applicable Unit Owners).

Neither the Department of Law nor any other government agency has passed upon the adequacy of the Working Capital Fund.

END OF SECTION V

SECTION W. MANAGEMENT AGREEMENT, CONTRACTS AND LEASES

Section W-1. Management Agreement. The important terms of the proposed management agreement with the Managing Agent are summarized below.

Section W-1.1. *The Managing Agent*. At or prior to the First Unit Closing, the Condominium Board will enter into a management agreement with Daisy Management LLC, having offices at 6 East 39th Street, Suite 1204, New York, New York 10016 (the "**Initial Managing Agent**" or "**Agent**"), an independent company unrelated to Sponsor or Sponsor's principal. The Initial Managing Agent, together with its principals, are experienced in residential management, including cooperatives and condominiums (see Section X-4 for discussion). Because no attorney has been retained to separately represent the Condominium Board, which is still to be formed on recording the Condominium Documents, the proposed Management Agreement is not the result of an "arms-length" negotiation.

Section W-1.2. *Term of Management Agreement*. The management agreement will be for an initial term expiring at the end of twenty-four (24) full calendar months after the First Unit Closing. At the end of the initial term, the management agreement will be extended automatically from year to year unless the Condominium Board or Agent elect not to extend the term by giving written notice of its election not to extend the term at least thirty (30) days prior to an annual extension. At least fifteen (15) days and not more than thirty (30) days before said thirty (30)-day period for serving such notice of the Board's election not to extend the term prior to each annual extension, the Initial Managing Agent shall give to the Board written notice, served personally or by certified mail, calling the attention of the Board to the existence of this provision in the Management Agreement.

Section W-1.3. *Fees and Other Compensation*. The Initial Managing Agent will receive an annual management fee of $17,000.00 for the first twenty-four (24) full calendar months of Condominium operation, payable in advance in equal, consecutive monthly installments. In the event the term is extended, the annual fee from and after the end of said twenty-four (24)-full calendar month period will be negotiable. The management fee is based on current market rates for a building of approximately the same size and location of the Building. After the initial term expires, the management fee with Daisy Management LLC or another managing agent will depend on then exiting market conditions, which are unpredictable. Any significant increase in the management fee at such time might increase Common Charges, depending upon changes in other budget items at such time, which too are uncertain.

The Initial Managing Agent will also receive, and the First Year's Budget includes, a one-time start-up fee of $1,416.66 payable on the date of commencement of the term and the following Unit service fees from an Owner of a Sold Unit:

(a) $500.00 on the sale or conveyance of a Sold Unit that is subject to (and not exempt from) the Board's Right of First Refusal under the By-Laws, or $250.00 if exempted;

(b) $500.00 on the leasing or renting of a Sold Unit that is subject to (and not exempt from) said Right of First Refusal, or $250.00 if exempted;

(c) $750.00 for alterations to a Sold Unit, other than a Unit Alteration that may be made without Condominium Board's approval, consent or oversight under the By-Laws; and

(d) $250.00 on a mortgage financing or refinancing, or an appraisal, of a Sold Unit, if any Board action is requested in connection therewith.

No Purchaser will be required to pay any fee to the Initial Managing Agent to purchase a Unit from Sponsor or to finance the Unit at Closing. No such Unit service fees will be paid by the Owners (including Sponsor) of Unsold Units.

In addition, the Condominium Board will collect a security deposit from an Owner or tenant of a Sold Unit when moving into or out of the Building. The security deposit is to be applied by the Board to pay for any damage to the Common Elements caused by such move. Any unapplied amount will be refunded after the move is completed. The security deposit will initially be set at $2,500.00 and may change from time to time by the Condominium Board, but may not be increased without obtaining the prior written consent of Sponsor during only the Sponsor Veto Control Period. No such move-in or move-out security deposit or other fee or charge may be imposed on a tenant of an Unsold Unit without obtaining the prior written consent of Sponsor in each instance.

The Initial Managing Agent may also receive commissions for placing insurance maintained by the Condominium Board and for renting space (if any) in the Common Elements (if authorized and retained for such purpose by the Condominium Board). In the event the Condominium Board engages the Initial Managing Agent to supervise major or capital repairs or alterations to the Common Elements or to arrange a loan for the Condominium Board, the Initial Managing Agent will be compensated separately in an amount to be negotiated at that time.

Section W-1.4. *Major Duties*. The major duties to be performed by the Initial Managing Agent will include the following and will be in effect from and after the First Unit Closing:

(a) hire, pay, supervise and discharge the Building staff (the Condominium Board will have the right to approve the number and fitness of the staff);

(b) cause the Common Elements to be maintained in the condition satisfactory to the Condominium Board, including cleaning and ordinary repairs and alterations; however, the Condominium Board must approve any expenditure of over $2,500.00 for any one item, other than Emergency repairs;

(c) cause any orders or violations issued by a Governmental Authority or fire underwriters body to be complied with and corrected; however, the Condominium Board must approve any expenditure of over $2,500.00 for any one order or violation, except in the case of a "civil/criminal sanctions order or violation" (as defined in the management agreement);

(d) contract for necessary services to maintain and operate the Building (such as elevator and exterminator services); however, the Condominium Board must approve any contract costing more than $2,500.00 a year or lasting longer than one year;

(e) obtain and maintain insurance for fire, property damage, liability and such other coverage, and in such amounts, as the Condominium Board approves;

(f) if requested, ascertain and report to the Condominium Board and Unit Owners on the tentative assessed valuations of the Units and cooperate in the preparation of any application or litigation to correct their assessed valuations;

(g) audit and pay bills for services, work and supplies to maintain and operate the Building, including water and sewer bills;

(h) purchase all supplies necessary to properly maintain and operate the Building; however, the Condominium Board must approve any single supply costing more than $2,500.00 except if needed to make an Emergency repair or to correct a civil/criminal sanctions order or violation;

(i) (in the case of a proposed sale or lease of a Sold Unit that is subject to the Condominium Board's Right of First Refusal under the By-Laws) obtain credit reports on the prospective purchaser or tenant (as applicable) and implement the procedures (including notifications) in the By-Laws to exercise or waive such Right of First Refusal;

(j) bill and collect the Common Charges and, if authorized by the Condominium Board, engage an attorney approved and selected by the Condominium Board to bring a litigation against a delinquent Unit Owner for unpaid Common Charges, including foreclosing the Board's lien under the By-Laws and the Condominium Act;

(k) maintain payroll records, and file all necessary forms for unemployment insurance, withholding and social security taxes and other forms relating to the Condominium Board's employees;

(l) render monthly statements of collections and disbursements;

(m) maintain accurate books of the Condominium Board (including checkbooks, minute books, payroll, records of cash billings and collections, and orderly files of documents, correspondence, insurance policies, Unit mortgages, etc.);

(n) prepare and submit to the Condominium Board by December 1st of each year, a proposed budget of projected income and expenses for the ensuing year and notify Unit Owners of the annual charges, assessments and any other sums set by the Condominium Board;

(o) arrange an annual audit by the Condominium Board's certified public accountant and distribute the accountant's certified financial statement to the Unit Owners;

(p) prepare and send notices of meetings of the Condominium Board and Unit Owners, arrange the place of each meeting, and attend and keep the minutes of each meeting; and

(q) send to a holder of a Permitted Mortgage a copy of a default notice sent to the Owner of the mortgaged Unit.

Section W-1.5. *Reimbursement for Expenses and Indemnities*. The Condominium Board will reimburse the Initial Managing Agent for certain expenses properly incurred to perform the duties required by the agreement or authorized by the Condominium Board. The Condominium Board will indemnify the Initial Managing Agent from claims and resulting liabilities based on: (a) injury to any person or property (unless caused by Agent's negligence, gross negligence or willful misconduct or willful violation of the agreement); and (b) Agent's acts properly performed pursuant to the agreement or authorized in writing by the Condominium Board.

The Initial Managing Agent will indemnify the Condominium Board and Unit Owners from claims and resulting liabilities arising from Agent's gross negligence, willful misconduct or willful violation of the agreement. Apart from such indemnity, the insurance to be obtained by the Condominium Board as part of the Common Expenses will include fidelity coverage insuring the Board and Unit Owners against loss occasioned by the dishonest acts of the Managing Agent or its employees (see applicable footnote to SCHEDULE B in Section F-6 for details).

Section W-1.6. *Assignment*. The management agreement is not assignable by the Initial Managing Agent.

Section W-1.7. Cancellation for Cause. The Condominium Board or the Initial Managing Agent may cancel the agreement for a specified cause after giving notice of the default and an opportunity for sixty (60) days from giving the default notice to cure the default and thereby void the cancellation notice. However, the Condominium Board will have only thirty (30) days to cure a default based upon a substantial shortage of cash needed to properly maintain the Building.

Section W-2. Other Contracts and Leases. In addition to the management agreement, upon commencement of Condominium operation, the Condominium Board will be bound by arms-length contracts, licenses and leases with independent providers of Building Services having no affiliation with Sponsor or its principal, which are disclosed in, or authorized by, the First Year's Budget (see Note 9 to SCHEDULE B in Section F for potential service contracts) or elsewhere in this Plan. Apart from the elevator service contract with the elevator manufacturer, no service contracts have been entered into at the date of this Plan.

Section W-3. Sponsor's Limited Right to Bind Condominium Board. Sponsor reserves the right to enter into other arms-length leases, licenses and service agreements with independent, unrelated service providers prior to the First Unit Closing to benefit the Unit Owners in accordance with the terms of this Plan that will be binding on the Condominium Board, but will amend this Plan to disclose them if they will materially increase the Common Charges or are for longer than

five years, other than leases, licenses and service agreements that customarily are for longer terms (such as a cable television agreement or license). Sponsor also reserves the right, without amending this Plan, to enter into agreements for utility services that will be binding on the Condominium Board, including licenses and leases for the erection, installation, maintenance and operation of Communications Facilities. Such licenses and leases are typically for initial terms of between ten (10) to twenty (20) years, depending on the telecommunication or other utility provider. Any Work required in connection with the initial construction and installation of the utility services will be performed by, and at the sole cost and expense of, Sponsor or the utility provider (as applicable). The Board will be required to maintain and repair the portions of the Building in which the Communications Facilities are located as part of the Common Expenses.

END OF SECTION W

SECTION X. IDENTITY OF PARTIES

Section X-1. Sponsor. Sponsor is W 108 Development LLC, having an office at 119 West 72nd Street #401, New York, New York 10023. Sponsor is a New York limited liability formed on January 5, 2015.

Section X-1.1. *Experience*. Sponsor was organized for the purpose of owning and developing the Property, and sponsoring the sale of the Units being offered under this Plan. The principal of Sponsor are Orly Gilat, Nimrod Ginsburg and Hamutal Lieberman.

Orly Gilat has over 35 years of experience in real estate development and property asset management, as well as specialized expertise in senior housing. As founder and Managing Director of Gilat Planning & Research, Ms. Gilat completed development projects ranging in size from $11 million to $80 million. She created and implemented conventional and novel financing mechanisms, particularly in the areas of tax credits and federal loan financing.

Ms. Gilat spent five years developing and operating senior housing as a Development Consultant to Silvercrest Independent and Assisted Living Corp. in Omaha, Nebraska. In New York City, Ms. Gilat served as the Chief Real Estate Development Officer at Pratt Area Community Council, a non-profit developer, where she managed and oversaw the rehabilitation of several large buildings, one of which is listed on the National Historical Registry, and managed a portfolio of more than 850 units, including the rehabilitation and preservation of townhouses.

Ms. Gilat holds graduate degrees of Ph.D. in Urban Planning and a Master in Economics and Planning from the London School of Economics.

Nimrod Ginsburg is the founder and Chief Executive Officer of NY EB-5 Fund, a real estate finance company that has raised over $1,000,000 in construction financing for New York-based residential projects. Prior to founding NY EB-5 Fund, Mr. Ginsburg spent five years in the Financial and Regulatory Surveillance Department at CME Group Inc., the world's largest and most prominent futures and options exchange and clearinghouse. Mr. Ginsburg graduated from the Kelley School of Business at Indiana University with a B.S. in Finance and Accounting in 2011.

Hamutal Lieberman having a business address c/o Helbraun Levey, 40 Fulton Street, 28th Floor, New York, NY 10038, is an attorney and an out-of-state principal of the Sponsor. The Secretary of State has been designated to receive service of process for an out-of-state sponsor or selling agent or for any principals of the Sponsor (including, but not limited to Ms. Hamutal Lieberman) or of the selling agent who reside outside of New York.

Section X-1.2. *Background*. There are no prior felony convictions of Sponsor and/or principals of Sponsor.

There are no prior bankruptcies, convictions, injunctions and judgments against the Sponsor, the principals of the Sponsor, any individuals who own or control a 10% or more equity

interest in Sponsor and/or entities in which principals of the Sponsor or such major equity owners were principals, that may be material to this Plan or to an offering of securities generally and that occurred within the fifteen (15) years prior to the submission of the proposed condominium offering plan for the Property to the Department of Law.

There is a $2,590 civil judgment related to a fuel bill owed by a former owner of the Property who is unrelated to Sponsor and Sponsor's principals. Sponsor had paid and believed the judgment had been removed or record. Sponsor shall remove such judgment and any other title objection that impacts the marketability of title before the first conveyance of a Unit under this Plan.

Section X-1.3. *Other Cooperative and Condominium Offerings*. Sponsor, the principals of Sponsor and any affiliates of Sponsor or the principals of Sponsor have not previously offered for sale any other properties as cooperatives, condominiums, planned unit development homes or timeshares that were first offered within the past five years. Sponsor and Sponsor's principals do not own, directly or indirectly, unsold units or shares constituting 10% or more of all units or shares of other condominiums, cooperatives or other cooperative interests in realty.

Section X-2. Sponsor's Attorneys. Paley Group, P.C., with offices at 801 Second Avenue, Suite 2100, New York, New York 10017, represents Sponsor on this Plan. Paley Group, P.C. has not passed upon the legal opinions of other attorneys appearing in this Plan nor passed upon or independently investigated the business or financial terms of this offering, the physical condition of the Building or the projections contained in this Plan. This Plan was prepared by Marc Paley, Esq. of Paley Group, P.C.

Paley Group, P.C. also is the Escrow Agent for Deposits of Purchasers under the Purchase and Sale Agreement and will perform Unit closing services. The Purchase and Sale Agreement provides the Escrow Agent may represent Sponsor in any litigation, whether or not related to Purchase and Sale Agreement and irrespective of Escrow Agent being in possession of the Deposit. See Section A-2.12.

Lawrence J. Berger P.C., with offices at 630 Third Avenue, 7th Floor, New York, New York 10023, was retained by Sponsor to render the opinion on the projected real estate taxes of the Units (see Section S-9).

Miller & Miller LLP, with offices at 73-11 184th Street Flushing, New York 11366, was retained by Sponsor to render an opinion on the availability of income tax deductions to Unit Owners and the tax status of the Condominium.

No attorney has been engaged to represent the Condominium Association or the Condominium Board. Accordingly, the proposed management agreement between Daisy Management LLC and the Condominium Board is not the result of an "arms-length" negotiation (see Section W-1 above).

Section X-3. Managing Agent. The proposed Managing Agent of the Condominium is Daisy Management LLC, having an address at 1460 Broadway, New York, New York 10036. Daisy Management LLC has no financial relationship, past or present.

Section X-3.1. *Experience*. Daisy Management LLC has been in the business of managing residential properties, including cooperatives and condominiums, for the past 2 years. At the date of this writing, Daisy Management LLC manages over 500 residential units with buildings in SoHo, upper westside, upper eastside and Brooklyn, including the following Manhattan condominiums and cooperatives: Nine52 Condominium, located at 416 west 52nd Street; The Vantage Condominium located at 308 E 38th Street; and cooperatives at 36 West 35th Street, 153 West 80th Street and 519 East 86th Street.

Section X-3.2. *Background*. The Managing Agent and its principal have no prior felony convictions. During the past fifteen (15) years, there were no prior convictions, injunctions or judgments against the Managing Agent or its principal that may be material to this Plan or to an offering of securities generally.

Section X-4. Selling Agent. The agent engaged by Sponsor to offer and sell the Residential Units under this Plan (the "**Selling Agent**") is Douglas Elliman, LLC d/b/a Douglas Elliman Real Estate ("**Douglas Elliman Real Estate**"), with offices at 575 Madison Avenue, New York, New York 10022. Douglas Elliman Real Estate has no financial relationship, past or present, with Sponsor, other than its fee for services as Selling Agent.

Section X-4.1. *Experience*. Douglas Elliman Real Estate and its predecessors have been engaged in the sale of condominium and cooperative apartments on the Upper Westside and other areas of Manhattan for over 40 years. Some of those Manhattan properties include: 150 West 87th Street; 949 Park Avenue; 100 Eleventh Avenue; 333 East 91st Street; 301 East 81st Street; 225 West 86th Street; 1 West End Avenue; 235 West 75th Street; 344 West 72nd Street; and 70 West 139th Street.

Section X-4.2. *Background*. The Selling Agent and its principals have no prior felony convictions. During the past fifteen (15) years, there were no prior convictions, injunctions or judgments against the Selling Agent or any of its principals that may be material to this Plan or to an offering of securities generally.

Section X-5. Architect and Other Construction Professionals. Sponsor engaged Oaklander, Coogan & Vitto Architects PC ("**OCV**"), having offices at 401 Lafayette Street, 4th Floor, New York, NY 10003, to prepare the DOB approved plans and specifications, including structural plans, to rehabilitate the Building with Units and Common elements and add an additional floor. For nearly 30 years, OCV has been designing innovative, quality projects that reflect our sense of community to New York City and the surrounding area. Its clients include City and State agencies, non-profit community organizations, educators, corporations and private developers. OCV has been acknowledged in awards ranging from the American Institute of Architects, to the Supportive

Housing Network of NY, including multiple awards form the New York State Historic Preservation Office.

Sponsor engaged Joselow & Associates, LLC, with offices at 30 Glenn Street, Suite 203, White Plains, New York, 10603 to prepare the mechanical plans for the rehabilitation and construction of the Building. Joselow & Associates, LLC has been in business since 1962 specializing in every major aspect of building systems, including mechanical, plumbing, ventilation, heating and cooling, fire sprinkler systems, fire alarms, and electrical design. Its clients include: The Department of Housing and Urban Development (HUD), The State of New York, The New York City Housing Authority, The New York City Department of Housing Preservation and Development, The New York State Office of General Services, New York City Department of Parks and Recreation, The New York City Human Resources Administration, The New York City School Construction Authority, and the Dormitory Authority of the State of New York.

The architect's report on the Description of Property and Specifications or Building Condition (Document 4 in Part II of this Plan) was prepared by Marc Kemeny, Registered Architect, for the Office of Marc Kemeny, having an office at 165 Pine Creek Avenue, Fairfield, Connecticut 06824. Mr. Kemeny founded K Square Designs, Architecture P.C. a New York architecture firm, in 1985. In 2017, Mr. Kemeny formed The Office of Marc Kemeny a successor firm. These two firms specialize in the conversion of commercial/industrial buildings to residential use, the rehabilitation of existing apartment buildings, and the renovation of building lobbies and individual apartments. They also have prepared similar architect reports for condominium or cooperative conversion of numerous Manhattan and Brooklyn buildings.

Section X-6. Real Estate Brokerage Expert. Sponsor has also engaged Daisy Management LLC to certify the adequacy of the First Year's Budget (see Section X-3.1 for experience) and Douglas Elliman Real Estate to give its opinion that the Common Interests allocated to the Units meets the requirements of §339-i of the Condominium Act (see Section X-4.1 for experience).

Section X-7. Relationship to Sponsor or Sponsor's Principals. Sponsor and Sponsor's principal are not related to the Selling Agent, the Managing Agent, the architect or the other professionals listed in the preceding Section X-5 and Section X-6, or any person or firm who will provide services to the Condominium Association or the Property subsequent to commencement of Condominium operation.

END OF SECTION X

SECTION Y. REPORTS TO UNIT OWNERS

Section Y-1. <u>Annual Financial Statements, Meetings and Budgets</u>. The Condominium Board is obligated to give all Unit Owners annually the following:

(a) within four months after the end of each financial year adopted by the Condominium Board, a financial statement of the Condominium Association, including an annual report of receipts and expenditures, prepared by an independent certified public accountant or public accountant, within four months after the end of each financial year adopted by the Condominium Board; such statement will be certified by the accountant while the Sponsor Board Members constitute a majority of the Condominium Board;

(b) not less than ten (10) days advance written notice of the annual meeting of Unit Owners for the election of members of the Condominium Board; such annual meeting is to be held within approximately thirty (30) days of the anniversary of each previous annual meeting, unless changed by the Condominium Board; and

(c) at least ten (10) days before the start of each budget year, a copy of the annual budget of Condominium Operation adopted by the Condominium Board; while the Sponsor Board Members constitute a majority of the Condominium Board, each such budget will be accompanied by a certification of its adequacy from an independent expert experienced in residential management in accordance with Part 20.4(d) of the Department of Law's regulations.

END OF SECTION Y

SECTION Z. DOCUMENTS ON FILE

Section Z-1. <u>Plan, Plan Amendments and Condominium Documents</u>. For six years from the date of First Unit Closing, Sponsor shall keep copies of this Plan, every Plan Amendment, all documents referred to in this Plan and all Exhibits submitted to the Department of Law in connection with the filing of this Plan on file and available to prospective Purchasers, Purchasers and Unit Owners for inspection without charge and copying at a reasonable charge at Sponsor's office at 119 West 72nd Street #401, New York, New York 10016.

At the First Unit Closing, Sponsor shall deliver to the Condominium Board, a copy of the Condominium Documents that are filed and recorded with the City Register's Office.

END OF SECTION Z

SECTION AA. GENERAL

Section AA-1. Litigation. There are no pending litigation, administrative proceedings or other proceedings the outcome of which may materially affect this offering, the Property, Sponsor's capacity to perform all of Sponsor's obligations under this Plan, the Condominium Association or the operation of the Condominium.

Section AA-2. No Prior Cooperative or Condominium Offering of Property. The Property has not, to the knowledge of Sponsor, been the subject of any prior cooperative or condominium offerings. In addition, as of the date of first Presentation of this Plan, no preliminary binding agreements have been entered into, and no Deposits or advances of funds accepted from, prospective Purchasers by Sponsor for the sale of Units in the Building. All of the Units offered pursuant to this Plan are vacant and in the course of construction or to be constructed at the date of this Plan. Sponsor's Application to Test the Market pursuant to Cooperative Policy Statement No. 1 (CPS-1), File Number CP20-004 was accepted on January 14, 2020. However, Sponsor did not perform any market testing pursuant to CPS-1.

Section AA-3. Compliance with Civil Rights Laws. Sponsor and its agents, including the Selling Agent, will not discriminate against any person on any basis prohibited by civil rights Laws in connection with the offering for sale, the sale, the financing or the leasing of Units under this Plan. These Laws prohibit discrimination based on sex, age, race, creed, color, national origin, ancestry, disability, or marital status or other grounds prohibited by Laws.

Section AA-4. Plan Amendment. Sponsor reserves the right to file a Plan Amendment, including a Plan Amendment that may be materially adverse to then existing Purchasers. If there is a material Plan Amendment that adversely affects existing Purchasers, Sponsor must grant such Purchasers a right of rescission and a reasonable time that is not less than fifteen (15) days after the date of Presentation of such Plan Amendment to exercise the right to rescind. Sponsor must return the Deposits to Purchasers who timely rescind together with the interest earned thereon. If a Purchaser elects to rescind, his or her Interim Use and Occupancy Agreement (if any) will automatically be cancelled and the Deposit will be refunded conditional upon the surrender of vacant possession of the Unit (see Section J-4 for discussion and the thirty (30)-day deadline, or "TIME OF ESSENCE" period, from cancellation within which the Purchaser must surrender vacant possession of the Unit before becoming liable for Sponsor's Legal Expenses if contested and awarded in a final non-appealable order or judgment of a court having competent jurisdiction), together with Per Diem Interest thereon, for removal and recovering possession. See Section A-12.

Section AA-5. Use and Enjoyment of Property. The use and enjoyment of the Property are not affected by any reciprocal covenants or easements with owners of properties adjacent to the Property or any known impending adjacent high rise construction. The Property is located in a historic district governed by the Landmarks Preservation Law.

Section AA-6. Contents of Plan. This Plan does not knowingly omit a material fact or knowingly contain an untrue statement of a material fact. Any statement, representation or information that is not expressly contained in this Plan or a Plan Amendment is not authorized and should not be relied upon. This Plan may not be modified orally and no provision may be waived orally.

The projections in the First Year's Budget (see SCHEDULE B in Section F) and the projected Common Charges in the Offering Price Schedule are made in reliance upon the expertise of Daisy Management LLC, which prepared the First Year's Budget and certified as to the adequacy of such First Year's Budget (see DOCUMENT 8C in Part II).

The projected real estate taxes in the Offering Price Schedule are based on certain estimates of Berger P.C. and are made in reliance upon the expertise of such firm (see footnote 6 to the Offering Price Schedule and Section S).

The Floor Plans of the Units set forth in DOCUMENT 5 in Part II and the report on the Description of Property and Specifications or Building Condition (see DOCUMENT 4 in Part II) has been included in this Plan in reliance upon the expertise of Marc Kemeny, Registered Architect, for the Office of Marc Kemeny, who certified its accuracy in DOCUMENT 8B in Part II.

The statements in this Plan on the availability of income tax deductions to qualified Owners of Residential Units have been made in reliance upon the expertise of Miller & Miller LLP, whose tax opinion is set forth in Section T-6.

Section AA-7. Exemption Under ILSA. Because this offering contains fewer than one hundred (100) condominium units, the offering is exempt from the registration and disclosure requirements of the Federal Interstate Land Sales Full Disclosure Act (called "**ILSA**") pursuant to §1702(b)(1) of ILSA.

END OF SECTION AA

SECTION BB. RESERVATION OF AIR AND DEVELOPMENTAL RIGHTS

Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a ZLDA whereby the two buildings at 324-326 West 108th Street and the building at 328 West 108th Street have been merged into a single zoning lot. Based upon a Residential Floor Area Ratio of 4 (Quality Housing) applicable to merged zoning lot, there are approximately an aggregate 26,440 square feet of available development rights (6,610 square foot lot size x 4 FAR).

Under the ZLDA, each owner retains the development rights applicable to its property. The development rights applicable to the subject 324-326 West 108th Street Building is approximately 17,560 square feet. The rehabilitated Building with the newly constructed additional floor contains approximately 16,478 square feet, leaving approximately 1,082 square feet of unused development rights.

Sponsor is not submitting to condominium ownership and is reserving for its exclusive use and enjoyment the Excess Development Rights appurtenant Property's zoning lot, which comprises approximately 1,082 square feet of unused development rights available to the Property's zoning lot after completion of rehabilitation of the Building with one additional floor and any future development rights that Sponsor might purchase or might become available to the Property's zoning lot by reason of a special permit or a change in zoning or otherwise. Sponsor may sell and transfer all, or a portion of, the Excess Development Rights and retain all proceeds realized therefrom without participation of the Condominium Board or Unit Owners. However, no Excess Development Rights may be used to expand the size, height, bulk or density of any portion of the Property after the recording of the Declaration establishing the Condominium. If any of the Excess Development Rights are transferred to an adjoining premises, the light and air of the Building and views from Units and/or their Balconies, Terraces or Yard may be adversely affected. See Section A-1.3.

END OF SECTION BB

SECTION CC. SPONSOR'S STATEMENT OF SPECIFICATIONS OR BUILDING CONDITION

Section CC-1. Report On Description of Property and Specifications or Building Condition. Sponsor adopts the report on the Description of Property and Specifications or Building Condition set forth as DOCUMENT 4 in Part II of this Plan and represents that Sponsor has no knowledge of any material defects or need for major repairs to the Property except as set forth in such report (if any), or included in the First Year's Budget or customarily corrected by routine maintenance. The report was prepared by Bromley Caldari Architects PC and is included in this Plan in reliance upon the expertise of such professional.

Section CC-2. Rehabilitation and New Construction. Sponsor has undertaken to substantially rehabilitate the Building with one additional floor and ten (10) modern, newly constructed, equipped and outfitted Units and Common Facilities in accordance with Sponsor's Plans and Specifications. During the period of rehabilitation, occupied Units will remain habitable and a tenant protection plan to the extent required by Laws will be in place. See Section A-18.2. A summary of the substantial rehabilitation and new construction, including the Units, the Common Areas and the Common Facilities is contained in DOCUMENT 4 in Part II and referred to in Section C-1. The projected timetable for completion of construction is contained in Section C-3.

Section CC-3. Certificate of Occupancy. Upon completion of construction, a Certificate of Occupancy is to be issued authorizing the number of Units for the proposed use set forth in this Plan as part of Sponsor's Obligations. Prior to the Closing of Title to a Unit, Sponsor must obtain either a Final Certificate of Occupancy or (at Sponsor's exclusive option) a Temporary Certificate of Occupancy authorizing the use of such Units for the purpose stated in this Plan.

Section CC-4. Official Inspection Reports. Official inspection reports reflecting upon the condition of the Property (such as notices of Building Code violations as at the date of search) and reports required by local law are noted in the report on the Description of Property and Specifications or Building Condition (DOCUMENT 4 in Part II).

As of June 27, 2019, there were 9 violations listed at the Department of Buildings for 324-326 West 108th Street (elevator, boiler and construction). Additionally, there were 11 Environmental Control Board construction violations listed. Sponsor shall cure these violations prior to the issuance of the FCO.

As of June 27, 2019, there were no violations listed at the Department of Housing, Preservation and Development.

See Section O-2.22 and Section O 2.23, respectively, for Sponsor's Obligations to correct violations noted or issued that are outstanding at the First Unit Closing and to update official inspection certificates and permits for Building equipment that expire at or prior to the First Unit Closing.

END OF SECTION CC

END OF PART I

PART II

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DOCUMENT 1

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is dated and made as of _____, 2022, between the following "**Parties**" (each, "**Party**"): W 108 Development LLC (the "**Seller**"), having an address for notices at 119 West 72nd Street, #401, New York, New York 10023, and the Party signing below as "**Purchaser**".

1. Agreement to Purchase and Sell

1.1 Purchaser agrees to purchase, and Seller agrees to sell, the Residential Unit ("**Unit**") and its appurtenant Common Interest in the Common Elements of the proposed 324 West 108th Street Condominium ("**Condominium**") located at 324 West 108th (a/k/a 324-326 West 108th Street), New York, New York 10025 ("**Building**") for the Purchase Price and on the Terms and Conditions, all as defined and stated below:

	Number	Common Interest
Residential Unit:	_____	_____%

2. Purchase Price

2.1 The "**Purchase Price**" of the Unit is $_____, which Purchaser agrees to pay to Seller as follows:

$_____ ("**Deposit**") on signing this Agreement; and

$_____ ("**Balance**") on delivery of the deed to the Unit to Purchaser ("**Closing**").

3. Date of Receipt of Offering Plan

3.1 Purchaser acknowledges receiving the condominium offering plan for the Property ("**Plan**") and the _____ amendments thereto ("**Amendments**") on _____ ___, 202__.

PURCHASER MUST BE AFFORDED THREE (3) FULL BUSINESS DAYS TO REVIEW THE OFFERING PLAN AND AMENDMENTS BEFORE SIGNING THIS AGREEMENT.

4. Information on Purchaser

4.1 Purchaser's address for notices and personal information are:

Street:_____, Apt. No._____

City: _____; State: ____ Zip Code:_____

Phone #: _____; Mobile:_____

(Social Security/Federal EIN No., Birth Date and Occupation are to be provided separately on Purchaser signing this Agreement.)

5. Purchaser's Attorney

5.1 "**Purchaser's Attorney**" is:

Individual Attorney: _____

Firm Name: _____

Address: _____

_____

_____

Phone #: (_____) _____

Fax #: (_____) _____

E-Mail: _____

6. Identity of Participating Broker

6.1 The only brokers and salespersons that Purchaser has dealt with on this transaction are the Selling Agent, Douglas Elliman, LLC, and:

Participating Broker: _____ *

Salesperson:_____

* [If inapplicable, state "None".]

7. No Mortgage Contingency

7.1 SPECIAL RISK: This Agreement is not contingent upon Purchaser obtaining financing (secured or unsecured). See paragraph 32.

CONTINUED ON THE FOLLOWING "TERMS AND CONDITIONS", WHICH ARE PART HEREOF

Seller and Purchaser agree that the provisions of this Agreement are legal and valid, binding on each of them and fully enforceable in accordance with its terms

All rights reserved.

SELLER:

W 108 Development LLC

By:

Sign:_____

Orly Gilat, Manager

Date Accepted:_____

PURCHASER:

Sign:_____

Name:_____*

Sign:_____

Name:_____*

Date Signed:_____ ___, 202_

***EXACT NAME TO BE ON THE DEED.**

ESCROW TERMS AGREED TO:

Paley Group,P.C.

By:_____

Name:_____

TERMS AND CONDITIONS

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8. Glossary

8.1 The meanings of the capitalized terms used but not defined in this Agreement are contained in the Plan. Seller is the Sponsor of the Plan. The lowercase words used in this Agreement shall be interpreted as indicated below and shall apply to derivations or variations thereof.. All other lowercase words shall have their ordinary meanings.

"arising from", "attributable to", "by reason of", "due to", and "in connection with" are interchangeable so that the use of one shall include the others.

"business day" is any day that is not a Saturday, Sunday or legal holiday of the State of New York or United States government.

"business hour" is from 9:00 a.m. to 5:00 p.m. (Eastern Time).

"change" is to amend, modify, revise, rewrite, supplement, add, eliminate, delete, repeal, replace, substitute, or otherwise vary.

"claim" is any contention, dispute, controversy or disagreement.

"cost" is any price, charge or fee.

"damages" means actual or compensatory damages, but not consequential, indirect, incidental, special or punitive damages

"day" is any day of the year, unless expressly stated to be a business day.

"deadline" is a time period that cannot be extended and is *of the essence*.

"default" is a breach, failure or violation, whether knowingly or unknowingly, inadvertent, negligent or otherwise.

"expense" is any pecuniary expenditure, outlay, imposition, penalty or fine.

"include" shall be interpreted to always be followed by: ", but not limited to,".

"indemnify" shall be interpreted to always be followed by: ", defend and hold harmless".

"legal expenses" are all reasonable attorney's fees and disbursements together with court cost and associated litigation expenses.

"legal requirements" are federal and state laws, and city ordinances, and the codes, rules, regulations, directives and requirements of governmental or other authorities having competent jurisdiction.

"liable" is any manner of legal responsibility, obligation or accountability.

"liquidated damages" are damages limited to the amount in question, which the Parties mutually agree are fair and reasonable under the circumstances and not subject to contest.

"litigation" is a court action or proceeding, and/or an arbitration, mediation or other dispute resolution body, as applicable.

"loss" means a financial or economic harm, including damages, as well as all costs and expenses.

"on behalf" means with the authority or permission, or at the direction, or at the behest of, or for the benefit of.

"per diem interest" is daily interest at the annual rate equal to the lower of nine per cent (9%) or the maximum legal rate, computed from the due date to the date each amount owed is fully reimbursed, unless otherwise expressly provided.

"repair" is to fix, correct, mend, refurbish and renovate.

"restore" is to rebuild, reinstate, replace and otherwise bring back to good and proper working order and first-class condition and appearance.

"shall" is the same as must.

"violation" is interchangeable with "default" so that the use of one shall include the other.

9. Part of Agreement

9.1 These "**Terms and Conditions**" form a part of the Agreement and are additional provisions governing Seller's agreement to sell, and Purchaser's agreement to purchase, the Unit.

10. Payment of Purchase. Purchaser shall pay the Purchase Price in the amount stated in paragraph 2 in accordance with these Terms and Conditions without abatement, set-off or credit, and without recourse against Seller and its managers, members, employees, agents and attorneys (collectively, "Seller's Related Parties").

10.1 Deposit. Purchaser shall pay the Deposit by Purchaser's unendorsed good personal collectible check or (at Seller's exclusive option) Purchaser's certified check or official cashier's or bank check, in the amount specified in paragraph 2.1 (which equals 10% of the Purchase Price) made payable to the order of "Paley Group, P.C., *as Escrowee*" for placement in an interest bearing escrow account. The Deposit shall be paid on signing and delivering this Agreement to Paley Group, P.C. ("**Seller's Attorney**" and "**Escrow Agent**") at 801 Second Avenue, Suite 2100, New York, New York 10017, as instructed by Seller's Attorney, Any earned interest on the Deposit shall be paid to Purchaser at Closing.

10.2 Balance. Purchaser shall pay the Balance of the Purchase Price at Closing in the amount specified in paragraph 2.1 by Purchaser's unendorsed good certified personal check or official cashier's or bank check, made payable to the direct order of *"W 108 Development LLC"*, or to such other payee(s) as Seller may specify on not less than two business days' prior oral notice or three business days' prior written notice to Purchaser or Purchaser's Attorney (if any).

10.3 Wire Transfer. At Seller's exclusive option, Purchaser shall pay the Deposit and/or the Balance in "immediately available funds" (that is, by electronic wire transfer to a bank account designated by Seller). Any payment made by wire transfer shall not be deemed to have been made until confirmed as received by Seller's bank and credited to Seller's account.

10.4 Checks. All checks for the Deposit and the Balance of the Purchase Price must be drawn on (and payable by) a member bank of the New York Clearing House Association, or a local bank, saving bank, savings and loan association, trust company, licensed mortgage banker, or insurance company (collectively, "**Institutional Lender**") acceptable to Seller (in its sole discretion). Purchaser shall not use a third party check (other than that of an Institutional Lender), including a check of an entity (unless Purchaser is the entity), to pay either the Deposit or the Balance.

10.5 IRS Form. Simultaneously with Purchaser's execution and delivery of this Agreement, Purchaser shall complete, sign and deliver to Seller or Seller's Attorney: (a) (if Purchaser is subject to backup withholding rules) Internal Revenue Service ("**IRS**") form W-8 BEN "Certificate of Foreign Status" (if Purchaser is a non-resident alien or foreign entity) or IRS form W-9 "Request for Taxpayer Identification Number (if Purchaser is a United States citizen or resident alien), as applicable.

11. Closing Date, Time and Place

11.1 After the Plan is declared effective, the date and time for Closing to the Unit ("**Closing Date**") will be fixed by Seller on not less than thirty (30) days' prior written notice to Purchaser. Seller shall not send such notice before Purchaser

is given an Amendment to the Plan disclosing Seller has declared the Plan effective ("**Effectiveness Amendment**"). The Closing Date is anticipated to be set on a date within the twelve (12)-month period commencing January 1, 2023, based on the construction schedule at the date of the Plan, subject to delays due to events or circumstances beyond the reasonable control of Seller, as explained below.. The Closing Date shall be on a business day, during business hours and at the offices of Paley Group, P.C., 801 Second Avenue, Suite 2100, New York, New York 10017. Depending upon the then current state of the COVID-19 coronavirus and its variants in New York City, the Closing may be conducted virtually under terms to be determined by Seller's Attorney, which shall be similar to the conveyance of title in other like real estate transactions conducted virtually by Seller's Attorney.

11.2 Seller has the right to postpone the Closing one or more times to remove a title objection or satisfy a Closing prerequisite under the Plan or for any other good faith reason. In the event Seller postpones the Closing or Purchaser fails to close on the Closing Date fixed by Seller in accordance with paragraph 11.1 (or any postponed dated fixed by Seller in accordance with this paragraph 11.2), Seller will fix a new date and time for Closing. Purchaser will be given written or oral notice of a postponement by Seller and at least ten (10) days' prior written notice of the new date and time for Closing fixed by Seller. In the event Seller postpones the Closing, Purchaser will pay the full amount of Purchaser's Closing payments contained in paragraph 14.1 on the postponed date of Closing, including the Balance of the Purchase Price.

11.3 Under the Plan, the First Unit Closing is targeted to occur on or about January 1, 2023, but may actually occur earlier or later. Purchaser understands that completion of the Unit and/or the Building may be delayed due to events or circumstances beyond Seller's reasonable control, such as inclement weather; fire; explosion; power failure; labor strikes, lockouts, stoppages or other disputes affecting Seller or Seller's contractors or subcontractors; shortages or late delivery of materials or supplies affecting Seller or Seller's contractors, subcontractors or suppliers; and delays in issuing permits or licenses or conducting inspections by, or other actions or inactions of, Governmental Authorities having competent jurisdiction (collectively, "**Unavoidable Causes**"). Accordingly:

a. Seller does not represent, assure or guarantee when the actual date of the First Unit Closing will occur, which might be earlier or substantially later;

b. Seller does not represent, assure or guarantee when the actual day of Closing to the subject Unit will occur, which might be substantially after the First Unit Closing;

c. Seller will determine the order of closings of Residential Units, which need not coincide with the sequence in which they are contracted for sale or the numerical order of the floors;

d. Purchaser will not be excused from paying the full Purchase Price, without abatement, set-off or credit, and without recourse of any kind against Seller, Seller's Related Parties or the Selling Agent, in the event the First Unit Closing occurs substantially later than said targeted Closing Date or the Closing to the subject Unit is substantially after the First Unit Closing or is postponed; provided, however, if the First Unit Closing is not held by January 1, 2024, or twelve (12) months from such later date as may be set forth in an Amendment to the Plan served on Purchaser before Purchaser signs and delivers this Agreement, Purchaser will be offered the option (if Purchaser is not then in default hereunder beyond the applicable grace period and the Plan has been declared effective) to rescind this Agreement and recover the Deposit and any interest earned thereon (together, "**Purchase Monies**") as Purchaser's sole right and remedy; and

e. in no event shall Seller, Seller's Related Parties or the Selling Agent be liable to Purchaser for any damages or losses due to any delay in completing construction of the Unit or in rehabilitating, erecting, equipping and outfitting the Building or in consummating the Closing.

11.4 If this Agreement is for more than one Residential Unit, then both Units shall Close simultaneously, provided only that a temporary, partial or final (at Seller's exclusive option) Certificate of Occupancy of the Building shall be issued authorizing the Residential Units which are the subject of this Agreement for use as a private dwelling.

12. Purchaser's Closing Costs

12.1 At Closing, Purchaser shall pay the following "mandatory" Closing costs, which are in addition to (and not part of) the Purchase Price:

a. Purchaser shall pay the New York City Real Property Transfer Tax and the New York State Real Estate Transfer Tax applicable to this purchase and sale together with the fee of an ACRIS service provider (if any) to prepare such transfer tax returns, the then governmental fees and charges, and title company's service charge, to prepare and file these transfer tax returns, together with the New York State equalization and assessment form, and to record the Deed and (if applicable) the mortgage lien release and UCC-3 Termination Statement under paragraph 14.1;

b. Purchaser shall pay a sum equal to two months' projected Common Charges for the Unit (i.e., each Residential Unit comprising the "Unit", if more than

one Residential Unit) as set forth in SCHEDULE A – Offering Prices and Related Information in Section E of Part I of the Plan, as such projected Common Charge may be revised in an Amendment to the Plan filed prior to the First Unit Closing (such payment represents Purchaser's contribution to the Condominium's Working Capital Fund and shall be made payable and delivered to Seller until the amounts paid by purchasers under the Plan who Close fully reimburse Seller for its "advance" payment to the Working Capital Fund as set forth in the Plan and, thereafter, will be made payable to 324 West 108 Condominium or as otherwise directed by the Condominium Board and delivered to Seller at Closing for forwarding to the Board or its Managing Agent); and

c. Purchaser shall pay Seller's Attorney, Paley Group, P.C. (or any other attorney designated in writing by Seller) the following sum: (a) (if Purchaser is buying without mortgage financing) such payment shall equal $3,000.00; or (b) (if Purchaser buying with mortgage financing) such payment shall equal $3,500.00 (such payment to cover the cost of Unit Closing legal services in connection with this purchase and sale).

12.2 At Closing, Purchaser shall also pay the following "elective" Closing costs:

a. if Purchaser elects to obtain a mortgage loan:

(a-1) Purchaser shall pay the mortgage recording tax, the governmental fee and charges to record the mortgage and a service charge to the title company to record the mortgage;

(a-2) Purchaser shall pay Seller an amount equal to all of Purchaser's savings in the mortgage recording tax to which Purchaser is entitled, whether such savings results from an assignment of an existing mortgage on the Unit (regardless of whether Purchaser's lender accepts such assignment) or is pursuant to Real Property Law Section 339-ee, or otherwise;

(a-3) if Purchaser's Institutional Lender or its attorney refuses to close at the offices of Seller's designated attorney, Paley Group, P.C. (or any other attorney designated in writing by Seller) as set forth in paragraph 11.1, and requires the Closing to be held elsewhere in The City of New York, Purchaser shall also pay Paley Group, P.C. (or other attorney designated by Seller) a travel fee of $500 (if the Closing is held in Manhattan) [NOTE: Seller and Seller's Attorney are not required to attend the Closing outside of the office of Seller's designated attorney or outside of New York City];

(a-4) Purchaser shall pay the premium for mortgage title insurance (if required by Purchaser's mortgage lender); and

(a-5) Purchaser shall pay all escrows (such as for Common Charges and real estate taxes), private mortgage insurance fee (if any) and other mortgage closing costs and expenses required by Purchaser's mortgage lender (if any);

b. if Purchaser elects to order title insurance, Purchaser shall pay the premium of Purchaser's title insurer or agent for the policy together with all charges and costs of title searches and any escrow for real estate taxes relative to Purchaser's period of ownership of the Unit;

c. if Purchaser elects to retain an attorney, Purchaser shall pay the fees and other charges of Purchaser's Attorney; and

d. if Purchaser has dealt with any broker other than the Selling Agent and the Participating Broker (if any) identified in paragraph 6.1, Purchaser shall pay the fee or commission earned by such broker.

12.3 At Closing, Purchaser shall also pay the following "delinquent Closing costs" if Purchaser fails for any reason whatsoever not due to the fault of Seller to close on the Closing Date to be fixed by Seller in accordance with paragraph 11.1 or if the Closing Date so fixed by Seller is postponed because Purchaser or Purchaser's Attorney fails to timely notify Seller or Seller's Attorney of a title objection as provided in paragraph 16.4:

a. Purchaser shall reimburse Seller for lost opportunity of earnings on the Purchase Price, a sum equal to per diem interest on the Purchase Price, prorated for each day's delay, starting on the fifth (5th) business day after the originally Closing Date fixed by Seller pursuant to paragraph 11.1 through the end of the day prior to the actual date of Closing (or expressed as a formula: Purchase Price x 9% = $X ÷ 365 = $Y x number of days delayed = $Amount);

b. Purchaser shall also reimburse Seller for the Unit's Common Charges and real estate taxes for the period of such delay; and

c. Purchaser shall pay Seller's designated attorney, Paley Group, P.C. (or any other attorney designated in writing by Seller), the amount of $250.00 for each default notice sent to Purchaser (for the costs to send

such notice) and a further sum of $250.00 for each time the Closing is rescheduled (for the costs to fix a new Closing date and time, to coordinate the attendance of all persons, to re-date the Closing documents and to recalculate the Closing apportionments).

12.4 Purchaser shall pay Purchaser's Closing costs under this paragraph 12 based on the applicable governmental and title company rates in effect at Closing.

12.5 All sums payable to Seller and Seller's designated attorney (i.e., Paley Group, P.C. or other attorney designated by Seller, as applicable) under paragraph 12.3 shall be payable in the same manner as the Balance (see paragraphs 10.2 and 10.4).

12.6 The New York City and the New York State transfer taxes payable by Purchaser under paragraph 12.1.a shall be paid by Purchaser's unendorsed certified check or unendorsed official cashier's or bank check made payable directly to the appropriate taxing authority or to Purchaser's title insurer or agent for forwarding to such taxing authority.

12.7 Purchaser shall pay any additional tax or tax deficiency in such New York City and State transfer taxes payable by Purchaser under paragraph 12.1.a. Similarly, if Purchaser obtains a mortgage loan, Purchaser shall pay any additional tax or tax deficiency in the mortgage recording tax payable by Purchaser under paragraph 12.2.a. Purchaser shall also pay any interest and penalties assessed by a taxing authority in connection with any of these additional tax or tax deficiency payments.

12.8 Purchaser shall indemnify Seller (with attorneys selected by Seller) from and against any and all costs and expenses resulting from Purchaser's agreements in paragraphs 12.1 and 12.7.

12.9 Purchaser's obligations under paragraph 12.1.a (to pay the New York City State transfer taxes), paragraph 12.2.d (to pay the commission earned by Purchaser's broker, other than the Selling Agent and Participating Broker identified in paragraph 6.1, if any), paragraph 12.7 (to pay all additional taxes, tax deficiencies, interest and penalties) and paragraph 12.8 (to indemnify Seller from any breach of Purchaser's obligations in paragraph 12.7) shall survive the Closing.

13. Closing and Post-Closing Apportionments

13.1 At Closing, Seller and Purchaser shall apportion the following items with respect to the Unit as of 11:59 p.m. of the preceding day:

a. real estate taxes and the then current installment of any special real estate tax assessment covering the tax period within which the Closing occurs; and

b. the monthly Common Charge and the then current installment of any Condominium special assessment for the period in which Title Closes.

All such apportionments shall be based on the actual number of days of the billing period in question for said items. If the Closing occurs before the Unit is separately assessed and billed for real estate taxes, then real estate taxes shall be apportioned pro rata to Common Interest as provided in the Plan and after the Unit is so separately assessed and billed, Seller and Purchaser shall each have the right, within a deadline of only sixty (60) days after the Unit is so separately assessed and billed to adjust post-Closing any overpayment or underpayment of real estate taxes apportioned at Closing as set forth in the Plan (see Section N-1.3 of Part I of the Plan). If the Closing occurs after the Unit is separately assessed but before the bill rate for real estate taxes is fixed covering the period in which the Closing occurs, then such real estate taxes shall be apportioned based upon the billing rate in effect at Closing.

13.2 The net amount resulting from the apportionments in paragraph 13.1 shall be paid to the proper Party at Closing (and, if owed by Purchaser, shall be in addition to the Purchase Price).

13.3 Installments for any real estate tax assessment or for any Condominium special assessment due after the Closing are not a defect in, or objection to, title and shall be paid by Purchaser without abatement, set-off or credit against the Purchase Price and without recourse of any kind against Seller or Seller's Related Parties. However, the then current installment for any special real estate tax assessment or any Condominium special assessment shall be apportioned at Closing in accordance with paragraph 13.1.

13.4 All conventional practices recommended by The Real Estate Board of New York, Inc. in its "Customs in Respect to Closings" shall be followed for Closing apportionments unless inconsistent with the express provisions of this paragraph 13.

13.5 Any errors or omissions in computing apportionments at Closing shall be corrected, and payment made to the proper Party, promptly after receipt of a written notice containing a calculation of the amount owed, provided and on condition such notice is sent within a deadline of six (6) months after the actual Closing Date.

13.6 If either Party receives subsequent to Closing a refund, savings or abatement in the Unit's real estate taxes for the fiscal tax year in which the Closing is held, the Party receiving the tax benefit shall pay to the other Party the portion thereof fairly attributable to the other Party after deducting

costs and expenses (including legal expenses) paid or incurred in connection therewith.

13.7 The utility service account in Seller's name with respect to the Unit for electricity shall be terminated as of the day of Closing. Purchaser shall be responsible to arrange obtaining electric service for the Unit from and after the Closing, including paying any deposit required by the utility provider. In the event Seller shall be billed by the utility provider for any separately metered electric service consumed by Purchaser from and after the Closing, Purchaser shall pay or (at Seller's option) reimburse Seller within five (5) business days after notice thereof is given to Purchaser accompanied by a copy of the bill from the utility provider, the amount so billed applicable to Purchaser's consumption.

13.8 The respective obligations of Seller and Purchaser under paragraphs 13.1, 13.5, 13.6, and 13.7 shall survive the Closing.

14. Closing Payments and Documents

14.1 At Closing:

a. Purchaser shall pay Seller the Balance of the Purchase Price in the amount stated in paragraph 2.1 and in the manner described in paragraphs 10.2 and 10.3;

b. Purchaser shall pay Purchaser's Closing costs as set forth in paragraph 12;

c. the net Closing apportionments shall be paid to the appropriate Party in accordance with paragraph 13;

d. Seller and Purchaser shall sign and (where required) notarize and deliver (in duplicate) the then current forms for the New York City and New York State transfer tax returns, the New York State equalization and assessment form applicable to this transaction and the New York City Smoke Detecting (Alarm) Device Affidavit and Carbon Monoxide Detection Device Affidavit;

e. Purchaser shall deliver the required checks in the proper amounts and to the proper payees of such New York City and New York State transfer taxes;

f. if Purchaser is obtaining mortgage financing:

(f-1) Purchaser shall pay, sign and deliver all amounts, instruments and documents as required by Purchaser's mortgage lender in order to close the mortgage loan simultaneously with the Closing hereunder; and

(f-2) Purchaser shall sign and deliver an appropriate affidavit for exemption from, abatement of and/or credit against the mortgage recording tax as a result of an assignment of an existing mortgage or the mortgage tax credit under Real Property Law Section 339-ee or otherwise (the foregoing notwithstanding, Seller may, at Seller's option, sign, notarize and deliver said affidavit; however, regardless of who signs the affidavit, Purchaser shall pay Seller the amount of Purchaser's available savings in the mortgage recording tax as provided in paragraph 12.2(a-2);

g. Seller and Purchaser shall sign in recordable form, and Seller shall deliver, Seller's standard Bargain and Sale Deed (**"Deed"**) with covenant against grantor's acts, in proper statutory form for recording and containing the covenant required by Section 13, subdivision 5 of the Lien Law, whereby Seller transfers legal ownership (fee simple title) of the Unit to Purchaser (such Deed to be substantially in the form set forth in Part II of the Plan);

h. Seller shall deliver a mortgage lien release and UCC-3 Termination Statement or other appropriate instrument (signed in recordable form) discharging the Unit and its contents from any mortgage lien and security interest in the "Personal Property" (defined in paragraph 17.1), other than the lien of any mortgage loan Purchaser obtains (Purchaser shall pay all governmental fees and charges, and title company service charge, to record and file such instruments);

i. Seller shall sign, notarize and deliver an affidavit stating that the Unit is not a "multiple dwelling" as defined in applicable laws;

j. Seller shall deliver to Purchaser a certification of non-foreign status signed by Seller as required by the applicable provisions of the federal income tax code and regulations;

k. Seller shall sign, notarize (where required) and deliver to Purchaser's title insurer or agent (as applicable) such title affidavit and other evidence as said title insurer or agent (as applicable) may reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against Seller and persons or entities whose names are the same as, or are similar to, Seller's name; and Purchaser shall likewise sign, notarize and deliver such title affidavit and other evidence as said title insurer or agent may reasonably require to omit from its fee or mortgage title insurance policy all such exceptions with respect to Purchaser;

l. Purchaser shall deliver to Purchaser's title insurer or agent (as applicable) certified or non-certified checks

of Purchaser (as directed), in such amounts and to such payees, as said title insurer or agent may require in connection with any escrow to be held and applied by the title insurer or agent for payment of the next due real estate taxes with respect to the Unit (if and as required by Purchaser's title insurer or agent);

m. Seller shall assign and deliver to Purchaser, to the extent in Seller's possession, all applicable unexpired and transferable warranties or undertakings of contractors, suppliers and manufacturers relative to the Personal Property in the Unit that is included in this purchase and sale (such assignment shall expressly provide that it is made without any kind whatsoever of guaranty, warranty or representation by, or recourse against, Seller or Seller's Related Parties and is subject to all faults, defects, risks, damages, conditions and need for repairs or corrections);

n. Seller shall deliver to Purchaser a statement by the Condominium Board or its Managing Agent as to the status of payment of Common Charges and any special assessments for the Unit (such statement will be sufficient for apportioning these items under paragraphs 13.1 and 13.3);

o. Seller shall deliver to Purchaser a certificate from the Condominium Board's insurer of the Property showing Purchaser and (if Purchaser is obtaining a mortgage loan) Purchaser's mortgage lender as additional insured parties under the Board's master liability policy;

p. Seller shall deliver a copy of a temporary or partial or final (at Seller's exclusive option) Certificate of Occupancy of the Building authorizing the use of the Unit as a private dwelling; and

q. Seller shall deliver to Purchaser all keys to the Unit and any mailbox or (at Seller's option) such keys shall be given to the Building's superintendent or Managing Agent for delivery to Purchaser.

14.2 The following documents and checks described in paragraph 14.1 shall be delivered to Purchaser's title insurer or agent, as applicable (or, if none, to Seller's Attorney) for recording or submission to the New York City Register's Office of the County of New York: the New York City and State transfer tax returns and checks, the New York State equalization and assessment form, the New York City Smoke Detector Affidavit and carbon monoxide detection device affidavit (if applicable), the Deed, the mortgage lien release and the UCC-3 Termination Statement (if applicable), and the non-multiple dwelling affidavit. After being recorded, the Deed and the mortgage lien release and said UCC-3 (if any) shall be returned to Purchaser.

14.3 Seller's covenant in the Deed is for Purchaser's personal benefit and shall not inure to the benefit of Purchaser's successors or subrogees (including Purchaser's title insurer or agent, as applicable). Purchaser must first look to Purchaser's title insurer or agent (as applicable) before seeking recourse against Seller or Seller's Related Parties for recovery on any claim or liability based upon a breach of such covenant. Purchaser agrees that Seller's liability will be limited to any loss or damage not covered by title insurance. In the event that Purchaser elects not to purchase title insurance, then Seller's liability shall be limited to any loss or damage that would not have been covered by the title insurance that was available to Purchaser at the Closing. The terms of any title policy or marked-up title binder of any title insurance company authorized to do business in New York State issued in connection with any other unit of the Condominium shall be conclusive evidence of the title insurance coverage that was available to Purchaser. This provision shall survive the Closing.

14.4 Purchaser's payment of the Balance of the Purchase Price and acceptance of the Deed shall constitute Purchaser's recognition and agreement that Seller has satisfactorily performed those obligations stated in this Agreement, the Plan and the Amendments thereto to be performed by Seller to and through Closing. This, however, shall not excuse Seller from performing those obligations (if any) expressly stated in this Agreement, the Plan or Amendments to be performed subsequent to the Closing, nor reduce or otherwise abridge any of Purchaser's rights under Article 23-A of the General Business Law, the Plan or Part 20 of the regulations issued by the Department of Law.

15. Possession

15.1 At Closing, Seller shall deliver possession of the Unit to Purchaser vacant and free of all leases, occupants and rights of others to possession. Seller shall not enter into a lease or other occupancy agreement for the Unit with a third person unless this Agreement is canceled or terminated.

15.2 Prior to Closing, Purchaser shall not be entitled to, and (unless Seller agrees to give Purchaser an Interim Use and Occupancy Agreement, which Seller is not obligated to give) Purchaser shall not use or occupy the Unit, or store Purchaser's household furniture, furnishings, belongings or other items in the Unit, or paint or otherwise decorate, or make any improvements or additions to the Unit or any portion thereof. Any violation of this provision shall be a material default of Purchaser's obligations entitling Seller to the remedies contained in paragraph 22.

16. State of Title

16.1 Seller shall convey, and Purchaser shall accept, title to the Unit and its appurtenant Common Interest free and clear of all liens, encumbrances and title conditions, other than the following:

a. the encumbrances (**"Permitted Encumbrances"**) listed in EXHIBIT A to this Agreement; and

b. such other matters as: (b-1) either (at Seller's option) Judicial Title as agent for First American Title Insurance Company of New York (each, "**Title Insurance Company**") or Purchaser's title insurer or agent (as applicable) shall be willing, without additional cost to Purchaser beyond its regular rates, to omit as exceptions to coverage or to except with insurance against collection out of, or enforcement against, the Unit; and (b-2) shall be accepted by the Institutional Lender (if any) which has offered in writing to make a loan to Purchaser, whether or not conditional upon any factor, secured by a first mortgage on the Unit ("**Loan Commitment Letter**"), and accepted by Purchaser, except that if such acceptance by Purchaser's Institutional Lender is unreasonably withheld, delayed or conditioned, such acceptance shall be deemed to have been given.

The Deed shall be considered to be subject to the Permitted Encumbrances, even though they are not repeated or referred to in the Deed.

16.2 Any lien, encumbrance, charge or title condition not included in the Permitted Encumbrances (collectively, "**Title Exception**") shall not be considered an objection to title, and Seller shall not be obligated to cause Purchaser's title insurer to omit it from Purchaser's title insurance policy, if:

a. at or prior to the Closing, the instrument required to remove it "of record" together with the requisite recording or filing fees, has been delivered to either (at Seller's option): (a-1) the Title Insurance Company for recording in the proper office, and a copy of said instrument is delivered at Closing to the representative of Purchaser's title insurer or agent, or Purchaser's Attorney (or, if none, to such other person as Purchaser shall direct); or (a-2) Purchaser's title insurer or agent; or

b. either the Title Insurance Company or (at Seller's exclusive option) Purchaser's title insurer or agent (as applicable) is willing to insure Purchaser (at Purchaser's expense, but at its regular rate and without additional premium) against collection or enforcement of the Title Exception out of the Unit and is willing to insure the mortgage lien of Purchaser's Institutional Lender (if any) free and clear of any such Title Exception (it being agreed that Seller shall have the right, in lieu of payment and discharge of such Title Exception, to make such deposits and/or to give such assurances and/or to pay such special or additional premiums as the Title Insurance Company or (at Seller's option) Purchaser's title insurer or agent (as applicable) may require in order to so insure); or

c. (in the case of a condition in the Unit that is a violation noted or issued by a governmental authority having competent jurisdiction) an architect or engineer designated by Seller certifies in writing to Purchaser that the condition causing the violation has been corrected and Seller undertakes in writing to Purchaser and Purchaser's title insurer or agent (as applicable) and Institutional Lender (if any) to use commercially reasonable diligence and efforts to cause the violation to be removed of record (such agreement shall survive the Closing), without escrowing any monies; provided only that such undertaking shall be reasonably acceptable to Purchaser's title insurer and Institutional Lender (if any).

16.3 Any unpaid taxes and assessments, together with the interest and penalties thereon to a date not less than two days following the date of Closing, and any other liens and encumbrances that Seller is obligated to pay and discharge or that are against corporations, limited liability companies, partnerships, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser at the Closing official bills for such taxes, assessments, interest and penalties and instruments in recordable form sufficient to discharge any such other liens and encumbrances of record. Upon request made on not less than two business days' prior oral notice or three business days' prior written notice before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with paragraph 10.2.

16.4 At least ten (10) days prior to the Closing Date, Seller's Attorney, Paley Group, P.C., 801 Second Avenue, Suite 2100, New York, New York 10017, shall receive from Purchaser or Purchaser's Attorney written notice of any and all title objections. If Purchaser elects to obtain title insurance, then a copy of the title report and every continuation thereof issued by Purchaser's title insurer or agent (as applicable) will suffice in lieu of such notice. In such event, the title report also must be received by Seller's Attorney at least ten (10) days prior to the Closing Date and each continuation must be sent directly to said Seller's Attorney by Purchaser's title insurer or agent (as

applicable), or sent to said Seller's Attorney within two business days after being received by Purchaser or Purchaser's Attorney.

16.5 If Seller is required to postpone the Closing to remove a title objection, Purchaser shall be at fault for such postponement if Purchaser fails to timely comply with paragraph 16.4 and the objectionable title condition existed at the time Purchaser is required to send the title objection notice. However, Purchaser shall not be at fault if Purchaser or Purchaser's Attorney or title insurer or agent (as applicable) timely sends Seller's Attorney a title report and every continuation in accordance with paragraph 16.4 and the objectionable title condition arises after such title report or any continuation is issued.

16.6 In the event Purchaser is at fault for the postponement of the Closing, Purchaser shall pay Seller and (if applicable) Paley Group, P.C. at Closing, the delinquent Closing costs stated and/or calculated as provided in paragraph 12.3.

16.7 If Purchaser's title insurer or agent raises one or more Title Exceptions that would be omitted by the Title Insurance Company as provided in paragraph 16.2, then Purchaser either (at Purchaser's option) shall take subject to such Title Exceptions (without abatement, set-off or credit against the Purchase Price, or escrowing any monies, and without recourse of any kind against Seller or Seller's Related Parties) or may procure title insurance from the Title Insurance Company (and thereby have title to the Unit insured free of such Title Exceptions).

16.8 Because the Title Insurance Company is already familiar with title to the Unit, any title issues might be more easily resolved by obtaining title insurance from the Title Insurance Company (i.e., Judicial Title, as agent for First American Title Insurance Company of New York, Attention: Angelo DelliCaprini,Esq. telephone number (212) 432--3272.

16.9 Notwithstanding any provision to the contrary in this Agreement, express or implied, or any contrary rule of law or custom, if Seller shall be unable to convey the Unit in accordance with this Agreement (provided that Seller shall release, discharge or otherwise cure at or prior to Closing any matter intentionally created by Seller in bad faith after the date hereof and any existing mortgage, unless this purchase and sale is subject to it) and if Purchaser elects not to complete this transaction without abatement, set-off or credit against the Purchase Price, without escrowing monies, and without recourse of any kind against Seller or Seller's Related Parties, the sole liability of Seller shall be to cause the Escrowee to release the Purchase Monies to Purchaser, and for Seller to and to pay Purchase the reasonable costs of the examination of title to, and departmental violation searches in respect of, this Agreement actually paid by Purchaser (the latter costs of title examination and searches are collectively, "**Title Search Costs**"), and upon releasing the Purchase Monies and making such payment, this Agreement shall be deemed cancelled and of no further force or effect, and neither Party shall have any further rights against, or liabilities to, the other Party by reason of this Agreement, other than those agreements, representations, indemnities or liabilities expressly stated to survive the cancellation or terminations of this Agreement. However, nothing contained in this paragraph 16.9 shall be construed to relieve Seller from Purchaser's remedy for specific performance under paragraph 23.3 due to a willful default.

17. Personal Property Included in Sale

17.1 This purchase and sale includes the kitchen and bathroom sinks, cabinets, appliances, plumbing and electrical fixtures and hardware (collectively, "**Personal Property**"), all as and to the extent set forth in the Plan (see Document 4 in Part II of the Plan for all items and their manufacturers and model numbers where applicable). The Personal Property will be new and the appliances, the electrical and plumbing fixtures and heating and air conditioning units will be in working order at Closing.

17.2 Seller shall have the exclusive right and discretion to make substitutions of equal or better quality, design and function for any Personal Property without Purchaser's approval or consent, without amending the Plan, and without abatement, set-off or credit against the Purchase Price or recourse of any kind against Seller or Seller's Related Parties.

17.3 No portion of the Purchase Price is attributable to the Personal Property, which will be transferred to Purchaser without consideration at the Closing. If the Closing does not occur, Purchaser will not have any right or interest in, and may not acquire or purchase, the Personal Property.

17.4 Apart from the Personal Property, the Unit shall be purchased by Purchaser without furnishings or decorations. Purchaser acknowledges and agrees that:

a. furniture, floor coverings, wall coverings, furnishings and other decorations, finishes and treatments in or about any model and not expressly set forth in the Plan as part of the Personal Property included in the sake of the Unit, are for display purposes only and are not included in this purchase and sale; and

b. there will be no modifications or extras unless agreed to in writing by Seller.

18. Seller's Construction Obligations

18.1 Seller is extensively rehabilitating the Building with an additional floor and newly constructed and outfitted units and Common Facilities substantially in accordance

with Seller's Plans and Specifications, as such Plans and Specifications may be amended from time to time in accordance with the Construction Change Requirements set forth and defined in Section O-2.8.2 of Part I of the Plan. The quality of construction is to meet or exceed any relevant specific standards required by any applicable building code and, if no such standard is required, the workmanship and materials are to meet or exceed the standard of locally accepted building practices for equivalent newly constructed buildings located in the locale of the Property and containing Building facilities and amenities comparable to this Building ("**Building Construction Standard**"). Nothing contained herein is, and shall not be construed to be, a representation, warranty or guaranty that the Unit or the Building, as built, will meet or comply with all applicable laws or the Plans and Specifications, as the same may be amended from time to time. See paragraph 18.5 for Seller's obligation for Construction Defects.

18.2 Purchaser shall accept title to the Unit without abatement, set-off or credit against the Purchase Price, without escrowing monies, and without recourse of any kind against Seller or Seller's Related Parties, subject to:

a. the Plans and Specifications and all amendments thereto made in accordance with the Construction Change Requirements;

b. any minor or insubstantial variations or discrepancies from the Plans and Specifications, whether caused by site conditions, or construction or job or governmental requirements, or customary construction allowances, tolerances or variations, or otherwise, provided, however, that all such variations or discrepancies shall comply with all applicable laws;

c. any minor or insubstantial variations or discrepancies between any floor plan of the Unit and the actual overall size (i.e., floor area) of the Unit or the actual size of any of the Unit's rooms, bathrooms, closets and other areas after completion of construction; and

d. any substitutions of Personal Property made in accordance with paragraph 17.2.

18.3 Purchaser understands and agrees as follows:

a. any floor plan of the Unit in the Plan or a brochure or elsewhere are based on construction drawings and are only approximations of its configuration, fenestration, floor area and room dimensions (collectively, "**Unit Layout**");

b. in accordance with customary practice, the overall floor area or square footage of the Unit shown on any floor plan and in the Plan is measured from the exterior side of all Building Walls and other boundary walls enclosing the Unit, or the midpoint of a wall separating the Unit from another unit, and thus will substantially exceed the Unit's usable floor area;

c. the actual Unit Layout may differ in minor respects from any floor plan or drawing due to changes: (c-1) required by the New York City Department of Buildings or other Governmental Authorities having competent jurisdiction; or (c-2) necessitated by site conditions or construction, job or governmental requirements; or (c-3) resulting from normal construction allowances, tolerances and variations;

d. the actual overall size and Unit Layout as constructed will govern and supersede any minor or immaterial variation or discrepancy in the overall size or Unit Layout set forth on any floor plan of the Unit or any Unit information contained in the Plan; and

e. if the actual overall size of the Unit when built, as similarly measured from behind the Building Walls and boundary walls enclosing the Unit, is materially smaller than the total square footage (i.e., floor area) estimated on its floor plan in DOCUMENT 5 in Part II of the Plan, or in SCHEDULE A in Section E of Part I of the Plan, the provisions of paragraph 23.6 shall apply.

18.4 The issuance of a final Certificate of Occupancy of the Building authorizing the use of the Unit for the purpose set forth in the Plan shall be presumptive evidence that Seller constructed, equipped and outfitted the Unit and the Building in accordance with applicable law, the Plan and the Plans and Specifications (as each of same may be amended). However, this does not excuse Seller from Seller's obligation to correct any Construction Defects in the Unit or the Common Elements (as defined in Section O-2.11.2 and provided in Section O-2.11.3 of Part I of the Plan) is summarized in paragraph 18.5.

18.5 In accordance with the Plan, Seller's only liability for Construction Defects shall be as follows:

a. in the case of the subject Unit and its appurtenant Limited Common Elements: Seller shall correct any Patent Construction Defects (as defined in Section O-2.11.2 of Part I of the Plan) in the Unit and its appurtenant Limited Common Elements that are listed in Purchaser's Final Inspection Statement, signed by Purchaser and Seller, and to correct any Latent Construction Defects (as defined in said Section O-2.11.2) in the Unit and its Limited Common Elements that are listed in a written notice ("**Defect Notice**") signed by Purchaser and received by Seller within a deadline of three calendar months following the consummation of the Closing, except in the case only of a Latent Construction Defect that is not reasonably ascertainable within said three-month

period, Seller must receive the Defect Notice within an extended deadline of three calendar months after the end of a reasonable period of discovery thereof or three calendar months from when and if sooner discovered, but in no event shall Seller receive the Defect Notice later than a deadline of one year after the Closing and conveyance of title to the Unit to Purchaser; and

b. in the case of Common Elements: Seller shall correct those Patent Construction Defects and Latent Construction Defects in the Common Elements that are listed in a reasonably detailed written Defect Notice signed by any Independent Board Member and received by Seller within a deadline of three calendar months after the *later* to occur of the following:

(b-1) the first Board election at which the Independent Board Members constitute a majority of the Condominium Board; or:

(b-2) completion of construction of the affected potion of the Common Elements; or

(b-3) the Closing with a bona fide purchaser of an Unsold Unit in which such affected portion of the Common Elements is located,

except in the case only of a Latent Construction Defect in the Common Elements that is not reasonably ascertainable within the foregoing applicable three-month deadline period, Seller must receive the Defect Notice within an extended deadline of three months after the end of a reasonable period of discovery thereof or three months from when and if sooner discovered, but in no event shall Seller receive the Defect Notice later than a deadline of one year from the date of completion of construction of the affected Common Element or the date the Independent Board Members comprise a majority of the Condominium Board, whichever is later.

18.6 As a result, Seller shall have no liability for:

a. Patent Construction Defects in the Unit or its appurtenant Limited Common Elements that are not listed in Purchaser's Final Inspection Statement signed by both Purchaser and Seller or Seller's representative and received by Seller at or prior to Closing; or

b. Latent Construction Defects in the Unit or its appurtenant Limited Common Elements or Patent and Latent Construction Defects in the Common Elements for which a written Defect Notice is not received by Seller within the applicable three months or one year deadline time period set forth above (as applicable).

18.7 Seller shall conclusively be regarded as having satisfied Seller's obligation to correct Construction Defects in the Unit and its appurtenant Limited Common Elements or the Common Elements if the corrective work is done in accordance with the Building Construction Standard as determined in the sole judgment of Seller's architect, engineer or contractor (who shall not be a principal of Seller).

18.8 Seller shall be excused, released and discharged from its obligations for Construction Defects in the Unit and its appurtenant Limited Common Elements or in the Common Elements (as applicable) if reasonable continuous access thereto by Seller and its agents and employees, and the architect, engineers, construction manager, contractors, subcontractors, consultants and expediters, and their respective workers and employees (collectively, "**Seller's Work Parties**") engaged by or on behalf of Seller to perform the corrective work is prevented and is not given within a deadline of thirty (30) days after written notice is mailed or hand delivered to: (a) (in the case of the Unit and its appurtenant Limited Common Element) Purchaser, or (b) (in the case of the Common Elements) any Independent Board Member.

18.9 In accordance with the Plan, the following are not Construction Defects and shall not be corrected by Seller nor excuse Purchaser from Purchaser's obligations under this Agreement to pay the full Purchase Price (without abatement, set-off or credit, without escrowing monies, and without recourse of any kind against Seller or Seller's Related Parties):

a. all Construction Changes (defined in Section O-2.8.1 of Part I of the Plan) made in accordance with Construction Change Requirements;

b. all insubstantial variations from the Plans and Specifications, the floor plan of the Unit or a description of the Building (including the units and Common Elements) set forth in the Plan;

c. all variations necessitated by site conditions or construction, job or governmental requirements, or customary construction allowances, tolerances or variations, provided all Construction Change Requirements are met to the extent applicable;

d. all Construction Defects covered by assignable unexpired warranties or other undertakings (however denoted) from manufacturers, contractors, material suppliers or others which are assigned to, or benefit (without assignment), Purchaser or the Condominium Board;

e. any condition caused by normal use, wear, tear, deterioration, settlement or shifting, or aging or seasonal variations; and

f. all insubstantial conditions or defects involving color, alignment, fit, noise, drafts, cracks, chips, scratches, breaks, warpage or other imperfections.

18.10 Seller's liability for construction defects in or affecting: (a) the Unit and its appurtenant Limited Common Elements shall be enforceable by only Purchaser and not subsequent owners of the Unit; and (b) the Common Elements shall be enforceable only by the Condominium Board.

19. Purchaser's Changes and Extras

19.1 After this Agreement is fully executed and given to each Party, Seller shall not be obligated to make any changes to the Plans and Specifications applicable to the Unit or its appurtenant Limited Common Element or provide any extras or upgrades that hereafter might be requested by Purchaser. Seller's refusal to make such changes or provide such extras or upgrades shall not excuse Purchaser from Purchaser's obligation to consummate the Closing timely, without abatement, set-off or credit against the Purchase Price, without escrowing monies, and without recourse of any kind against Seller or Seller's Related Parties.

19.2 Any changes, extras or upgrades requested by Purchaser and agreed to be made by Seller shall not be binding on either Party unless and until the terms thereof, including the additional amount to be paid and when same is payable by Purchaser are set forth in writing signed and exchanged by Seller and Purchaser as part of this Agreement.

20. Pre-Closing Inspection by Purchaser

20.1 Until Seller notifies Purchaser in writing that construction of the Unit is sufficiently completed and ready for inspection, Purchaser and Purchaser's representatives (including architect, engineer, contractor, decorator and appraiser) shall not, nor have the right, to inspect or visit the Unit or Building or any portion thereof.

20.2 At least five (5) days before Closing, Seller shall notify Purchaser in writing that construction of the Unit is sufficiently completed and is now ready for inspection. The inspection is to occur on a business day that falls within five (5) days from the giving of such inspection notice, and during business hours, fixed by Seller. Seller will endeavor (but shall not be obligated) to fix such date and time as shall be mutually convenient to Seller and Purchaser. Purchaser and Purchaser's representatives (if any) are to inspect the Unit on such date and time fixed by Seller, accompanied by Seller's representative. At conclusion of the inspection, Purchaser shall complete, and Purchaser and Seller or Seller's representative are to sign and deliver to each other, the Final Inspection Statement (on the form annexed as EXHIBIT B to this Agreement) containing all items to be corrected and any unfinished work (collectively, **"Punch List Work"**).

20.3 Seller shall be obligated to correct or cause to be corrected any Personal Property (including appliances, electrical and plumbing fixtures, and heating and air conditioning units) that are not in working order, provided same are listed on the Final Inspection Statement signed by both Purchaser and Seller or Seller's representative. Seller shall not, and shall not be required to, perform any Punch List Work that is not noted on the Final Inspection Statement. Purchaser shall consummate the Closing and pay the full Balance of the Purchase Price on the date fixed by Seller in accordance with this Agreement (all: without escrowing monies, without delay; and without abatement, set-off or credit against the Purchase Price) notwithstanding:

a. Purchaser's failure to arrange or attend the Unit inspection prior to Closing or to complete, sign and deliver the Final Inspection Statement; or

b. the failure of Purchaser and Seller or Seller's representative to agree upon the Punch List Work (such disagreement shall not excuse Seller to complete or correct any proper Patent Construction Defects listed on the Final Inspection Statement signed by Purchaser and delivered to Seller or Seller's representative at the time of inspection or at Closing);

c. the existence of required Punch List Work not performed or completed (which Seller shall complete or correct in accordance with Seller's obligations under this Agreement), provided only that: (c-1) the Unit is authorized for residential use on a temporary, partial or final (at Seller's exclusive option) Certificate of Occupancy of the Building, as required herein; (c-2) the Unit is substantially completed with an operable kitchen and bathroom, and with the appliances, electrical and plumbing fixtures, and heating and air conditioning units in working order; and (c-3) the Unit is substantially in broom clean condition (subject to the conditions to be corrected by the Punch List Work, if any).

20.4 Seller shall endeavor in good faith to complete all Punch List Work within approximately thirty (30) days after the Closing Date or such longer period as may be reasonable in light of the extent of the work involved, but not to exceed ninety (90) days after Closing, unless:

a. delayed due to Unavoidable Causes, in which case such incomplete work shall be completed with reasonable diligence and continuity after the event or circumstance causing the delay ceases; or

b. Purchaser refuses or fails to give Seller and Seller's Work Parties reasonably continuous access to the Unit (Seller shall be excused, released and discharged from

its obligation to correct Punch List Work and Latent Construction Defects if such reasonably continuous access is prevented and not given within a deadline of thirty (30) days after giving written notice requesting access).

Seller's obligation to perform and complete the required Punch List Work in accordance with this Agreement shall survive Closing.

20.5 If Seller fails to complete the Punch List Work within the applicable time period set forth in paragraph 20.4, Purchaser's sole right and remedy shall be to compel Seller to so do in a litigation for specific performance. In no event shall Seller be liable for any loss, damage, cost or expense, or legal expense, incurred by Purchaser due to Seller's failure or default. The provisions of this paragraph 20.5 shall survive the Closing.

20.6 Purchaser's right to inspect does NOT entitle Purchaser or Purchaser's representatives to do the following (and Purchaser and Purchaser's representatives shall NOT so do): (a) probe, penetrate or disturb the surfaces of the walls, floors or ceilings of the Unit or any portion of the Building; or (b) make any alterations or changes to the Unit; or (c) store any furniture or other belongings in the Unit or elsewhere in the Building prior to Closing.

21. Risk of Loss

21.1 The risk of damage or destruction ("**Loss**") to the Unit and Personal Property during the course of construction and until the Closing is assumed by Seller on the following terms, unless Purchaser is given possession of the Unit prior to Closing or the Loss is caused by Purchaser or Purchaser's representatives (in either of which cases the provisions of paragraph 21.5 shall apply).

21.2 If Seller assumes the risk of Loss, Seller shall have the exclusive right to elect either: (a) to repair or restore the Loss; or (b) to cancel this Agreement and refund the Purchase Monies to Purchaser, unless the First Unit Closing has occurred and the Condominium Board is obligated to repair or restore the Loss. Seller will give Purchaser notice ("**Loss Notice**") of the Loss and of Seller's election or the Board's obligation (as applicable) within thirty (30) days after the Loss occurs.

21.3 If Seller elects to repair or restore the Loss or if the Condominium Board is obligated to do so, such repair or restoration is to be completed by the later to occur of the date fixed by Seller for Closing in accordance with paragraph 11.1 or ninety (90) days from the date the Loss occurs ("**Restoration Period**"). The Closing shall not occur until the Unit and Personal Property are substantially in the condition required for Closing as provided in paragraph 20.3.c.

21.4 If Seller fails to give the Loss Notice within the thirty (30)-day period specified in paragraph 21.3 or if the repair or restoration is not completed within the Restoration Period in accordance with paragraph 21.3, Purchaser's sole right and remedy shall be to cancel this Agreement on notice to Seller given within a deadline of seven (7) days thereafter, failing which Purchaser shall lose such right to cancel and shall remain bound by this Agreement. If Purchaser timely elects to cancel, the Purchase Monies will be refunded to Purchaser with reasonable promptness.

21.5 If the Loss occurs after Purchaser is given possession of the Unit under an Interim Use and Occupancy Agreement or otherwise, or the Loss is caused by Purchaser or a representative of Purchaser (including an architect, engineer, contractor, decorator or appraiser, or an agent or an employee of any of the foregoing), Purchaser shall assume the risk of Loss to the extent the Loss is not covered by insurance maintained by Seller or (if the First Unit Closing has occurred) the Condominium Board, and the following shall apply:

a. Purchaser shall be obligated: (a-1) to accept title to the Unit at Closing subject to such Loss; and (a-2) to pay the full Balance of the Purchase Price without abatement, set-off or credit, without escrowing monies, and without recourse of any kind against Seller or Seller's Related Parties;

b. Purchaser shall not be entitled to postpone the Closing by reason of such Loss and may not commence work to restore the Loss until after the Closing is consummated (except work may begin, at Purchaser's expense, if Purchaser is in possession in accordance with Purchaser's Interim Use and Occupancy Agreement or other possession agreement); and

c. if Purchaser fails to timely comply with this paragraph 21.5, such failure shall constitute a material default by Purchaser entitling Seller to cancel this Agreement and receive and retain the Deposit and all other amounts specified in paragraph 22 as liquidated damages.

22. Purchaser's Events of Default; Seller's Remedies

22.1 Purchaser shall be in default upon the occurrence of any of the following events ("**Events of Default**" or each, "**Event of Default**" or "**default**"):

a. Purchaser fails to timely and properly pay the full amount of the Balance of the Purchase Price, as provided in paragraphs 2.1 and 10.2;

b. Purchaser fails to pay any of Purchaser's Closing costs as required in paragraph 12;

c. Purchaser fails to pay the net Closing apportionments, if in favor of Seller, as required in paragraph 13;

d. Purchaser fails to deliver any of the Closing documents (properly completed and signed in recordable form, where required) in accordance with paragraph 14.1;

e. the dishonor or failure of collection of Purchaser's check or instrument ("**failed instrument**") in payment of the Deposit, or any other sum paid by Purchaser under this Agreement;

f. Purchaser advertises or publicizes in any media (including newspaper, magazine, television, radio, Internet or other print, broadcast, electronic or other form of public media or communication) the availability of the Unit for sale or lease prior to the Closing;

g. Purchaser fails to pay, perform, observe, fulfill or to otherwise comply with any of Purchaser's other obligations in this Agreement or any other Purchase and Sale Agreement between Seller and Purchaser for another unit of the Condominium, or any of Purchaser's representations in this Agreement or such other Purchase and Sale Agreement shall not be true, accurate or correct in all respects (the Parties intend and agree that a default by Purchaser under this Agreement or such other Purchase and Sale Agreement shall be a default under both of said Agreements and Purchaser shall have only one grace period (if any) to cure the default as set forth in the applicable Purchase and Sale Agreement under which Purchaser is initially in default); or

h. if Purchaser is given an Interim Use and Occupancy Agreement for the Unit and defaults in making any payment or in performing, observing, fulfilling or otherwise complying with any obligation thereunder, such default shall become a default under this Agreement if a final judgment or order is issued granting Seller possession of the Unit by a court of competent jurisdiction or Purchaser vacates or abandons the Unit (in such case, Purchaser shall have only the single grace period stated in the Interim Use and Occupancy Agreement to cure such default).

i. Purchaser' assigns any of Purchaser's property for the benefit of creditors, or Purchaser files a voluntary petition in bankruptcy; or

j. a non-bankruptcy trustee or receiver is appointed over Purchaser or Purchaser's property, or an involuntary petition in bankruptcy is filed against Purchaser; or

k. a judgment or tax lien is filed against Purchaser and Purchaser does not pay or bond the same within thirty (30) days.

22.2 Upon the occurrence of an Event of Default, Seller's sole right and remedy shall be to cancel this Agreement after Purchaser has first been given notice specifying the default and a deadline of thirty (30) days from the giving of such default notice to cure the specified default or (in the case a default under paragraph 22.1. g or h) the applicable cure period contained therein; except in the case of a dishonored check, Seller have the right to regard this Agreement as null and void, and of no force or effect *ab initio*, in which case Seller shall cause the failed instrument to be returned to Purchaser.

22.3 If Purchaser fails to cure the default within such thirty (30)-day deadline period or the cure period specified in paragraph 22.1. g or h) for a default thereunder (as applicable), then this Agreement shall be deemed canceled and after the Plan is consummated (as evidenced by the acceptance of a post-Closing Amendment by the Department of Law), Escrow Agent is directed give to Seller and Seller shall receive and retain as liquidated damages, the Deposit together with any interest earned thereon, except there will be no limit on Seller's remedies for a breach of Purchaser's representation in paragraph 30 ("Broker").

22.4 Purchaser agrees that Seller's actual damages would be impossible to ascertain and that Seller receiving and retaining the Deposit and any the earned interest thereon as liquidated damages shall be fair, reasonable and equitable compensation under the circumstances, and is not a forfeiture or penalty. Purchaser is represented on this transaction by experienced and knowledgably counsel and agrees to this liquidated damages provision freely after consulting with counsel and without duress or coercion, shall not institute any litigation or assert any claim inconsistent with the foregoing.

22.5 Upon payment of the Deposit and earned interest to Seller, this Agreement shall be of no further force or effect and neither Party shall have any further rights against, or liabilities to, the other Party by reason of this Agreement, other than those agreements, representations, indemnities or liabilities expressly stated to survive the cancellation or terminations of this Agreement.

23. Purchaser's Remedies on Seller's Default or Inability to Perform

23.1 If Seller defaults in paying, performing or complying with any of Seller's agreements, obligations, representations or conditions in this Agreement, whether at or prior to Closing, Purchaser shall give Seller written notice specifying the default in reasonable detail.

Seller shall be allowed a grace period of 30 days to cure the default (which shall start from Seller's actual receipt of the default notice) or (if the default is not

reasonably capable of being cured within thirty (30) days) such longer period as is commercially reasonable to cure the default, but in no event more than ninety (90) days.

23.2 If Seller fails to cure the default within the applicable grace period, Purchaser's only legal and equitable rights and remedies shall be to require Seller to specifically perform Seller's obligations (other than those obligations Seller is unable in good faith to perform as to which paragraph 23.6 shall apply and govern) or to cancel this Agreement and recover the Purchase Monies and (if canceled pursuant to paragraph 16.9) Purchaser's actual Title Search Costs (if any). Notwithstanding the foregoing, the Seller cannot limit any rights which the Purchaser may have pursuant to Art. 23A of the GBL, NYCRR regulations, and the Offering Plan, except as determined in a final decision or order by a court of competent jurisdiction or any governmental agency or by executive order and that Purchaser may be entitled to.

23.3 In the event Purchaser elects to cancel, the Purchase Monies and (if canceled pursuant to paragraph 16.9) Purchaser's actual Title Search Costs (if any), will be refunded to Purchaser within thirty (30) days after Seller and Escrowee receive Purchaser's cancellation notice accompanied by a copy of Purchaser's bill for the Title Search Costs from Purchaser's title insurer or agent (if applicable). Purchaser shall in no event have recourse of any kind against Seller or Seller's Related Parties for any loss, damage, cost or expense, including legal expenses, paid or incurred by Purchaser beyond recovery of said Purchase Monies and (if applicable) Title Search Costs, by reason of Seller's uncured default or good faith inability to perform. Upon the payment of the said Purchase Monies and (if applicable) Title Search Costs, the Parties shall have no further liability to each other under this Agreement, except that the Parties shall remain Liable for those agreements, representations, indemnities or liabilities expressly stated to survive the cancellation or termination of this Agreement.

23.4 Nothing contained herein will excuse Seller from a willful default for intentionally causing a Title Exception to frustrate this sale in bad faith, nor excuse Seller from obtaining a release of any lien on the Unit, including a mortgage lien (other than a mortgage Purchaser obtains to purchase the Unit).

23.5 If at Closing Seller shall be unable in good faith to perform Seller's obligations or satisfy any condition applicable to Seller or the Unit in accordance with this Agreement (including the actual overall size of the Unit, when built, being materially smaller than the square footage of the Unit estimated in the Plan or its floor plan) or title to the Unit shall not be in accordance with this Agreement, Purchaser's sole right and remedy shall be either (at Purchaser's option):

a. to fully pay, perform and comply with Purchaser's agreements and obligations under this Agreement and to accept such title to the Unit as Seller is able to convey, without abatement, set-off or credit against the Purchase Price or provision for escrowing monies and without recourse of any kind against Seller or Seller's Related Parties; or

b. to cancel this Agreement and recover said Purchase Monies and (if canceled pursuant to paragraph 16.9) Purchaser's Title Search Costs (if any), which is the limit on the amount Purchaser may recover, regardless of any loss, damage, cost or expense, including legal expenses, paid or incurred by Purchaser (except the Parties shall remain Liable for those agreements, representations, indemnities or liabilities expressly stated to survive the cancellation or termination of this Agreement).

23.6 Purchaser shall elect either such right and remedy in the preceding paragraph 23.6 in writing given within a deadline of five (5) business days after Seller gives Purchaser notice of such inability, but in no event later than the Closing Date fixed by Seller in accordance with this Agreement. If Purchaser fails to timely make such election within said five (5)-business day deadline period, then Purchaser shall conclusively be deemed to have elected to proceed with Closing as provided in paragraph 23.6.a.

23.7 Seller shall be excused from performing Seller's agreements and obligations during any period when Seller is prevented from performing them due to Unavoidable Causes. Seller's time to perform such agreements and obligations shall be extended for a period equal in length to the period during which Seller's performance is excused, but this shall not extend the ninety (90)-day period set forth in paragraph 23.2 or any other similar outside period or date expressly provided in this Agreement within which Seller must perform.

24. Claims Released On Cancellation and Disbursement of Purchase Monies

24.1 Upon cancellation of this Agreement and payment of the Purchase Monies to the proper Party pursuant to the provision of this Agreement and (if applicable) the payment to Seller for the costs and expenses, including legal expenses and per diem interest thereon to pursue, enforce, uphold, protect and defend its rights under this Agreement and to collect the amounts due it, or (if applicable) the payment to Purchaser of Purchaser's Title Search Costs, the rights and liabilities of the Parties under this Agreement, the Plan and Amendments shall end and be null and void, and all claims

or liabilities each Party may have the right to assert hereunder against the other Party and such other Party's heirs, distributees, successors, assigns, employees, agents and attorneys, and Seller's Related Parties, shall be released and discharged, except that the Parties shall remain liable for, and shall not be released or discharged from, those agreements, representations, indemnities or liabilities expressly stated to survive the cancellation or termination of this Agreement.

25. Escrow Provisions

25.1 Seller agrees to comply with the escrow and trust fund provisions of General Business Law ("**GBL**") Sections 352-e(2-b) and 352-h and Lien Law Section 71-a(3) of the State of New York and Part 20 of the regulations issued by the Attorney General, and all funds paid by Purchaser will be handled in accordance with said statute and regulations. Any purported waiver of the escrow and trust fund provisions of the Attorney General's regulations is void. The escrow and trust fund provisions of the Attorney General's regulations shall prevail over any conflicting or inconsistent provisions in the Plan, as amended, or this Agreement.

25.2 The law firm of Paley Group, P.C., with an address at 801 Second Avenue, Suite 2100, New York, New York 10017, telephone number (212) 603-9899, shall serve as the Escrow Agent for Seller and Purchaser. Marc Paley, Esq. is the only signatory on the "Escrow Account" (identified below) and the sub-account in which the Deposit is to be maintained, each of whom is admitted to practice law in the State of New York. Escrow Agent is not, and does not have any beneficial interest in, the Seller, the selling agent (if any), the managing agent of the Building, or any principal of any of the foregoing.

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

25.4 The Escrow Agent has established the escrow account at the Depository, Signature Bank, N.A. at its office located at 261 Madison Avenue, New York, New York 10016, a bank authorized to do business in the State of New York. The escrow account is entitled "Paley Group, P.C. Master Escrow Account" ("**Escrow Account**"), which is a master escrow account. The Deposit of Purchaser shall be maintained in a separate sub-account of this Master Escrow Account. The said sub-account is not an "Interest-on-Lawyer's-Account" (commonly called "IOLA") established pursuant to Judiciary Law Section 497.

25.5 The Escrow Account and sub-account are 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. "SPECIAL RISK": Purchaser assumes the risk of any losses resulting from failure of the Depository, and will not have any recourse against Seller, Seller's Related Parties, Selling Agent or Escrow Agent based thereon. Seller, Selling Agent and Escrow Agent do not represent, assure or guarantee the solvency of the Depository and will not be responsible or liable for any loss due to the failure of the Depository or the amount collected on checks or other instruments given in payment of the Deposit.

25.6 The Deposit received from Purchaser shall be in the form of good personal collectible checks of Purchaser or (at Seller's option) by good certified personal checks or bank money orders or official cashier's or bank checks, unendorsed and made payable to the direct order of *"Paley Group, P.C. as Escrowee"*, as provided more fully in paragraph 10.1.

25.7 Any instrument not in compliance with paragraph 25.6 (unless waived in writing by Seller) or which cannot be deposited into said sub-account of the Master Escrow Account, shall be returned to Purchaser promptly, but in no event more than five (5) business days following receipt of such instrument by or on behalf of Seller. In the event of such return, the instrument shall be regarded not to have been delivered to Seller in violation of the provisions of this Agreement.

25.8 The interest rate for the Deposit placed into said sub-account of the Master Escrow Account will be a fluctuating rate for such accounts established from time to time by the Depository. Interest shall begin to accrue upon placing the Deposit into the sub-account and collection of the check or other instrument in payment thereof. All interest earned thereon shall be paid or credited to Purchaser at Closing.

25.9 No fees of any kind may be deducted from the Deposit. Seller or Escrow Agent will bear any administrative cost for maintenance of the Escrow Account and said sub-account.

25.10 Within five (5) business days after this Agreement has been "tendered" (defined in paragraph 25.12) to the Escrow Agent along with the check for the Deposit, the Escrow Agent shall sign this Agreement and place the check for the Deposit into a separate sub-account of the Master Escrow Account. If IRS form W-8BEN or IRS form W-9 (as applicable) does not accompany the Deposit check as required under paragraph 10.5, then the Deposit check shall be placed instead in the Master Escrow Account pending receipt thereof. The Master Escrow Account is an IOLA account. As a result, no earned interest will be paid to Purchaser while the Deposit remains in the Master Escrow Account.

25.11 Within ten (10) business days of the placing the Deposit in said sub-account of the Master Escrow Account, Escrow Agent shall provide written notice to Purchaser and Seller confirming said placement of the Deposit. The notice shall be sent by ordinary mail and provide the account number and the initial interest rate to be earned on the Deposit. In the event Seller does not sign this Agreement within the five (5)-business day period set forth in paragraph 25.10, then the placement of the Deposit check in said sub-account of the Master Escrow Account shall not constitute, nor be construed to constitute, Seller's acceptance of this Agreement nor prejudice Seller's right to reject this Agreement as provided in paragraph 29.4.

25.12 The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in said sub-account of the Master Escrow Account. If the Purchaser does not receive notice of such placement of the Deposit within fifteen (15) business days after "tender" (defined below) of this Agreement signed by Purchaser and the check or other instrument for the Deposit, Purchaser may cancel this Agreement within a deadline of ninety (90) days thereafter, but in no event later than the Closing Date. The terms "**tendered**" and "**tender**" mean the date delivered by hand or email with wire transfer of the Deposit, or the next business day after being sent by a nationally recognized overnight courier service or five (5) calendar days after being sent by mail (as applicable).

25.13 Purchaser will be regarded as having conclusively waived Purchaser's right to cancel in the event Purchaser does not send the cancellation notice within such ninety (90)-day deadline period or any earlier Closing Date. Complaints concerning the failure to honor such cancellation request may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, 21st Floor, New York, New York 10005-1413. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the check for 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.

25.14 The Deposit is and shall continue to be the Purchaser's money, and may not be comingled with any other money or pledged or hypothecated by Seller, as per GBL § 352-h.

25.15 The Deposit may not be transferred to any new escrow account and the Escrow Agent may not be replaced unless and until Seller first amends the Plan to provide the same full disclosures contained in paragraphs 25.4 through 25.6 (in the case of a new escrow account) or paragraphs 25.2 through 25.6 (in the case of a new escrow agent). Any such Amendment to the Plan shall be binding upon Seller and Purchaser. (See paragraph 25.28 for additional discussion.)

25.16 Under no circumstances shall Seller 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 Department of Law. Consummation of the Plan does not relieve Seller of its obligations pursuant to GBL §§352-3(2-b) and 352-h.

25.17 The Escrow Agent shall release the Deposit in accordance with the following (if and as applicable):

a. to Seller at the Closing to the Unit pursuant to paragraph 14;

b. as directed in a writing signed by both Seller and Purchaser; or

c. as directed by a final, non-appealable order or judgment of a court of competent jurisdiction.

25.18 If the Deposit is not released pursuant to paragraph 25.17 and the Escrow Agent receives a request by either Party (the "**Requesting Party**") to release the Deposit, then the Escrow Agent must give the non-Requesting Party prior written notice of not fewer than thirty (30) days before releasing the Deposit to the Requesting Party ("**30-Day Release Period**"). If the Requesting Party is Seller and is based on Purchaser's default, Seller must give Purchaser notice of the default and a thirty (30)-day period to cure the default as provided in paragraph 22.3. Such thirty (30)-day cure period shall run concurrently with the 30-Day Release Period. If the Escrow Agent has not received notice of objection to the release of the Deposit from the non-Requesting Party prior to the expiration of said 30-Day Release Period, the Deposit shall be released to the Requesting Party, whereupon Escrow Agent shall provide further written notice to both Parties informing them of said release. If the Escrow Agent receives a written notice from the non-Requesting Party objecting to the release of the Deposit within said 30-Day Release Period, the Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraph 25.17 or as provided in paragraph 25.19.

25.19 Notwithstanding the foregoing:

a. if the Escrow Agent is uncertain as to Escrow Agent's duties or doubts the genuineness of any document or signature, Escrow Agent may refrain from taking any action and continue to hold the Deposit until the uncertainty or genuineness is resolved; and

b. the Escrow Agent shall have the right in any event, at any time, to place the Deposit contained in the sub-account of the Master Escrow Account with the clerk of the county where the Building is located in

accordance with law, in which case Escrow Agent shall give written notice thereof to both Parties, whereupon Escrow Agent shall be fully released and discharged from all further responsibility and liability therefor.

25.20 Seller shall not object to the release of the Deposit to Purchaser if Purchaser timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan.

25.21 Escrow Agent shall maintain the Escrow Account and said sub-account under its direct supervision and control.

25.22 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).

25.23 Escrow Agent may rely upon any paper or document which may be submitted to it in connection with its duties under this Agreement and which is believed by Escrow Agent to be genuine and to have been signed or presented by the proper Party or Parties and shall have no liability or responsibility with respect to the form, execution or validity thereof.

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

25.25 Seller shall endeavor in good faith to obtain or cause its Selling Agent (if any) to obtain a completed and signed IRS Form W-9 or W-8BEN, as applicable, from Purchaser and deliver such form to Escrow Agent together with the Deposit and this Agreement.

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

25.27 Seller agrees to indemnify Escrow Agent from and against all claims and liabilities incurred in connection with or arising out of Escrow Agent's responsibilities under 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 its obligations set forth in this Agreement or involving its gross negligence. This indemnity includes legal expenses either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by Escrow Agent to itself.

25.28 Seller shall have the right to terminate the duties of the Escrow Agent on written notice to Escrow Agent and Escrow Agent shall have the right to resign on written notice to Seller. In either case, Seller shall have the exclusive right to designate a new escrow agent to replace Escrow Agent. Such termination or resignation will not take effect, and Escrow Agent will continue to be bound by these escrow provisions, until an Amendment to the Plan is accepted and filed by the Department of Law disclosing the identity of the new escrow agent. Upon the acceptance and filing of such Amendment, Escrow Agent will deliver to the new escrow agent the Deposit, together with all earned interest thereon received from the Depository and all agreements and documents (or copies thereof) maintained by Escrow Agent relating to the Escrow Account.

25.29 These escrow provisions will be binding upon the new escrow agent with regard to events occurring on and after the date the appointment of the new escrow agent takes effect.

25.30 Escrow Agent may represent Seller in any litigation, whether or not related to this transaction and irrespective of Escrow Agent being in possession of the Deposit.

25.31 Seller will be responsible to compensate Escrow Agent for acting as such.

26. Effectiveness Amendment Requirement

26.1 In accordance with the Plan, Seller's obligations under this Agreement are contingent upon Seller declaring the Plan effective and the Effectiveness Amendment being accepted for filing by the Attorney General. Seller may declare the Plan effective only in accordance with the terms contained in the Plan (see "Section L. Effective Date" in Part I of the Plan).

26.2 Seller has the exclusive right and discretion to declare the Plan effective or to abandon the Plan at any time before declaring it effective. In addition, if Seller declares the Plan effective, Seller may thereafter and before the First Unit Closing abandon the Plan under the limited circumstances explained in the Plan (see "Section L. Effective Date" of said Part I).

26.3 If Seller elects to abandon the Plan, Seller shall submit an Amendment to the Plan disclosing its election to abandon the Plan and shall refund Purchaser's Purchase Monies within five (5) days after such Amendment is accepted and filed by the Department of Law, whereupon this Agreement shall be considered to have been cancelled and neither Party shall have any liability to the other for any claims, or costs or expenses, or legal expenses based on this Agreement or the Plan or any Amendments, except the Parties shall not be released from those agreements, representations, indemnities or liabilities expressly stated to survive the cancellation or termination of this Agreement.

26.4 Unless and until the Plan is abandoned by Seller or deemed abandoned, Purchaser shall remain

irrevocably bound to fully pay, perform, observe, fulfill and comply with all of Purchaser's agreements and obligations as provided in this Agreement, and in no event may Purchaser cancel this Agreement based on this contingency.

27. Plan and Amendments Govern

27.1 The Plan and Amendments to the Plan (whether filed before or after the date of this Agreement, but before Closing) form a part of this Agreement. The Parties are bound by the provisions of the Plan and all such Amendments. If the provisions of this Agreement are inconsistent or conflict with the Plan or Amendments (other than permitted negotiated changes in accordance with Section I-2 of Part I of the Plan), such inconsistency or conflict shall be resolved according to the terms of the Plan and Amendments, which are paramount and shall govern.

27.2 Seller has the right to file Amendments to the Plan without Purchaser's consent. The Amendments may change, among other things, the projected Common Charges and projected real estate taxes to be paid by Purchaser, or any of the other provisions of the Plan or this Agreement; except that after Purchaser signs and returns this Agreement, Seller may not change the Purchase Price, or the payment provisions in paragraph 2.1 or the escrow provisions in paragraph 25. The Plan and all Amendments to the Plan filed prior to Closing, including all material adverse changes:

a. shall be binding on Purchaser; and

b. shall not excuse Purchaser from paying the full amount of all Closing payments under paragraph 14.1, including the Balance of the Purchase Price, without abatement, set-off or credit against the Purchase Price or provision for escrowing monies and without recourse of any kind against Seller or Seller's Related Parties (except as otherwise provided in paragraph 27.3).

27.3 In the case only of a material adverse Amendment affecting Purchaser, the Amendment will afford Purchaser the right, for not less than fifteen (15) days after presentation of said Amendment, to rescind this Agreement and recover the Purchase Monies in accordance with Section 20.5(a)(5) of Part 20 of the regulations issued by the Attorney General.

28. Purchaser's Time to Review Plan and Amendments

28.1 At Seller's option:

a. Purchaser will be given at least three business days to review the Plan and any Amendments before Purchaser signs and delivers this Agreement and the check for the Deposit; or

b. (if, and only if, Purchaser is given less than three business days for such review) Purchaser will have a deadline of seven days after Purchaser signs and delivers this Agreement and the check for the Deposit to rescind this Agreement and recover Purchaser's Deposit (without interest).

In the latter case, Purchaser must elect to rescind in a written notice sent to Seller within the mentioned seven (7)-day deadline period. If Purchaser fails to timely do so, Purchaser will no longer have the right to rescind under this paragraph 28.1 and will be fully bound to purchase the Unit.

29. Seller's Acceptance or Rejection of Agreement

29.1 Seller is not bound by this Agreement until Seller or Seller's duly authorized agent or representative signs and returns a counterpart of this Agreement to Purchaser or Purchaser's Attorney (if any). No inference shall be drawn that Seller accepted this Agreement or is bound by its provisions based on:

a. the submission of the Plan or this Agreement to Purchaser;

b. the delivery to Seller or Seller's Selling Agent or Seller's Attorney of this Agreement signed by Purchaser and Purchaser's check for the Deposit; or

c. the placement of Purchaser's Deposit check for collection (whether or not inadvertent).

29.2 Until Seller rejects or is deemed to have rejected this Agreement as provided in paragraph 29.3, Purchaser shall be irrevocably bound by its provisions and will not be entitled or permitted to recover Purchaser's Deposit.

29.3 Seller will be deemed to have rejected this Agreement unless Seller hand delivers or mails (by electronic mail (i.e., "e-mail") or by ordinary or certified mail, with or without return receipt requested) to Purchaser or Purchaser's Attorney (if any), within twenty (20) days after Seller or Seller's Selling Agent or attorney receives this Agreement signed by Purchaser together with Purchaser's check for the Deposit, and IRS form W-8 BEN or W-9 (if and as applicable), a counterpart of this Agreement signed by Seller or Seller's duly authorized agent or representative. In the event Seller rejects or is deemed to have rejected this Agreement, Purchaser's check for the Deposit will promptly be refunded to Purchaser, without interest. Upon making such refund, neither Party shall have any liability to the other Party based on this Agreement or the Plan or any Amendments.

29.4 Purchaser understands that the placement of Purchaser's Deposit check in the Escrow Account or a sub-account is required by regulation of the Attorney General within the five (5)-business day period stated in paragraph

25.10, which period may expire before the lapse of the twenty (20) days Seller has to accept or reject this Agreement in accordance with paragraph 29.3. *Purchaser agrees that such placement of the Deposit check will NOT be regarded as Seller's acceptance of this Agreement nor prejudice or impair Seller's right to reject this Agreement as provided in paragraphs 25.11 and 29.1.*

30. Broker

30.1 Purchaser represents to Seller that Purchaser has not dealt with any broker, salesperson or finder, whether licensed or unlicensed, in connection with this purchase and sale other than the Selling Agent and its salesperson and the Participating Broker (if any) and its salesperson identified in paragraph 6.1.

30.2 Seller will pay the commission earned by the Selling Agent and the Participating Broker (if any) pursuant to a separate agreement with each of them. This obligation shall survive the Closing. The Selling Agent and the Participating Broker (if any) shall not be deemed a third-party beneficiary of this provision.

30.3 Each Party agrees to indemnify the other Party (with attorneys selected by Seller) from and against any and all liabilities arising from:

a. (in the case of Purchaser) Purchaser's representation in paragraph 30.1; or

b. (in the case of Seller) Seller's agreement in paragraph 30.2.

Seller shall have the exclusive right to control the defense, compromise and settlement (including choosing the attorney) of any Claim or Litigation for which indemnity is sought by Seller under this paragraph 30.3. Purchaser, at Purchaser's sole cost and expense, shall have the right to participate and be represented by separate counsel in the defense, compromise and settlement of said Claim or Lawsuit.

This indemnity shall survive the Closing or (if the Closing does not occur) the cancellation or termination of this Agreement.

31. Notices

31.1 Unless otherwise expressly provided elsewhere in this Agreement, any notice (other than a notice of placement of the Deposit in paragraph 25.11), request, consent, election, demand or other communication (collectively, "**notice**") to be given or made by the Parties or Escrowee under this Agreement:

a. must be in writing and sent as follows

(a-1) if to Seller, at Seller's address in the preamble, with a copy sent simultaneously and in like manner to Seller's Attorney at its address in paragraph 10.1;

(a-2) if to Purchaser, at Purchaser's address in paragraph 4.1 or (after the Closing) to the Unit, with a copy sent simultaneously and in like manner to Purchaser's Attorney (if any),at its address in paragraph 5.1;

(a-3) if to Escrow Agent, to Paley Group, P.C., 801 Second Avenue, Suite 2100, New York, New York 10017, Attention: Marc Paley, Esq; and

b. unless otherwise expressly provided elsewhere in this Agreement, shall conclusively be deemed given, received and effective:

(b-1) when personally delivered with receipt requested or sent by facsimile or electronic mail with facsimile or electronic confirmation of transmission followed by sending the original notice the same day by any other method permitted herein (or if not so delivered or sent on a business day and received during business hours, the first business day thereafter); or

(b-2) the first business day after being sent by Federal Express or other nationally recognized overnight courier service for next day delivery; or

(b-3) the third business day after being mailed by registered or certified mail (with or without return receipt requested), in a properly addressed postage prepaid wrapper in any post office or branch post office regularly maintained by the United States Postal Service; except a notice mailed from outside the United States or a notice of a change of address or an additional addressee shall not be considered effective until actually received.

31.2 Each Party may from time to time, by notice to the other Party and Escrow Agent, designate a different address to which future notices are to be sent and add an addressee to whom copies of notices are to be sent simultaneously and in like manner when giving a notice to such Party. The refusal or failure to accept a notice shall be deemed receipt of the notice and shall not affect the effectiveness, validity or enforceability of the notice, nor excuse or justify delaying the performance of an act or obligation.

32. No Mortgage Financing Contingency

32.1 SPECIAL RISK: This Agreement is NOT contingent upon Purchaser obtaining financing (secured or unsecured) to pay the Purchase Price set forth in paragraph

2.1, or any portion thereof. If Purchaser desires financing, Purchaser assumes and accepts full and sole risk to obtain and close the loan simultaneously with the Closing under this Agreement. Under no circumstance shall Purchaser have the right to cancel this Agreement, or to delay Closing, or to be relieved or excused from paying the full Purchase Price (without abatement, set-off or credit, and without recourse of any kind against Seller or Seller's Related Parties) in the event: (a) Purchaser is unable to arrange financing; or (b) Purchaser receives a Loan Commitment Letter, but before the Closing the interest rate or other terms change unfavorably, or such Loan Commitment Letter expires and is not extended or renewed, or is extended or renewed on less favorable terms, or is terminated because of: an adverse change in Purchaser's financial condition, or an appraisal of the Unit is not satisfactory to the lender, or any other condition or factor is not met.

33. Payment and Collection Terms

33.1 All amounts owed by one Party to the other Party under this Agreement shall be paid within a deadline of ten (10) days after a reasonably detailed and itemized notice of the amount owed is given to the indebted Party, accompanied by copies of supporting bills or statements evidencing such amount, failing which the indebted Party shall reimburse the aggrieved Party for all legal expenses, together with per diem interest thereon. However, if the indebted Party litigates its alleged liability or the amount allegedly owed, the aggrieved Party shall be entitled to receive only the amount (if any) awarded in a final, non-appealable order or judgment of a court having jurisdiction. The losing Party in such litigation shall reimburse the prevailing Party for all costs and expenses, including legal expenses and per diem interest thereon, paid or incurred in connection therewith, if and as provided in said final, non-appealable order or judgment. These "**Payment and Collection Terms**" shall apply whenever one Party is indebted to the other Party under this Agreement, even though not expressly stated elsewhere in this Agreement.

34. Standard Terms

34.1 Date of Agreement. Seller shall date this Agreement as of the date this Agreement or a counterpart hereof is signed by Seller and returned to Purchaser or Purchaser's Attorney.

34.2 Authorization of Attorneys: Paley Group, P.C. is authorized by Seller, and Purchaser's Attorney (if any) identified in paragraph 5.1 is authorized by Purchaser, to sign any notice or extend any time period in this Agreement. The officers, partners, counsel, associate attorneys and legal assistants so authorized by said attorneys of a Party are similarly authorized to act for such Party.

34.3 Merger: All prior and contemporaneous "statements" (defined below) made to each Party with regard to this transaction, as well as all prior and contemporaneous statements made between each Party and Escrowee with regard to the escrow provisions of paragraph 25, are merged in this Agreement and have no effect unless they are expressly contained or incorporated by reference in this Agreement. The term **"statements"** includes representations, promises, understandings, discussions, negotiations, agreements, estimates, valuations, projections and opinions, whether written or oral, as well as a broker's set-up, terms sheet, floor plans, drawings and data of any kind.

34.4 Entire Agreement: This Agreement, together with the Plan and Amendments to the Plan accepted for filing by the Attorney General's office prior to Closing, constitute the entire understanding and agreement of the Parties. Any rider to this Agreement signed by Seller and Purchaser is part of this Agreement. Any statements not contained in a written rider attached to this Agreement and signed by the Parties is not part of this Agreement and not binding on, or enforceable by or against, the Parties.

34.5 Changes and Waivers: A provision of this Agreement will be considered to have been changed or waived only if the change or waiver is expressly made in writing signed by the Party to be charged or (if applicable) by Escrowee, unless such provision is expressly provided to have been waived or deemed waived if not exercised, satisfied or performed within a specified period. The failure to insist on strict performance of any provision will not mean that the provision has been waived or that the right to insist thereafter on strict performance of that or any other provision has been waived.

34.6 Parties to Cooperate: Each Party will reasonably cooperate with the other Party, and each Party is to obtain, execute and/or deliver (as applicable) such documents as are in the possession or control of such Party and are reasonably necessary in order to implement the Closing or to effectuate or confirm any provision of this Agreement. These documents include: (a) the federal tax forms to report the Closing and Purchaser's receipt of interest on the Escrow Fund; and (b) documents Purchaser's title insurer (if any) might reasonably require to show that: (b-1) delivery of the Deed has been properly authorized by Seller's organization; and (b-2) any judgments, bankruptcies or other title issues against names the same as or similar to Seller or Purchaser are not against Seller or Purchaser, respectively. This, however, does not obligate either Party to give an indemnity, to escrow monies or to make representations not contained in this Agreement. The provisions of this paragraph 33.6 shall survive the Closing.

34.7 Governing Law; Venue for Lawsuits: The internal laws of the State of New York will govern this Agreement and the interpretation and enforcement of its provisions, without regard to legal principles of conflict of laws. Any Lawsuit arising out of this Agreement or the Plan or Amendments thereto: (a) must be brought in the Supreme Court of the State of New York or (if such court lacks jurisdiction) a court of competent jurisdiction; (b) must be brought in the county in which the Unit or Seller is located; and (c) may be commenced by serving the summons and/or complaint by certified or registered mail (return receipt requested), postage prepaid, deposited in an official depository maintained by the U.S. Postal Service, and sent to the Party at the Party's address referred to in paragraph 31.1 or any other address of which the Party has given notice in accordance with paragraph 31.2. The provisions of this paragraph 34.7 shall survive the Closing or (if the Closing does not occur) the cancellation or termination of this Agreement.

34.8 Waiver of Jury Trial: EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY LAWSUIT ARISING FROM THIS AGREEMENT OR THE PLAN OR AMENDMENTS, OTHER THAN A LAWSUIT IN WHICH A JURY TRIAL CANNOT LEGALLY BE WAIVED. ANY CLAIM FOR WHICH A JURY TRIAL CANNOT LEGALLY BE WAIVED SHALL NOT BE ASSERTED AS A COUNTERCLAIM OR JOINED WITH ANY LAWSUIT IN WHICH A JURY TRIAL IS WAIVED, UNLESS THE FAILURE TO ASSERT IT WOULD PREVENT THE CLAIM FROM BEING MADE LATER. THE PROVISIONS OF THIS PARAGRAPH 34.8 SHALL SURVIVE THE CLOSING OR (IF THE CLOSING DOES NOT OCCUR) THE CANCELLATION OR TERMINATION OF THIS AGREEMENT.

34.9 Co-Purchasers: If Purchaser is more than one person, then each is jointly obligated with the other, and each is solely, fully and personally obligated, to pay and perform Purchaser's obligations under this Agreement. In addition, any notice given to or by one co-Purchaser, and any provision changed or waived by one co-Purchaser, will be sufficient to bind all co-Purchasers.

34.10 No Assignment: Purchaser may not assign this Agreement or Purchaser's rights hereunder. Any purported assignment hereof by Purchaser in violation of this provision shall be null and void, as well as an Event of Default under paragraph 22.1. If Seller, in its sole and absolute discretion, permits Purchaser to assign this Agreement, then the provisions of Section K-18 of Part I of the Plan shall apply and govern.

34.11 No Lien: Neither this Agreement nor the Purchase Monies are a lien against the Unit or the Property. Purchaser shall not record this Agreement or a memorandum hereof and any attempted recordation of same shall be null and void and a material default hereunder.

34.12 Subordination: This Agreement and all of Purchaser's rights under it are subordinate to the liens of all mortgages, and renewals, extensions and modifications thereof, and to all advances, fundings and payments thereunder, whether made before or after Purchaser signs this Agreement. No further legal document is required to be signed by Purchaser to effectuate this subordination. However, if requested, Purchaser shall promptly sign in recordable form and return to Seller a document prepared by Seller's Attorney which confirms this subordination.

34.13 Invalid Provisions Severed: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of the other provisions, which shall be enforced to the fullest extent permitted by law.

34.14 Indemnity Generally. The following terms shall apply whenever one Party ("**Indemnifying Party**") agrees to indemnify the other Party or Escrowee ("**Indemnified Party**") under this Agreement, unless otherwise expressly provided:

a. the indemnity shall include the Indemnified Party's past, present and future shareholders, officers, directors, partners, managers or members (as applicable), principals, employees, agents and attorneys;

b. with prompt diligence after an Indemnified Party receives notice of any claim or is served with a summons and/or pleadings in a litigation for which indemnity is sought from the Indemnifying Party, such Indemnified Party, with commercially prompt diligence, shall notify the Indemnifying Party in writing of such claim accompanied by copies of any writings thereof or the commencement of such litigation accompanied by copies of a summons with notice and/or pleadings, as applicable;

c. the Indemnifying Party, at such Party's sole cost and expense, with counsel chosen by the Indemnifying Party, shall:

   (c-1) control and conduct the defense, compromise and settlement of the indemnified matter (including all appeals of any order, judgment or award in a litigation, for which indemnity is sought), subject to compliance with the following clause (d); and

   (c-2) keep the Indemnifying Party and the representatives and counsel of the Indemnifying Party promptly and reasonably

apprised of all compromise and settlement negotiations and legal proceedings;

d. if and to the extent that the Indemnifying Party is named as a party in any claim or litigation and such claim or litigation is compromised or settled:

(d-1) the Indemnified Party shall not be adversely affected beyond a de minimis extent by a proposed compromise or settlement of such claim or litigation (as applicable) without obtaining the prior written consent of the Indemnified Party, which consent is discretionary and may be withheld, denied or conditioned without cause or explanation, without any manner of recourse against the Indemnified Party and without affecting the liability of the Indemnifying Party under the indemnity;

(d-2) the Indemnified Party shall be fully and unconditionally released and discharged in writing from all liabilities with respect to such claim by all claimants or (if applicable) by all plaintiffs or petitioners or counter claimants or cross-claimants in such litigation; and

(d-3) the Indemnifying Party shall give the Indemnified Party a fully executed original or counterpart original of such compromise or settlement agreement (as applicable) with prompt diligence after the execution and delivery thereof to the Indemnifying Party or its counsel;

e. the Indemnified Party, without fee or charge, shall make available to Indemnifying Party, at the Building or a location in or reasonably convenient to the Building, documents (whether paper or electronic or similar records, material or data capable of reproduction) requested by the Indemnifying Party that the Indemnified Party determines in good faith to be reasonably related to the defense of said claim or litigation (as applicable) and are in the possession or under the control of the Indemnified Party and existing at or after the time the Indemnifying Party was given notice of the claim or litigation (as applicable), other than documents that are subject to a non-disclosure agreement legally binding on the Indemnified Party;

f. the Indemnifying Party, without fee or charge, shall fully cooperate with the Indemnified Party and its representatives and counsel (chosen by such Indemnified Party), including the following:

(f-1) consult with the Indemnified Party and its representatives and counsel with respect to the proposed terms of the defense, compromise and settlement of such claim or litigation (as applicable) and all proposed writings related thereto; and

(f-2) give the Indemnified Party and its representatives and counsel, with commercially prompt diligence after being received by the Indemnifying Party or its representatives or counsel, and (to the extent practicable) a commercially reasonable period in advance before being given by the Indemnifying Party or its representatives or counsel to the claimants or their respective representatives or counsel in said claim or to the plaintiffs or petitioners or counter claimants or cross-claimants, or their respective representatives or counsel, in said litigation (as applicable), copies of the following:

(f-2.1) all notices and writings with respect to said claim received or to be given;

(f-2.2) all pleadings, complaints, answers, counterclaims, cross-claims, petitions, applications, certifications, motions, briefs, memoranda, affidavits, affirmations, interrogatories, bills of particulars, transcriptions of depositions and otherwise writings with respect to said litigation, and all drafts and revisions thereto, received or to be given; and

(f-2.3) all proposed and final tolling, compromise, settlement, release or discharge agreements with respect to such claim or litigation (as applicable), and all drafts and revisions thereto, received or to be given;

g. the Indemnified Party and its representatives and counsel shall have the right, but not the obligation, to participate in the defense, compromise and settlement of said claim or said litigation (as applicable), including to attend all depositions in the litigation and all proceedings before a court or arbitration panel or other dispute resolution body;

h. intentionally deleted

i. if the Indemnified Party is determined in a final non-appealable order or judgment of a court of competent jurisdiction to be at fault in the indemnified matter, the Indemnified Party shall contribute to the award in a litigation, and related losses in such proportion as is appropriate to reflect the relative fault of the Indemnified Party, on the one hand, and the Indemnifying Party, on the other hand, as well as any other relevant equitable considerations, as determined

in said final non-appealable court order or judgment, except the entire award shall be paid by the Indemnified Party or the Indemnifying Party (as applicable) if said non-appealable final court order or judgment finds bad faith or intentional wrongdoing on the part of the Indemnified Party or the Indemnifying Party (as applicable);

j. the indemnity shall exclude all losses resulting from the negligence, gross negligence or intentional wrongdoing of the Indemnified Party;

k. the Indemnifying Party shall timely pay all amounts owing to all claimants or litigants pursuant to a compromise or settlement agreement with respect to such claim or litigation (as applicable) or to all plaintiffs or petitioners or counter-claimants or cross-claimants in such litigation pursuant to a final, non-appealable order or judgment or award in a litigation (if and as applicable); and

l. if the Indemnifying Party fails to timely make such payment and such failure continues after the Indemnifying Party is given not less than ten (10) days' prior written notice of such failure, the Indemnified Party shall have the right (but not the obligation), in addition to all other rights and remedies available at law and in equity:

(l-1) to compel the Indemnifying Party to comply with the Indemnifying Party's obligations hereunder by appropriate action or proceeding, or to fully pay the amount owed for the account and at the expense of the Indemnifying Party; and

(l-2) in either case, the Indemnifying Party shall reimburse the Indemnified Party for all costs and expenses, and (if applicable) the amount paid pursuant to said compromise or settlement agreement, or final, non-appealable order or judgment or award in a litigation, as applicable, in accordance with the Payment and Collection Terms set forth in paragraph 33.1.

m. Notwithstanding the foregoing, in the event of a lawsuit between Purchaser and Sponsor, Purchaser is only responsible to pay Sponsor's legal expenses if Sponsor is the prevailing party.

34.15 Satisfaction and Discharge: All agreements and liabilities of the Parties are considered satisfied and discharged at Closing or upon the effective date of cancellation or termination hereof in accordance with the terms of this Agreement (as applicable), except only those agreements, representations, indemnities or liabilities which are expressly stated in this Agreement or the Plan or Amendments to survive the Closing or to be paid or performed subsequent to Closing or to survive said cancellation or termination (as applicable). All such agreements, representations, indemnities or liabilities which are expressly stated to be paid or performed subsequent to Closing shall survive the Closing, whether or not expressly stated to so survive.

34.16 No Negative Inference: The Parties acknowledge that they are sophisticated and/or are represented by experienced, knowledgeable attorneys and/or advisors. The normal rules of construction to resolve ambiguities against the Party whose attorney drafted this Agreement shall not be followed in the interpretation of this Agreement. Consequently, no adverse or negative inference or interpretation shall be made by a court in construing or enforcing the provisions of this Agreement against the Party whose attorney drafted this Agreement.

34.17 Purchaser's Representations:

33.17.1 Purchaser represents that: (a) Purchaser is a bona fide purchaser; (b) Purchaser is not related to Seller, the Selling Agent or the proposed managing agent identified in the Plan, or to any of their respective principals, by blood, marriage or adoption, or as a business associate, an employee, a shareholder or a limited partner; and (c) Purchaser is not purchasing as an accommodation to, or for the account or benefit of, Seller or a principal of Seller.

33.17.2 If Purchaser is or includes an individual, Purchaser further represents that Purchaser is at least 18 years old.

33.17.3 If Purchaser is or includes a corporation, partnership, limited liability company, trust or other entity, Purchaser represents still further that: (a) Purchaser has been duly organized; (b) Purchaser is validly existing and in good standing under the laws of the state or jurisdiction in which it was formed and is authorized to do business in the State of New York; (c) Purchaser has all requisite organizational power and authority to execute this Agreement; (d) this Agreement constitutes a legally binding and valid agreement of Purchaser; (e) this Agreement has been duly authorized by all requisite organizational action of Purchaser, has been duly executed by an authorized officer or signatory of Purchaser, and is fully enforceable against Purchaser in accordance with its terms, without defense, set-off or counterclaim; (f) any right to assert a defense with respect to the legality, validity or enforceability of this Agreement, or any set-off or counterclaim with respect to this Agreement, are hereby irrevocably and unconditionally waived by Purchaser; (g) the execution and delivery of this Agreement by Purchaser, and the performance of Purchaser's covenants and agreements hereunder, do not violate or contravene any laws affecting

Purchaser or the enforceability of this Agreement against Purchaser; and (h) neither Purchaser or (if Purchaser is an entity) nor any member, partner or shareholder of Purchaser, nor, to Purchaser's knowledge, any person with actual authority to direct the actions of any member, partner or shareholder of Purchaser, nor, to Purchaser's knowledge, any other persons or entities ("**Persons**" or "**Person**") holding any legal or beneficial interest whatsoever in Purchaser: (h-1) are named on any list of Persons and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**") pursuant to Executive Order 13224 - Blocking Property and Prohibiting Transactions with Persons Whom Commit, Threaten to Commit, or Support Terrorism, as in effect on the date hereof, or any similar list known to Purchaser or publicly issued by OFAC or any other department or agency of the United States of America (collectively, the "**OFAC Lists**"), (h-2) are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of the Persons referred to or described in the OFAC Lists, or (h-3) has knowingly conducted business with, or knowingly engaged in any transaction with, any Person named on any of the OFAC Lists or any Person included in, owned by controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or (to Purchaser's knowledge) otherwise associated with any, of the Persons referred to or described in the OFAC Lists.

All references herein to "this Agreement" shall include the exhibits to this Agreement and any agreement (including a rider) being executed by Purchaser pursuant to or in connection with this Agreement. Purchaser agrees that Seller may rely upon the foregoing representations, which shall survive the Closing or the cancellation or termination hereof (as applicable).

34.18 Liability: Each Party agrees that it shall have no recourse against any member, officer, director, shareholder, manager, agent, employee, attorney or affiliate (whether direct or indirect, disclosed or undisclosed) of the other Party (collectively, "**Related Persons**") in connection with this Agreement or the enforcement of this Agreement and shall not join the other Party's Related Persons in any litigation or seek to recover any costs or expenses against said other Party's Related Persons.

34.19 Legal, Valid and Binding: Each Party represents and agrees that: (a) this Agreement is legal, valid and binding upon, and fully enforceable in accordance with its terms (without defense, set-off or counterclaim) against, the representing Party, and any right to assert a defense, set-off or counterclaim with respect to the legality, validity or enforceability of this Agreement by the representing Party is hereby irrevocably and unconditionally waived by the other Party; (b) this Agreement has been duly authorized by all requisite organizational action of the representing Party; (c) this Agreement is being executed by a duly authorized signatory of the representing Party; (d) the execution, delivery, and performance of this Agreement will not conflict with any of such representing Party's obligations or any law, rule, or regulation applicable to such representing Party; and (e) all of the foregoing may be relied upon by the other Party.

34.20 Section 1031 Exchange: Seller hereby acknowledges that the acquisition of the Unit hereunder may be in connection with a tax deferred exchange under §1031 of the Internal Revenue Code and that Purchaser (except as prohibited by this Agreement) may be assigning all of its rights and obligations hereunder to a qualified intermediary as part of, and in furtherance of, such tax deferred exchange. Seller hereby agrees to reasonably assist and cooperate in such tax deferred exchange, provided, however, that: (a) any action taken in connection with such tax deferred exchange or requested of Seller shall not result in any cost, expense or liability on the part of Seller or increased risk to Seller relating to the transaction contemplated by this Agreement (and among other things, Purchaser acknowledges that a fee may be payable to Seller's counsel in connection with the review of any documentation related to such tax-deferred exchange); (b) no action or failure on the part of Purchaser (or any other party to such tax deferred exchange) or cooperation on the part of Seller in connection with or related to said tax deferred exchange will frustrate the purpose of this Agreement or otherwise result in a reduction of Seller's rights, remedies and privileges under this Agreement or increase any of Seller's obligations or duties under this Agreement or otherwise; and (c) Seller shall not be obligated, as part of any tax deferred exchange, to convey any property (other than the Unit), acquire any property, or accept any form of payment in respect of the amounts due hereunder other than as set forth herein. Purchaser shall indemnify Seller from and against any and all liabilities for claims, litigations, costs and expenses (including legal expenses) incurred by Seller in connection with or resulting from the said tax deferred exchange, which indemnity shall survive the Closing or the termination of this Agreement. Notwithstanding the foregoing, Seller makes no representation and expresses no opinion with respect to the applicability of §1031 of the Internal Revenue Code to the purchase or acquisition of the Unit.

34.21 Waiver of Diplomatic or Sovereign Immunity:

34.21.1 Purchaser hereby waives any and all immunity from suit or other actions or proceedings and agrees that, should Seller or any of its successors or assigns bring any suit, action or proceeding in New York or any other jurisdiction to enforce any obligation or liability of Purchaser arising, directly or indirectly, out of or relating to

this Agreement, no immunity from such suit, action or proceeding will be claimed by or on behalf of Purchaser.

34.21.2 As of the execution of this Agreement, Purchaser acknowledges and agrees that all disputes arising, directly or indirectly, out of or relating to this Agreement may be dealt with and adjudicated in the state courts of New York or the federal courts sitting in New York, and hereby expressly and irrevocably submits the person of Purchaser to the jurisdiction of such courts in any suit, action or proceeding arising, directly or indirectly, out of or relating to this Agreement. So far as is permitted under the applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action shall be necessary in order to confer jurisdiction upon the person of Purchaser in any such court.

34.21.3 Purchaser irrevocably waives, to the fullest extent permitted by law, and agrees not to assert, by way of motion, as a defense or otherwise in any suit, action or proceeding arising, directly or indirectly, out of relating to this Agreement, brought in the state courts in New York or the federal courts sitting in New York: (a) any objection which it may have or may hereafter have to the laying of the venue of any such suit, action or proceeding in any such court; (b) any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum; or (c) any claim that it is not personally subject to the jurisdiction of such courts. Purchaser agrees that final judgment from which Purchaser has not or may not appeal or further appeal in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon Purchaser and, may so far as is permitted under the applicable law, be enforced in the courts of any state or any federal court and in any other courts to the jurisdiction of which Purchaser is subject, by a suit upon such judgment and that Purchaser will not assert any defense, counterclaim, or set off in any such suit upon such judgment.

34.21.4 Purchaser agrees to execute, deliver and file all such further instruments as may be necessary under the laws of the State of New York, in order to make effective the consent of Purchaser to jurisdiction of the state courts of New York and the federal courts sitting in New York and any other provisions of this paragraph 34.21.

34.21.5 Nothing in this paragraph 34.21 shall affect the right of Seller to bring proceedings against Purchaser in the courts of any jurisdiction or jurisdictions.

34.21.6 The provisions of this paragraph 34.21 shall survive the Closing or the termination of this Agreement for the purpose of any Lawsuit arising directly or indirectly, out of or relating to this Agreement.

34.21.7 In the event Purchaser is a foreign government, a resident representative of a foreign government or such other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity), such Purchaser shall hereby be deemed to have designated and hereby designates C.T. Corporation System, having its offices, at the date hereof, at 111 Eighth Avenue, New York, New York 10011 as its duly authorized and lawful agent to receive process for and on behalf of Purchaser in any state or federal suit, action or proceeding in the state of New York based on, arising out of or connected with this Agreement.

34.21.8 If Purchaser is a foreign mission, as such term is defined under the Foreign Missions Act, 22 U.S.C. 4305, Purchaser shall notify the United State Department of State prior to purchasing a Unit and provide a copy of such notice to Seller. Seller shall not be bound under this Agreement unless and until the earlier to occur of: (a) a notification of approval is received by the Department of State; or (b) sixty (60) days after Purchaser's notice is received by the Department of State.

34.22 Captions: The paragraph captions and Table of Contents are for convenience only and are not part of the text of this Agreement, nor to be used to interpret its provisions.

34.23 References: All references in this Agreement to a paragraph, subparagraph, clause, Exhibit, refer to the paragraphs, subparagraphs and clauses of this Agreement and to an Exhibit attached to this Agreement. The words "hereof", "herein", "above", "below" and similar terms mean this Agreement. Each Exhibit attached to this Agreement is part of this Agreement.

34.24 Grammar: Any number (plural or singular), or gender (masculine, feminine or neuter) or tense (past, present or future) used herein shall be deemed to include any other number, any other gender and any other tense, as the context may require or to correct a grammatical error.

34.25 U.S. Dollars: All payments and dollar amounts are in the currency of the United States (i.e., U.S. dollars).

34.26 Credit Check: Purchaser authorizes Seller and its designated mortgage broker, agents and employees to check Purchaser's credit and judgment history and to obtain reports on Purchaser's credit and judgment history from credit agencies, bureaus and companies. Upon written request from Purchaser, Seller will inform Purchaser of the name and address of each agency, bureau or company furnishing said report.

34.27 Counterparts and Signatures: The Parties are separately signing counterparts of this Agreement with an actual or electronic signature and transmitting the executed

counterpart by facsimile, electronic, PDF format or other comparable transmission, which shall be deemed an original for all purposes, with all such separately executed and transmitted counterparts comprising one and the same instrument, fully valid, binding and enforceable for all purposes. The Parties waive the "best evidence rule" or any similar law or rule in any litigation in which said signed reproduction of the signed original of this Agreement is presented as evidence or for enforcement.

END OF TERMS AND CONDITIONS OF PURCHASE AND SALE AGREEMENT
The Exhibits to this Purchase and Sale Agreement start on the following page.

EXHIBIT A

PERMITTED ENCUMBRANCES

The Unit will be conveyed and sold, and will be purchased and acquired by Purchaser (without abatement in the Purchase Price or recourse of any kind against Seller or Seller's Related Parties), subject to the following Permitted Encumbrances, which shall not be objections to title:

1. Building restrictions and zoning laws and other regulations, resolutions and ordinances and any amendments thereto now or hereafter adopted by any governmental or quasi-governmental authority having competent jurisdiction, provided they do not prevent the use of the subject Unit for the purpose set forth in the Plan.

2. State of facts shown survey made by Earl B. Lovell - S.P. Belcher, Inc. dated April 29, 2013, updated by visual examination on 11/14/2013 shows an eight story brick garage with two story brick extension, elevator machine rooms (building being remodeled) and the following survey exceptions:

Southerly line (East 12th Street)
Projections:
Trim 1'0"
Wheel Guard 1'3"
Stand Pipe 1'5"
Auto Sprinkler 1'2"
Roll up Gates 1'3"
Signs up to 3'0"
Light 1'0"
Alarm 0'6"
Vent 1'8"

Easterly line
Windows project when open

Westerly line
Wall of adjoiner is 0'0-1/4" East
Two story extension leans 0'0-1/2" West
Wall of adjoiner is 0'-1/2" East and leans 0'-0-3/4" East

Northerly line
No encroachments

Any additional state of facts that an accurate survey or personal inspection of the Land and Building (after being rehabilitated with additional floors and newly constructed Units and Building Facilities) would show, including encroachments of the Building on adjoining properties and/or streets, provided that the Title Insurance Company or Purchaser's title insurer or agent (as applicable) will insure at its regular rate, without additional premium, in a fee title policy issued to Purchaser that any such encroachments may remain for so long as the Building shall stand, and provided further that such state of facts would not prevent the use of the subject Unit for the purpose set forth in the Plan.

3. Any state of facts that an accurate survey or personal inspection of the subject Unit (when erected) would disclose, including: (a) encroachments by the Unit on adjoining Units and/or on Common Elements; and (b) encroachments by adjoining Units or Common Elements on the Unit, provided that the Title Insurance Company or Purchaser's title insurer or agent (as applicable) will insure at its regular rate, without additional premium, in a fee title policy issued by it to Purchaser, that any encroachments of a portion of the subject Unit upon any other unit or the Common Elements may remain for so long as the Building shall stand.

4. The terms, burdens, covenants, restrictions, conditions, duties, limitations, licenses, powers, easements, encroachments and rules and regulations set forth in, or permitted by, the Declaration, the By-Laws (and the Rules and Regulations made thereunder), the Unit Owner's Power of Attorney from Purchaser to the Condominium Board and Seller, and the Floor Plans, as any of them might be amended from time to time, provided that the Title Insurance Company or Purchaser's title insurer or agent (as applicable) will insure at its regular rate, without additional premium, in a fee title policy issued to Purchaser, against loss or Damage occasioned by reason of the Unit not being part of a condominium validly established pursuant to Article 9-B of the Real Property Law, as amended.

5. Consents by the Seller, the Condominium Board or any former owner of the Land, for the erection of any structure or structures on, under or above any street or streets on which the Land abuts.

6. Sewer, water, electric, plumbing, heating, gas, telephone, cable and other utility easements and any and all rights of use in favor of any utility company for construction, use, maintenance, repair, removal, relocation and replacement of utility lines, wires, terminal boxes, mains, pipes, cables, conduits, poles, connections and other equipment and facilities on, under and across the Land and Building.

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

8. Encroachments of stoops, areas, cellar steps or doors, trim, coping, retaining walls, bay windows, balconies, sidewalk elevators/hatches, fences, fire escapes, cornices, foundations, footings, chutes, fuel oil lines, drainage and stand pipes, and similar projections, if any, on, over, or under the Property or the streets or sidewalks abutting the Property, and the rights of Governmental Authorities to require the removal of any such projections, and variations between record lines of the Property and retaining walls and the like, if any.

9. Leases and service, maintenance, employment, concessionaire and license agreements, if any, of other units of the Condominium or portions of the Common Elements as described or permitted in the Plan or a Plan Amendment or made after the end of the Sponsor Board Control Period.

10. The lien of any unpaid Common Charge and real estate taxes, which shall be apportioned at the Closing as set forth in this Purchase and Sale Agreement. The lien for any unpaid water charges and sewer rents are payable by the Condominium Board and included in Common Charges, and thus are deemed apportioned as part of the Common Charges.

11. The lien of any unpaid "assessment" (defined below) payable in installments, except that: (a) Seller will pay all such assessments due prior to the Closing Date; and (b) Purchaser will pay all assessments due from and after such date. However, the then current installment of an assessment will be apportioned at Closing in accordance with this Purchase and Sale Agreement. The term **"assessment"** as used herein includes both a real estate tax assessment and a Condominium Board Special Assessment.

12. Unpaid fees or charges of any Governmental Authority for inspections, re-inspections, examinations, services, permits and licenses, which shall be apportioned between Seller and the Condominium Board as provided in the Plan or, if arising after the First Unit Closing, shall be payable by the Condominium Board and included in the Common Charges, and thus are deemed apportioned as part of the Common Charges.

13. Unpaid costs, charges and amounts owed by the Condominium Board after the First Unit Closing for work performed by a Governmental Authority, including the New York City Office of Rent and Housing Maintenance, Emergency Services Division, and the New York City Department of Health (all such unpaid costs, charges and amounts owed prior to said First Unit Closing shall be paid by Seller pursuant to the Plan).

14. Any encumbrance as to which the Title Insurance Company or the title insurer or agent (as applicable) that insures Purchaser's title to the Unit would be willing to insure, at Purchaser's expense, at its regular rate and without additional premium, in a fee policy issued by it to Purchaser: (a) will not be collected out of, or enforced against, the Unit or its Common Interest if it is a lien; or (b) will not prevent the use of the Unit for the purpose set forth in the Plan, whichever is applicable. Any exception that the Title Insurance Company has omitted or insured at its regular rates and without additional premium will not be collected out of, or enforced against, a unit, in a fee title insurance policy for other units of the Condominium, regardless of which title insurance company or agent Purchaser uses, will not be a valid objection to title.

15. Any declaration or other instrument affecting the Property that Seller or the Condominium Board considers 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 Standard and Appeals,

or any other public or quasi-public Governmental Authority, applicable to the demolition, construction, alteration, repair, use, occupancy, operation or restoration of the Building.

16. Covenants, conditions, easements, leases, agreements of record (if any), provided the Unit shall not be subject to a lease or Use and Occupancy Agreement with other than Purchaser, and provided further that none of same shall prevent the use of the Unit for the purpose set forth in the Plan and excluding any title exception and lien excluded in clauses (a) and (b) in the following paragraph 17.

17. Lot line Window Restrictive Declaration dated 10/8/2013 and recorded 10/15/2013 in CRFN 2013000424577. Any other covenants, declarations, restrictions, easements or agreements of record affecting the Property or any portion thereof, and the title exceptions set forth in the title report issued by the Title Insurance Company, provided none of the foregoing prevent the use of a Unit for the purpose set forth in this Plan, and excluding: (a) any title exception to be removed in order to insure the valid establishment of the Condominium as provided in the Plan; and (b) the lien of any mortgage or UCC-1 financing statement, which are to be released or terminated, respectively, from the Unit.

18. Any violations against the Property (other than the Unit) that are the obligation of the Condominium Board or the owner of another unit to correct (all such violations existing at the First Unit Closing shall be corrected by Seller pursuant to the Plan.).

19. A temporary, partial or final (at Seller's exclusive option) Certificate of Occupancy covering the Building (when issued after completion or substantial completion of rehabilitation and construction of the Building), provided it authorizes use of the Unit for the purpose set forth in the Plan.

20. Leases, use and occupancy Agreements and rights of tenants and occupants of other units and portions of the Property other than the subject Unit, as tenants only, and any use and occupancy agreement, lease, tenancy or occupancy of this Unit by Purchaser if and as provided in the Purchase and Sale Agreement.

21. Any lien (including any mortgage lien) or other encumbrance granted, created or obtained by the Purchaser.

22. Easements for ingress and egress for construction, installation, operation and maintenance of municipal service facilities and utilities.

23. Any easement or right of use required by Seller or its designee to obtain a temporary, partial or final Certificate of Occupancy of the Building or any part thereof. Any other covenants, restrictions, easements or other encumbrance (other than for payment of money), provided that they do not prohibit the existence and use of the Unit for the purpose set forth in the Plan.

24. Service, labor, concessionaire and maintenance agreements with the Condominium Board as disclosed or permitted in the Plan or a Plan Amendment, or made after the end of the Sponsor Board Control Period.

25. Any lien, encumbrance or lis pendens either: (a) for which the instrument required to remove said encumbrance of record is delivered at or prior to the Closing Date to the proper Party or to Purchaser's title insurer or agent (as applicable) together with the required recording or filing fee; or (b) as to which Purchaser's title insurer or agent (as applicable) or the Title Insurance Company will insure that the lien, encumbrance or lis pendens will not be collected out of, or enforced against, the Unit.

26. Party walls and party wall agreements, if any.

27. Judgments, bankruptcies or other returns against other persons having names the same as or similar to Seller or any of its principals, provided Seller or any such principals, as the case may be, deliver to Purchaser or Purchaser's title insurer or agent (as applicable), or the Title Insurance Company, an affidavit showing that such judgments, bankruptcies or other returns are not against Seller or any such principals, as the case may be.

28. Uniform Commercial Code financing statements or conditional bills of sale, provided that: (a) such statements were filed on a date more than five (5) years prior to the Closing Date; (b) Seller executes and delivers to Purchaser an

affidavit setting forth that the property covered thereby is no longer in the Unit or is fully paid for; or (c) a tenant is the debtor thereunder.

29. Standard printed exceptions contained in the form of fee title insurance policy then issued by the title insurer or agent (as applicable) insuring Purchaser's title to the Unit, including the following: (a) defects and encumbrances arising or becoming a lien after the Closing Date; (b) consequences of the exercise and enforcement or attempted enforcement of any governmental, war or police powers over the Unit or the Property; (c) any laws, regulations or ordinances (including, but not limited to zoning, building, and environmental protection) as to the use, occupancy, subdivision or improvement of the Unit or the Property, adopted or imposed by any governmental body, or the effect of any noncompliance with or any violation thereof; (d) judgments against the insured or estates, interests, defects, objections, liens or encumbrances created, suffered, assumed or agreed to, by or with the privity of Purchaser; (e) title to any property beyond the lines of the Unit or the Property, or title to areas within or rights to easements in any abutting streets, roads, avenues, lanes, ways or waterways, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement, other than the ordinary rights of access and egress belonging to abutting owners; and (f) title to any personal property, whether the same be attached to or used in connection with the Unit or the Property or otherwise.

30. Franchise taxes and New York City business corporation taxes of any organization in the chain of title, provided that Purchaser's title insurer or agent (as applicable), or the Title Insurance Company, would be willing to insure at its regular rate, without additional premium, in a fee policy issued by it to Purchaser, that such taxes will not be collected out of the Unit.

END OF EXHIBIT A
PERMITTED ENCUMBRANCES

EXHIBIT B

FINAL INSPECTION STATEMENT

Date: _____ ___, 202_

W 108 Development LLC
119 West 72nd Street, #401
New York, New York 10023

Re: Residential Unit ___ ("**Unit**")
324 West 108 Condominium
324 West 108th Street
New York, New York 10025

Gentlemen:

This is to confirm that based on my/our personal inspection of the above referenced Unit, I/we have found the Unit and its Limited Common Elements, including its floors, walls, doors, fixtures, appliances, hardware, facilities and all other items listed below (if and to the extent included in the sale pursuant to the Purchase and Sale Agreement to which this EXHIBIT B is attached) to be in good and satisfactory working order and condition, free of chips, marks, scratches, breaks, defects or other imperfections, except for those matters (if any) expressly noted and detailed below under "Exceptions" requiring repair, adjustment or correction:

Item	Exceptions (or Accepted if not otherwise noted)	Purchaser's Initials
1. Unit Interior:		
(a) Walls:	_____	_____
(b) Floors:	_____	_____
(c) Ceilings:	_____	_____
(d) Windows: (glass, sash, pane, sill, etc.)	_____	_____
(e) Doors:	_____	_____
(f) Electrical fixtures:	_____	_____
(g) Painted surfaces:	_____	_____
(h) Countertops:	_____	_____
(i) Kitchen Cabinets:	_____	_____
(j) Refrigerator/Freezer:	_____	_____
(k) Cooktop:	_____	_____

Item	Exceptions (or Accepted if not otherwise noted)	Purchaser's Initials
(l) Oven/Microwave Oven:	_____	_____
(m) Dishwasher:	_____	_____
(n) Washer/Dryer	_____	_____
(o) Kitchen Sink:	_____	_____
(p) Bathroom Sink(s):	_____	_____
(q) Water Closet(s):	_____	_____
(r) Bathtub/Shower:	_____	_____
(s) Hardware: (doorknob, faucets, locks, etc.)	_____	_____
(t) Intercom:	_____	_____
(u) Bathroom Vanity/Cabinet:	_____	_____
(v) Bathroom Medicine Cabinet:	_____	_____
(w) Other:	_____	_____

2. General Operating Condition:

(a) All Doors:	_____	_____
(b) All Windows:	_____	_____
(c) All Plumbing (including Hot Water):	_____	_____
(d) All Hardware:	_____	_____
(e) All Cabinets:	_____	_____
(f) Other:	_____	_____

I/We understand that to prevent pilferage, certain items (such as a shower head and toilet seat), if now absent, will be installed just prior to the date I/we move in.

I/We will sign and deliver to you a separate statement signifying my/our satisfaction with each item excepted above (if any), immediately upon completion of its repair, adjustment or correction.

I/We understand and agree that you shall not be obligated to make any repairs, adjustments or corrections to the Unit or any portion thereof or its fixtures, appliances and other facilities contained the Unit or its Limited Common Elements, from and after the date of Closing under the undersigned's Purchase and Sale Agreement for the Unit, except as to those items (if any) expressly excepted above (and your obligation regarding each such excepted item (if any) shall cease upon completion of its repair, adjustment or correction), and except further to the extent required under the Plan to correct any Latent Construction Defects in the Unit and its Limited Common Elements (as provided in the Plan and undersigned's Purchase and Sale Agreement) as to which I/we give you timely written notice in accordance with the Plan and said Purchase and Sale Agreement.

I/We shall pay the full amount of the Purchase Price set forth in said Purchase and Sale Agreement (without reduction, set-off or credit and without escrowing any monies) and accept title to the Unit on the date of Closing, notwithstanding the existence of any Exceptions listed above.

I/We understand and agree that you will not be bound hereby unless you or your authorized representative sign and deliver this Final Inspection Statement to me/us.

The meanings given to the terms defined in the Purchase and Sale Agreement shall apply when such terms are used herein.

Very truly yours,

Purchaser:

Signature: _____

Name: _____

Signature: _____

Name: _____

Agreed To:
W 108 Development LLC

By:
Signature: _____

Name:_____

Title:_____

END OF EXHIBIT B
FINAL INSPECTION STATEMENT

DOCUMENT 2A

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number

☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person ▶** **Date ▶**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

DOCUMENT 28

Form **W-8BEN**

(Rev. October 2021)

Department of the Treasury
Internal Revenue Service

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)

▶ For use by individuals. Entities must use Form W-8BEN-E.
▶ Go to *www.irs.gov/FormW8BEN* for instructions and the latest information.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do NOT use this form if: **Instead, use Form:**

- You are NOT an individual W-8BEN-E
- You are a U.S. citizen or other U.S. person, including a resident alien individual W-9
- You are a beneficial owner claiming that income is effectively connected with the conduct of trade or business within the United States (other than personal services) W-8ECI
- You are a beneficial owner who is receiving compensation for personal services performed in the United States . . . . . 8233 or W-4
- You are a person acting as an intermediary W-8IMY

Note: If you are resident in a FATCA partner jurisdiction (that is, a Model 1 IGA jurisdiction with reciprocity), certain tax account information may be provided to your jurisdiction of residence.

Part I Identification of Beneficial Owner (see instructions)

1 Name of individual who is the beneficial owner

2 Country of citizenship

3 Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address.**

City or town, state or province. Include postal code where appropriate.

Country

4 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country

5 U.S. taxpayer identification number (SSN or ITIN), if required (see instructions)

6a Foreign tax identifying number (see instructions)

6b Check if FTIN not legally required . . . . . ☐

7 Reference number(s) (see instructions)

8 Date of birth (MM-DD-YYYY) (see instructions)

Part II Claim of Tax Treaty Benefits (for chapter 3 purposes only) (see instructions)

9 I certify that the beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.

10 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article and paragraph _____ of the treaty identified on line 9 above to claim a _____ % rate of withholding on (specify type of income): _____.

Explain the additional conditions in the Article and paragraph the beneficial owner meets to be eligible for the rate of withholding: _____

Part III Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the individual that is the beneficial owner (or am authorized to sign for the individual that is the beneficial owner) of all the income or proceeds to which this form relates or am using this form to document myself for chapter 4 purposes;
- The person named on line 1 of this form is not a U.S. person;
- This form relates to:
  (a) income not effectively connected with the conduct of a trade or business in the United States;
  (b) income effectively connected with the conduct of a trade or business in the United States but is not subject to tax under an applicable income tax treaty;
  (c) the partner's share of a partnership's effectively connected taxable income; or
  (d) the partner's amount realized from the transfer of a partnership interest subject to withholding under section 1446(f);
- The person named on line 1 of this form is a resident of the treaty country listed on line 9 of the form (if any) within the meaning of the income tax treaty between the United States and that country; and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner. **I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.**

Sign Here ▶ ☐ I certify that I have the capacity to sign for the person identified on line 1 of this form.

Signature of beneficial owner (or individual authorized to sign for beneficial owner) — Date (MM-DD-YYYY)

Print name of signer

DOCUMENT 3
CONDOMINIUM UNIT DEED

THIS INDENTURE, made the ____ day of _____, 202_, between:

W 108 DEVELOPMENT LLC, a New York limited liability company, having an office at 119 West 72nd Street, #401, New York, New York 10023 ("**Grantor**");

and

_____

_____

having an address at _____
("**Grantee**").

W I T N E S S E T H:

That the Grantor, in consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee, forever:

the condominium Unit ("**Unit**") in the building known as 324 West 108 Condominium (the "**Condominium**") and by the street number of 324 West 108th Street (a/k/a 324-326 West 108th Street), in the Borough of Manhattan and the City, County and State of New York ("**Building**"), said Unit being designated and described as Residential Unit No. _____ in that certain declaration dated _____, 202__, made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York ("**Condominium Act**") establishing a plan for condominium ownership of the Building and the land ("**Land**") upon which the Building is situated (which Land is more particularly described in EXHIBIT A annexed hereto and by this reference made a part hereof), which declaration was recorded in the New York County Office of the City Register of The City of New York (the "**City Register's Office**") on _____, 202__, in CRFN # _____ (such declaration and, if amended, the amendments thereto set forth on EXHIBIT B annexed hereto and by this reference made a part hereof are hereinafter collectively referred to as the "**Declaration**"); this Unit also being designated as Tax Lot _____ in Block 1892 on the Block Map of Taxes and Assessments in the borough of Manhattan, and on the "**Floor Plans**" of the Building, certified by Marc Kemeny, Architect, on _____, 202__, and certified by the tax map specialist of the Tax Map Unit of the Real Property Assessment Department of The City of New York on _____, 202_, and filed in the New York City Land Records Division of the Department of Finance on _____ __, 202_ as Condominium Plan No. _____, and also filed in the City Register's Office on _____ __, 202_, as Map No. ____;

together with an undivided _____% interest in the Common Elements of the Condominium;

together with the appurtenances and all the estate and rights of the Grantor in and to the Unit;

together with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the Land to the center line thereof;

together with all right, title and interest, if any, of Grantor in and to all strips and gores adjacent to the Land described in EXHIBIT A hereto, and easements, if any, appurtenant thereto;

together with, and subject to, the rights, power, duties, obligations, easements, licenses, requirements, burdens, encroachments, limitations, restrictions (including those with respect to permitted use, occupancy and disposition of the Unit) and other provisions set forth in, or permitted by, the Declaration, Floor Plans and the by-laws (including the rules and regulations appended thereto) of the Condominium, as each may be duly amended from time to time (said by-laws and, if amended, the amendments thereto set forth on EXHIBIT B hereto are hereinafter collectively called the "**By-Laws**"), all of which shall constitute covenants running with the Land and shall bind any person having at any time any interest or estate in the Unit, as though recited and stipulated at length herein; and

subject also to all exceptions to title and to such other liens, agreements, covenants, easements, restrictions, declarations, consents and other matters of record or set forth in the Offering Plan of the Condominium as pertain to the Unit, to the Land and/or to the Building (the Land and Building are hereinafter collectively called the "**Property**");

TO HAVE AND TO HOLD the same unto the Grantee and the heirs or successors and assigns of the Grantee forever.

The words and terms defined in the Declaration or the By-Laws of the Condominium that are used herein without express definition shall have the same meanings given to them in said instruments.

If any provision of the Declaration or the By-Laws is invalid under, or would cause the Declaration or the By-Laws to be insufficient to submit the Property to, the provisions of the Condominium Act, or otherwise fails to comply with the Condominium Act, or if any provision that is necessary to cause the Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from the Declaration or the By-Laws, the applicable provisions of Article 22 of the Declaration shall control.

Except as otherwise expressly permitted by the Condominium Board or provided in the Declaration or the By-Laws, the Unit is intended for use only as a dwelling and incidental home occupation allowed by Law.

The Grantor covenants that the Grantor has not done or suffered anything whereby the Unit has been encumbered in any manner whatever, except as aforesaid. This covenant is for the personal benefit of Grantee only and cannot be assigned to, or enforced or exercised by, and shall not inure to the benefit of, anyone else, including (but not limited to) any insurer of Grantee's title or any successor of Grantee's interest. In the event of any breach of these covenants, Grantee shall first seek recovery against Grantee's title insurance company (if any) and Grantor's liability hereunder shall be limited to the extent only that Grantee's loss or damage is not insured by Grantee's title insurer. In the event that Grantee shall elect not to purchase title insurance, then the liability of Grantor shall be limited to the extent only that any loss or damage would not have been covered by the title insurance that was available to Grantee as of the date of this conveyance. The terms of any marked-up title binder issued by any title insurer that is a member of the New York Board of Title Underwriters in connection with any unit in the Building shall be conclusive evidence against Grantee of the title insurance coverage that was available to Grantee as of the date of this conveyance.

The Grantor, in compliance with Section 13 of the Lien Law of the State of New York, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund for the purpose of paying the cost of the improvements at the Property and will apply the same first to the payment of the cost of such improvements before using any part of the same for any other purposes.

By accepting this deed, the Grantee accepts and ratifies the provisions of the Declaration and the By-Laws (and the Rules and Regulations appended thereto, as same may be duly amended from time to time) and agrees to comply with all the terms and provisions thereof.

This conveyance is made in the regular course of business of the Grantor.

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

SIGNATURE PAGE FOLLOWS

END OF TEXT ON THIS PAGE

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

GRANTOR:

W 108 DEVELOPMENT LLC
By:

Signature: _____

Name: _____

Title: _____

GRANTEE:

Signature: _____

Name: _____

Signature: _____

Name: _____

ACKNOWLEDGMENTS

STATE OF NEW YORK)
): ss.:
COUNTY OF NEW YORK)

On the __ day of _____, 202_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Signature and Office of
individual taking Acknowledgment

STATE OF NEW YORK)
): ss.:
COUNTY OF NEW YORK)

On the ____ day of _____, 202_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Signature and Office of
individual taking Acknowledgment

STATE OF NEW YORK)
): ss.:
COUNTY OF NEW YORK)

On the ____ day of _____, 202_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Signature and Office of
individual taking Acknowledgment

EXHIBIT A

TO

CONDOMINIUM UNIT DEED

DESCRIPTION OF LAND

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH OF MANHATTAN AND THE COUNTY, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a point on the southerly side of One Hundred Eighth Street, distant one hundred forty three feet, four and one half inches easterly from the corner formed by the intersection of the southerly side of One Hundred Eighth Street with the easterly side of Riverside Drive,

Running Thence SOUTHERLY parallel with Riverside Drive and part of the way through a party wall, one hundred feet, eleven inches to the centre line of the block;

Thence EASTERLY along said centre line of the block and parallel with One Hundred Eighth Street, 43 feet 6 inches;

Thence NORTHERLY parallel with Riverside Drive and part of the way through a party wall, one hundred feet eleven inches to the southerly side of One Hundred and Eighth Street; and

Thence WESTERLY along the southerly side of One Hundred Eighth Street, 43 feet 6 inches to the point or place of BEGINNING.

Said premises being known as 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York.

END OF EXHIBIT A

CONDOMINIUM UNIT DEED

GRANTOR: **W 108 DEVELOPMENT LLC**

TO

GRANTEE: _____

_____

CONDOMINIUM: **324 WEST 108 CONDOMINIUM**

BUILDING: **324 West 108th Street**
(a/k/a 324-326 West 108th Street)
New York, New York 10025

PREMISES: **Residential Unit No. ____**

County: New York
Block: 1892
Lot: _____

Record and Return to:

_____

_____

_____

_____

DOCUMENT 4

REPORT

DESCRIPTION OF PROPERTY
AND SPECIFICATIONS OR BUILDING CONDITION
324 West 108 Condominium
324-326 West 108th Street
New York, New York 10025

PREPARED BY:
MARC KEMENY, REGISTERED ARCHITECT
OFFICE OF MARC KEMENY
165 PINE CREEK AVENUE
FAIRFIELD, CT
06824

324 West 108 Condominium
324-326 West 108th Street
New York, New York

PREFACE

This report concerning 324-326 West 108th Street, New York, New York (the "Building" or "Property" or "Premises") was commissioned by the Sponsor for the purpose of inclusion in the Condominium Offering Plan for said Building in compliance with the requirements of the Department of Law of the State of New York. Any use of this report for any other purpose is not authorized by Marc Kemeny R.A./Office of Marc Kemeny.

We visually inspected portions of the Premises on November 19, 2022, and reviewed plans delineating the prospective renovation of the Building by OCV Architects, dated December 5, 2017, and June 25th, 2018, consisting of Building Department approved architectural, structural and mechanical plans (Joselow & Associates, LLC engineers as consultants).

Observations were made of those areas that were open and accessible at the time of the visits. Marc Kemeny/Office of Marc Kemeny assumes no responsibility for any conditions or defects that were hidden, inaccessible, or could not be determined by cursory observation. It is to be understood that some aspects of the physical condition of the Property cannot be determined from visual observation, and all statements contained in this report are premised on and limited to such observations. This report is not a guarantee or warranty of the physical condition of the Premises by the Architect or the Sponsor. All statements relative to the legal use, zoning provisions, and code compliance of the Building only express Marc Kemeny's professional opinion, and are subject to final determination by those government agencies having jurisdiction.

The Sponsor reserves the right, in its sole discretion, to substitute any of the equipment or materials set forth herein with equipment or materials that are no less equal in quality or design.

The Building is being completely rehabilitated and all equipment and components are new.

Marc Kemeny, R.A. for the Office of Marc Kemeny
November 21, 2022

REGISTERED ARCHITECT
MARC KEMENY
No. 018280-1
STATE OF NEW YORK

a) LOCATION AND USE OF PROPERTY

1) Address: 324-326 West 108th Street
New York, New York 10025
The Property is located on the south side of 108th Street, between Broadway and Riverside Drive, approximately 143'4" east of Riverside Drive.

2) Block and Lot Number:
Block: ***1892***
Lot: ***60***

In order to use the development rights of 328 West 108th Street, 324-326 W. 108th Street and 328 West 108th Street share zoning lots (60 and 62), which were merged into a single zoning lot, in conformance with the Declaration of Zoning Lot Restrictions which allows for the merging of zoning lots. There will be no common infrastructure with 328 West 108th Street, except for the demising wall between the Buildings. A small section of the 6th floor of 324-326 West 108th Street, approximately 1'6" wide, located on the western side of the Building towards the front, cantilevers over the roof of 328 West 108th Street. 328 West 108th Street will not be part of the condominium.

3,4) Zoning and Permissible Use
The Property is in an R8B district which allows for residential and community facility use but not commercial. The Sponsor states that the Property and proposed use will comply with all zoning and use requirements at closing. The Building is located in a historical district, which means that in the future, proposed changes to the exterior need the approval of the Landmarks Preservation Commission ("LPC"), which is not assured (the current application has been approved).

b) STATUS OF CONSTRUCTION

1) Year Built:
Historic documentation indicates that the original Buildings were built in 1898. Construction details are consistent with the technology at the turn of the last century.

2) Class of Construction
The construction classification is Class II1A non-fireproof (wood joist combustible). The principal materials of the Building, as discussed in other sections of this Report, are: masonry and brick foundations, masonry walls with steel stud construction on the upper floors, and wood floor joists. The Building is being renovated in compliance with the 2014 NYC Building Code. Structural steel was sprayed with 2-hour fire rated material; the partitions between apartments have a 2-hour rating; the shaft walls, (elevator, duct and stair shafts) are 2-hour fire rated; the hollow metal doors for apartment entries and stairwells are 1-1/2 hour rated; the interior partition walls within the apartments are 1-hour fire rated; the floor slabs are 1-hour rated except for the cellar and 6th floor ceilings, which are 2-hour rated; new exterior masonry walls are 3-hour fire rated. This is a non-fireproof building.

The Building renovation complies with the requirements of the NYC Quality Housing Program, specifically bulk regulations.

3) Certificate of Occupancy

Alteration number 1, application 121193341 for the renovation and extension of the Property was approved by the Department of Buildings on February 7, 2018. Various ancillary applications such as mechanical work, demolition, shed construction, as well as subsequent amendments, including the 6th floor addition, have also been approved. A Building Permit was issued on March 1, 2018. The Sponsor is currently in the process of renovating the Building. The scope of work includes the enlargement of the Building confined to portions of the rear façade which is being extended into the rear yard, the construction of an additional floor, and the renovation of the existing Building.

Work is expected to be complete by December 31, 2022. The Sponsor will secure a new, single Certificate of Occupancy for the Building after the completion of work, and reserves the right to sell individual Units as they receive Temporary Certificates of Occupancy, together or separate.

c) SITE

1) Size

The Property is rectangular, approximately 43'6" wide along 108th Street and approximately 100'11" deep. These dimensions are exclusive of the cellar access openings and front stoops/steps located in the front of the Building, which extend beyond the lot line. The lot is approximately 4,390 square feet. 328 West 108th Street has been combined with 324-326 West 108th Street into a merged zoning lot in order to utilize its development rights (328 W. 108th Street will not be part of the condominium and will not share infrastructure with 324-326 West 108th Street). For zoning purposes, the combined Properties are approximately 66'6" wide with approximately 6,610 square feet.

2) Number of Buildings and Use

The Property originally consisted of two townhouses, which have previously been combined into a single interconnected Building which has unitary utility services and infrastructure.

There is no bar or nightclub located in the immediate vicinity.

3) Streets Owned or Maintained by the Project

The site does not own or maintain a street. The municipal, asphalt paved street in front of the site, is in fair condition.

4) Drives, Sidewalks, and Ramps

There are no drives on the Property. The concrete sidewalk has small cracks, gaps, and slight unevenness. The sidewalk will be resurfaced as part of the renovation. The granite street curb is uneven and broken with a small gap in one spot. The sidewalk slope drains water away from the Building. The Condominium Board shall be responsible for maintaining the sidewalk per New York City municipal requirements.

There are handicap curb cuts and catch basins at the corners of the block. There are no municipal light poles or hydrants in front of the Building. A light pole is located in front of 328 West 108th Street. There are no catch basins on the Property. A parking sign is located in front of the Building.

The front stoops/porch and steps, as well as the cellar access vaults are located slightly beyond the Property line and have been permitted to exist under a revocable, undocumented license from The City of New York, as owner of the sidewalk. These conditions are commonly found in New York City and have remained undisturbed. In the unlikely event, however, the license is revoked, the front stoops/porch and steps, and the sidewalk vaults in the cellar, which contain no equipment or fixtures, would have to be reconfigured and the cellar common areas re-engineered by the Condominium Board as a Common Expense assessed to all Unit Owners Pro Rata to their respective Common Interests.

In the future, it will be the Condominium Board's responsibility to maintain the vaults per the requirements of all jurisdictions.

There are two, 2' X 3' hatch openings in the front sidewalk next to the Building that access the cellar vaults. New "Bilco" type hatch covers have been installed.

d) UTILITIES

Water and sewer service is provided by The City of New York as part of its services. There is a single water service meter for the Building and a separate sprinkler meter**.** Water costs will be appropriated to each Unit per the Offering Plan.

There will be no gas or oil. This is an all electric Building.

Electricity is provided by Consolidated Edison Corporation. Power for all common areas are master metered. Each Unit is separately metered for electric use within the Unit, and to power their individual mechanical equipment located on the roof.

The Building will be serviced by Time Warner Spectrum or another equal telephone service provider. Units will not be allowed to install wiring in any common area without Condominium Board consent. Units are prewired and provided with a telephone jack outlet in the bedroom and the living/dining room. Cable television service will be provided by Verizon or another equal cable service provider. Units are prewired for cable service and provided with a cable service jack in each bedroom and living/dining room. The cost of any cable, telephone and Internet service will be the responsibility of each individual Unit Owner.

e) SUB-SOIL CONDITIONS

1) Foundations

The existing foundations are cut stone with small areas of brick. The observable portions of the foundation (without damage to floor slabs or walls) that are not being rehabilitated or newly constructed, generally appear to be in fair condition or without signs of settlement cracks, bulges, leaning conditions, or other signs of distress, and appear to have been repaired or refurbished to fair condition. 1-1/2" foil insulation with mold resistant gypsum board is attached to the foundation walls. A new rear façade has been built. The new foundation wall is poured concrete with a 3 hour fire rating, and has been installed, per the structural engineer's specification and inspection for the calculated load. No sub-grade drainage system was observed.

Based on a review of a Phase 1 Environmental Site Assessment Report prepared by the Singer Environmental Group, dated December 8, 2014, there was no evidence of recognized environmental conditions in connection with the Property except for acknowledgement that there were several oil tank spills in the past requiring no further action (cases closed by the NYS

DEC), and a recommendation that oil tanks be disposed of in a proper manner. The oil tank was disposed of as part of the project.

2) Moisture

The cellar is dry, with no reported moisture.

3) Flooding

The nearest large water body to the Building is the Hudson River, approximately 1,700' away.

FEMA map 3604970087F indicates that the Building is in Zone X (outside of the .2% annual chance flood plain).

Flooding might occur in the event of a water main break in the street, or a rain deluge (typically caused by a hurricane). Cellar areas, and any goods stored in the cellars would be damaged in such an event.

f) LANDSCAPING AND ENCLOSURES

1) Grass

There will be no grass

2) Plantings

There will be miscellaneous planters installed in the 1st floor Unit 102 rear yard, 1st floor Common Area rear yard area, and Common Area roof terrace.

3) Trees

There is a 10" diameter tree located in the front sidewalk, in a planter that is flush with the sidewalk, and is filled with soil. The tree appears to be healthy. A new border will be installed around the planter area.

4) Fencing

There is a 6' high wood fence located on the eastern side of the rear yard. There will be a 3'6" high, steel fence, equipped with access gates at the roof bulkhead surrounding the mechanical equipment., There will be a 3'6" steel (or wood) fence installed to separate the Unit 102 rear yard from the Common Area yard. Fencing will be aluminum or painted metal.

5) Gates/enclosures

There are no gates or enclosures.

6) Garden Walls

There are no garden walls.

7) Retaining Walls

A new poured concrete retaining wall has been built directly in front of an existing wall located at the rear of the Property on its southern edge. This extends above grade. A poured concrete, retaining wall has been built to separate the cellar level, exterior passageway from the first floor yard areas and to frame the exterior stairs. The retaining walls appear to be in good condition.

8) Display pools and fountains

There are no fountains.

g) BUILDING SIZE

1) Height

The Building will be approximately 70'11" high when work is completed.

2) Crawl Spaces

There are no crawl spaces.

3) Cellar

The Building has a full cellar and two small vaults opening onto the sidewalk. There are two 2' X 3' access doors located in the front of the Building that were corroded and have been replaced. The corrosion had allowed water to seep in, damaging the access panel frames. This is especially noticeable at one of the corners of the western access panel where rusted rebar is visible. The sponsor states that the frames will be refurbished as part of the Building renovation. The lintels above the entry openings into the vaults will be evaluated by the Sponsor's architect or structural engineer, and Sponsor will perform any suggested reinforcement of the lintels if suggested.

The observable portions of the cellar that are not being rehabilitated or newly constructed (without damage to floor slabs or walls), generally appear to be in fair condition or without signs of settlement cracks, bulges, leaning conditions, or other signs of distress, or (if otherwise) Sponsor states will be repaired or refurbished to fair condition by Sponsor.

The cellar access vaults, which do not contain any equipment or fixtures, are located slightly beyond the Property line and have been permitted to exist under a revocable, undocumented license from The City of New York, as owner of the sidewalk. These conditions are commonly found in New York City and have remained undisturbed. In the unlikely event, however, the license is revoked, the front stoops/porch and steps, and the sidewalk vaults in the cellar, would have to be reconfigured and the cellar common areas re-engineered by the Condominium Board as a Common Expense assessed to all Unit Owners Pro Rata to their respective Common Interests.

In the future, it will be the Condominium Board's responsibility to maintain the vaults per the requirements of all jurisdictions.

4) Number of floors

There will be a cellar, and six above grade floors, plus a rooftop floor.

5) Equipment rooms

The Building cellar has a refuse room, elevator machine closet, electric meter room, water meter room, pump room and two maintenance rooms. There is a rooftop mechanical room.

6) Parapets

The rear of 5th and 6th floor (PH) terraces have parapets consisting of the masonry walls extending up to meet metal railings with a combined height of approximately 3'6", as approved

by the NYC Department of Buildings. The 6th floor front cornice will be adapted to meet code height requirements.

h) STRUCTURAL SYSTEMS

1) Exterior of buildings

(i) Walls and floors

This is a masonry and brick Building, with wood floor joists. New wood joists and steel beams have been installed in various places in the Building, primarily by the stairwell and in the rear extension. Floors have a ¾" plywood subfloor and 5/8" wood strip flooring on top. The new rear wall has been built out of concrete masonry units (CMU's) with brick veneer on the 1st-4th floors, and brick veneer and metal studs on the 5th floor. There was no underpinning of existing walls (only underpinning was in conjunction with the installation of the new masonry elevator shaft walls). The PH, rooftop Unit east and west side party walls have been built out of CMU/metal stud with a stucco type finish (EFIS). The roof elevator bulkhead consists of masonry units with stucco/EFIS finish and the stair bulkhead is metal stud and stucco type/EFIS finish. The foundation walls were waterproofed with a weatherproof protective coating and the cellar floor slab was waterproofed with a vapor barrier. Balconies will be concrete pour on steel decking supported by steel beams. The Building is not subject to Local Law 11 façade inspection. New exterior walls and foundation floor have a 3 hour fire rating (existing wall rating is not determined).

The observable portions of the Building structural system (without damage to floor slabs or walls) that are not being rehabilitated or newly constructed, generally appear to be in fair condition or without signs of settlement cracks, bulges, leaning conditions, or other signs of distress, and appear to have been repaired or refurbished to fair condition.

The existing Building is not sound insulated. The floors are sound attenuated with acoustical, mineral wool insulation (Thermafiber or equal), as well as a 5 millimeter neoprene underlayment (Scuba or equal), but the Units are not soundproof. Unless expressly authorized by the Board of Managers in each instance, not less than eighty percent (80%) of the floor area of each Residential Unit (excepting only kitchens, pantries, bathrooms, closets and foyers) must be covered with rugs, carpeting, or equally effective noise reducing material. The Sponsor states that the Building will be in compliance with Building Department noise requirements.

The new rear façade consists of brick veneer accentuated with several corbel bands. The PH level (6th floor) and rooftop bulkheads will be stucco/EFIS, as approved by the Landmarks Preservation Commission. The front façade is highly articulated in a Renaissance Revival style, with two large bows. The 1st floor is rusticated stone. The entrances have detailed entablatures. The second floor also has stone accents, as well as an ornamental iron railing. There are stone lintels on the upper floors, and a large wood cornice at the top of the 5th floor. The Building is located in a historical district, which means that in the future, proposed changes to the exterior need the approval of the Landmarks Preservation Commission ("LPC"), which is not assured (the current application has been approved). All façade elements will be refurbished, per the requirements of the Landmarks Preservation Commission, to fair condition.

The renovation will conform to the requirements of the NYC Energy Conservation Construction Code for renovated buildings, with certifications as required. New walls will be R-

11, minimum and the roof will be R-30. The existing walls are insulated with 2" closed cell, foam insulation with a minimum R-14 rating.

The project was designed to conform to NYC code acoustic standards, utilizing sound attenuation between floors, but the various spaces in the Units have not been tested for decibel sound transmission.

(ii) Windows

All the windows will be new as follows:

A) Front façades: wood, triple-glazed, insulated, tilt and turn windows, as approved by the LPC, with friction operation on the 3rd, 4th, and 5th floors, casement windows (or doors) on the 1st and 2nd floors (with fixed transoms). Manufactured by Klearwall.

B) Rear façades and penthouse: aluminum, insulated, tilt and turn, with fixed transoms and bottom panels, manufactured by Klearwall.

There are no lot line windows.

The front, 1st floor windows have metal gates. Windows will have interior mounted child guards installed by Unit Owners as required by law, and approved by the Board of Managers.

The air gap between the panels of glass in the windows provide the thermal break.

Windows will have a one year parts and labor warranty. After that, some components will have a parts only (no labor) warranty ranging up to 20 years.

2) Parapets and Copings

The rear of 5th and 6th floor (PH) terraces have parapets consisting of the masonry walls extending up to meet metal railings with a combined height of approximately 3'6" ", as approved by the NYC Department of Buildings. The 6th floor front cornice will be adapted to meet code height requirements.

All parapets and roof areas/terraces will conform to code, and the requirements of the Landmarks Preservation Commission.

3) Chimneys and caps

There are no chimneys, caps, or flues.

4) Balconies and Terraces

The Units have the following approximate terrace areas:

- Fifth Floor, Unit 501, Rear 239 Square feet roof terrace
- Penthouse (6th floor), Unit PH, Front 457 Square feet roof terrace
- Penthouse (6th floor), Unit PH Rear 196 Square feet roof terrace

The Units have the following approximate balcony areas:

- Third Floor, Unit 302, East 40 Square feet roof balcony
- Third Floor, Unit 302, West 40 Square feet roof balcony
- Fourth Floor, Unit 402, East 40 Square feet roof balcony
- Fourth Floor, Unit 402, West 40 Square feet roof balcony
- Second Floor, Unit 201, Front (Juliette) 89 Square feet balcony

The terraces and balconies are accessed from the Units via aluminum & insulated glass doors with locks manufactured by Klearwall. The air gap between the panels of glass in the doors provide the thermal break. All exterior metal is corrosion resistant, and the frame edges will be caulked as required. The doors will have a standard manufacturer's warranty for material defects, which will be transferred to the Condominium Board as applicable. The terraces will have porcelain pavers and combined parapet curbs with railings on top, approximately 3'6" high in total, and drains. The railings are metal, running horizontally, creating a "ladder" effect and were approved by the NYC Building Department. It is possible for children to climb on these types of railings, which are not being protected. The balconies will have standard, steel, 42" high metal railings, as approved by the NYC Department of Buildings. It is possible for children to climb on these types of railings, which are not being protected.

It will be the sole responsibility of the Unit Owner to maintain the finished terrace decking, including keeping the surfaces clean, repaired and kept clear of snow, ice, and debris at the sole cost of the individual Unit Owner. The deck surface material will be part of the Unit. The drains and Building drainage system are Common Elements, as are the supporting beams and the roofing material. The Unit Owner will be responsible to keep the drains on their respective terrace surfaces free of debris and unclogged. The Sponsor states that the Condominium Board will be responsible for the roof surface which is below the surface material, unless the Unit Owner causes damage to the roof surface or drainage.

The Condominium Board will have an easement to use the terrace of Unit PH (6th floor) to access the top roof, in order to allow maintenance of all equipment, and to allow the New York City Fire Department access to all roof and terrace areas. Code compliant circulation paths must be maintained, clear of any obstruction, by the Unit PH Owner.

It will be the sole responsibility of the Unit Owner to keep the balcony surfaces clean, repaired and kept clear of snow, ice, and debris at the sole cost of the individual Unit Owner.

5) Exterior entrances

(i,ii) Exterior doors and frames

The entrance has a pair of wrought iron doors, approximately 5' wide X 8' high. Per the Landmarks Preservation Commission, the doors will be refurbished, including scraping and painting, with installation of new glazing panel. Doors will lead into the 1st floor lobby. The door lock will be a BEA, 10Maglock6ul 600lb, double magnetic lock for the main entrance door, and 1XBEA 10Maglock3ul 600 lb single magnetic lock for the side entrance door. The locks will be equipped with a manual request to exit button and unlocking sensor (both on the interior side).[i]

The lobby, emergency egress/handicap door, approximately 3'2" X7'6", will have existing wrought iron mounted on a new outswing steel door. A series of doors and an interior ramp will lead into the 1st floor lobby.

The entrance door accessing Unit 101 is set in a wood entablature (approximately 5' X 8'), flanked by 7" wide wood pilasters and freestanding columns. Per the Landmarks Preservation Commission, the entablature will be refurbished, a new wood door matching the existing will be installed, and existing metal ironwork will be scraped and painted.

(iii) Exterior stairs.

There is a single exterior stairway. It is located in the rear yard connecting the cellar passageway with the 1st floor rear yard. The stairway is built out of concrete and appears to be in good condition.

The main entry into the Building is accessed by a stoop with a single step plus an additional step at the doorway. The western entrance stoop opening into Unit 101, is accessed by two steps. The steps and porch/stoops have chips and worn areas and will be refurbished.

The steps leading to the entrance doors do not meet the current Building Code minimum depth requirements. This is a permitted non-conforming condition.

In addition, the cellar access vaults, which contain no equipment or fixtures, are located slightly beyond the Property line and have been permitted to exist under a revocable, undocumented license from The City of New York, as owner of the sidewalk. These conditions are commonly found in New York City and have remained undisturbed. In the unlikely event, however, the license is revoked, the sidewalk vaults in the cellar, would have to be reconfigured and the cellar common areas re-engineered by the Condominium Board as a Common Expense assessed to all Unit Owners Pro Rata to their respective Common Interests. The current estimated approximate cost of engineering, filing and construction is $ 15,000.

(iv) Railings

The front steps and stoops have ornamental iron railings set on stone curbs. The railings will be scraped, cleaned and painted, but the stone curbs, which are worn but intact, will be left as they are, per the requirements of the Landmarks Preservation Commission.

(v) Lighting

All exterior lighting will be new. There will be a pair of sconces installed at the Building entrance and at the entrance to Unit 101 (Wac led or similar). Sconces will also be installed at the front emergency egress door, and at all balconies, terraces and the rear yard (Wac led or similar).

(vi) Mailboxes

Mailboxes will be installed in the 1st floor lobby area. There will be a package storage closet adjacent to the mailboxes.

6) Service entrances

(i) Doors and frames

There are no service entrances.

(ii) Gates

There are no service entrance gates

(iii) Exterior stairs

There are no exterior service entrance stairs.

(iv) Railings

There are no service entrance railings.

7) Roof and roof structures

(i) Type of roof

New roofing has been installed throughout consisting of a modified bitumen roofing membrane set on R-30 continuous tapered polyisocyanurate insulation that is pitched to drains, manufactured by the Firestone Building Products Company, who the Sponsor states, have inspected the completed roof areas and accepted them. Sheathing is ¾" plywood or Versaroc with fiberglass base sheet. Roof walls have rolled up flashing and counter flashing as required**.** The Roof will have a twenty (20)-year warranty by the manufacturer, which shall be limited to repairs of the Roof caused by defective material, but the warranty will exclude repairs to any areas or Facilities within the Building caused leaks in the Roof, and will not include labor.

Roof surfaces that are not decked over, consisting of the 2nd floor, non-usable, Juliette balconies , the roof at the front of the 6th floor, and the main, bulkhead roof are not suitable for daily foot traffic and are not to be used for recreational purposes. Porcelain pavers will cover all terrace areas used exclusively by the Units they are adjacent to, and the common area rooftop terrace, and will be suitable for daily use. Roof and terrace areas are shown on attached plans. Residential terraces are parts of the Units and the rooftop recreation area is a common element.

(ii) Drains

The roofs have cast iron internal roof drains. Drainage will satisfy New York City Building code requirements.

(iii) Skylights

There are no skylights.

(iv) Bulkheads

The rooftop bulkhead is set on the roof adjacent to the common area terrace. It houses the stairwell and mechanical room. There is an elevator bulkhead directly above the elevator shaft. The roof elevator bulkhead is masonry with stucco/EFIS finish and the stair bulkhead is metal stud w/ stucco type finish. The rooftop/stairway access to the roof will comply with NYC code requirements.

The stair bulkhead roof contains ventilation stacks and air conditioning dunnage, which will be painted,. AC equipment will rest on steel dunnage.

(v) Metal work at roof

The roof will contain ventilation stacks**,** which will be painted. The Condominium Board will have an easement to use the terraces of Unit PH to access the roof level, and to allow Fire Department use. Code compliant circulation paths must be maintained, clear of any obstruction, by the Unit PH Owner

(vi) Rooftop facilities

There will be a common area terrace that will have seating and shrubbery on pavers.

8) Fire escapes

There are no fire escapes.

9) Yards and courts

There is a sub-grade passageway, at cellar level, with stairs that lead up to the Common Area rear yard, approximately 663 square feet, located on the 1st floor. The passageway stair (with steel side rail), floor and Common area rear yard are concrete and appear to be in fair condition. The rear yard terrace, and cellar passageway have drains connected to the storm system.

There is a 6' high wood fence located on the eastern side of the rear yard. There will be a 3'6" steel (or wood) fence installed to separate the Unit 102 rear yard from the Common Area yard. Fencing will be aluminum or painted metal.

The Unit 102 concrete rear yard, located on the first floor, will be approximately 424 square feet.

The yard satisfies NYC zoning requirements (to provide light and air and qualify as rear yards).

Rear yard retaining walls appear to be in good condition.

10) Interior stairs

(i) Number of stairs

There are a pair of scissors stairs (fire stairs 1 and 2), both ascending from the cellar up to the roof. Rooftop access and general Building egress satisfies New York City Building Department requirements.

The first floor lobby has continuous egress and conforms to the NYC code.

(ii) Enclosure

The stairways will be installed in a 2-hour, fire rated, gypsum board unit enclosure.

(iii,iv,v,vi) Construction, stringers, treads, and risers

The stairways will be steel pan with concrete tread infill and 3'0" wide. The stringers will be painted steel and the underside of the stairs will be painted gypsum board. Landings will have hardwood surfaces.

(vii) Stair railing

The stairways will have 1-1/2"-2" diameter, wall mounted, steel or aluminum railings.

(viii) Balustrades

There are no balustrades.

(ix) Other stairs

There are no other stairs.

11) Interior doors and frames

(i,ii) Entry doors, interior doors, and corridor doors

The Unit entrances, and stairwell enclosures have 3' X 7', mnimum self-closing, 1-1/2 hour fire rated, hollow metal doors, set on metal frames, with locksets.

The Unit interiors will have solid core, wood doors. Door hardware will meet handicap code requirements. Bathroom doors have locksets.

(iii) Cellar doors

The cellar utility doors have 3' X 7', self-closing, 1-1/2 hour fire rated, hollow metal doors, set on metal frames, with locksets.

(iv) Roof doors and frames

Roof Bulkhead utility doors have 3' X 7'self-closing, 1-1/2 hour fire rated, hollow metal doors, set on metal frames.

12) Elevators

(i) Number of passenger and service elevators

A new traction elevator has been installed in the Building in a new, 3 hour fire rated concrete masonry unit (cmu) enclosure, as indicated on the floor plans put forth in the Offering Plan. All equipment is new, and all work will conform to all code requirements including Local Law #58 (handicap access), as required.

(ii) Manufacturer, age of each, and capacity

The elevator is new, and has a 3,500 pound (21 person) capacity traveling approximately 150 feet per minute, or more. Elevator has been fabricated by Kone. The Sponsor will not be obligated to provide a maintenance contract beyond the initial warranty period of the elevator installation.

(iii) Type of operation and location

The elevator has automatic operation dedicated to passenger use, with occasional use for moving furniture, and moving trash to the cellar or first floor and then out of the Building. The elevator is located in the central portion of the Building, as indicated on the attached plans.

(iv) Controls

The elevator has an electronic controller with simplex operation, provided by Kone. The cab has full controls including digital position indicator and call buttons. The elevator has full elevator safety features, as required by the New York City code, including fireman controls, elevator recall, self-leveling, intercom, and infrared detector.

(v) Floors served

The elevator services the cellar, 1st floor, 2nd floor, 3rd floor, 4th floor, 5th floor. PH (6th floor) and the roof.

(vi) Type

The elevator is a traction machine.

(vii) Doors

The elevator has a single leaf, single speed, steel door, approximately 3'6" by 7'0".

(viii) Machine room location

The elevator machine room/closet is located in the cellar (with ancillary equipment on the roof)

(ix,x) Motor

The elevator has a nominal, 9.4 horsepower AC motor (208V, 46 amps)

13) Elevator cab

(i) **Kind**

The cab is approximately 8' high, steel shell sling type, with a platform dimension of approximately 6'8" width and approximately 6'2" depth.

(ii) Floor

The cab will have a vinyl floor (or equal, or better).

(iii) Walls

The cab walls will have plastic laminate panels (or equal, or better) and a rear handrail.

(iv) Ceiling

The cab ceiling will be metal or plastic laminate panels. There will be a fan.

(v) Lighting

The cab will have 6 recessed, small diameter down lights, or equal.

(i) AUXILIARY FACILITIES

1) Laundry rooms

Each Unit has a laundry room or closet, and will be supplied with a Miele electric washer and a Miele electric dryer or equal, side by side.

There will be a common laundry room, with 1 pay washer and 1 pay dryer, all by Bosch or similar.

The residential dryers in the cellar and in the Units are electric, condenser type, non-vent models that do not require ventilation.

2) Refuse disposal

(i,ii,iii) Incinerator, compactor, jurisdiction approvals

There will be no compactor. There will be a refuse room accessing the refuse chute located on the 1st through 6th floors.

(iv) Initial storage location

The refuse room is located in the cellar, which will be used for initial storage.

The Board will determine how and when the trash and recyclables shall be brought up to the sidewalk for collection. The trash is collected by the City as a municipal service.

(j) PLUMBING AND DRAINAGE

1) Water supply

Water and sewer service is provided by the City of New York as part of its services. There is a single meter and a new, 2" water service, with 2" RPZ, connected to the NYC water

main on West 108th Street. There is also a metered sprinkler service. Water lines will be copper with insulation (thickness per NYCECC 2016). The main shut-off valve is located in the cellar in the water meter/pump room.

The domestic hot water system will be generated in each Unit by an electric, storage type, residential hot water heater, located in a closet in each Unit (Proline, EN6-50 DORT with TACO #1109 recirculating pump and expansion tank, or equal). The tank capacity will be 50 gallons.. The same type of residential hot water heater will be installed in the cellar to generate domestic hot water for the powder room, warming kitchen sink, and common washing machine, all located in the cellar.

2) Fire protection system

(i-v) Standpipes, hose racks, sprinkler heads, siamese connection

The Building will be fully sprinkled, with an automatic wet system. Sprinkler service line is 4", entering the cellar central station, which will be equipped with alarm, meter and check valve. There is a combination of recessed (concealed) upright, sidewall and exposed heads by Viking or equal. Branch piping is schedule 40 black steel.

A new 3" X 3" X 4", brass, Siamese connection will be installed in the front of the building. Sprinkler system pressure will be maintained by street pressure. There will be no pump.

3) Water storage tanks

(i-v) Number, type, location

There will be no water storage tanks.

4) Water pressure

The water lines are pressurized by the incoming water service, and by duplex booster pumps with cushion and expansion tanks (two SICO pumps, model 2300 operating at 69 gallons per minute or equal). System will meet NYC code requirements for maintaining minimum water pressure.

(5) Sanitary sewage system

(i,ii,iii) Material, pumps, disposal

The sanitary sewage system works by gravity, with new cast iron, 2"-4" lines and traps, draining into a 5" sanitary trap, and then into the combined house trap and out-take. Existing sewer line to street will be retained (per architect approval).

(6) Plumbing permits required

Plumbing permits are not required for any current work besides the renovation work currently underway under Alteration number 1, application 121193341 for the renovation of the Building, approved by the Department of Buildings on February 7, 2018.

(7) Storm drainage system

(i) Catch basins

There will be no catch basins.

(ii,iii) Yard and roof drains

The 1st floor terrace and cellar passageway have drains feeding into 4" cast iron drainage lines. The lines, working by gravity, coalesce into a 5" storm trap, and then into the combined house trap. and out-take.

(iv) Ejector or sump pumps

There will be a sump pump installed in the elevator pit, Grundfos model AP-12, or equal, operating at 20 gallons per minute, and Liberty or equal ejector pumps (model 1103 duplex and model P383) located in the cellar. All equipment will satisfy New York State energy efficiency requirements.

(k) HEATING

1,2,3,4,5) System distribution, number of boilers, and description.

Heating and Air conditioning for each Unit will be provided by an electric, split system heat pump system consisting of a rooftop condenser, an air handler located in the ceiling of the Unit, and ductwork distributing hot/cold air into the rooms from the handler. There will be one heat pump per Unit. An additional heat pump will service public areas.

The system will be manufactured by Daikin or equal (model RXTQ36TAVJU on the roof and FXMQ30PBVJU in the ceilings). System will operate at 23,189 BTU's per hour available heating, and 23,189 BTU's per hour sensible cooling (30,001 BTU's per hour total cooling capacity) with an air flow of 1,094 cubic feet per minute. The system for Unit 101 will be smaller. A two stage heat coil will also be installed on the roof. Rooftop mechanical equipment will be set on vibration isolators. 1" pipe insulation will be installed in accordance with the New York City, 2014 Energy Code (R-value not available). There will be a 10 year warranty on the Daiken compressors and a 10 year warranty on all Daikin VRV system equipment. There is no efficiency rating. Sponsor states that installation meets all code requirements and has been passed by required 3rd person inspection. The AC/heating systems are ducted except for the cellar, which has ductless split units that are wall mounted.

Heating will be adequate per New York City code requirements, and New York State energy requirements, maintaining legally required heat under anticipated weather conditions, and will have individual, programmable, remote thermostatic controls. The following dry/wet bulb ambient temperatures were used in the design calculations:

Winter Outdoor	10 degrees Fahrenheit Dry Bulb
Winter Indoor	72 degrees Fahrenheit Dry Bulb (No humidification)

All exterior metal, including fasteners, shall be corrosion resistant. Service water and refrigerant piping will be thermally insulated.

(6) Radiators

The Building does not have radiators.

(7,8,9) Fuel

There is no oil usage. The Building will use electricity for cooking, heat and air conditioning.

(l) GAS SUPPLY

There will be no gas.

(m) AIR CONDITIONING

(1,2,3,4) Air Conditioning

All exterior metal, including fasteners, shall be corrosion resistant. Service water and refrigerant piping will be thermally insulated.

Heating and Air conditioning for each Unit will be provided by an electric, split system heat pump system consisting of a rooftop condenser, an air handler located in the ceiling of the Unit, and ductwork distributing hot/cold air into the rooms from the handler. There will be one heat pump per Unit. An additional heat pump will service public areas.

The system will be manufactured by Daikin or equal (model RXTQ36TAVJU on the roof and FXMQ30PBVJU in the ceilings). System will have operate at 23,189 BTU's per hour available heating, and 23,189 BTU's per hour sensible cooling (30,001 BTU's per hour total cooling capacity) with an air flow of 1,094 cubic feet per minute. The system for Unit 101 will be smaller. A two stage heat coil will also be installed on the roof. Rooftop mechanical equipment will be set on vibration isolators. 1" pipe insulation will be installed in accordance with the New York City, 2014 Energy Code (R-value not available). There will be a 10 year warranty on the Daiken compressors and a 10 year warranty on all Daikin VRV system equipment. There is no efficiency rating. The installation meets all code requirements and has been passed by required 3rd person inspection. The AC/heating systems are ducted except for the cellar, which has ductless split units that are wall mounted.

Air conditioning will satisfy New York State energy requirements,, and will have individual, programmable, remote thermostatic controls. The following dry/wet bulb ambient temperatures were used in the design calculations:

Summer Outdoor	92 degrees Fahrenheit	Dry Bulb/ 74 degrees Fahrenheit Wet Bulb
Summer Indoor	75 degrees Fahrenheit	Dry Bulb/ 50% Relative Humidity Max.

(n) VENTILATION

The bathrooms and kitchens in the Units have ducted, mechanical ventilation, with exhaust fans on the roof.

Public areas, including hallways, cellar and 1st floor lobby will be mechanically ventilated utilizing the heat pump Air conditioning/heating system (continuous). The Sponsor states that the ventilation, including noise emissions, will satisfy NYC code requirements. Bathroom ceiling exhaust fans are 50CFM (cubic feet per minute); kitchen ceiling exhaust fans are 100 CFM, the cellar has a 200 CFM ceiling register and a 35 CFM top register, along with a 50 CFM bathroom exhaust fan.

Living rooms and bedrooms will be ventilated by operable windows.

The indoor air handlers in the Units have a sound pressure level, measured in dBA/decibels from 29 to 43. The outdoor units (condensers) have sound pressure levels from 57 to 61 and sound power levels from 74 to 81 (all in dba).

(o) ELECTRICAL SYSTEM

(1-5) Service, Adequacy

Electricity is provided by Consolidated Edison Corporation. Power for all common areas is master metered. Each Unit is separately metered for electric use. There are two service disconnect switches located in the cellar electrical room, a 400 amp switch for the fire pump, and 800 amps for the house (200 amps) and Units (600 amps) at 120/240 volts, 1 phase, 3 wire.. Electrical riser wiring is Type MC cable 1.38" diameter-constructed with 3, 8000 series compact stranded aluminum conductors cabled with aluminum grounding conductor. A binder identification baring tape is wrapped over the cabled assembly. Aluminum armour is interlocked over the conductor assembly. All insulated conductors are phase identified and installed per the NEC requirements of section 300-19 (a) and section 330.30

Wires used for branch circuit wiring is 0.5 diameter, AC-90 Steel Armored Cable Type AC.

There is a 120/240 volt, 1 phase, 3 wire, electric panel board (with a minimum of 42 circuits including spares) for each of the Units. The panels have the following approximate amperages (on circuit breakers):

Unit PH	200 amps
All other Units	150 amps

Sponsor reserves the right to sell or allocate additional amperage to Individual Units as available.

Electricity will be adequate for modern usage, including but not limited to, use of high efficiency dishwashers, microwaves, and air conditioning. Sponsor states that electric service will satisfy New York City code requirements, including number of circuits per apartment and capacity to handle modern appliances including air conditioners, dishwashers and electric dryers, lighting and fixtures including bathrooms, kitchens and hallways, convenience and appliance outlets in all rooms. There will be switched fixtures in the living rooms, kitchens, bedrooms and bathrooms. There will be no provision for electricity supply, such as generators, during outages.

GFI outlets will be installed in wet locations as required by code. Water resistant receptacles will be specified for exterior areas.

(p) INTERCOMMUNICATIONS, CABLE TV, & PHONE

A video intercom system will be installed outside of the main entrance that residents will be able to utilize by any of the following options: a mobile phone unlock, face identification, a pin code entered on the intercom screen. Guests will use the video intercom system to call residents in order to gain access, There will also be a handicap accessible service entrance with a key reader allowing entry. Residents will receive a key fob and can use their phones to unlock the service entrance. Unit one will have direct exterior access. Intercom is Swiftreader X panel with a one year warranty (2 years for parts). Security cameras will be Ubiquiti UVC-G4-DOME with a one year warranty.

There will be no master antenna in the Building. The Building will be wired for a cable TV connection to each Unit. Phone and internet service, and television service will be available through a cable that will be provided. Installation and operation costs of telecommunications and television equipment are to be borne by the individual Unit Owners. Owners will make individual arrangements for cable TV/phone/internet services with providers with direct billing to user (as available in the Building).

The Building will not have common satellite reception, or a master antenna. The Building will be serviced by Verizon (or equal). Units will not be allowed to install wiring in any common area without Condominium Board approval.

(q) PUBLIC AREA LIGHTING

Public areas will be illuminated with:

Front façade	WAC led
Rear façade	WAC led
1st floor lobby	Tech & Global LED pendants, and Artemide sconces
Hallways	Finelite recessed linear LED fixtures
Stairwells/utility areas	Laman & Cooper surface mounted, LED strip lighting
Exercise room	Cooper recessed linear LED
Community room	Cooper & Sonnemann surfaced mounted and pendant LED lighting

The Sponsor reserves the right to substitute all fixtures for products that are of equal or better quality. The Sponsor states that public area lighting will comply with all applicable codes.

(r) GARAGES AND PARKING AREAS

There will be no parking on the Property. Alternate side of the street parking is available in the area.

(s) SWIMMING POOL

There will be no swimming pool.

(t) TENNIS COURTS, PLAYGROUNDS, RECREATION FACILITIES

There will be no tennis courts or playgrounds. Recreational facilities will consist of the roof top terrace, the cellar exercise room equipped with a Core Fitness Dumbbell Weight Set, and Primasole yoga mats, and a cellar community room equipped with a refrigerator, dishwasher and microwave, all by Miele matching the Units, and an adjacent rear yard area. There will be a bicycle room in the cellar storing approximately 9 bikes.

(u) REQUIRED PERMITS

Alteration number 1, application 121193341 for the renovation and extension of the Property was approved by the Department of Buildings on February 7, 2018. Various ancillary applications such as mechanical work, demolition, shed construction, as well as subsequent

amendments, including the 6th floor addition, have also been approved. A Building Permit was issued on March 1, 2018. The Sponsor is currently in the process of renovating the Building.

The Building is required to have the following ongoing inspections and certifications:

1) The sprinklers need to be inspected monthly, and yearly (by private vendors with authorization of Fire Department), and every 5 years in the presence of the Fire Department.
2) The elevator in the Building must be inspected every year, with an additional test every second year, and a safety test conducted every five years

(v) VIOLATIONS

As of November 18, 2022 there were 4 violations listed at the Department of Buildings for 324-326 West 108th Street (elevator and boiler,). There were no Environmental Control Board (ECB) violations listed. The Sponsor states it will cure these violations prior to the issuance of the permanent Certificate of Occupancy.

As of November 18, 2022, there were no violations listed at the Department of Housing, Preservation and Development (HPD).

(w) UNIT INFORMATION

All of the Unit areas and all public areas were visited.

The following description may vary from Building Department zoning count description. All of the Units have a minimum of one bathroom, with a sink, toilet, and bathtub. Bathrooms have bathtubs unless otherwise specified to have showers.

Unit	Configuration	Bathrooms
101	1 bedroom	1 bathroom
102, 201, 202, 301 302, 401, 402	2 bedroom	Regular bathroom plus a bathroom with 2 sinks & shower (no tub)
501	3 bedroom	Regular bathroom plus a bathroom with tub, shower and two sinks, plus a bathrm with 1 sink and shower (no tub)
PH (6th floor)	3 bedroom	Two Regular bathrooms plus a bathroom with 2 sinks, shower (no tub)

1) Finishes for Units

The Units will have the following finishes:

a) Floors in the bedrooms, kitchens living and dining rooms will be tongue and groove, end matched, engineered, 5/8", European Oak Flooring by Madera, with a UV cured oil finish , set on a cdx plywood subfloor. Baseboards to be wood.

Wood does not have a warranty. Bathroom floors will be microcement, or product no less equal in quality or design.

b) The walls and ceilings of the Units will be light colored painted gypsum board. There will be one coat of primer and 2 coats of finish paint (Regal Select Matte), level 5.
c) Kitchen cabinets in the Units to be provided by Poggenphol, with silestone counter tops.
d) New bathrooms in the Units will have microcement floors, walls and bathtub surrounds..
e) There will be no carpeting.
f) The Units will have switched fixtures:

Living rooms:	Philips LED recessed downlights,
Kitchens:	Tech pendant LED fixture
Bedrooms	Artemide surface mounted, LED fixure
Bathrooms	Robern surface mounted, 4-pin

The Sponsor reserves the right to substitute all finishes for products that are of equal or better quality.

(2,3) Type and condition of lavatory and bathroom fixtures

The Unit bathrooms have sinks, toilets, and bathtubs or showers, and will be equipped with the following fixtures:

Toilets	Toto	Nexus one piece
Lavatories	Robern Vanities	TF3IUC092-1
Lavatory faucets	Phylrich	mixed single lever
Bathtubs	Duravit	drop in tub
Bathtub faucets	Phylrich	8” shower head
5th fl & PH master bath tub	DadoQuartz, siene stand alone	
Kitchen sinks	Franke	CUX 160
Kitchen faucets	Franke	FF3100
Kitchen refrigerator	Miele	KF2801
Kitchen induction cooktop	Miele	KM6365
Kitchen convection oven	Miele	H6680BPW
Kitchen dishwasher	Miele	G6885SCVi

Each Unit have a laundry room or closet, and will be supplied with Miele electric washer (WWF060) and Miele electric dryer (TWF160WP) or equal, side by side.

The dryers are electric, condenser type, non-vent models that do not require ventilation.

The Sponsor reserves the right to substitute all appliances, fixtures, and faucets for models and manufacturers that are of equal or better quality.

(4) Floor to ceiling heights of Units

Dimensions are approximate. Heights vary within the Units and hallways. The following are approximate heights of the living rooms and bedrooms:

1st floor	11’0”

2nd floor	10’0”
3rd floor	10’0”
4th floor	10’0”
5th floor	9’0”
6th floor	9’0”

(x) FINISH SCHEDULE OF AREAS OTHER THAN UNITS

MAIN LOBBY	Microcement	No base	Painted gypsum board	Painted gypsum board
HALLWAYS	Hardwood	Wood	Painted gypsum board	Painted gypsum board
CELLAR GYM, CELLAR REC. ROOM	Rubber tile Polished concrete/porcelain tile	No base Vinyl & tile	Painted gypsum board Painted gypsum board	Painted gypsum board Painted gypsum board
CELLAR UTILITY AREAS	Concrete	No base	Masonry	Exposed structure

All finishes will be new. The Sponsor reserves the right to substitute equal or better quality finishes.

A common area bathroom will be installed in the cellar. The toilet will be Toto Nexus one piece , and the lavatory sink will be Robern TF3IUC092-1.

There will be a janitor’s closet with slop sink located in the cellar.

(y) SAFETY AND WARNING DEVICES

The Units will be equipped with hard wired, smoke detector/carbon monoxide indicators. A smoke detection system will be installed in the Building, with a central station control panel, located in the cellar electrical room, and a remote annunciator located in the 1st floor lobby. The system will have a fire alarm and 1st floor pull station, and will be tied into the sprinkler system (flow switches), and will have elevator recall.

(z) ADDITIONAL INFORMATION

(1) Site plan

Site plan is attached.

(2) Area map

Area map is not required (urban area).

(3) Floor plans

Floor plans are attached.

(4) Total area for each Unit

The approximate floor area of each Unit has been measured horizontally from the exterior side of a common element enclosing such Unit (I.E., the exterior side of a window, boundary wall or Building wall, but not beyond the Property Line), or from the midpoint of a boundary wall separating the Unit from another Unit. Any common elements bordering or within a Unit (such as a window, boundary wall or Building wall, and any vents, chases, chase walls, ducts, shelves, ceiling drops, columns, conduits or shafts housing common elements) have been included in the computation of the floor area of the Unit, but such common elements are not part of the Unit.

The configuration, fenestration and dimensions are approximate. The square footages and room dimensions on the floor plans are estimates based on an extrapolation of the square footage of overall Unit dimensions in accordance with the customary practice in the City of New York. The square footage shown are taken from points behind the walls enclosing the Unit and thus exceed the Unit's usable floor area. A room's dimensions shown on the floor plans, however, are measured from the interior prevailing surface of the gypsum board walls enclosing the room. The Sponsor states that inaccuracies between a Unit's overall size and its actual square footage, will not excuse a Purchaser from completing the purchase of a Unit without abatement in price and without recourse against the Sponsor, regardless of any other inaccuracies in individual room dimensions. The Sponsor reserves the right to make changes to the Unit in accordance with the terms of the Offering Plan.

See Section h) Structural systems, 4) Terraces, for a listing of the residential terraces and their method of measurement. The following square footages do not include the terraces or balconies., or Unit 2 rear yard, or cellar storage lockers, all of which are part of the Individual Units.

Unit	Approximate square feet
101	754 square feet
102	1,207 square feet
201	1,305 square feet
202	1,207 square feet
301	1,305 square feet
302	1,207 square feet
401	1,239 square feet
402	1,207 square feet
501	2,362 square feet
PH	1,715 square feet

The Sponsor will be installing 10 prefabricated, link or corrugated type, metal Storage lockers in the cellar, which will be included in, and be a noncontiguous part

of, each Unit. The lockers will be approximately 3' wide X 3' deep and 90" high. Measurements are taken from midpoint to midpoint of the metal partitions laterally, and from the midpoint of the metal partition to the face of the abutting wall front to back.
The Sponsor reserves the right to substitute gypsum board on metal stud partitions for the prefabricated metal.

(5) Master floor plans

Unit adjacencies are as indicated on accompanying floor plans.

(ab) FURTHER DEVELOPMENT

The Sponsor states that Sponsor and the owner of the adjacent property at 328 West 108th Street have signed and recorded a Declaration of Zoning Lot Restrictions (the "ZLDA") whereby the two buildings at 324-326 West 108th Street and the building at 328 West 108th Street have been merged into a single zoning lot. Based upon a Residential Floor Area Ratio ("FAR") of 4 (Quality Housing) applicable to merged zoning lot, there are approximately an aggregate 26,440 square feet of available development rights (6,610 square foot lot size x 4 FAR), as indicated on the approved, NYC alteration application zoning analysis plans.

According to the Sponsor, under the ZLDA, each owner retains the development rights applicable to its property. The development rights applicable to the subject 324-326 West 108th Street Building is approximately 17,560 square feet. The rehabilitated Building with the newly constructed additional floor contains approximately 16,478 square feet, leaving approximately 1,082 square feet of unused development rights, as indicated on the approved NYC alteration application zoning analysis plans.

Sponsor advises that it: (a) is not submitting to condominium ownership and is reserving for its exclusive use and enjoyment the approximately 1,082 of unused development rights and any future development rights that might become available to the Property's zoning lot after completion of rehabilitation of the Building with one additional floor (the unused and future development rights are together, the "Excess Development Rights"); and (b) may sell and transfer all, or a portion of, the Excess Development Rights and retain all proceeds realized therefrom without participation of the Condominium Board or Unit Owners. However, Sponsor states that no Excess Development Rights may be used to expand the size, height, bulk or density of any portion of the Property after the recording of the Declaration establishing the Condominium.

(ac) ASBESTOS

An asbestos survey was carried out by a licensed asbestos consultant. The report is in Part II of the Offering Plan.

(ad) ADDITIONAL INFORMATION

(1) Lead

The Building was not tested for lead.

(2) Radon

The Building has not been tested for Radon.

(3) Roof rights and commercial telecommunications equipment on the roof, against the sides of the Building, and in the Building

The Sponsor reserves roof rights, including without limitation, the right to install air conditioning equipment and supporting dunnage, as well as communication equipment such as satellite dishes, commercial telecommunications equipment such as antennae arrays and housings, electrical ventilation, and plumbing equipment.

(4) Renovation regulations

The Board of Managers will have access to all areas of the Building for the purpose of making inspections and repairs and in case of emergency per the Condominium Declaration and Bylaws.

The Board of Managers shall regulate all aspects of renovations in the Building by Purchasers including, without limitation:

a) time periods when work is permitted;
b) the manner in which renovation debris will be handled;
c) measures which must be taken to prevent compromising the security of the Building during renovations;
d) the interruption of services during renovation; and
e) liability insurance for contractors during renovations.

The Sponsor, as Owner of Unsold Units, will not be subject to these regulations.

(5) Building security devices

Cameras will be installed at the main entrance, in the lobby, and on the roof. The cameras will connect to a looped recording device, but will not be monitored. Equipment will be Ubiquiti UVC-G4-DOME with a one year warranty.

(6) Unit Owner Work

The Sponsor states that the sale of any Unit shall not be conditioned upon the purchaser being required to perform any additional work necessary to secure a Temporary or Permanent Certificate of Occupancy.

(7) No undertaking to repair

The Sponsor has not undertaken to correct or repair any existing conditions noted in this Report including with respect to any Special Risks, unless otherwise expressly provided, but may do so at its election in its sole discretion.

(8) Compliance with the Americans with Disability Act and Local Law 58

The Building will conform to the current provisions of the Local Law 58 (New York City accessibility requirements) or the Americans with Disability Act.

(9) Sponsor work

There is no Sponsor Work except for the ongoing renovation project. The Sponsor work will include all work required to obtain the final Certificate of Occupancy and removal of all violations of record issued against the Building, other than any violations issued that are attributable to the acts or omissions of the Board of Managers or Residential Unit Owners.

(10) Warranties

There will be no warranties or guarantees for any of the work, equipment, or materials in the Buildings, unless specified. This exclusion includes windows, roof, elevator, electricity, heating, ventilation, brickwork, structural systems, or any other components or construction defects. Sponsor will transfer all transferable warranties in its possession to the Condominium Board.

(11) Waivers

The Sponsor has not undertaken to correct or repair any existing conditions noted in this Report, including Special Risks, unless otherwise expressly provided.

(12) Easements

The Condominium Board will have an easement to use the terraces of Unit PH (6th floor) to access the top roof, in order to allow maintenance of all equipment, and to allow Fire Department access to all roof and terrace areas. Code compliant circulation paths must be maintained, clear of any obstruction, by the Unit PH Owner.

(13) Documents to be transferred to the Condominium Board Management

The Sponsor will transfer to the Board of Managers all equipment maintenance documents, including operation manuals and warranties, in its possession, and will also provide a copy of the final "as-built" architectural, mechanical, fire alarm, plumbing, sprinkler, and electrical drawings as submitted to the New York City Building Department to obtain the Certificate of Occupancy.

The Sponsor will not be obligated to provide progress drawings or shop drawings, operation and maintenance manuals, electronic system manuals, re-commissioning manuals, start up sheets, control system documentation, or test and balance reports.

DOCUMENT 4A

S & B Environmental, LLC
7 Fairchild Road
Newtown, CT. 06482
Phone (203) 947-6300

Asbestos Pre Renovation Report

For

W 108 Development LLC

At

324 West 108th Street
New York, New York 10025

Dates of Project: 25 January 2022

Date of Report: 1 February 2022

Introduction:

At the request of 108 Development LLC, S & B Environmental, LLC representatives, collected eight bulk samples of various building materials for analysis for potential asbestos containing materials at the residential structure located at 324 West 108th Street, in New York, New York. The inspection was performed to evaluate if these materials might contain asbestos. This survey was conducted after a total gut renovation of the building occurred.

Summary:

S & B Environmental, LLC collected samples from the following materials:

Gypsum Wallboard
Joint compound
Fireproofing
Wall Insulation

These samples were delivered to Atlas Environmental in New York City for analysis. The results of these samples were negative for asbestos in all seven samples.

The Investigator, Vernon C. Rohde II, walked through the entire facility. The building is now a 6 story brownstone (formerly 5 stories) with a celler. Many areas are open so wall cavities and plenum areas could be viewed at this time. All surfaces observed were new construction. A previous inspection was performed prior to renovation work and the only asbestos containing materials identified originally were roofing materials. Inspection of the roof found a new roof recently installed with workers currently applying new flashing tars. No samples were collected of roofing at this time as they would damage the roof that is not scheduled for further work.

Conclusions:

No asbestos was found to be present in any of the new materials sampled. The only asbestos containing material previously identified was roofing materials that were removed to allow construction of the new top floor of apartments.

Very truly yours,
S & B Environmental, LLC

By:

Name: Vernon C. Rohde II

Title: NYC Asbestos Investigator

CITY OF NEW YORK
VERNON ROHDE II
CERTIFIED ASBESTOS INVESTIGATOR

S & B Environmental, LLC
7 Fairchild Road
Newtown, CT. 06482
Phone (203) 947-6300

Asbestos Pre Renovation Report

For

W 108 Development LLC

At

324 West 108th Street
New York, New York 10025

Laboratory Data Sheets - Asbestos

AmeriSci New York
117 EAST 30TH ST.
NEW YORK, NY 10016
TEL: (212) 679-8600 • FAX: (212) 679-3114

PLM Bulk Asbestos Report

S&B Environmental
Attn: Vernon Rohde
7 Fairchild Drive

Newtown, CT 6470

Date Received 01/25/22 **AmeriSci Job #** 222012945
Date Examined 01/30/22 P.O. #
ELAP # 11480 Page 1 of 2
RE: Orly Gila; 324 West 108th Street, New York, New York 10025

Client No. / HGA	Lab No.	Asbestos Present	Total % Asbestos
1	222012945-01 **Location:** 6th Floor - Gypsum Wall Board	*No*	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22
Analyst Description: Off-White, Homogeneous, Non-Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Cellulose Trace, Fibrous glass Trace, Non-fibrous 100%			
2	222012945-02 **Location:** 6th Floor - Joint Compound	*No*	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22
Analyst Description: White, Homogeneous, Non-Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Non-fibrous 100%			
3	222012945-03 **Location:** Basement - Gypsum Wall Board	*No*	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22
Analyst Description: Off-White, Homogeneous, Non-Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Cellulose Trace, Fibrous glass Trace, Non-fibrous 100%			
4	222012945-04 **Location:** Basement - Joint Compound	*No*	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22
Analyst Description: White, Homogeneous, Non-Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Non-fibrous 100%			
5	222012945-05 **Location:** Basement - Fireproofing	*No*	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22
Analyst Description: Off-White, Homogeneous, Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Fibrous glass 90%, Non-fibrous 10%			

See Reporting notes on last page

PLM Bulk Asbestos Report

Orly Gila; 324 West 108th Street, New York, New York 10025

Client No. / HGA	Lab No.	Asbestos Present	Total % Asbestos
6	222012945-06 **Location:** Basement - Fireproofing **Analyst Description:** Off-White, Homogeneous, Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Fibrous glass 90%, Non-fibrous 10%	***No***	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22
7	222012945-07 **Location:** Basement - Fireproofing **Analyst Description:** Off-White, Homogeneous, Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Fibrous glass 90%, Non-fibrous 10%	***No***	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22
8	222012945-08 **Location:** 6th Floor Stairwell - Wall Insulation **Analyst Description:** Yellow, Homogeneous, Fibrous, Bulk Material **Asbestos Types:** **Other Material:** Fibrous glass 98%, Non-fibrous 2%	***No***	NAD (by NYS ELAP 198.1) by John P. Koubiadis on 01/30/22

Reporting Notes:

Analyzed by: John P. Koubiadis
Date: 1/30/2022

Reviewed by: John P. Koubiadis

*NAD/NSD =no asbestos detected; NA =not analyzed; NA/PS=not analyzed/positive stop, (SOF-V) = Sprayed On Fireproofing containing Vermiculite; (SM-V) = Surfacing Material containing Vermiculite; PLM Bulk Asbestos Analysis using Olympus, Model BH-2 Pol Scope, Microscope, Serial #: 223705, by Appd E to Subpt E, 40 CFR 763 quantified by either CVES or 400 pt ct as noted for each analysis (NVLAP 200546-0), ELAP PLM Method 198.1 for NY friable samples, which includes the identification and quantitation of vermiculite, or ELAP 198.6 for NOB samples, or EPA 400 pt ct by EPA 600-M4-82-020 (NY ELAP Lab 11480); Note:PLM is not consistently reliable in detecting asbestos in floor coverings and similar non-friable organically bound materials. NAD or Trace results by PLM are inconclusive, TEM is currently the only method that can be used to determine if this material can be considered or treated as non asbestos-containing in NY State (also see EPA Advisory for floor tile, FR 59,146,38970,8/1/94) National Institute of Standards and Technology Accreditation requirements mandate that this report must not be reproduced except in full without the approval of the lab.This PLM report relates ONLY to the items tested. RI Cert AAL-094, CT Cert PH-0186, Mass Cert AA000054, NJ Lab ID #NY031.

_____END OF REPORT_____

S & B Environmental, LLC **7 Fairchild Road** **Newtown, CT. 06470**

Bulk Sample Data Sheet/Chain of Custody

222012945

Client: Orly Gila
Building Address: 324 West 108th Street, New York, New York 10025
Sampling Date: 25 January 2022

Page 1 of 1

Sample Number	Sample Description	Notes
1	Gypsum wall board	6th floor
2	Joint compound	6th floor
3	Gypsum wall board	Basement
4	Joint compound	Basement
5	Fireproofing	Basement
6	Fireproofing	Basement
7	Fireproofing	Basement
8	Wall insulation	6th floor Stairwell

Industrial Hygienist: Vernon C. Rohde II Signature: [signature] Date: 25 January 2022

Laboratory Personnel: Efrain Nunez Signature: [signature] Date: 1-25-22 1400

Turnaround Time Requested: 5 Day TAT

For NOB Samples (including ceiling tiles) - Read by PLM NOB first, and if Negative also perform TEM analysis.

Please email all results to the following: gsa.vernonrohde@gmail.com

S & B Environmental, LLC
7 Fairchild Road
Newtown, CT. 06482
Phone (203) 947-6300

Asbestos Pre Renovation Report

For

W 108 Development LLC

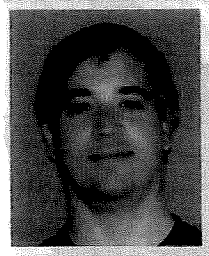
At

324 West 108th Street
New York, New York 10025

Certifications

STATE OF NEW YORK - DEPARTMENT OF LABOR
ASBESTOS CERTIFICATE

N.Y.S

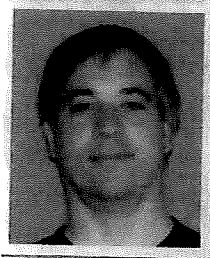


VERNON C ROHDE II
CLASS(EXPIRES)
C ATEC(10/22) D INSP(10/22)
E MGPL(10/22) H PM (10/22)
I PD (10/22)

CERT# 89-01729
DMV# 302032580

MUST BE CARRIED ON ASBESTOS PROJECTS

NYC DEP ASBESTOS CONTROL PROGRAM
ASBESTOS CERTIFICATE



ROHDE II,
VERNON
INVESTIGATOR
116391

EXPIRES: 10/31/2023
DOB:10/25/1964 M 5' 10"

MUST BE CARRIED ON ALL ASBESTOS PROJECTS

New York State – Department of Labor
Division of Safety and Health
License and Certificate Unit
State Campus, Building 12
Albany, NY 12240

ASBESTOS HANDLING LICENSE

S & B Environmental, LLC

7 Fairchild Road

Newtown, CT 06470

FILE NUMBER: 99-0324
LICENSE NUMBER: 28539
LICENSE CLASS: RESTRICTED
DATE OF ISSUE: 11/08/2021
EXPIRATION DATE: 11/30/2022

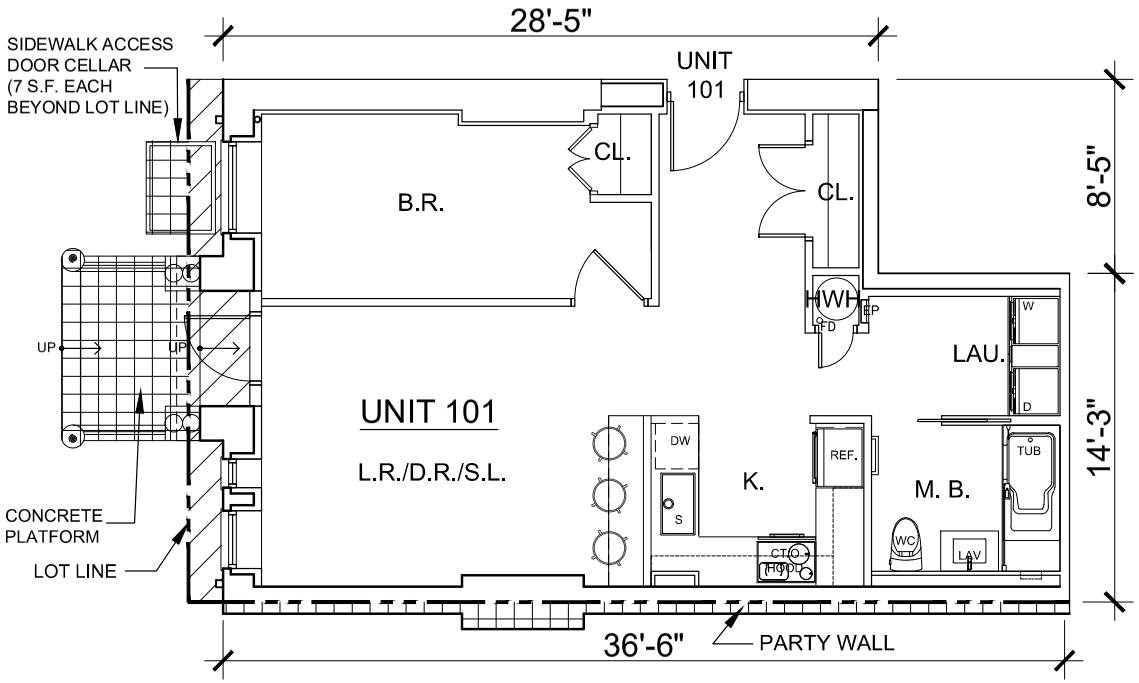
Duly Authorized Representative – Vernon C Rohde II:

This license has been issued in accordance with applicable provisions of Article 30 of the Labor Law of New York State and of the New York State Codes, Rules and Regulations (12 NYCRR Part 56). It is subject to suspension or revocation for a (1) serious violation of state, federal or local laws with regard to the conduct of an asbestos project, or (2) demonstrated lack of responsibility in the conduct of any job involving asbestos or asbestos material.

This license is valid only for the contractor named above and this license or a photocopy must be prominently displayed at the asbestos project worksite. This license verifies that all persons employed by the licensee on an asbestos project in New York State have been issued an Asbestos Certificate, appropriate for the type of work they perform, by the New York State Department of Labor.

Amy Phillips, Director
For the Commissioner of Labor

SH 432 (8/12)

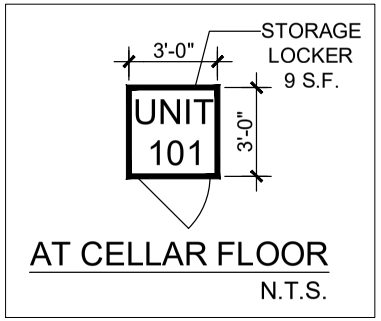


FIRST FLOOR

0' 5' 10'

08.10.22

NORTH



AT CELLAR FLOOR

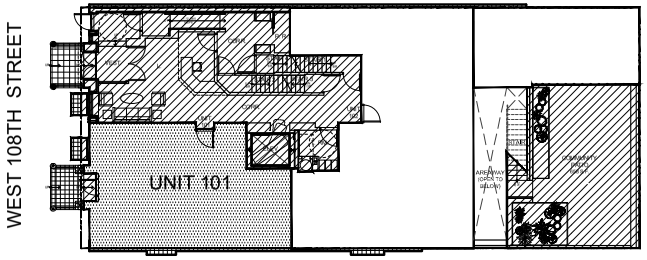
N.T.S.

RESIDENTIAL UNIT 101

1ST FLOOR (INTERIOR):	754 S.F.
CELLAR FLOOR (STORAGE LOCKER) :	9 S.F.
TOTAL UNIT 101:	763 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



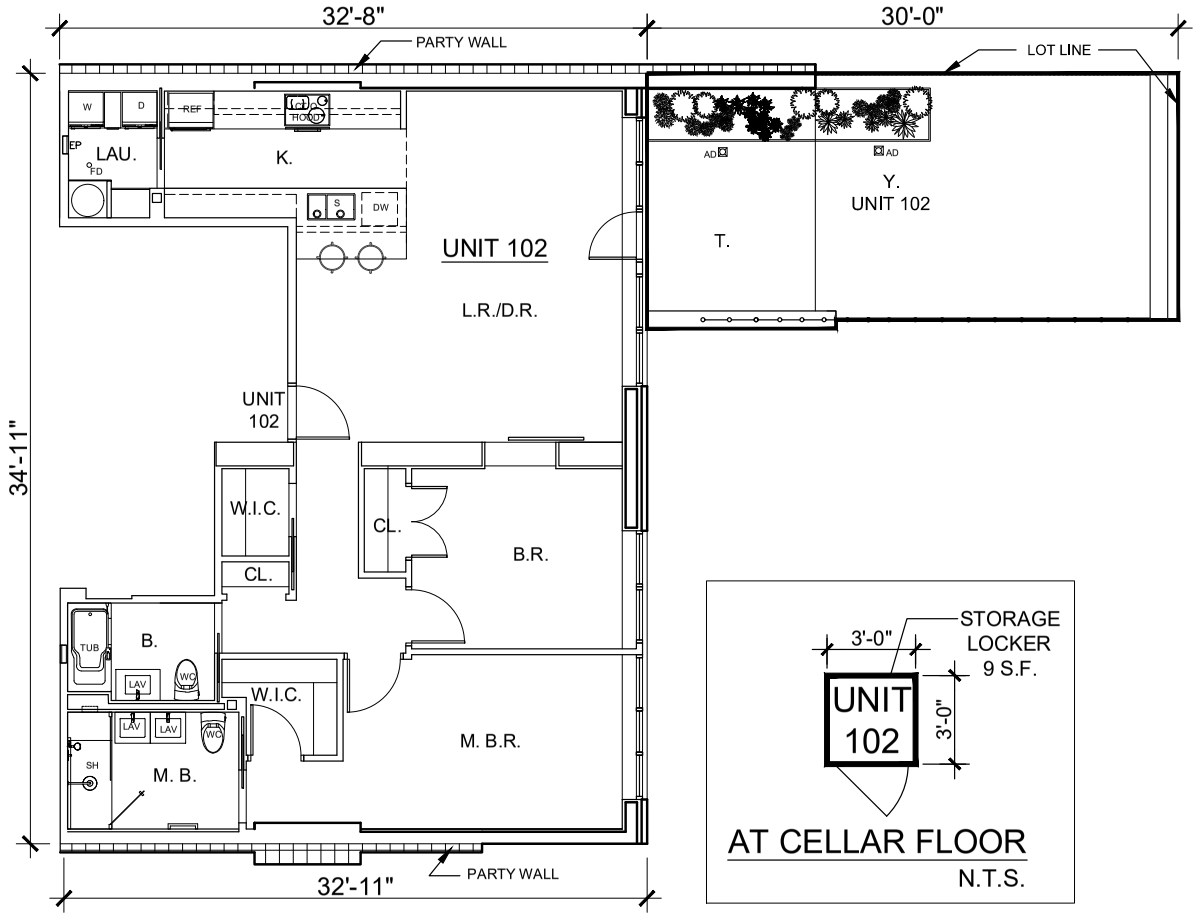
FIRST FLOOR KEY PLAN

NORTH

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



FIRST FLOOR

0' 5' 10'

08.10.22

NORTH

AT CELLAR FLOOR

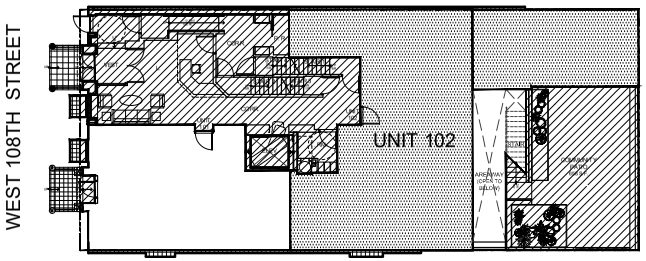
N.T.S.

RESIDENTIAL UNIT 102

1ST FLOOR (INTERIOR):	1,207 S.F.
1ST FLOOR (EXTERIOR YARD) :	423 S.F.
CELLAR FLOOR (STORAGE LOCKER) :	9 S.F.
TOTAL UNIT 102:	1,639 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



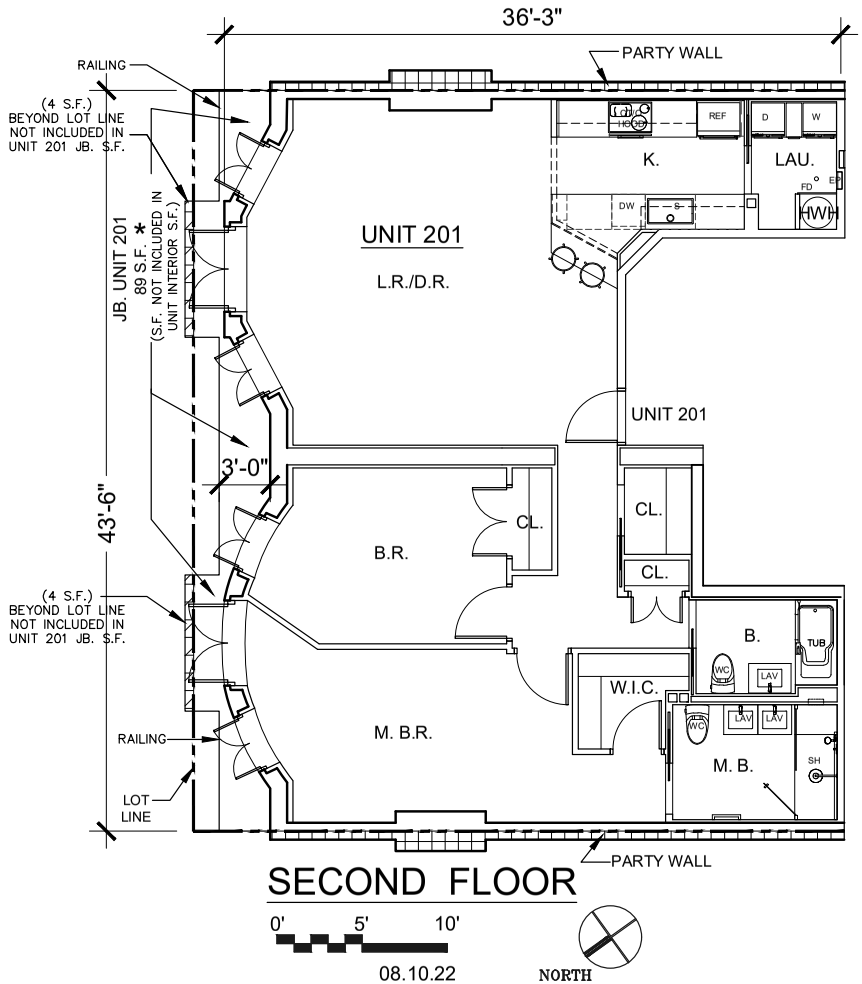
FIRST FLOOR
KEY PLAN

NORTH

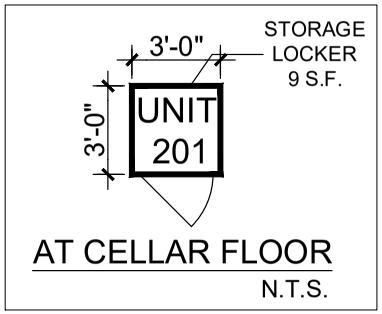
THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



SECOND FLOOR



AT CELLAR FLOOR

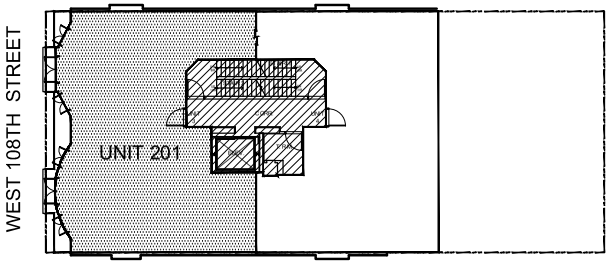
N.T.S.

RESIDENTIAL UNIT 201

2ND FLOOR (INTERIOR):	1,305 S.F.
2ND FLOOR (EXTERIOR JULIETTE BALCONY) :	89 S.F. *
CELLAR FLOOR (STORAGE LOCKER) :	9 S.F.
TOTAL UNIT 201:	1,403 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE
- * EXCLUDES S.F. BEYOND LOT LINE



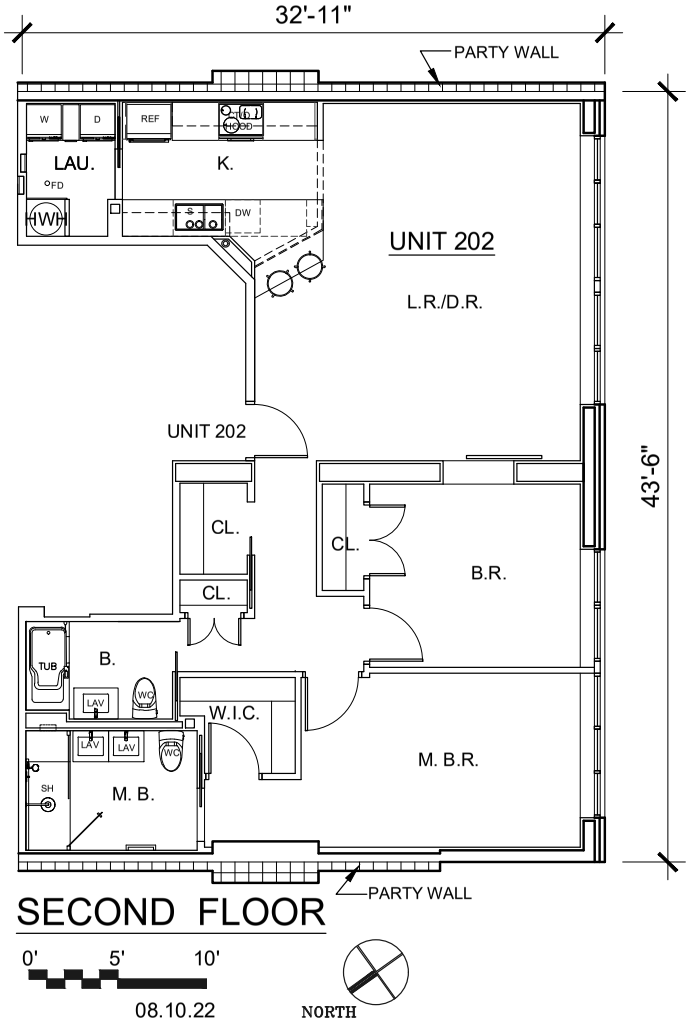
SECOND FLOOR KEY PLAN

NORTH

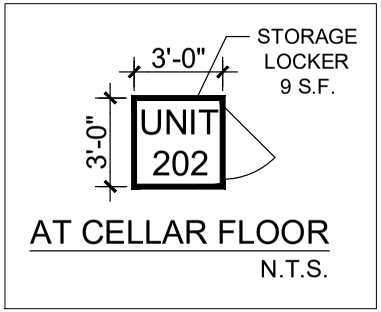
THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



SECOND FLOOR



AT CELLAR FLOOR

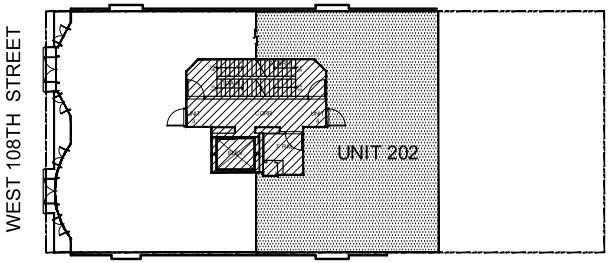
N.T.S.

RESIDENTIAL UNIT 202

2ND FLOOR (INTERIOR):	1,207 S.F.
CELLAR FLOOR (STORAGE LOCKER) :	9 S.F.
TOTAL UNIT 202:	1,216 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



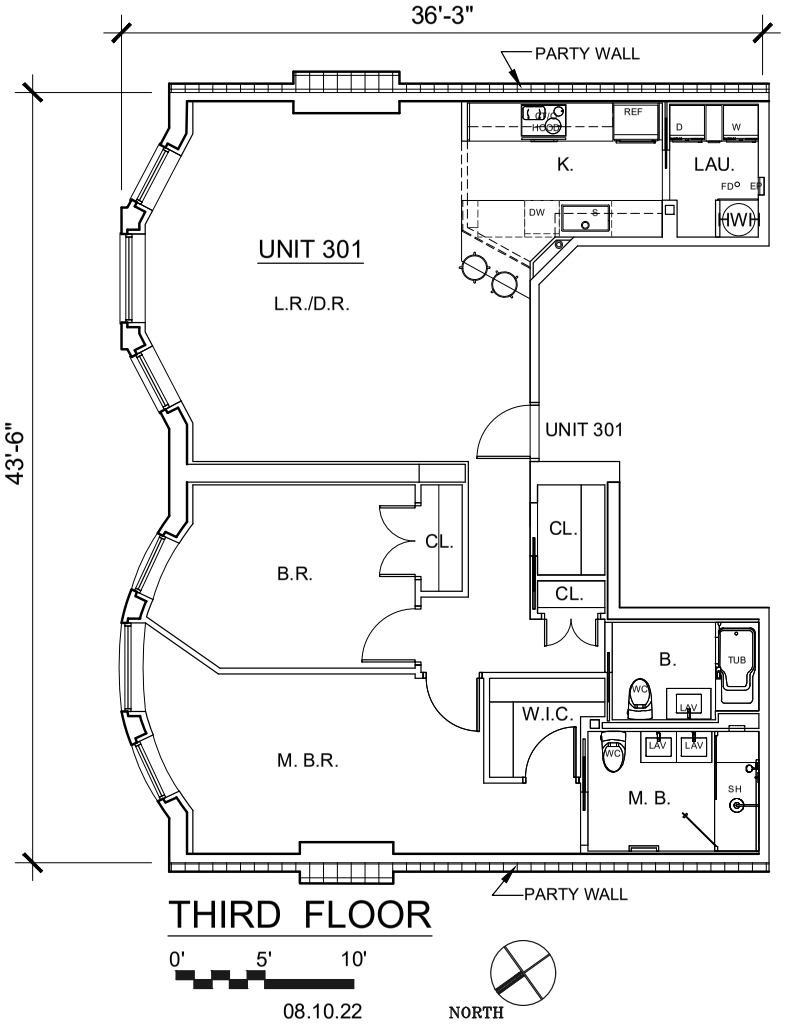
SECOND FLOOR
KEY PLAN

NORTH

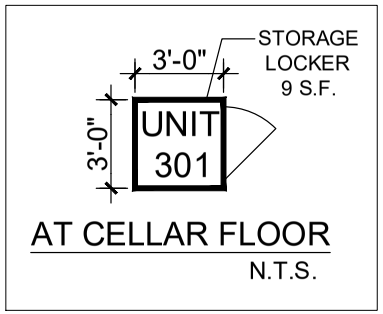
THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



THIRD FLOOR



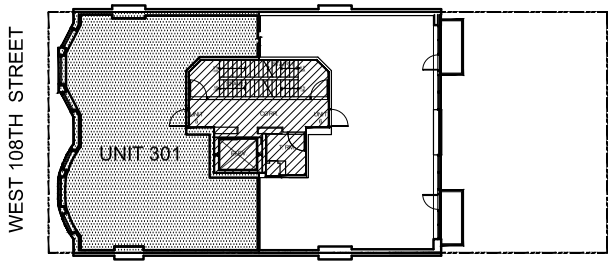
AT CELLAR FLOOR
N.T.S.

RESIDENTIAL UNIT 301

3RD FLOOR (INTERIOR):	1,305 S.F.
CELLAR FLOOR (STORAGE LOCKER) :	9 S.F.
TOTAL UNIT 301:	1,314 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



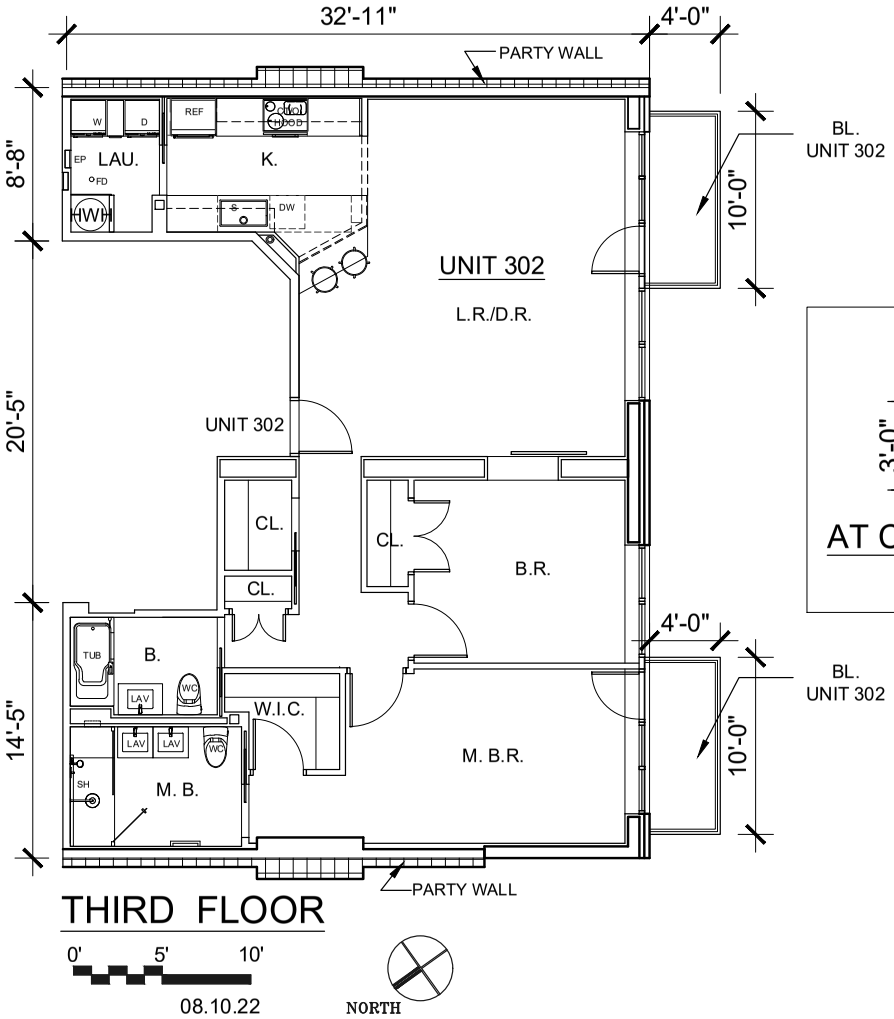
THIRD FLOOR
KEY PLAN

NORTH

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

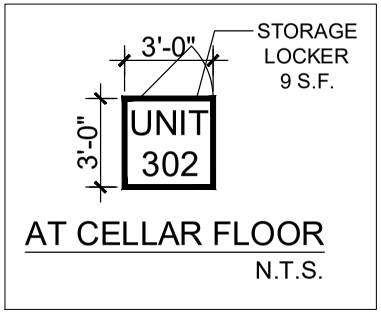
324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



THIRD FLOOR

08.10.22



AT CELLAR FLOOR

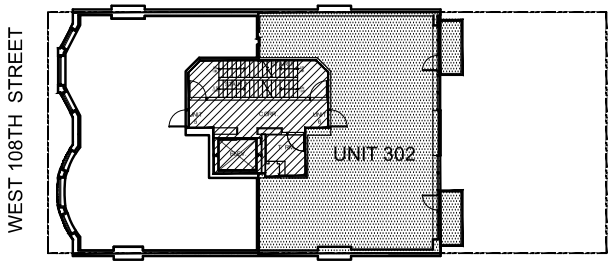
N.T.S.

RESIDENTIAL UNIT 302

3RD FLOOR (INTERIOR):	1,207 S.F.
3RD FLOOR (EXTERIOR BALCONIES) :	80 S.F.
CELLAR FLOOR (STORAGE LOCKER) :	9 S.F.
TOTAL UNIT 302:	1,296 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



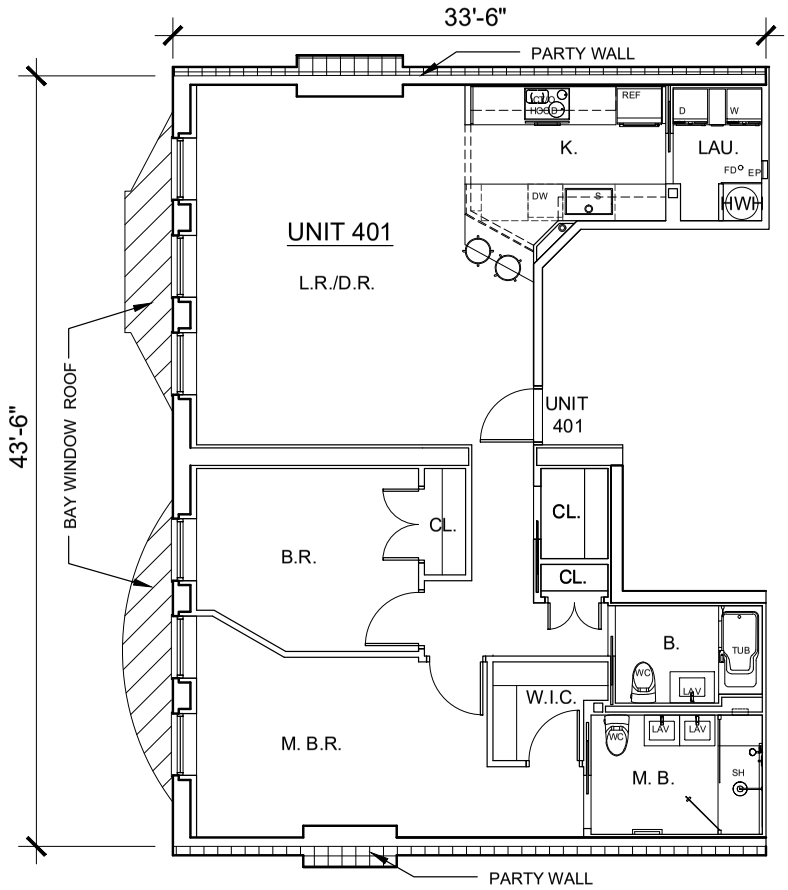
THIRD FLOOR
KEY PLAN

NORTH

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025

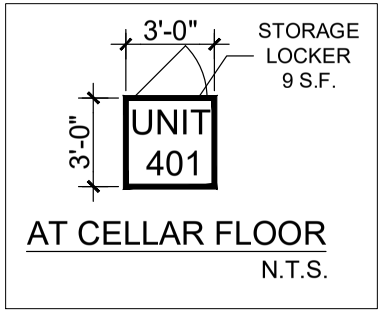


FOURTH FLOOR

0' 5' 10'

08.10.22

NORTH



AT CELLAR FLOOR

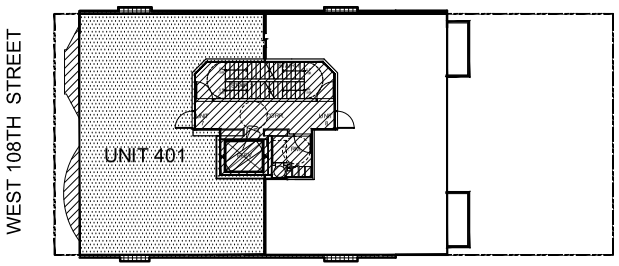
N.T.S.

RESIDENTIAL UNIT 401

4TH FLOOR (INTERIOR):	1,239 S.F.
CELLAR FLOOR (STORAGE LOCKER) :	9 S.F.
TOTAL UNIT 401:	1,248 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



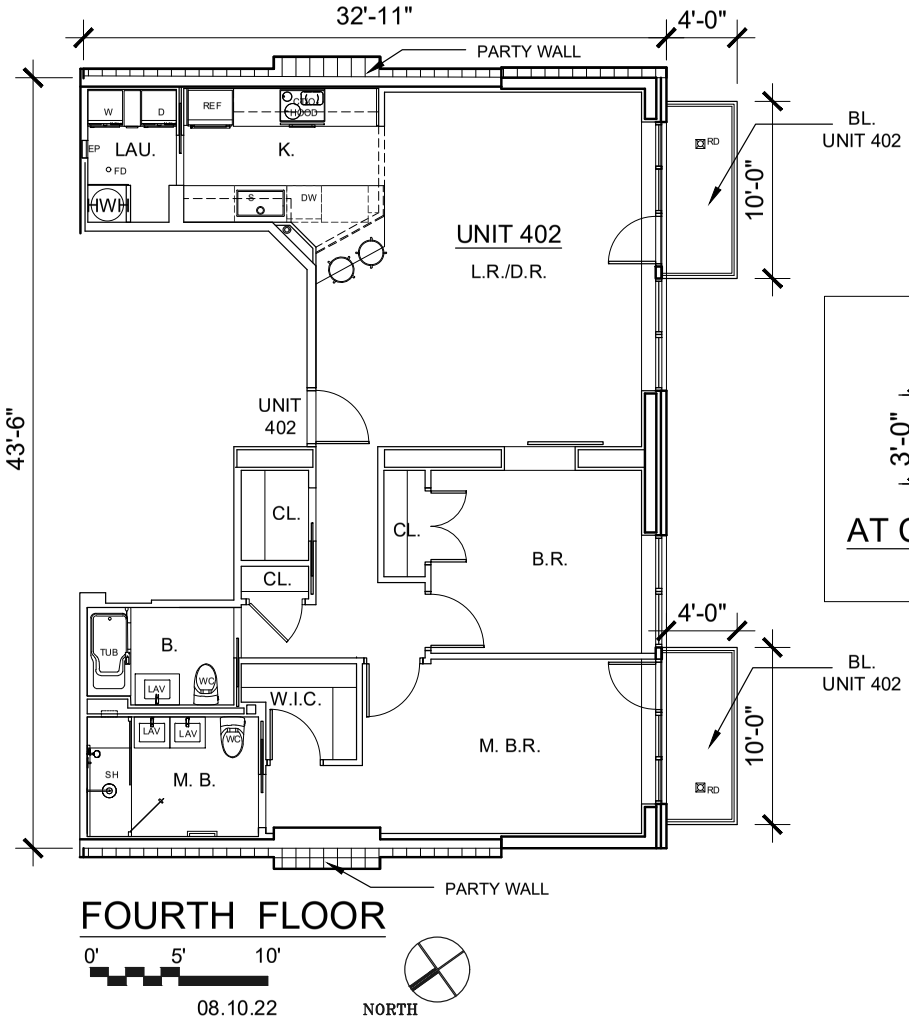
FOURTH FLOOR
KEY PLAN

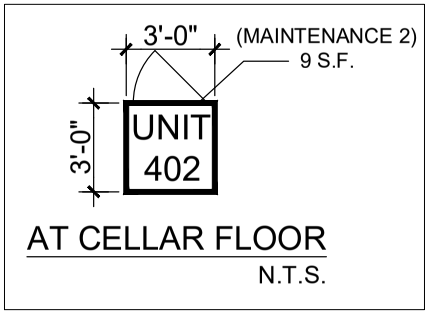
NORTH

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



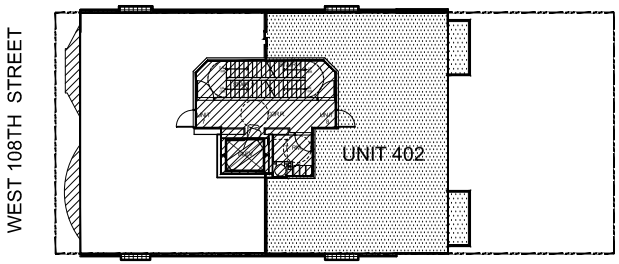


RESIDENTIAL UNIT 402

4TH FLOOR (INTERIOR):	1,207 S.F.
4TH FLOOR (EXTERIOR BALCONIES) :	80 S.F.
CELLAR FLOOR (MAINTENANCE 2) :	9 S.F.
TOTAL UNIT 402:	1,296 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



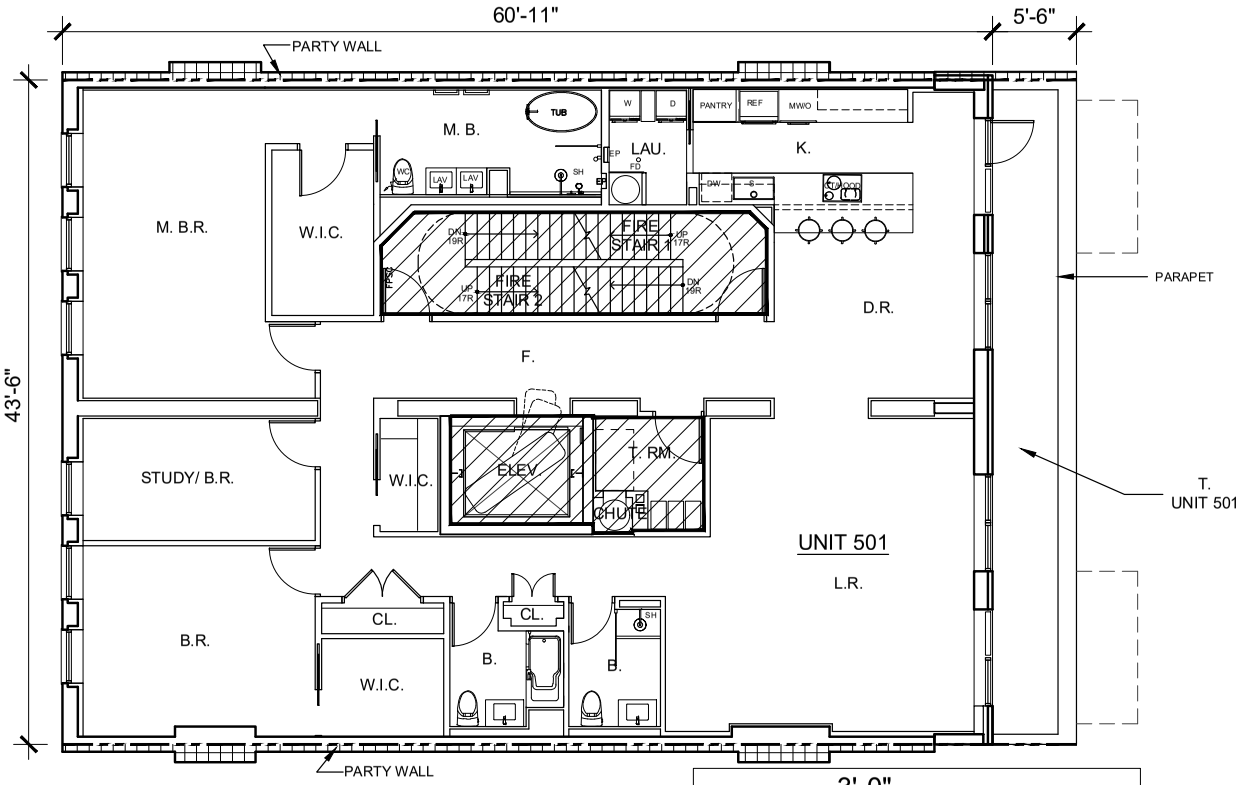
FOURTH FLOOR
KEY PLAN

NORTH

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025

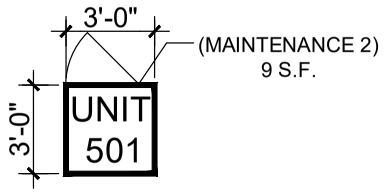


FIFTH FLOOR

0' 5' 10'

08.10.22

NORTH



AT CELLAR FLOOR

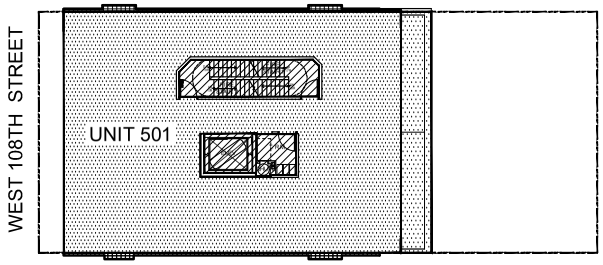
N.T.S.

RESIDENTIAL UNIT 501

5TH FLOOR (INTERIOR):	2,362 S.F.
5TH FLOOR (EXTERIOR -TERRACE) :	239 S.F.
CELLAR FLOOR (MAINTENANCE 2) :	9 S.F.
TOTAL UNIT 501:	2,610 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



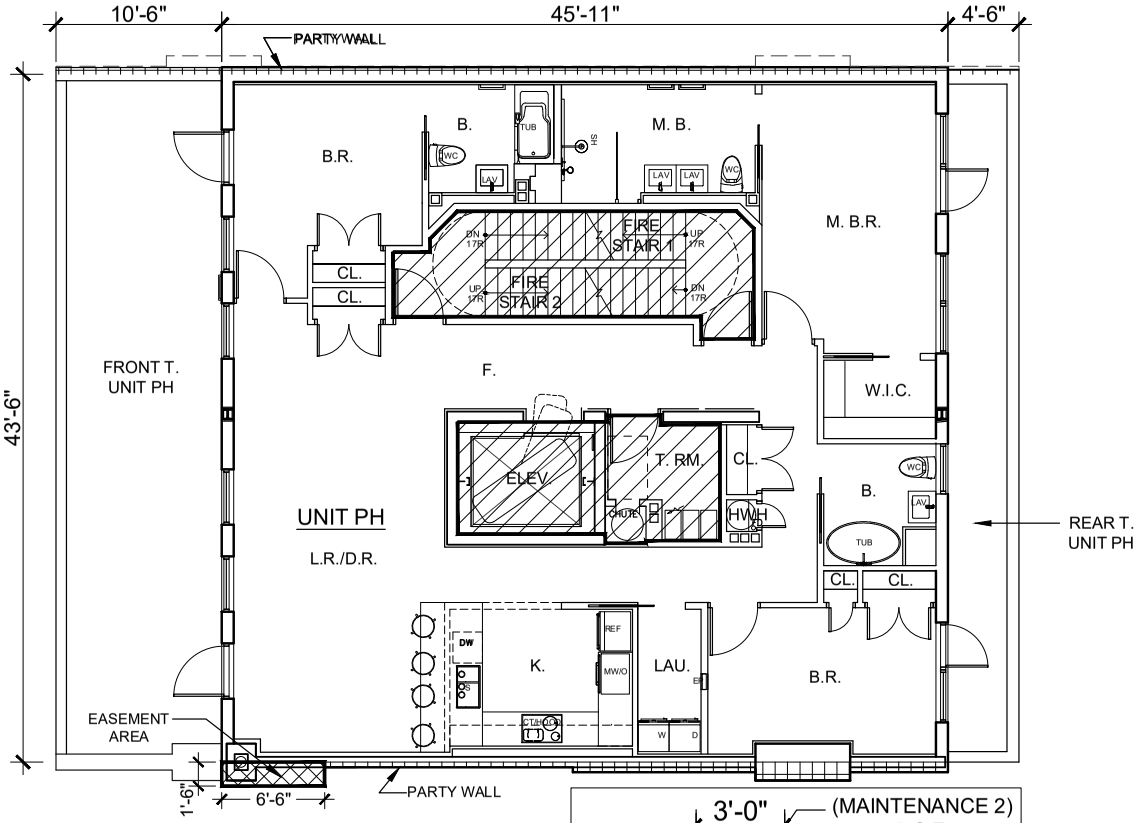
FIFTH FLOOR KEY PLAN

NORTH

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025

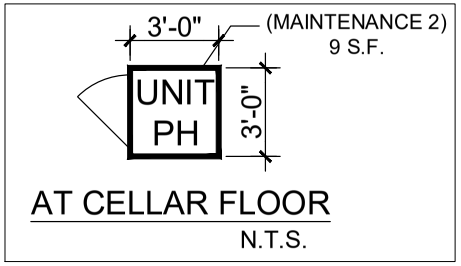


SIXTH FLOOR

0' 5' 10'

08.10.22

NORTH



AT CELLAR FLOOR

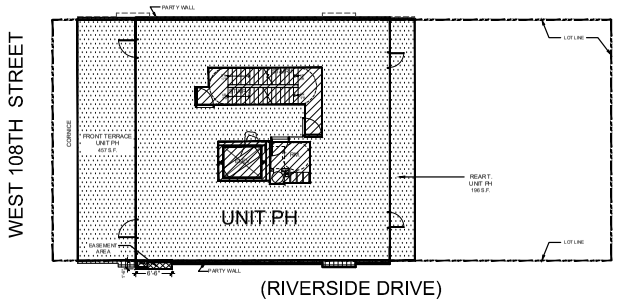
N.T.S.

RESIDENTIAL UNIT PH

6TH FLOOR (INTERIOR):	1,715 S.F.
6TH FLOOR (EXTERIOR -TERRACE) :	653 S.F.
CELLAR FLOOR (MAINTENANCE 2) :	9 S.F.
TOTAL UNIT PH:	2,377 S.F.

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE



SIXTH FLOOR KEY PLAN

NORTH

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025

DOCUMENT 6

DECLARATION OF CONDOMINIUM

Establishing a Plan for Condominium Ownership
of the Premises known as and by the street number

324 West 108th Street
(a/k/a 324-326 West 108th Street)
New York, New York 10025

Pursuant to Article 9-B of the Real Property
Law of the State of New York

Name of Condominium:	**324 West 108 Condominium**
Declarant:	**W 108 Development LLC**
Declarant's Address:	**119 West 72nd Street, #401** **New York, New York 10023**
Date of Declaration:	**_____ __, 202__**
Location of Land:	The Land affected by the within instrument lies in Tax Block 1892 on the Block Map of the Tax Map Unit in the Borough of Manhattan, County, City and State of New York, in Lots: F/K/A Lot 60, N/K/A Lots ____ to ____

RECORD AND RETURN TO

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DECLARATION
OF
CONDOMINIUM

(Pursuant to Article 9-B of the Real
Property Law of the State of New York)

W 108 Development LLC, the Declarant and Sponsor, having a business address (and for Notices) at 119 West 72nd Street, #401, New York, New York 10023, does hereby declare, reserve and grant as follows:

ARTICLE 1

GENERAL

Section 1.1 **Glossary**. The meanings given to the capitalized terms used in this Declaration, the By Laws and the Rules and Regulations are contained in EXHIBIT C: Glossary to this Declaration.

Section 1.2 **Rules of Interpretation**.

Section 1.2.1 Exhibits and Schedules. Unless otherwise expressly provided, references to any document, instrument or agreement shall include all provisions thereof and all exhibits, schedules and other attachments thereto, together with their revisions.

Section 1.2.2 Certain Words. The following lowercase words used in the Condominium Documents shall be interpreted as set forth below:

(a) "**aggrieved**" shall be interpreted to mean offended or wronged;

(b) "**amend**" or derivations there of shall be interpreted to include modify, revise, correct, rewrite, supplement, add, eliminate, delete, repeal, replace, substitute, or otherwise change.;

(c) "**easement**" shall be interpreted to mean irrevocable, perpetual and permanent and not subject to forfeiture or reversion;

(d) "**in accordance with**" or "**pursuant to**" shall be interpreted to mean "in accordance and compliance with" or "pursuant to and in compliance with";

(e) "**in connection with**" or "**attributable to**" or "**caused by**" or "**due to**" or "**arising from**" shall be interpreted to be interchangeable so that the use of one shall include the others;

(f) "**include**", "**such as**" and similar words or derivations thereof shall always be interpreted as though followed by the words "but not limited to";

(g) "**offending**" shall be interpreted to mean to be at fault, blame, responsible or accountable;

(h) "**on behalf of**" shall be interpreted to include at the direction or at the behest of;

(i) "**shall**" is the same as "must" and shall be interpreted to mean mandatory; and

(j) "**subject to**" shall be interpreted to mean "subject and subordinate to".

All other lowercase words used in the Condominium Documents shall have their ordinary meanings.

Section 1.3 **Grammar**. Any grammatical errors in this Agreement shall automatically be deemed corrected so that the singular, shall include the plural and vice versa; or any gender shall include any other gender; or any tense (past, present or future), shall include any other tense, whenever required by the sense of this Agreement and is not contrary to the express context.

Section 1.4 **Discretionary or Reasonable Consent**. Any provision of the Condominium Documents that requires the Discretionary or Reasonable Consent of a Party shall be construed to be preceded by the words "obtaining the prior written", and:

(a) in the case of Sponsor, shall mean only while Sponsor owns an Unsold Unit or until the issuance of the Final Certificate of Occupancy of the Building, whichever is the last to occur; or

(b) in the case of any other Unit Owner, shall mean only while such Owner continues to own a Unit' or

(c) in the case of the Condominium Board, shall be sufficient and effective only if given in writing by the Board prior to implementing the transaction for which Discretionary or Reasonable Consent is required or requested, unless duly ratified by the Board thereafter, and the consent of the Unit Owners shall not be required, unless otherwise expressly provided in this Declaration or the By Laws.

Section 1.5 **Owner and Unit Count**. An Owner and a Unit shall be counted as follows:

(a) an Owner of more than one Unit shall be counted as a separate Owner for each such Unit for quorum and voting purposes;

(b) a Unit owned by two or more Persons shall be counted as one Unit Owner for quorum and voting purposes;

(c) in the case of Units owned by the Condominium Board or its Affiliated Nominee or Designee (each, a "**Board Unit**") in order to determine the total number of Units, the number of Unit Owners and the total percentage of Common Interests for quorum or voting purposes:

(c-1) the total number of Units shall be reduced by one Unit for each Board Unit;

(c-2) the total number of Owners shall be reduced by one Owner for each Board Unit owned by the Condominium Board or its Affiliated Nominee or Designee; and

(c-3) the total percentage of Common Interests appurtenant to all Units shall be reduced by the total percentage of Common Interests appurtenant to all Board Units;

(d) each Subdivided Unit reflected in a duly recorded and filed Amendments to this Declaration and the Floor Plans of the original Unit being divided shall be regarded as a separate Unit

for quorum and voting purposes and the total number of Units and Unit Owners shall be increased accordingly; and

(e) a Combined Unit reflected in a duly recorded and filed Amendments to this Declaration and the Floor Plans of the original Units being combined shall be counted as one Unit for quorum and voting purposes and the total number of Units and Unit Owners shall be reduced accordingly.

Section 1.6 **Certain References**. All references in the Condominium Documents to:

(a) a Unit Owner shall mean the Person who owns a Unit at the time in question, but only while such Person owns the Unit;

(b) Condominium Board shall mean and be construed to include all existing and succeeding Board Members from time to time and shall benefit and bind the Condominium Board regardless of any change in the Board Members from time to time;

(c) Work to be performed by a Unit Owner, the Condominium Board or a Tenant shall mean either directly by such Party or caused to be performed by such Party;

(d) the words "Article", "Section", "provision", "paragraph", "clause", "EXHIBIT" or similar words refer to an Article, Section, provision, paragraph and clause of this Declaration, or an EXHIBIT attached to this Declaration, unless otherwise expressly stated;

(e) the words "hereof", "herein", "above", "below" and similar terms mean this Declaration, the By-Laws or the Rules and Regulations (as applicable), wherever these words appear;

(f) a Section of this Declaration or the By-Laws shall include the provisions of such Section with the same force and effect as though set forth at length herein or therein (as applicable);

(g) a construction level (i.e., the cellar, a floor, the roof or bulkhead roof or elevator bulkhead roof), or a room or fire stair, correspond to those set forth on the Floor Plans; and

(h) this Declaration, the By-Laws, the Rules and Regulations, the Floor Plans or the Condominium Documents shall mean and be construed to include as each thereof may be duly amended from time to time.

Section 1.7 **Work Parties; Tenants**.

Section 1.7.1 Condominium Board. All Work to be performed pursuant to the easements and rights of the Board granted under this Declaration or the By-Laws may be performed by the Work Parties of the Board and (if authorized or permitted in a Lease entered into by the Board) the Work Parties of a Tenant under said Lease, whether or not expressly set forth in this Declaration or the By Laws. The Board and its Work Parties shall be required to exercise, execute and perform All Work in accordance with the restrictions, limitations, prohibitions and requirements contained herein and in the By-Laws, including the General Requirements contained in Section 10.1. The Board shall be fully and directly responsible and accountable for, and shall Indemnify all Unit Owners, and their respective Related

Parties, on the terms more fully set forth in Article 27, from and against all Claims, Litigations, Liabilities and Losses caused by, or arising from or in connection with or attributable to, any Violation of said restrictions, limitations, prohibitions and requirements by, or the negligence of the Board or said Tenant or their respective Work Parties. All amounts payable by the Board resulting or arising from such Liability shall be a Common Expense and charged to all Owners Pro Rata to their respective Common Interests, unless otherwise expressly provided.

Section 1.7.2 Unit Owner. All Work to be performed pursuant to the easements and rights of an Owner granted under this Declaration or the By-Laws may be performed by the Work Parties of said Owner and (if authorized or permitted in a Lease) the Work Parties of a Tenant of an Owner's Unit, whether or not expressly set forth in this Declaration or the By-Laws. The Owner and (if applicable) said Tenant, and their respective Work Parties, shall be required to exercise, execute and perform All Work in accordance with the restrictions, limitations, prohibitions and requirements contained herein and in the By-Laws, including the General Requirements contained in Section 10.1. Such Owner shall be fully and directly responsible and accountable for, and shall Indemnify the Board and all other Unit Owners, and their respective Related Parties, on the terms more fully set forth in Article 27, from and against all Claims, Litigations, Liabilities and Losses caused by, or arising from or in connection with or attributable to, any Violation of said restrictions, limitations, prohibitions and requirements by, or the negligence of, said Owner or (if applicable) said Tenant, or their respective Work Parties.

If the Liability of an Owner hereunder is the result of a Casualty and such Casualty is insured under a policy maintained by the Condominium Board containing a waiver of subrogation or equivalent provision, then such Owner's Liability shall be reduced by the amount of any insurance proceeds received and collected by the Condominium Board in connection therewith.

Section 1.8 Payment and Collection. Whenever a Party (the "**Debtor Party**") is indebted to another Party (the "**Creditor Party**") under the Condominium Documents, whether pursuant to an Indemnity, a Violation of the Condominium Documents, or resulting from the performance of Work for the account and at the expense of the Debtor Party, or otherwise, the Debtor Party shall reimburse the Creditor Party for all Costs and Expenses, and all other amounts, owed to the Creditor Party within ten (10) Days after a reasonably detailed and itemized written demand therefor is given to said Debtor Party, accompanied by copies of supporting bills or statements from contractors and/or from vendors of materials and supplies, or otherwise; failing which the Debtor Party shall be Liable to said Creditor Party for the Legal Expenses incurred or paid by the Creditor Party, together with Per Diem Interest thereon, to pursue, enforce, uphold, protect and defend the provisions under which the Liability arose and to collect the amounts owed thereunder (hereafter collectively, "**Payment and Collection**"); provided, however, the Creditor Party is the successful Party in any Litigation contesting the Liability or the amount owed, and provided further, the losing Party in such contest shall reimburse the prevailing Party for all Costs and Expenses, together with Legal Expenses and Per Diem Interest thereon, paid or incurred in connection therewith. The Payment and Collection provisions, shall apply whenever a Debtor Party is indebted to a Creditor Party under the Condominium Documents, whether or not expressly set forth.

If the Board is the Creditor Party and a Unit Owner is the Debtor Party, the amounts owed to the Board shall constitute Additional Common Charges, whether or not expressly provided. An offending Sold Unit Owner shall not have the right to submit any dispute or controversy arising under this Section 1.9 to arbitration.

If the Board is the Debtor Party or is otherwise Liable for any amount payable under this Declaration or the By-Laws, the amount payable by the Board shall be included in the Common Expenses and assessed to all Unit Owners Pro Rata to their respective Common Interests, unless the Board acted on behalf of, or the transaction primarily benefits, only one or more, but not all Unit Owners, in which case said amount payable by the Board shall constitute a Specially Allocated Expense and assessed as an Additional Common Charge to only such applicable Owner or Owners (Pro Rata to their respective Common Interests) on whose behalf the Board acted or the transaction primarily benefits, as indicated in the text.

Section 1.9 **Litigation.** No Costs and Expenses of any Litigation that are incurred or paid by the Condominium Board in which Sponsor is an adverse litigant shall be assessed to the Unsold Units pending issuance of the final, non-appealable judgment or order or award of the court or other forum having jurisdiction, at which time said Costs and Expenses allocable to the Unsold Units may be assessed, without interest or late charges, to the Unsold Units, but only if the Condominium Board is adjudged or awarded or found to be the prevailing party in said Litigation and entitled to collect interest or late charges (as applicable).

Section 1.10 **Condominium and Condominium Association**. The term "**Condominium**" means the Property submitted to condominium ownership under the provisions of the Condominium Act (Article 9-B of the Real Property Law of the State of New York). The term "**Condominium Association**" or "**Association**" refers to the unincorporated association of Unit Owners to the extent permitted pursuant to the provisions of the General Associations Law of the State of New York. The membership of the Association at all times shall consist exclusively of all the Unit Owners or, following the withdrawal or termination of the Condominium, all former Unit Owners entitled to share the net proceeds of any partition sale or an award in a Taking by a Governmental Authority in condemnation or by eminent domain, as applicable.

ARTICLE 2

SUBMISSION OF THE PROPERTY

Section 2.1 **Submission**. The parcel comprising a portion of the Land which is the subject of this Declaration is more particularly identified in EXHIBIT A hereto. The Land together with the Building and other improvements erected on and under the Land known as and by the street address 324 West 108th Street (a/k/a 324-326 West 108th Street), in the Borough of Manhattan and the County, City and State of New York, are hereafter collectively called the "**Property**". Sponsor hereby submits fee title to the Property to the provisions of Article 9-B of the Real Property Law of the State of New

York (a/k/a Condominium Act) and, pursuant thereto, does hereby establish a regime of condominium ownership of the Property as more particularly set forth in the Condominium Documents. The Property being submitted hereby to condominium ownership also includes: (a) all easements, rights and appurtenances belonging thereto; (b) all other property (real, personal or mixed) used or intended for use in connection with the Land or Building; (c) any land lying in the bed of any street, road or avenue open or proposed, public or private, in front of or adjoining the Land, (d) any award made or to be made in lieu thereof, (e) any unpaid award for damage to the Land or the Building by reason of change of grade of any street; and (f) any strips and gores bisecting, adjoining or adjacent to the Land; but excludes the Excess Development Rights of the Property, which are reserved to, and retained by, Sponsor exclusively.

Section 2.2 **Filing**. Sponsor, at its Sole Cost and Expense and with reasonable promptness following the recording hereof, shall file this Declaration with the Department of State of the State of New York in accordance with Section 339-s of the Condominium Act and the rules, regulations or requirements of said Department of State.

ARTICLE 3

NAME OF CONDOMINIUM

Section 3.1 **Name**. The Condominium shall be known as 324 West 108 Condominium and shall not be changed or modified without the Discretionary Consent of Sponsor. Sponsor shall exclusively own and control all rights and interests in and to the name of the Condominium, including the right to apply for any trademark and prosecute to registration any trademark applications, and to Litigate against those whom Sponsor believes may be infringing its rights in and to the name of the Condominium. Only Sponsor shall have the right to assign the name of the Condominium and to maintain one or more plaques or other Signage identifying Sponsor on the exterior side of the Building Walls.

Section 3.2 **Use by Unit Owners and Others**. Sponsor hereby reserves for itself as to any Unit owned by Sponsor and grants to each Owner of a Unit (including an Unsold Unit) and (if permitted in a Lease) to the Tenant of each such Unit, the Unfettered right to use the name of the Condominium in connection with the Permitted Use and Enjoyment of a Unit by its Owner or Tenant.

ARTICLE 4

THE LAND

Section 4.1 **Location**. The Land is located in the Borough of Manhattan and the County, City and State of New York and consists of the parcel together with the air space thereover occupied by the Building at the time of issuance of the Final Certificate of Occupancy of the Building (excluding the Excess Development Rights), which parcel is more particularly described in EXHIBIT A annexed hereto.

Section 4.2 **Land Area**. The Land is owned by Sponsor in fee simple absolute and the parcel comprising the Land has an area of approximately 6,610 square feet.

ARTICLE 5

THE BUILDING

Section 5.1 **Location**. The Building is located on the Land, which lies in Block 1892, in Lot F/K/A Lot 60 and N/K/A Lots ____ to ____ on the Block Map of Taxes and Assessments of the Tax Map Unit in the Borough of Manhattan, County, City and State of New York.

Section 5.2 **Building and Floors**. The Building is located on the Land and contains a cellar, six floors above grade and the Main Roof, which houses a community roof Terrace, mechanical room, mechanical area, corridor, elevator shaft, Egress Stairs 1 and 2, elevator bulkhead and larger bulkhead, Equipment, and railings. There are two vaults adjacent to the cellar. The floors will be called and numbered in the Condominium Documents, unless the context otherwise requires, as cellar and floors 1 (ground) to 6. There are a total of ten (10) Units located on portions of floors 1 to 6. An approximate 1 foot, six inch (1'-6") wide Building Wall at floor 6 cantilevers over the roof of the adjacent building located at 328 West 108th Street pursuant to an easement agreement.

Section 5.3 **Units and Common Elements**. Initially, the Building contains a total of ten (10) Residential Units and most of the Common Elements located in, on or adjacent to the Building. The other Common Elements include portions of the Land.

Section 5.4 **Construction Materials**. The Building construction is classified as Construction Class II 1A non-fireproof (wood joist combustible). The principal construction materials of the Building are: masonry and brick foundations; new poured concrete foundation wall; new poured concrete retaining walls; masonry walls with steel stud construction on the upper floors, and wood floor joists; wood; Balconies of concrete poured on steel decking supported by steel beams; modified bitumen roofing membrane set on insulation with plywood sheathing or fiberglass sheet, flashing and counterflashing; steel pan with concrete tread infill scissor Egress Stairs enclosed by 2-hour fire rated gypsum board enclosure; copper water lines with insulation; and cast iron sanitary waste lines.

Section 5.5 **Excess Development Rights**. All of the Excess Development Rights are reserved to, and retained by, Sponsor exclusively and are not being submitted to Condominium ownership hereunder and may be used by Sponsor for such purposes as it determines to be appropriate, in Sponsor's sole discretion, including the Unfettered right of Sponsor to use the Excess Development Rights in connection with the rehabilitation of the Building (i.e., the Units and Common Elements) and issuance of the Final Certificate of Occupancy, or otherwise, as more particularly set forth in Article 28.

ARTICLE 6

THE UNITS

Section 6.1 **Units**. The Property contains ten (10) Condominium units (collectively, the "**Units**" and each, a "**Unit**"), all of which are designated Residential Units. Each Owner shall have the private and exclusive ownership and possession of his or her Unit together with the Common Interest appurtenant to the Unit. The term Unit includes a Combined Unit, a Subdivided Unit and a Reconfigured Unit, if and when Altered pursuant to a Unit Change in accordance with Article 12.

Section 6.2 **Location**. The Residential Units are located on portions of floors 1 through 6 of the Building. Part of the private and exclusive use and possession of certain Units are one or two Terraces or a Juliette Terrace, or a Balcony or a Yard, and each Unit also includes as part thereof a specified non-contiguous Storage Locker located in the cellar. See EXHIBIT B hereto for a more complete description of each Unit and (where applicable) its Terrace(s), Juliette Terrace, Balcony or Yard, and Storage Locker.

Section 6.3 **Unit Information**. EXHIBIT B annexed hereto sets forth the following data with respect to each Unit necessary for its proper identification: (a) the designation number; (b) number of rooms and baths; (c) the tax lot number; (d) the floor location in the Building; (e) the approximate interior and exterior floor areas; (f) the portions of the Common Elements to which the Unit has immediate access; and (g) the appurtenant Common Interest.

Section 6.4 **Floor Plans and Diagrams**. A more precise location of each Unit in the Building is shown on the Floor Plans of the Condominium certified by Marc Kemeny, Registered Architect. The Diagrams of Units and Common Elements (EXHIBIT F hereto) also show the location of the Units on each floor of the Building.

Section 6.5 **Unit Areas**. The interior area of each Unit consists of the volume of space bordered horizontally by a Boundary Wall enclosing the such Unit's floor area and bordered vertically by a Boundary Floor located below the flooring, sub-flooring and any supporting pedestals and a Boundary Ceiling together with any plaster, gypsum board or other finishes or coverings thereon.

The outdoor exterior area of each Unit consists of the volume of space bordered horizontally by a Boundary Wall enclosing a Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) and extending vertically therefrom to a height of an imaginary horizontal plane which is directly opposite and coincident with the exposed underside of the Unit's Structural Ceiling. The indoor noncontiguous area of each Unit is its Storage Locker located in the cellar and consists of the volume of space bordered horizontally and vertically by a prefabricated link or corrugated type metal or other construction material enclosing such Storage Locker, which is part of the Common Elements.

A Boundary Wall is part of the Common Elements and is not part of a Unit.

Section 6.6 **Unit Dimensions**. The approximate interior contiguous floor area of each Unit has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line) enclosing the Unit, or from the midpoint of a Boundary Wall separating the Unit from another Unit. The approximate non-contiguous floor area of a Unit's Storage Locker has been measured from the exterior side of the Boundary Wall enclosing the Storage Locker, or from the midpoint of a Boundary Wall separating two Storage Lockers. The approximate outdoor floor area of a Unit's Balcony, Terrace, Juliette Terrace or Yard (if any) has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line), or from the exposed surface of the prevailing Building Wall, enclosing such outdoor floor area. All Common Elements bordering or within the indoor or outdoor floor areas of a Unit have been included in the computation of the floor areas of the Unit, but such Common Elements are not part of the Unit.

Section 6.7 **Items Included in Unit**. The items included in and part of the private and exclusive ownership and possession of a Unit consist of the areas ("**Unit Areas**") and Facilities (the "**Unit Facilities**") set forth below.

Section 6.7.1 Unit Areas. The Unit Areas consist of the volume of space bordered horizontally and vertically by Common Elements enclosing: (a) the indoor contiguous area of the Unit and its noncontiguous Storage Locker (i.e., Boundary Floors, Boundary Ceilings and Boundary Walls); and (b) the outdoor area of a Unit's Terrace, Juliette Terrace, Balcony or Yard, if and as applicable (i.e., horizontally by Boundary Floors and vertically by Building Walls extending to a height of an imaginary horizontal plane that is directly opposite and coincident with the exposed underside of the Unit's Boundary Ceiling), all as more particularly described in Section 6.5.

Section 6.7.2 Unit Facilities. The Unit Facilities of each Unit consist of the following:

(a) Interior Walls and Partitions: all non-load bearing interior walls and partitions;

(b) Interior Window Sills: all interior Window sills;

(c) Doors: all interior Doors;

(d) Terraces: the pavers, tiles, decking or other construction material;

(e) Yard: the pavement, tile or other construction material;

(f) Sub-flooring and Supports: the sub-flooring and any supporting pedestals below an interior floor area of a Unit or a Terrace;

(g) Decorations: all Decorations on the Unit's Windows, interior walls and partitions, the Unit-side of Boundary Walls, Boundary Floors and Boundary Ceilings, including the Unit-side of any plaster, gypsum board or other finishes or coverings on the underside of Structural Ceilings, which are part of the Common Elements;

(h) Kitchens and Bathrooms: all Unit kitchen and bathroom appliances (including cooktop, oven, microwave oven, dishwasher, clothes washer and dryer and refrigerator), sinks, lavatories,

showers, bathtubs, cabinets, countertops and built-ins (if and as applicable), and all Accessible Facilities exclusively serving any of the foregoing;

(i) Finishes and Coverings: all: paint; wallpaper; tiles (e.g., ceramic, marble, granite, stone, vinyl or otherwise); wood flooring, subflooring, sound dampening, and supporting pedestals; wood panels; baseboards; moldings; fabrics; carpeting; rugs; and all other floor, wall or ceiling coverings or finishes on the Unit-side of the Common Elements enclosing the Unit;

(j) Meter and Submeter: any separate individual meter or submeter (wherever located) that serve exclusively the Unit and its Facilities;

(k) New Facilities: any new Facilities Installed by an Owner which are not included in Sponsor's Plans and Specifications, whether Accessible or Inaccessible, including all newly Installed Lines and Conduits serving such new Facilities; and

(l) General: the portions of the Building Systems and the separate, independent Facilities that serve exclusively the Unit, all of which are exposed to view inside the Unit or are Accessible from within the Unit's Boundary Walls enclosing the Unit (including, if and where applicable, Facilities with respect to plumbing, electricity, mechanical Equipment, electronics, heating and cooling heat pump system (including compressor and air handlers), ventilation, hot and cold water, telephone, television, internet, intercom, telecommunications, security, sanitary waste, refuse, lighting, sprinkler heads, and smoke and carbon monoxide detectors, and their respective pipes, shut-off valves, faucets, spouts, outlets, jacks, switches, panel and circuit breakers, and the portions of their respective related exposed or Accessible Lines and Conduits serving only these Facilities).

A Unit does not include the items comprising the Common Elements listed in Article 7 or otherwise serving a Common Element, including the Roof and Roof Structures enclosing a Terrace, the unimproved area and dirt comprising the Land below the pavement or other flooring material comprising the Yard, and the Structural Components comprising a Balcony and Juliette Terrace.

Section 6.8 **Attachment to Perimeters**. All Facilities may be Installed in, to or on the Boundary Walls, Boundary Floors and Boundary Ceilings enclosing a Unit or its appurtenant Limited Common Elements by nails, screws, bolts or other mounting devices; provided, however: (a) the structural integrity or soundness, or weather tightness (including the insulation component) of the Unit, its Limited Common Elements, or the Common Elements shall not be impaired or compromised; (b) any visible, rentable or useable space of another Unit or the Common Elements shall not be penetrated or affected without obtaining the Discretionary Consent of the affected Owner of such Unit or (in the case of the Common Elements) the Condominium Board; (c) the acoustical performance of the Boundary Walls, Boundary Floors and Boundary Ceilings enclosing a Unit shall not be reduced, impaired or jeopardized; (d) the exterior appearance of the Building shall not be penetrated or affected without obtaining the Discretionary Consent of the Condominium Board and (until issuance of the Final Certificate of Occupancy) Sponsor; and (e) the Work shall be performed in accordance with the Building Standard.

ARTICLE 7

THE COMMON ELEMENTS AND ASSOCIATION'S PROPERTIES

Section 7.1 **Common Elements**. All portions of the Property, other than the Units, are called the "**Common Elements**" and generally include all Building areas and Facilities that are not expressly stated to be part of the private or exclusive ownership and possession of a Unit, as well as all other parts of the Property necessary or convenient to its existence, maintenance, security, protection and safety, or normally in common use. The Unit Owners own, in common, a proportionate undivided interest (the "**Common Interest**") in fee simple absolute in the Common Elements. The Common Elements that are for the Permitted Use and Enjoyment in common by all Unit Owners and are summarized in Section 7.2. Although the Common Elements are "owned" in common by all Unit Owners, those Common Elements that are restricted and limited to the exclusive use by only one Unit Owner are called the "**Limited Common Elements**" and are summarized in Section 7.3.

Section 7.1.1 Requirements, Restrictions and Easements. The use in common of the Common Elements by all Unit Owners, and the restricted, limited and exclusive use of the Limited Common Elements by only one Unit Owner, are subject to:

(a) compliance with this Declaration, the By-Laws and the Rules and Regulations;

(b) the Board's Governance Rights; and

(c) certain restrictions, as well as certain easements and rights reserved to Sponsor and granted to the Condominium Board, Unsold Unit Owners and their respective Tenants, and other Persons, all as and to the extent set forth in the Plan, this Declaration, the By-Laws and the Condominium Act.

Section 7.2 **Items of Common Elements**. The Common Elements consist of the areas (collectively, the "**Common Areas**") and Facilities (the "**Common Facilities**") set forth below. The Common Areas shall be immutable for the Use and Enjoyment in common by all Unit Owners, subject to the General Requirements, Sponsor's Rights and the Board's Governance Rights, and the easements in favor of the Parties indicated in Article 11. The Common Facilities shall be mutable and perishable in connection with Unit Changes set forth in Article 12 or as otherwise provided elsewhere in the Condominium Documents.

Section 7.2.1 Common Areas. The Common Areas include the following:

(a) Land: the Land (excluding the Excess Development Rights);

(b) On the Cellar Level: all cellar level corridors, rooms and other areas housing Common Facilities (e.g., the electric meter room, the maintenance rooms, the laundry room, the bicycle storage room, the exercise room, the community/recreation room with its warming kitchen, the trash recycling room, the pump room, the room housing the Storage Lockers, the water meter room, the janitor's closet,

the powder room, the elevator shaft, the fire stairs (i.e., Egress Stairs) and landing, the areaway, the unexcavated area, and the license for the two vaults;

(c) On (Ground) Floor 1: the Building street entrance, vestibule, lobby, mail and delivery area, and the areas leading to the Elevator (collectively, the "**324 West 108th Street Public Areas**");

(d) On Floors 2 to 6: all hallways and other areas (including rooms housing the trash chute), other than the Units;

(e) Egress Stairs: all Egress Stairs and their respective landings;

(f) Roofs: all areas on the Main Roof and the Bulkhead Roof; and

(g) Generally: generally, all rooms and other areas housing the Common Facilities, and all corridors, hallways, passageways leading thereto or to the Elevator or to Egress Stairs.

Section 7.2.2 Common Facilities. The Common Facilities include the following items that serve only the Common Elements or two or more Units or are inaccessible from within the interior of a Unit, regardless of their location within or bordering a Unit or elsewhere in, on, under or adjoining the Building, if and to the extent existing at the time in question and replacements and substitutions thereof:

(a) Structural Components: all Structural Components, including (if and to the extent applicable):

(a-1) the Building's foundation, foundation walls, retaining walls, footings, pilings and structural columns, beams and supports;

(a-2) all Structural Floors and Structural Ceilings, including any plaster, gypsum board or other construction material on the underside of a Structural Ceiling;

(a-3) all exterior Building Walls and load-bearing or shear walls;

(a-4) all Roofs and Roof Structures, including the Roofs below Terraces;

(a-5) all Structural Components comprising the Balconies and Juliette Terraces; and

(a-6) generally, all similar structural members of the Building not expressly included in a Unit or the Limited Common Elements;

(b) Balcony, Terrace, Juliette Terrace and Yard Structures: all Balcony Structures, Terrace Structures, Juliette Terrace Structures and Yard Structures;

(c) Main Feeder Lines: all main feeder lines for water, sewerage, sanitary waste, storm drainage, fire protection, electricity, telephone, cable television, Internet and other Utility Equipment and Related Facilities, Communications Equipment and Related Facilities and other Building Services that serve the Common Elements or all or portions of one or more Units;

(d) Building Systems: all Building Systems for water, sewage or sanitary waste, storm drainage, electricity, telephone, cable television, Internet and other Utility Equipment and Related

Facilities, Communications Equipment and Related Facilities and other Building Services (e.g., risers and distribution and branch lines) that serve the Common Elements and the Inaccessible portions of said Building Systems the serve all or portions of two or more Units or are Inaccessible from within the interior of a Unit (all portions thereof that are Accessible from within the interior of a Unit are included in, and part of, the private and exclusive ownership and possession of such Unit as provided in Section 6.7 above);

(e) Fire Protection System: all portions of the fire protection System (e.g., risers, distribution lines and branch lines) that serve the Common Elements and the Inaccessible portions of said fire protection System that serve all or portions of one or more Units (all portions thereof that are Accessible from within the interior of a Unit are included in, and part of, the private and exclusive ownership and possession of such Unit as provided in Section 6.7);

(f) Lighting and Ventilation Systems: all portions of the lighting System (e.g., all lighting fixtures, Lines and Conduits) and the ventilation System (e.g., all Lines and Conduits) that serve the Common Elements and the Inaccessible portions of said lighting System ventilation System that serve all or portions of one or more Unit Properties (all portions thereof that are Accessible from within the interior of a Unit are included in, and part of, the private and exclusive ownership and possession of such Unit as provided in Section 6.7);

(g) Inaccessible Facilities: all Inaccessible Facilities serving one or more Units or the Common Elements, including the Inaccessible portions of Lines and Conduits that serve all or portions of one or more Units (all portions thereof that are Accessible from within the interior of a Unit are included in, and part of, the private and exclusive ownership and possession of such Unit as provided in Section 6.7);

(h) Boundary Floors and Ceilings: all Boundary Floors and Boundary Ceilings enclosing the rooms and other areas comprising the Common Areas on the cellar level or enclosing Units vertically, including separating vertically two Units or separating vertically a Unit from a Common Area;

(i) Building and Boundary Walls: all Building Walls and Boundary Walls enclosing Units horizontally, including perimeter walls separating horizontally two Units or separating horizontally two Storage Lockers, or separating horizontally a Unit from a Common Area;

(j) Interior Walls and Partitions, and Doors: all walls and partitions enclosing and within the rooms and other areas comprising the Common Areas, all Entrance Doors leading to the Building and all Doors leading to or within the Common Areas;

(k) Egress Stairs: the fire rated walls, hand rails, steps, landings other Facilities comprising the Egress Stairs serving the Common Areas and the Units;

(l) Elevator: the Elevator, including the cab, shaft, pit, cables and all other Facilities comprising its components;

(m) Bulkheads: the Main Roof Bulkheads, including its Boundary Walls, Boundary Floors, Boundary Ceilings, Roofs and related Roof Structures;

(n) Shafts, Ducts, Conduits, Chases etc.: the shafts, ducts, conduits, chases, chase walls, shelves, coves, dropped ceilings, ducts, soffits and other structures that house Facilities comprising or serving one or more Units or the Common Elements;

(o) Corridors, Hallways and Passageways: the components of all common or public corridors, hallways, passageways leading to a Common Area or a Unit;

(p) Staff Bathroom: all fixtures and other Facilities comprising and enclosing the staff bathroom;

(q) Finishes, Coverings Decorations: all finishes, coverings and other Decorations on the rooms and other areas comprising the Common Areas; and

(r) Generally: all Facilities:

(r-1) serving the Common Elements and the Inaccessible portions of Facilities that serve all or portions of one or more Units (all portions thereof that are Accessible from within the interior of a Unit are included in, and part of, the private and exclusive ownership and possession of such Unit as provided in Section 6.7), including Facilities for heating, ventilating, air-conditioning, hot and cold water, refuse disposal, storm drainage, sanitary sewerage or waste lines, fire protection (e.g., sprinkler, sprinkler alarm, hoses, standpipe, siamese connection and related Facilities), utilities (i.e., electricity, water and sewer, cable television, telephone and Internet), intercom, security cameras, monitors and other devices, and their respective components (including all manner of motors, pumps, equipment, machinery, tools and apparatus), together with all inaccessible risers and distribution or branch lines, and other Lines and Conduits of the Building Systems the serve all or portions of more one Unit or are inaccessible from within the interior of a Unit, or serve the Common Elements; or

(r-2) necessary or convenient for the Permitted Use and Enjoyment in common of two or more Units or the Property as a whole, and are not expressly stated to be part of the private and exclusive ownership and possession of a Unit.

Section 7.3 Limited Common Elements. The Limited Common Elements appurtenant to each Unit comprise all Unit Windows and all Entrance Doors to a Unit and all doors leading to a Unit's Balcony, Terrace, Juliette Terrace or Yard (if and as applicable).

Section 7.4 Conflict Between Declaration and Floor Plans. The description of the Units set forth in Section 6.7 and the description of the Common Areas set forth in Section 7.2.1 are intended to complement and to be consistent with the Floor Plans and EXHIBIT F hereto, as well as the actual physical construction of the Building. In the event the description of the Units or the Common Areas omits one or more items designated as a Unit or a Common Area shown on the Floor Plans or EXHIBIT F hereto, the Floor Plans and said EXHIBIT F shall be paramount, govern and control. In the event of any

conflict or inconsistency or ambiguity between an express description of a Unit or a Common Area in this Declaration and the Floor Plans or EXHIBIT F hereto, the actual physical construction of the Building and the other provisions of this Declaration and the By-Laws shall be used to determine the intent of the Sponsor (i.e., the areas serving two or more or all Units are part of the Common Areas). In the absence of such discernible intent of the Sponsor, the actual physical construction of the Building shall be paramount, govern and control. The Floor Plans and EXHIBIT F hereto are intended to show only the areas comprising a Unit and the Common Elements (there are no areas that comprise the Limited Common Elements). The Floor Plans and EXHIBIT F do not, and are not intended to, show the Facilities comprising a Unit, or the Common Elements or the Limited Common Elements.

Section 7.5 **Association's Assets**. All assets owned, Leased or otherwise held from time to time by the Condominium Board on behalf of the Condominium Association, whether real property or Personal Property, chattel real, intangibles, monies, securities, licenses, belongings or otherwise, constitute, and are herein called, the "**Association's Assets**". The Association's Assets include any Unit purchased or leased by the Board pursuant to the Board's "Right of First Refusal", the monies collected from payments of the Common Charges and payments to the Working Capital Fund, any interest or investment income earned on all such monies, and the vaults abutting the Land which are subject to a revocable license from The City of New York to use said vaults. All assets held by the Board shall include assets held by the Board's Affiliated Nominee or Designee. Unless otherwise expressly indicated, the references in this Declaration and the By-Laws to the Rights, Powers, Duties, requirements and obligations with respect to the use, Maintenance, Repair, Alteration, Operation or Disposition of the Common Elements shall apply to any Unit, the Sidewalk, the vaults and the Association's Assets at the time in question.

Section 7.6 **No Partition**. The Common Elements and the Association's Assets shall remain undivided and no Unit Owner or any other Person shall bring, nor shall have the right to bring, any action for partition or division thereof, except as is expressly permitted pursuant to the terms of Article 15 hereof.

Section 7.7 **Decision as to the Common Elements, Limited Common Elements and Association's Assets**. Subject to Sponsor's Rights (which are superior and paramount over those granted to the Condominium Board and Sold Unit Owners), all decisions concerning the Permitted Use and Enjoyment of the Common Elements, the Limited Common Elements and the Association's Assets shall be made by the Condominium Board in accordance with the By-Laws. Any dispute under this Section 7.7 shall be resolved by arbitration in accordance with the By-Laws.

Section 7.8 **Business Judgment Rule**. The decisions and transactions of the Condominium Board shall have, and must be given, the equivalent status of the decisions and transactions of a cooperative housing corporation as to which the so-called "business judgment rule" articulated in Levandusky v. One Fifth Ave Corp. (75 NY2d 530 [1990]) shall apply, except said "business judgment rule" shall not apply to any decisions or transactions of the Condominium Board that will affect, directly

or indirectly, the Sponsor or other Owner of an Unsold Unit, the Sponsor's Rights or an Unsold Unit, all of which shall be subject to scrutiny and determined solely on the merits by a court, arbitration panel or other forum having jurisdiction, without any deference, weight or favorable assumption being given to the Condominium Board.

ARTICLE 8

THE COMMON INTERESTS

Section 8.1 **Statutory Method Chosen**. The Common Interest of 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 for exclusive or shared use, and the overall dimensions of the particular Unit, in accordance with Section 339-i(1)(iv) of the Condominium Act.

Section 8.2 **Common Interests**. The Common Interest of each Unit is set forth in EXHIBIT B hereto and constitutes the proportionate undivided interest of the Owner of such Unit in the Common Elements and the Association's Assets. The Common Interest appurtenant to each Unit cannot be separated from the Unit. Accordingly, the conveyance, mortgage or similar Disposition of the fee title interest in a Unit shall include and (in the absence thereof) shall conclusively be deemed to include, the Unit's Common Interest.

ARTICLE 9

CONDOMINIUM EXPENSES AND CHARGES

Section 9.1 **Condominium Expenses and Charges**. The Condominium Expenses consist of:

(a) the Common Expenses assessed to all Units Pro Rata to their respective Common Interests);

(b) the Specially Allocated Expenses assessed to only the Owner or (if more than one Owner) the Owners (Pro Rata to their respective Common Interests) for whom the Board acted or the transaction primarily benefitted in accordance with RPL §339-m; and

(c) the Administrative Expenses assessed by the Board to only one Unit for the late payment of Common Charges or Violations of the Condominium Documents (as applicable).

The Condominium Charges consist of the Common Charges assessed by the Condominium Board to all Unit Owners and the Additional Common Charges assessed by the Condominium Board to only one or more Unit Owners. The Condominium Expenses and the Condominium Charges are more fully explained in Article 8 of the By Laws.

ARTICLE 10

USES OF COMMON ELEMENTS, VAULTS, SIDEWALK AND UNIT PROPERTIES

Section 10.1 **General Requirements**. The Permitted Use and Enjoyment of the Common Elements, the vaults and the Sidewalk adjacent to the Property by each Unit Owner or only each Sold Unit Owner (as indicated), and all Unit Users of such Unit Owner or only each Sold Unit (as applicable),and the Condominium Board, and the Permitted Use and Enjoyment of each Unit or only each Sold Unit (as indicated) and its Limited Common Elements by the Owner thereof and all Unit Users of such Sold Unit, shall be in accordance with the following requirements (collectively, the "**General Requirements**"):

(a) the requirement to Use and Enjoy the Common Elements, vaults, Sidewalk and Units (or only Sold Units where indicated) and their respective Limited Common Elements for the purposes for which each is reasonably suited, capable, designed and intended, and as permitted or stated in this Declaration, the By-Laws or the Rules and Regulations, but the following uses shall not be permitted or suffered (collectively, the "**Prohibited Uses**"), whether knowingly or unknowingly):

(a-1) any use or Alteration of, or matter kept in or on, a Sold Unit or its appurtenant Limited Common Element, that, in the Business Judgment of the Board, would impair or threaten the structural integrity of the Building, or damage to the Common Elements or another Unit Property, or the life, health, safety, protection or security of Owners or Tenants of Units;

(a-2) any use that violates applicable Laws (as such Laws may change from time to time as a result of a statutory change, a zoning variance, a new or amended Certificate of Occupancy of the Building or otherwise);

(a-3) any use of, or matter kept in or on, a Sold Unit or its Limited Common Element, whether permitted or suffered, that increases the rate of insurance of the Property, or results in, or in the Business Judgment of the Board would result in, the cancellation or notice of cancellation of insurance maintained by the Board;

(a-4) any use of a Sold Unit that increases or, in the Business Judgment of the Board, would increase, the rate of insurance for the Property above the rate in effect at the date of recording the Declaration, unless the Unit Owner responsible for such increase pays the additional premium therefor as a Specially Allocated Expense;

(a-5) any use inconsistent with or in Violation of its permitted use;

(a-6) any use of, or practice permitted or suffered in, on or to a Sold Unit or its Limited Common Element, a Common Element, a vault or the Sidewalk that, in the Business Judgment of the Board, is an unreasonable and substantial annoyance or nuisance to an Owner or a Tenant of another Unit or an unreasonable, substantial and repeated interference with the peaceful

possession or proper Use and Enjoyment of a Unit or the Common Elements for their intended or permitted purposes as stated in the Condominium Documents;

(a-7) any use of a Common Element causing or comprising waste;

(a-8) any use involving the storage, purchase, sale, disposal or release or other Disposition of any hazardous, explosive, toxic or radioactive material, matter, substance or waste that is or becomes regulated under applicable Law, including: asbestos; polychlorinated biphenyls (i.e., "PCBs"); radioactive substances; petroleum, petroleum-based derivatives and hydrocarbons; urea formaldehyde; and any "hazardous substance" or "hazardous waste", as defined in and regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, 6903, 6921, et. seq., as each statute may hereafter be amended from time to time, or any other existing or hereafter enacted or promulgated new applicable federal, state or local Law, but excluding from the foregoing the following:

(a-8.1) petroleum products for mechanical Equipment of a Unit or Common Element that are properly used and stored in accordance with applicable Law or the Condominium Documents; and

(a-8.2) cleaning, heating and lubricating products in general use in first-class, high quality residential buildings located in the vicinity of the Building and similar to the Building's amenities; provided, however, such products are properly used and stored in accordance with applicable Laws);

(a-9) any use of a Unit or any portion thereof by any International Organization, unless such International Organization waives its sovereign or diplomatic immunity in conformity with the terms contained in this Declaration; and

(a-10) any change in use that would require a new or amended Certificate of Occupancy that would affect the permitted use of another Unit;

(b) the requirement to Use and Enjoy the Common Elements, the Limited Common Elements, the Sidewalk, the vaults and the Units in accordance with the Building Standard and in a manner that shall not hinder or impair the exercise of, or infringe, the Sponsor's Rights;

(c) the requirement to pay, perform, observe, fulfill and comply with the Work Requirements (if and to the full extent applicable) and all other requirements, restrictions, limitations and prohibitions expressly stated in the Condominium Documents;

(d) the requirement of a Sold Unit Owner to obtain the Discretionary Consent of Sponsor or (after Sponsor no longer owns a Unit and the Final Certificate of Occupancy of the Building is issued) the Condominium Board to Alter or otherwise change the aesthetics, architectural integrity or appearance of an exterior Building Wall, a Sold Unit's Window or Entrance Door, unless required by Laws; provided, however, such changes (including design and materials) shall be consistent in all material

respects to the original aesthetics, architectural integrity and appearance of such exterior Building Wall, Unit Window or Entrance Door as determined in the sole Business Judgment of Sponsor or (after Sponsor no longer owns a Unit and the Final Certificate of Occupancy is issued) in the sole Business Judgment of Condominium Board;

(e) the requirement of each Sold Unit Owner to not discharge, nor permit or suffer (whether knowingly or unknowingly) such Owner's Tenant to, discharge, any materials or items into, or to emanate from, such Owner's Unit into waste lines, vents or flues that causes or would reasonably expect to cause damage thereto;

(f) the requirement of each Sold Unit Owner to not, nor permit or suffer (whether knowingly or unknowingly) such Owner's Tenant to, emit fumes, vapors or odors from such Owner's Unit that would unreasonably disturb or interfere with the comforts, conveniences or Permitted Use and Enjoyment of another Owner or a Tenant of such other Owner's Unit

(g) the requirement of each Sold Unit Owner to not Install or use, nor permit or suffer (whether knowingly or unknowingly) a Tenant of such Owner's Unit to Install or use, any Facilities in or on said Owner's Unit or the Common Elements that exceeds the Building's permissible floor load or electrical capacity under applicable Law;

(h) the requirement of each Sold Unit Owner, at its Sole Cost and Expense, to Install and Maintain in its Unit, and to cause a Tenant of such Owner's Unit to Install and Maintain therein, such insulation or buffers or other material or apparatus as may be necessary to prevent the transmission from such Owner's Unit to another Unit of commercially unreasonable disturbing noise, vibration, odor, fume or other interference with another Unit's electrical, internet, television or other Communications Facilities; and

(i) until issuance of the Final Certificate of Occupancy, the requirement to obtain the Discretionary Consent of the Sponsor for any Work to be undertaken by or behalf of the Condominium Board or a Unit Owner or its Tenant that requires a Governmental Approval or a Governmental Work Permit or an application therefor.

All provisions of Condominium Documents shall be subject to compliance with the General Requirements (even though not expressly provided), which are paramount and shall govern and control. Any inconsistency or ambiguity between the General Requirements and any other provision of the Condominium Documents, shall be resolved in favor of the General Requirements.

The provisions of this Section 10.1 cannot be amended without the unanimous Discretionary Consent of all Owners and (until issuance of the Final Certificate of Occupancy of the Building) the Sponsor, duly executed, acknowledged and recorded in the Register's Office together with such Amendment.

Section 10.2 Violations and Remedies. In the event of a Violation of a General Requirement, the following Party shall exclusively have all rights and remedies available at law and in equity against

the offending Party, including the Right of Self Help (to the extent applicable) and the right to enjoin, abate or otherwise remediate the continuance or repetition of such Violation by appropriate Litigation:

(a) in the case of a Violation of a General Requirement affecting the Sponsor's Rights, only aggrieved Unsold Unit Owner (i.e., Sponsor or a Designee, as applicable);

(b) in the case of a Violation of a General Requirement affecting the issuance an extension of a Temporary Certificate of Occupancy or the Final Certificate of Occupancy of the Building, only Sponsor;

(c) in the case of a Violation of Section 10.1(d), only Sponsor or (after Sponsor no longer owns a Unit) the Condominium Board, subject to Sponsor's Right under the preceding clause (b), if applicable;

(d) in the case of a Violation of Section 10.1(i), only Sponsor;

(e) in all other cases, only the Condominium Board.

If the Condominium Board or the Sponsor is an aggrieved Party, then it shall have, and must be given, the exclusive and preferential Power to pursue said rights and remedies against the offending Party. If both the Condominium Board and the Sponsor are the aggrieved Parties, then the Sponsor shall have, and must be given, the exclusive priority and preferential Power to pursue said rights and remedies against the offending Party.

In the event of a Violation of a General Requirement and the aggrieved Party is an Unsold Unit Owner and the offending Party is the Condominium Board, all Costs and Expenses incurred by the Condominium Board in connection with such Violation shall be charged to all Unit Owners, other than the aggrieved Unsold Unit Owner, Pro Rata to their respective Common Interests.

Section 10.3 Use of Common Elements.

Section 10.3.1 Use by Unit Owners. Subject to compliance with the General Requirements, the Board's Governance Rights and all easements and rights set forth elsewhere in this Declaration or the By-Laws, and permitted Unit Changes:

(a) the Common Element are for the irrevocable, perpetual and permanent Permitted Use and Enjoyment in common by all Unit Owners and their respective Unit Users in accordance with the purposes for which they are reasonably suited, capable, designed and intended, without excluding, preventing, interfering with, hindering or infringing upon the Permitted Use and Enjoyment thereof by the other Owners or their respective Unit Users; and

(b) the Limited Common Elements are for the irrevocable, perpetual, permanent and exclusive Permitted Use and Enjoyment by only the Owner of the Unit to which such Limited Common Elements are appurtenant in accordance with the purposes for which they are reasonably suited, capable, designed and intended, without encroaching upon the rights of other Unit Owners.

If a Unit is divided into two or more Units, the Limited Common Elements appurtenant to the original Unit, or the applicable portions thereof, shall become Limited Common Elements for the irrevocable, perpetual, permanent and exclusive Permitted Use and Enjoyment by only the applicable Subdivided Unit or Units set forth in an Amendment to the Declaration implementing such division.

Section 10.3.2 Sponsor's Rights. Sponsor shall have, and must be given, the Unfettered right to use the Common Elements, including the 324 West 108th Street Public Areas and the Building Walls, and the Sidewalk for all purposes related to the Use and Enjoyment (including sales, rental, Promotion and Operation) of its Unsold Units, as more particularly set forth in Section 10.6.

Section 10.3.3 Board Governance of Common Elements. The uses and changes in uses of the Common Elements shall be determined by the Condominium Board in accordance with applicable Laws and the provisions of the Condominium Documents, subject to Sponsor's Rights. Any dispute as to the uses or changes in uses of the Common Elements shall be resolved by arbitration pursuant to the By-Laws.

Section 10.3.4 Move-In and Move-Out Uses of Common Elements. Unsold Unit Owners, Tenants of Unsold Units, and each Sold Unit Owner and such Owner's Tenant, and the respective movers of each of the foregoing, shall have, and must be given, the right to use the Common Elements (including the 324 West 108th Street Public Areas and the elevator) for the purpose of moving furniture, furnishings, belongings and other Personal Property into or out of an Unsold Unit or a Sold Unit (as applicable). The time and date of the move, the requirements to protect the Common Elements from damage and all other details with respect to the move shall be determined by Sponsor (with respect to only the Unsold Units) or the Board (with respect to only the Sold Units). The Board may adopt rules and regulations with regard to moving into and out of the Building to assure reasonable access to, and use of, other portions of the Common Elements by other Unit Users; provided, however, Unit Owners and Tenants moving into and out of Units shall be given preference over said other Unit Users and allowed reasonably prompt access to, and priority use of, the elevator and the public and Common Areas of the Common Elements to be used in connection with the move.

The Condominium Board shall not impose or collect any fee, charge or other imposition in connection with a move into or out of the Building, or such use of the Common Elements, other than a security deposit from Owners and Registered Tenants of Sold Units only (but not Unsold Units), which can be applied to pay the Costs and Expenses to Repair damage to the Common Elements attributable to such move. The unapplied amount of such security deposit shall be refunded to the applicable Owner or Registered Tenant of a Sold Unit with commercially reasonable diligence after completion of the move. The amount of the security deposit shall be determined by the Board, in its Business Judgment.

Section 10.4 New Facilities Affecting Common Elements and Sidewalk. Subject to compliance with the Work Requirements:

(a) each Unsold Unit Owner (including Sponsor), while it owns any Unsold Unit, shall have, and must be given, the Unfettered right to connect Facilities and related Lines and Conduits now or

hereafter part of such Owner's Unsold Unit to the Facilities comprising at any time the Common Elements, to thereafter Maintain, Repair, Restore and Alter such newly connected Facilities, and to reasonably access the Common Elements in order to perform the Work in connection with the foregoing;

(b) until the issuance of the Final Certificate of Occupancy of the Building, Sponsor shall have, and must be given, the Unfettered right to Install new, different and/or substitute Facilities and related Lines and Conduits in, on and along the non-public portions of the Common Elements (including the Building service rooms or other areas in the cellar, the Egress Stairs, the unutilized or underutilized portions of a Roof and its appurtenant Roof Structures, and the Building Walls) and the unexposed portions of the Common Elements (e.g., shafts, ducts, conduits, soffits, shelves, chases and chase walls), which Facilities and related Lines and Conduits:

(b-1) shall be for the common use, service and/or benefit of the Owners and Unit Users of Unsold Units, or the Building or any portion thereof; or

(b-2) shall provide telephone, television, Internet and all other kinds of communication, media and information services to Building residents and occupants or to the general public (whether via cable, satellite or other Communications Facilities); and

(c) the Condominium Board shall have, and must be given, the right to Install in or on and along, or within, the Common Elements new, different and/or substitute Facilities and related Lines and Conduits for the use, service and/or benefit of the Units or the Owners or Tenants of Units.

Section 10.5 Limited Common Elements. The Limited Common Elements shall be for the exclusive Permitted Use and Enjoyment of the Owner of the Unit to which they are appurtenant and such Owner's Unit Users in accordance with the purposes for which they are reasonably suited, capable, designed and intended. Such exclusive Permitted Use and Enjoyment of the Limited Common Elements shall nevertheless be subject to:

(a) compliance with this Declaration and the By-Laws, including the Work Requirements and other limitations, restrictions, easements and requirements contained in the Condominium Documents, all of which are superior, paramount and take preference over the right of a Unit Owner to exclusively Use and Enjoy the Limited Common Elements appurtenant to such Owner's Unit; and

(b) (in the case of only a Sold Unit, but not an Unsold Unit) the Governance Rights of the Board to amend from time to time the Rules and Regulations governing the use thereof by each Sold Unit Owner and such Owner's Registered Tenant.

Section 10.6 Sponsor's Rights to Access and Use.

Section 10.6.1 Units and Common Elements. Sponsor hereby reserves and shall have, and must be given, the Unfettered right (other than the requirement to comply with the applicable Work Requirements set forth in Section 5.7 of the By-Laws), at its Sole Cost and Expense:

(a) to access the Units and Common Elements:

(a-1) to complete the construction, equipping and outfitting of the Building (including the Units and Common Elements) in accordance with Sponsor's Plans and Specifications, or Sponsor's Plan and Sale Obligations, or Sponsor's obligations under a lease of an Unsold Unit; and

(a-2) to obtain a Final Certificate of Occupancy authorizing the use and occupancy of all Units for their permitted uses under this Declaration;

(b) to access the Common Elements and to have priority and preferential use of the Common Elements (including in particular, but not limited to, the Building Walls, the 324 West 108th Street Public Areas and the elevator), and the Sidewalk in connection with the following:

(b-1) to sell, rent, Operate, manage, use and occupy Unsold Units and in connection therewith to provide access for ingress and egress to sales and rental personnel, outside brokers, prospective Purchasers and renters, Construction Parties, decorators and other Persons authorized by Sponsor;

(b-2) to Install, Maintain, Repair, Restore and Alter Communications Facilities on Roofs and Roof Structures and in Equipment rooms and non-public portions of the Common Elements and to permit licensees to so do (as provided elsewhere in this Declaration);

(b-3) to Install, Maintain and Repair furnishings, wall and floor coverings and other Decorations in the Common Areas or public areas, such as the 324 West 108th Street Public Areas and other portions of the Common Areas;

(b-4) to Install, Maintain, Repair, Restore, Alter and operate one or more Signs, objects, structures, extensions and enclosures of any size, content, composition, material, design, illumination, character, color and/or appearance deemed appropriate by Sponsor in, on or from the Building Walls, the Sidewalk, in or on the 324 West 108th Street Public Areas, and other portions of the Common Elements;

(b-5) to station sales and rental staff in the 324 West 108th Street Public Areas and all other common or public portions of the Common Elements; and

(b-6) to Maintain, Repair, Restore and Alter Unsold Units; and

(c) to make all determinations with respect performance of matters in clauses (a) and (b) above, including:

(c-1) all Construction Parties and construction specifications, materials and other details;

(c-2) to temporarily interrupt electrical, water, plumbing, heating, cooling, hot water, ventilation and other Building Services during the course of such Work without Sponsor or its Related Parties or Construction Parties being responsible or accountable for any Claims, Litigations, Liabilities or Losses to an Owner or Tenant of a Unit or to the Condominium Board

that are attributable to such temporary interruption in Building Services; but shall give, or cause the Managing Agent to give, the affected Unit Owners reasonable advance oral or written notice before so doing (except no notice need be given in the case of an Emergency); and

(c-3) to transport, stage and store materials, Equipment and supplies on and across the Common Areas and the Sidewalk.

The Condominium Board shall cooperate with Sponsor to implement the provisions of this Section 10.6.1 pursuant to Article 21 and may not impose any fees, charges, security deposits, impositions, restrictions, requirements, work rules, insurance or other limitations on, nor prevent or unreasonably impede or interfere with, the foregoing access to, and use of, the Common Elements or the Sidewalk, or to access the Unit by Sponsor or its Construction Parties, or any Disposition of an Unsold Unit. Nevertheless, such access to, and use of, the Common Elements and the Sidewalk, and such access to Unit, may not unreasonably interfere with the Use and Enjoyment of a Unit or the permitted use of a Unit set forth in this Declaration. In addition, when such access or use ends, Sponsor shall Repair all damages caused by Sponsor's access or use and Restore the affected Common Elements, the Sidewalk or the Unit (as applicable) to as near as reasonable and economically practicable to its condition existing immediately prior to such access or use.

Section 10.6.2 Damage or Destruction. In the event of damage or destruction in connection with the access to and use of the Common Elements, the Limited Common Elements, the Units or the Sidewalk pursuant to Section 10.6.1, the only obligation of Sponsor shall be (when the use ends) to Repair the damage or destruction and Restore the affected Common Elements, the Limited Common Elements, the Units or the Sidewalk, as applicable, to as near as commercially reasonable and economically practicable to its condition existing immediately before being damaged or destroyed (including Customized Changes and Improvements). In no event will Sponsor or its Related Parties or Construction Parties be Liable for any Loss based thereon.

Section 10.6.3 Prohibitions. The Condominium Board and other Owners may not (and shall not):

(a) impose or levy any fee, charge, deposit, security, payment, imposition, restriction, limitation, Work rule, insurance or other requirement or limitation on:

(a-1) Sponsor or its Construction Parties in connection with the exercise or performance of Sponsor's Rights under Section 10.6.1; or

(a-2) Sponsor or an Unsold Unit Owner, or Unit Users of an Unsold Unit in connection with their respective Permitted Use and Enjoyment of the Common Elements pursuant to the Condominium Documents (other than regular Common Charges and Special Assessments, if any, levied on all Unit Owners in accordance with the By-Laws); or

(b) prevent , impair, impede or interfere with the use, occupancy, sale, rental, Promotion, Operation, management or other Permitted Use and Enjoyment of one or more Unsold Units or Sponsor's Rights under this Article 10.

Nevertheless, such access to, and use of, the Common Elements, the Limited Common Elements, the vaults, the Units and the Sidewalk shall comply with the applicable General Requirements and may not unreasonably and materially prevent the Permitted Use and Enjoyment of a Unit for its permitted purposes set forth in this Declaration.

Nothing herein shall prevent an Owner or such Owner's Tenant from using the Sidewalk for ordinary pedestrian passage or prevent the Owners or their respective Tenants from using the 324 West 108th Street Public Areas for ordinary ingress and egress to and from their Units.

The foregoing right reserved to Sponsor to use the Common Elements, the vaults and said Sidewalk shall be superior, paramount and take preference over the rights of the Board and other Unit Owners, including Unsold Unit Owners.

Section 10.6.4 Violations. In the event the Condominium Board or one or more Unit Owners shall Violate this Section 10.6, the aggrieved Unsold Unit Owner (i.e., Sponsor or a Designee, as applicable) shall have, and must be given, all rights and remedies available at law and in equity against the offending Board or Unit Owner (as applicable), including:

(a) the Right of Self-Help; and

(b) the right to enjoin, abate or otherwise remediate the continuance or repetition of such Violation by appropriate Litigation,

All amounts payable by Condominium Board in connection with its Violation of this Section 10.6 shall be charged to all Unit Owners, other than the Unsold Unit Owners, Pro Rata to their respective Common Interests.

The provisions of this Section 10.6 cannot be amended without the unanimous Discretionary Consent of all Owners of Unsold Units and (until issuance of the Final Certificate of Occupancy of the Building) the Sponsor, duly executed, acknowledged and recorded in the Register's Office together with such Amendment. Any purported Amendment or change thereto without such recorded Discretionary Consent shall be null and void *ab initio*.

Section 10.7 Permitted Use and Occupancy of Units. Each Unit shall be used and occupied as set forth below, subject to the General Requirements, the Sponsor's Rights, certain easements set forth in Article 11, and (in the case of Sold Units) the Board's Governance Rights. All uses of a Unit by an Owner permitted under this Declaration or the By-Laws shall automatically inure to the benefit of, and apply to, the Tenant of such Owner's Unit, subject, however, to compliance with the same restrictions, limitations, prohibitions and requirements applicable to said Owner.

Section 10.7.1 Sold Units. Each Sold Unit shall be used only as a private one-family dwelling and incidental home occupations permitted by Laws, and for no other purpose, and shall be occupied in accordance with all applicable Laws by only:

(a) the Unit's Owner or Registered Tenant; and

(b) the Household of said Owner or Registered Tenant; and

(c) the Guests of said Owner or Registered Tenant or a Household member of said Owner or Registered Tenant.

If the Owner is an Entity, then occupancy of a Sold Unit shall mean the Individual who is an officer, director, shareholder, member, partner, fiduciary, trust grantor or beneficiary, principal or governmental official or employee designated by such Entity, or said Unit's Registered Tenant, and the Household of said Individual or Registered Tenant, and the Guests of said Individual or Registered Tenant or a Household member said Individual or Registered Tenant.

The foregoing permitted Household and Guests will be permitted to occupy the Sold Unit even though the Owner or the Owner's Registered Tenant (as applicable) is absent; provided, however, at least one Household member of the Owner or said Registered Tenant aged 18 years or older is simultaneously in occupancy overnight. No transient or short-term occupancy or stay, similar to a hotel, motel, dormitory, bed and breakfast, boarding house (other than Guests) shall be accommodated in a Sold Unit or any room of a Sold Unit at any time. No Sold Unit Owner shall permit or suffer (whether knowingly or unknowingly) such Owner's Sold Unit to be used or occupied in Violation hereof.

Notwithstanding the foregoing, the Condominium Board may, in its sole and absolute discretion, grant permission for occupancy of a Sold Unit by Persons other than those set forth above, subject, however, to compliance with applicable Laws. If granted by the Condominium Board, such permission must be in writing and shall be personal to such Sold Unit Owner or the Registered Tenant of the Sold Unit (as applicable) and shall not inure to the benefit of the successors or assigns or a successor in interest of such Owner or Registered Tenant (as applicable).

Section 10.7.2 Unsold Units. None of the requirements and restrictions contained in Section 10.7.1 shall apply to Unsold Units, each of which may be used and occupied, and changed to be used, for any lawful purposes.

The permitted uses of Unsold Units include as models and offices for the sale, Promotion, rental, management and Operation of Unsold Units. Such permitted uses of the Unsold Units may be noisy, emit odors, involve heavy traffic and cause other effects that need not be compatible with the primary use of the Building for dwelling purposes.

The Condominium Board and the other Unit Owners shall not have the right to approve or consent to the Tenants or other Unit Users of Unsold Units, nor impose any restrictions, limitations, requirements with respect to, the use or any changes in the use, or Operation of, or the business conducted in, the Unsold Units, or any portions thereof, nor the use or any changes in the use, or Operation of, or

the business conducted in, the Unsold Units, or any portions thereof, nor levy any fees or charges or impositions on Sponsor or other Owners of Unsold Unit, or Unit Users of Unsold Units, in connection therewith. The Unsold Units may be occupied by any Person or Persons approved by Sponsor, regardless of any relationship or lack of relationship with Sponsor.

Sponsor and each Unsold Unit Owner shall have, and shall be given, the Unfettered right, at its Sole Cost and Expense, to change the use and configuration of its Unsold Units from time to time. The foregoing right to change the use or configuration of Unsold Units includes:

(a) the right to execute and deliver all requires Government Documents, obtain all required Governmental Work Permits and Governmental Approvals, including an amended or new Certificate of Occupancy of the Building, a letter of completion or other appropriate Government Document required for such change in use or configuration and a zoning variance to authorize such change in use or configuration; and

(b) (if required by Laws or desired) to record an Amendment to this Declaration to reflect such change in use or configuration.

In no event, however, shall a change in use or configuration of an Unsold Unit shall change or impair the Permitted Use and Enjoyment of a Sold Unit without obtaining the Discretionary Consent of the Owner thereof.

Sponsor and each Unsold Unit Owner shall have, and must be given, the exclusive Unfettered right to make all determinations concerning the use, configuration, appearance, use, occupancy, sale, rental, management and Operation of, and all Unit Changes to, such Owner's Unsold Unit and all portions thereof. The Condominium Board shall cooperate with Sponsor or other Unsold Unit Owner to implement the provisions of this Section 10.7.2 pursuant to Article 21.

Sponsor or the Unsold Unit Owner (as applicable) exercising said right to change the use of its Unsold Unit shall Indemnify the Condominium Board and the other Owners, and their respective Indemnified Parties, on the terms set forth in Article 27 from and against all Claims, Litigations, Liabilities and Losses attributable to: (a) the execution of said Government Document; or (b) the performance of the Work pursuant thereto and any defects in such Work.

Section 10.7.3 Balcony, Terrace, Juliette Terrace or Yard. A Sold Unit's Balcony, Terrace or Yard (if and as applicable) may be used only for lounging, sunbathing and other passive recreational activities, and for no other purpose, and may be used and occupied only in accordance with the same Unit Users applicable to the interior of the Unit. In connection with such permitted use:

(a) no Alteration or Decoration shall be made, nor enclosure Installed, on such outdoor area of a Sold Unit, other than a temporary structure erected in accordance with applicable Laws for religious, ceremonial or similar purposes;

(b) no satellite dishes, antennae of similar Communications Facilities may be Installed in, on or from such outdoor area of a Sold Unit; and

(c) no fence, partition, furniture, furnishing, barbecue or grilling Facility, plants, trees, flowers, hedges, shrubs or other gardening item, planters or containers, structures or other objects (collectively, "**Outdoor Objects**") shall be Installed or placed in or on said outdoor area of a Sold Unit, unless in compliance with applicable Laws and after first obtaining in each instance the Reasonable Consent of the Board and (until there are no Unsold Units and the Final Certificate of Occupancy of the Building is issued) the Discretionary Consent of Sponsor.

In no event may a Balcony, Terrace, Juliette Terrace or Yard of a Sold Unit be used for sleeping, dining or any other any type of "living" or habitable space or as an office, nor enclosed in a manner that would use, impair, infringe or otherwise affect the Excess Development Rights reserved exclusively to Sponsor without obtaining the Discretionary Consent of Sponsor.

The interior and exterior sides of a Sold Unit's windows and (if applicable) glass doors leading to its Balcony, Terrace, Juliette Terrace or Yard, are to be washed and cleaned in accordance with applicable Laws.

Section 10.7.4 Juliette Terrace. A Juliette Terrace is a decorative element of a Building Wall and may not be used by an Owner or Tenant whose Sold Unit is adjacent thereto to Install therein, thereon or therefrom:

(a) satellite dishes, antennae of similar Communications Facilities; or

(b) flower, plant or other horticulture containers, structures or other objects, unless in compliance with applicable Laws and after first obtaining the Reasonable Consent of the Board and (until there are no Unsold Units and the Final Certificate of Occupancy of the Building is issued) the Discretionary Consent of Sponsor in each instance.

Section 10.7.5 Storage Locker. A Storage Locker shall be used only for the storage of personal effects of the Owner or a Registered Tenant of a Unit to which it is appurtenant, and in no event shall any food or other perishable item, or any flammable or explosive item, or any item that would impose a health or safety threat or cause noxious odors, dirt or other sanitary problems or create a nuisance, be stored in a Storage Locker.

Section 10.7.6 General Restriction. In order to protect the structural integrity and weather tightness of the Building and the safety of lower floors as well as the Sidewalk, and to preserve the architectural and aesthetic harmony of the Building's façade and minimize possible unsightliness, a Sold Unit's private Terrace, Juliette Terrace, Balcony or Yard (if and as applicable), and related structures enclosing these outdoor areas, may not be replaced, removed or otherwise Altered or Decorated without obtaining in each instance the prior written the Reasonable Consent of the Board and (until there are no Unsold Units or the Final Certificate of Occupancy of the Building is issued, whichever is the later to occur) the Discretionary Consent of Sponsor in each instance. The foregoing restrictions do not apply to Unsold Sold Units (including their windows exterior doors, private Terrace, Juliette Terrace, Balcony or Yard, and related structures enclosing these outdoor areas, if and as applicable). Sponsor or other

Owner of an Unsold Unit shall have the Unfettered right to Alter and Decorate their respective Unsold Units, other than the requirement to comply with the applicable General Requirements set forth in Section 10.1.

Section 10.7.7 Lease Subordination. Any Lease of a Unit entered into after the recording of the Declaration automatically shall be subject to the provisions of the Condominium Documents.

Section 10.7.8 Remedies. If a Sold Unit Owner permits or suffers (whether knowingly or unknowingly) such Owner's Sold Unit to be used or occupied in Violation of the Condominium Documents, such Violation shall constitute a material Violation of such Unit Owner's obligations and shall entitle the Condominium Board to all rights and remedies available at law and in equity against:

(a) such Sold Unit Owner, including to enjoin the Violation pursuant to Section 16.2 of the By-Laws; and

(b) the offending Tenant of such Sold Unit, including suits and proceedings at law and in equity, in the name of such Sold Unit Owner, as attorney-in-fact, and for the account of said Sold Unit Owner, to terminate the offending Lease and to eject, evict or otherwise remove said offending Tenant from such Sold Unit by summary dispossess proceedings or by any other suitable action or proceedings at law or in equity, and to repossess said Sold Unit so leased or occupied by such offending.

Section 10.7.9 Limited Power of Attorney. With the intention to constitute a limited, durable power of attorney, each Sold Unit Owner, by accepting or recording a deed to a Sold Unit or otherwise succeeding to title to such Unit (whether by gift, will, inheritance, transfer, merger, consolidation, liquidation, dissolution, distribution, bankruptcy, insolvency, reorganization or otherwise) shall thereupon automatically have, and conclusively be deemed to have, irrevocably and unconditionally authorized and designated the individuals who shall from time to time constitute the Condominium Board, collectively in their capacity as Board Members, as agent and attorney-in-fact of said Sold Unit Owner, "coupled with an interest" and for valuable consideration, and with full power of substitution, to act on behalf and as agent of said Sold Unit Owner and in the name, place and stead of said Sold Unit Owner in any way in which such Owner could do if personally present, to the full extent such Owner is permitted by Law to act through an agent, having the Power with respect only to institute and prosecute through completion a Litigation and all appeals therefrom to terminate the Lease and or occupancy of an offending Tenant and to eject, evict, dispossess or otherwise remove an offending Tenant of such Owner's Sold Unit, whether by summary dispossess proceedings or otherwise, and to repossess the Sold Unit so leased or occupied by such offending Tenant in accordance with Section 10.7.8. This durable, limited power of attorney shall not be affected by the subsequent disability or incompetence of a Sold Unit Owner.

Section 10.8 Compliance with Laws. Each Unit Owner, at such Owner's Sole Cost and Expense, shall comply with all Laws applicable to such Owner's Unit Property, including Laws governing use, occupancy, Maintenance, Repair, Restoration, Alteration and Governmental Violation noted or issued with respect to such Owner's Unit Property, and a condition constituting a Governmental

Violation, whether or not noted or issued, other than a Governmental Violation or condition expressly stated in this Declaration or the By-Laws to be Repaired, cured or corrected by the Condominium Board.

Section 10.9 Violations. In the event of any Violation of the provisions of this Article 10, the rights and remedies set forth in Article 16 of the By-Laws shall apply.

ARTICLE 11

EASEMENTS, RIGHTS AND RESTRICTIONS AFFECTING THE COMMON ELEMENTS AND UNIT PROPERTIES

Section 11.1 Easements Affecting All Common Elements and Unit Properties. Subject to compliance with the General Requirements (including in particular, but not limited to, the Work Requirements), the Condominium Board and its Work Parties shall have, and must be given, an Unfettered easement and right of access to, from, on and across all portions of the Common Elements and Unit Properties for following purposes, and all portions of the Common Elements and Unit Properties shall be subject thereto:

(a) to conduct inspections for the presence of any vermin, insects or other pests and to take such measures as may be necessary to control or exterminate any such vermin, insects or other pests, and read meters and submeters;

(b) to Maintain, Repair, Restore, Alter and Operate all Common Areas and Common Facilities now or hereafter comprising the Common Elements and to provide Building Services to each and every Unit in accordance with the Condominium Documents; and

(c) to perform All Work necessary:

(c-1) to fulfill the obligations of the Board under the Condominium Documents or applicable Laws;

(c-2) to prevent damage or destruction to a Unit Property or the Common Elements, or any portion thereof, or to prevent bodily injury or death;

(c-3) to remedy violations of Governmental Authorities noted or issued, or conditions that would constitute such violations even though not yet noted or issued against:

(c-3.1) the Property that affect the Common Elements; or

(c-3.2) a Unit Property, unless timely remedied by the Owner thereof in accordance with the Condominium Documents;

(c-4) to remedy any Violation by a Unit Owner under the Condominium Documents that has continued beyond the grace or cure period, if any, provided for therein; or

(c-5) to remedy any Emergency Condition that, in the Business Judgment of the Board, threatens or affects a Unit Property, the Common Elements or a Building Service, or the life, health, safety, protection or security of one or more Owners or Tenants of Units; and

(c-6) to grant easements affecting the Common Elements or to provide Building Services to one or more Units that the Condominium Board, in its Business Judgment, deems necessary or desirable or appropriate.

Section 11.1.1 Specific Easement Affecting PH Unit. Subject only to the Work Access Requirements, the Condominium Board shall have, and must be given, an Unfettered easement and right of access to, from, on and across the PH Unit to use its Terrace to access the ladder leading up to the Main Roof, in order to allow Board to Maintain, Repair, Restore, Alter and Operate such Roof and all Facilities located thereon from time to time, and to allow the New York City Fire Department access to the Main Roof and Terrace areas.

Section 11.2 Reciprocal Easements Affecting Common Elements and Units. If at any time any Common Facilities are located in, adjacent to or bordering a Unit Property or any Unit Facilities are located in, adjacent to or bordering a Common Element or another Unit Property, then subject to compliance with the General Requirements (including in particular, but not limited to, the Work Requirements):

(a) in the case of the Common Facilities, the Condominium Board shall have, and must be given, the Unfettered easements and rights of access to, from, on and across such Unit Property to Maintain, Repair, Restore, Alter and Operate any and all such Common Facilities (including replacements of then existing Common Facilities, if any, with new Common Facilities) substantially within the confines of their then current spaces and locations, but in no event within or on any exposed area of such Unit; or

(b) in the case of the Unit Facilities, the Owner of such Unit shall have, and must be given, the Unfettered easements and rights of access to, from, on and across the Common Elements or such other Unit (as applicable) to Maintain, Repair, Restore, Alter and Operate any and all such Unit Facilities (including replacements of then existing Unit Facilities, if any, with new Unit Facilities) substantially within the confines of their then current spaces and locations, but in no event within any exposed area within the interior of a Common Area or within or on any exposed area of such other Unit Property.

Section 11.3 Easements of Support and Necessity and for Building Services. Each Unit Owner (with respect to the Owner's Unit Property) and all Unit Owners (with respect to the Common Elements) shall have, and must be given the easements and rights of subjacent support and necessity, as well as for Building Services being commonly provided or available to Units (subject to permitted temporary interruptions), and every Unit Property and the Common Elements shall be subject thereto.

Section 11.4 Easements Allowing Encroachments. Each Unit Property and the Common Elements shall have, and must be given (and every Unit and Common Element shall be subject to) easements and rights for the existence, continuation and Maintenance of encroachments by any Unit on another Unit and/or a portion of the Common Elements, or an encroachment by a portion of the Common Elements on any Unit and/or other portions of the Common Elements, for so long as the Building or the affected Unit or Common Element (as applicable) shall stand, if and to the extent now existing or

hereafter arising as a result of: (a) the Building or any portion thereof settling or shifting naturally; or (b) a Maintenance, Repair, Restoration, Alteration or other Work by the Condominium Board or a Unit Owner performed in accordance with this Declaration and the By-Laws, whether following a Casualty, or a Taking by condemnation or eminent domain or otherwise.

Section 11.5 Statutory and Recorded Easements. In addition to the specific easements reserved and granted in this Articles 11 and elsewhere in this Declaration and the By-Laws, the Property and every portion thereof (including the Common Elements and the Units) shall be subject to all easements and rights of use and access required by, or set forth in, the Condominium Act and other applicable Laws or any easement recorded against the Property prior to the recording of this Declaration or recorded thereafter in accordance with this Declaration or the By-Laws.

Section 11.6 Emergency Easements.

Section 11.6.1 Emergency Egress. In the case of an Emergency, all Unit Users at the time in question are hereby granted, and must be given, an easement and right of access for egress to, from, on and across the Common Areas and (to the extent reasonably necessary) another Unit leading to a street as and to the extent required by fire safety requirements of the New York City building code and other applicable Laws or this Declaration, and such Common Areas and every Unit Property shall be subject thereto.

Section 11.6.2 Emergency Access to Remedy Emergency Condition. In the case of an Emergency Condition in or on:

(a) a Unit Property that, in the Business Judgment of the Board, impacts or threatens the Common Elements or another Unit Property or the Owner or the Unit Users of a Unit, the Condominium Board is hereby granted, and must be given (and every Unit shall be subject to), an easement and right of access for ingress and egress to, from, on and across said Unit to the extent reasonably necessary in order to abate, mitigate and otherwise remedy such Emergency Condition, without advance Notice, without the Board or its Related Parties or Construction Parties being Liable or guilty in any manner of trespass or otherwise, and without giving the applicable affected Owner or its Tenant an opportunity to perform Work to abate, mitigate or otherwise remedy such Emergency Condition; or

(b) a Common Element that, in the Reasonable Judgment of an Owner, impacts or threatens such Owner's Unit Property or the Unit Users of such Owner's Unit, said Owner shall promptly notify the Condominium Board or the Managing Agent, or its property manager, by telephone and (if unsuccessful) by email, of the Emergency Condition, and upon any of same learning thereof, it shall undertake with prompt diligence to implement such remedial action as necessary to abate, mitigate and otherwise remedy such Emergency Condition.

All applicable Work Requirements shall apply to access a Unit Property and to the Work undertaken by or on behalf of the Board pursuant to this Section 11.6.2.

Section 11.7 Utility Easements and Rights.

Section 11.7.1 Grant of Utility Easements. Sponsor hereby grants to the Condominium Board (on behalf and as agent of all Owners) and reserves for itself (each a "**Utility Grantor**") the Unfettered Power to grant Utility Easements and Rights to Utility Providers for Utility Services to the Common Elements and to all or portions of one or more Units that the Condominium Board or Sponsor (as applicable), in its Business Judgment, shall determine to be necessary, desirable or appropriate for the permitted Use and Enjoyment of all or part of the Common Elements or the Building Services to be provided to all or portions of one or more Units.

The foregoing Utility Easements and Rights include the Power of each Utility Grantor to grant such additional, new and substitute Utility Easements and Rights for Utility Services from time to time, and to relocate then existing Utility Services to other portions of the Common Elements.

Section 11.7.2 Utility Provider Easement. Subject to compliance with the following Section 11.7.3, each Utility Provider of a Utility Service to the Building or any portion thereof or to all or portions of one or more Units, and such Utility Provider's Construction Parties, are hereby granted (and must be given) an easement and right of reasonable access to, from, on and across the Property, including the Building and the Units, and any portion of each thereof, to the extent reasonably necessary to Install, Maintain, Repair, Restore, Alter and Operate all Facilities related to such Utility Service (including reading meters and submeters).

Section 11.7.3 Utility Obligations and Requirements. The Utility Grantor shall cause the Utility Provider to exercise and perform the easement and right of access under Section 11.7.2 in accordance with all applicable Work Requirements.

Section 11.7.4 Liabilities for Damage or Destruction. With respect to any damage or destruction caused by the exercise of said access easement or the performance of Work by the Utility Provider's Construction Parties or any defects in such Work, the Responsible Party obligated to Maintain the damaged area or Facility shall, for the account and at the expense of the Utility Grantor, within a commercially reasonable period, Repair with continuity to completion, the damaged or destroyed area and any damaged or destroyed Facilities (including Customized Changes and Improvements) to as near as commercially reasonable and economically practicable to the condition existing immediately prior to being damaged or destroyed. The Utility Grantor shall reimburse the Responsible Party (i.e., the Board in the case of damage or destruction to the Common Elements or the applicable Owner in the case of damage or destruction to such Owner's Unit Property) for the Costs and Expenses paid or incurred by said Responsible Party in connection therewith.

The Utility Provider shall be Liable, jointly and severally, with such Utility Grantor for all amounts owed hereunder. If a Tenant is expressly permitted in the Lease to engage such Utility Provider, the Owner of the Unit shall be Liable, jointly and severally, with said Tenant for the amounts owed hereunder. All amounts payable by the Condominium Board hereunder shall be included in the Common Expenses and charged to all Owners Pro Rata to their respective Common Interests or charged to only

the Owner or (if more than one Owner) the Owners (Pro Rata to their respective Common Interests) for whom the Utility Service solely or primarily benefits (as applicable) as a Specially Allocated Expense, as indicated in the text.

Section 11.8 Sponsor's Easements.

Section 11.8.1 Easements. Subject to Section 11.8.2, Sponsor hereby reserves (and must be given), Unfettered easements and rights of access (for ingress and egress) to, from, on and across, and for the preferential use of:

(a) the Common Elements (including in particular, but not limited to: the 324 West 108th Street Public Areas, the elevator, the Egress Stairs, the Building Walls, the Roofs and Roof Structures, the Bulkheads; and all other public and non-public portions of the Common Elements) and the Sidewalk in connection with:

(a-1) the use, occupancy, sale, rental, management, Operation and Promotion of Unsold Units, including;

(a-1.1) to Install, Maintain, Repair and Alter furnishings, wall and floor coverings and other Decorations in and on the 324 West 108th Street Public Areas and other portions of the Common Elements;

(a-1.2) to station sales and rental staff in the 324 West 108th Street Public Areas;

(a-1.3) to Install, Maintain, Repair, Restore and Alter in and on the 324 West 108th Street Public Areas and other portions of the Common Elements and the Sidewalk, one or more Signs of any size, content, composition, material, color, design, illumination, character and appearance;

(a-1.4) to provide access to the following persons authorized by Sponsor or an Unsold Unit Owner (as applicable): sales and rental personnel; cooperating brokers; prospective Purchasers and prospective renters of Unsold Units; and Construction Parties;

(a-1.5) to perform Plan and Sale Obligations and Tenant Obligations, and to make Unit Changes to Unsold Units pursuant to Article 12;

(a-1.6) to newly Install and connect to any Building Facilities comprising the Common Elements any Facilities now or hereafter serving any Unsold Unit Property or any portion thereof; and

(a-1.7) to thereafter Maintain, Repair, Restore, Alter and Operate such newly installed and connected Facilities; and

(b) the Common Elements and (to the extent reasonably necessary) each and every Unit Property in connection with the following:

(b-1) the exercise and performance of Sponsor's Rights under the Plan, this Declaration and the By-Laws, including the right to Use and Enjoy the Common Elements and Unsold Units pursuant to Articles 10 and 11; and

(b-2) to rehabilitate, construct, equip, outfit and otherwise complete the Building to the extent necessary for the issuance of a Final Certificate of Occupancy authorizing the use of the Units for the purposes set forth in the Plan and herein, whether before or after the First Unit Closing;

(b-3) to store, transport and stage materials, supplies, Equipment and debris on, over and across the elevator, 324 West 108th Street Public Areas and other portions of the Common Elements; and

(b-4) to temporarily interrupt water, heating, plumbing, electric and other Building Services in connection with the foregoing.

Section 11.8.2 Requirements. The Unfettered easements and rights of Sponsor in Section 11.8.1 may be exercised and performed the following requirements (in addition to the General Requirements):

(a) to endeavor, to the extent commercially reasonable and economically practicable, to minimize inconveniencing residents of the Building. Sponsor's Working Parties shall have, and must be given, the right to perform Work on Mondays through Fridays from 8:00 a.m. to 5:00 p.m., except that especially noisy Work will not begin before 9:00 a.m., and on Saturdays from 9:00 a.m. to 1:00 p.m., except further that Work may be performed at any time and on any Day in the case of an Emergency, including to correct a condition that, in Sponsor's Business Judgment, threatens the life, health, safety, security or protection of Unit Users, or to protect property from damage or destruction, or to provide a required or necessary Building Service; and

(b) no new Equipment (other than replacements of existing Equipment or Equipment to be Installed in accordance with Sponsor's Plans and Specifications) shall be installed after the issuance of a Final Certificate of Occupancy of the Building that encroaches in or on the 324 West 108th Street Public Areas.

Section 11.8.3 Paramount and Preferential. The Unfettered easements and rights of Sponsor in Section 11.8 are superior, paramount and take preference over the easements and rights of the Condominium Board and other Unit Owners to use the Common Elements, but shall be exercised in a commercially reasonable manner so as not to unreasonably and materially interfere with the permitted Use and Enjoyment of an occupied Sold Unit in accordance with the Declaration and By-Laws.

Section 11.9 Sponsor's Right to Grant Easements, Licenses and Leases. For so long as Sponsor owns any Unsold Unit, Sponsor shall have the right, on behalf of all Unit Owners, to grant easements, licenses and leases to all or any portion of the Common Areas of the Property as Sponsor deems necessary or desirable to: (a) properly Operate and Maintain the Common Elements; (b) promote and protect the general health, safety, security, protection or welfare of Owners or occupants of one or

more Units; (c) to comply with applicable Laws or requirements of a Governmental Authority having jurisdiction; or (d) to Install, Maintain, Repair, Restore and Operate Communications Facilities and other Utility Services.

However, no easements, licenses and leases may be granted that would with reasonable likelihood unreasonably interfere with the use or occupancy of Units for their permitted purpose under this Plan. A utility provider or other person who is granted an easement, license or lease and its Construction Parties shall have and be given reasonable access to, from, over, across and on the Units and the Common Elements in connection with Work to be performed in furtherance thereof.

Section 11.10 Damage or Destruction. If and to the extent required or necessary to implement the easements and rights granted to the Condominium Board or a Unit Owner under this Article 11, such Party shall have the right to remove finishes, coverings or other Decorations on, and to penetrate, remove and open the Common Elements enclosing the affected Unit (e.g., Boundary Floors, Boundary Walls, Boundary Ceilings, shelves, coves, dropped ceilings, ducts and soffits), and the Unit's interior partitions, and to temporarily relocate the affected Unit's cabinets and fixtures and other Facilities, all in accordance with the applicable Work Requirements. Upon completion of the Work:

(a) (if the Board is implementing the easement and right) the Condominium Board, as a Common Expense assessed to all Owners Pro Rata to their respective Common Interests, shall Repair the damage and destruction to the affected Unit and said Common Elements attributable to such Work with commercially prompt diligence and continuity to completion, and in accordance with all applicable Work Requirements, and Restore the affected Unit and said Common Elements, and their respective finishes, coverings and Decorations (including all Customized Changes and Improvements) to as near as commercially reasonable and economically practicable to their former condition and finish immediately before being damaged or destroyed, and return any relocated cabinets and fixtures and other Facilities to their original locations; or

(b) (if a Unit Owner is implementing the easement and right) the Owner of the affected Unit or the Board in the case of the affected Common Elements, for the account and at the expense of the Owner implementing said easement and right, shall Repair the damage and destruction attributable to such Work in accordance with all applicable Work Requirements, and Restore the affected Unit and said Common Elements, and their respective finishes, coverings and Decorations (including all Customized Changes and Improvements) to as near as commercially reasonable and economically practicable to their former condition and finish immediately before being damaged or destroyed, and return any relocated cabinets and fixtures and other Facilities to their original locations.

The Payment and Collection provisions of Section 1.9 shall apply to all amounts to be reimbursed to the affected Owner or the affected Board (as applicable) under clause (b) above. Nothing herein shall be construed to permit the Condominium Board or an Owner or a Tenant to undertake any Work in Violation of this Declaration or the By-Laws, including the requirement to obtain any required prior

written Discretionary or Reasonable Consent of the Board, or the affected Owner or Sponsor, if and as set forth in this Declaration or the By-Laws.

Section 11.11 Violations. In the event of any Violation of the provisions of this Article 11, the rights and remedies set forth in the provisions of Article 16 of the By-Laws shall apply.

ARTICLE 12

CHANGES IN UNITS AND COMMON ELEMENTS

Section 12.1 Changes. Each and every Unsold Unit Owner (including Sponsor) and Sold Unit Owner shall have, and must be given, the right, on the terms set forth in Section 12.2, to make the following changes to each Unit owned by said Owner (each, a "**Unit Change**"):

(a) the right to divide Owner's Unit into two or more Units (a "**Unit Division**") and in connection therewith:

(a-1) to erect new Boundary Walls enclosing or separating, the Units established on such Unit Division (each, a "**Subdivided Unit**"), which Boundary Walls shall constitute Common Elements;

(a-2) to Alter the Facilities of the original Unit being divided and construct new Facilities to serve each Subdivided Unit; and

(a-3) to apportion the Common Interest of the Unit being divided among the resulting Subdivided Units;

(b) the right to combine two or more of Owner's Units and recombine two or more of Owner's Subdivided Units (each, a "**Unit Combination**"), horizontally and vertically, into one integrated Unit (a "**Combined Unit**") and in connection therewith:

(b-1) to remove the Boundary Walls separating the Units being combined horizontally;

(b-2) to pierce, remove and leave openings in the Boundary Floors and Boundary Ceilings separating the Units being combined vertically;

(b-3) to Alter the Facilities that are part of the private and exclusive ownership and possession of the original Units being combined and construct new Facilities to serve the Combined Unit; and

(b-4) to allocate to the Combined Unit the aggregate of the Common Interests of the Units being combined;

(c) the right to reconfigure portions of two or more of Owner's Units (a "**Unit Reconfiguration**"), horizontally and vertically, into reconfigured Units (each, a "**Reconfigured Unit**") and in connection therewith:

(c-1) to raze, remove and relocate the Boundary Walls separating Owner's Units being reconfigured horizontally;

(c-2) to pierce, remove and leave openings in the Boundary Floors and Boundary Ceilings separating Owner's Units being reconfigured vertically;

(c-3) to Alter the Facilities that are part of the private and exclusive ownership and possession of the original Units being reconfigured and construct new Facilities to serve each Reconfigured Unit; and

(c-4) to apportion among the resulting Reconfigured Unit the Common Interests of the Units being reconfigured Units;

(d) the right to increase the overall size of Owner's Unit (a "**Unit Expansion**") by razing, removing and relocating the Boundary Walls separating Owner's Unit from a portion of a Common Area and integrating and enclosing within the interior of Owner's Unit such portion of the Common Area, which enclosed Common Area shall thereupon automatically become a perpetual, permanent and irrevocable easement for the exclusive Use and Enjoyment by the Owner and all succeeding Owners of such Unit; and

(e) the right to alter Owner's Unit (each, a "**Unit Alteration**"), to change the number of rooms and bathrooms, the layout, the configuration, and the Unit's Facilities.

The Facilities affected by a Unit Change shall automatically become part of a Unit involved in the Unit Change if they are Accessible from within the interior of the Unit or part of the Common Facilities if they are Inaccessible from within the interior of a Unit.

Section 12.2 **Terms of Unit Changes**. All Unit Changes shall comply with the following terms:

(a) until the issuance of the Final Certificate of Occupancy of the Building, all Unit Changes that require an application to a Governmental Authority or the issuance of a Governmental Work Permit or other Governmental Document shall not be undertaken without the Discretionary Consent of Sponsor (including, if given, such terms and conditions as Sponsor may require in its sole and absolute discretion):

(b) all Unit Changes shall comply with the applicable General Requirements, which include the applicable Work Requirements;

(c) each Unit Division, Unit Combination and Unit Reconfiguration shall be made pursuant to an Amendment to the Declaration and an Amendment to the Floor Plan(s) of the Unit or Units involved in such Unit Division, Unit Combination or Unit Reconfiguration (as applicable), duly executed, acknowledged and recorded and filed in the Register's Office at the Sole Cost and Expense of the Owner or Owners making such Unit Change in accordance with Section 13.5 of the By-Laws;

(d) the Common Interest of a Unit involved in a Unit Division or a Unit Reconfiguration shall be apportioned between or among the resulting Subdivided Units or Reconfigured Units Pro Rata to the square footages of the Subdivided Units involved in such Unit Division or the Reconfigured Units involved in such Unit Reconfiguration; provided, however, that the aggregate Common Interests of all Subdivided Units or all Reconfigured Units shall equal exactly the Common Interest of the Unit being divided or the aggregate of the Units being reconfigured;

(e) the Common Interest of a Unit involved in a Unit Combination shall equal exactly the aggregate of the Common Interests of the Units being combined;

(f) the Common Interests of all Units following a Unit Division, Unit Combination or Unit Reconfiguration shall total one hundred percent (100%);

(g) no Unit Change shall:

(g-1) change or affect the floor area or size of another Unit or penetrate the interior of another Unit (that is, the space within the Unit's enclosing Boundary Walls, Boundary Floors and Boundary Ceilings) without obtaining the Discretionary Consent of the Owner of such affected Unit, duly executed, acknowledged and recorded with the Amendment implementing the Unit Change;

(g-2) change or affect a Building Service to another Unit by more than a *de minimis* extent or the Common Elements serving another Unit for their intended purposes without obtaining the Discretionary Consent of the Owner of such affected Unit, duly executed, acknowledged and recorded with the Amendment implementing the Unit Change;

(g-3) change or affect the Common Interest of another Unit without obtaining the Discretionary Consent of the Owner and any mortgagee of such affected Unit, duly executed, acknowledged and recorded with the Amendment implementing the Unit Change;

(g-4) use, impair, infringe or otherwise affect the Excess Development Rights without obtaining the Discretionary Consent of Sponsor, duly executed, acknowledged and recorded with the Amendment implementing the Unit Change; or

(g-5) prevent or unlawfully impair legal access by another Unit to Egress Stairs, the elevator or the 324 West 108th Street Public Areas;

(h) no license or use fee or rental or other charge (other than the regular Common Charges and Special Assessments, if any, levied on all Unit Owners) may be levied or imposed by the Condominium Board in connection with any wall, space, Boundary Wall, Floor or Boundary Ceiling or other portion of the Common Elements affected by a Unit Change made pursuant to this Article 12;

(i) each Unit Change shall be made at the Sole Cost and Expense of the Owner or Owners undertaking the Unit Change;

(j) the obligations, requirements, limitations and restrictions applicable to the use, occupancy, Maintenance, Repair, Restoration and Alteration of a Unit shall likewise apply to a Common Area permitted to be enclosed within the interior of a Unit pursuant to Section 12.1(d);

(k) the Owner making a Unit Change (including an Unsold Unit Owner) shall Indemnify the Condominium Board and all other Unit Owners, and their respective Indemnified Parties, on the terms set forth in Article 27, from and against all Claims, Litigations, Liabilities and Losses arising from a Unit Change or the Work in performing such Unit Change and any defects in such Work;

(l) pursuant to Article 21, the Condominium Board shall reasonably cooperate with the Owner or Owners making a Unit Change in accordance with this Article 12;

(m) any Unit Change requiring an application to a Governmental Authority for the issuance of a Governmental Work Permit or other Governmental Document shall be signed by only the following:

(m-1) in the case of a Sold Unit, the Condominium Board only (subject to the following clause (m-2)); or

(m-2) in the case of an Unsold Unit or a Unit Change to a Sold Unit pursuant to Sponsor's Plan and Sale Obligations, Sponsor or a Sponsor Board Member, in the name and as an authorized signatory of the Board;

(n) all Unit Changes made by Sponsor to its Unsold Units or pursuant Sponsor's Plan and Sale Obligations shall not require:

(n-1) the consent of the Condominium Board or any Unit Owners or their respective mortgagees or lienors;

(n-2) complying with any regulations, rules or other requirements of the Condominium Board for Unit Alterations or other Unit Changes;

(n-3) paying any kind of fee, charge or imposition of the Condominium Board or its Managing Agent or attorneys or other professionals or consultants; and

(n-4) the plans or specifications of the proposed Unit Change being submitted to, or reviewed, supervised or monitored by, the Condominium Board or an architect, engineer or other professional or consultant chosen by the Condominium Board; and

(o) no Unit Change to a Sold Unit shall be undertaken that requires an application to a Governmental Authority for the issuance of a Governmental Work Permit or other Governmental Document without the Owner of such Sold Unit first signing, notarizing and submitting to the Board an Alteration Agreement for such Unit Change, in form and content required by the Board, together with:

(o-1) the plans and specifications of the Unit Change;

(o-2) such insurance certificates or policies and endorsements, and other documents, instruments as the Board shall require; and

(o-3) payments (in the form and to the order required by the Board) for fees, charges, security or otherwise, as required by the Board.

Section 12.3 **Violations**. In the event of any Violation of the provisions of this Article 12, the aggrieved Party shall have, and must be given, all rights and remedies set forth in Article 16 of the By-Laws.

ARTICLE 13

BOARD ACQUISITION OF UNITS AND PERSONAL PROPERTY

Section 13.1 **Authority for Acquisition**. The Condominium Board is hereby granted the Power on behalf and as agent of the Unit Owners, in the name of the Condominium Board or in the name of its Affiliated Nominee or Designee or (in the case of the exercise of the Right of First Refusal) by either an Affiliated or non-Affiliated Nominee or Designee of the Board as provided in Article 15 of the By-Laws):

(a) to accept a surrender of, and thereby acquire title to, a Unit and its appurtenant Common Interest from any Unit Owner who elects to surrender the Owner's Unit and its appurtenant Common Interest pursuant to Section 339-x of the Condominium Act, but subject to the terms of Section 8.7 of the By-Laws;

(b) to purchase and acquire title to a Unit and its appurtenant Common Interest as a result of:

(b-1) the exercise of a Right of First Refusal of the Condominium Board, as provided in Article 15 of the By-Laws; or

(b-2) a foreclosure of the Board's lien for unpaid Common Charges pursuant to the By-Laws and Section 339-aa of the Condominium Act or by a deed given in lieu of such foreclosure;

(c) to Lease a Unit as a result of the exercise of said Right of First Refusal; and

(d) to purchase, Lease or otherwise acquire or hold real property, Personal Property and assets pursuant to Section 7.5 above and Article 2 of the By-Laws.

Nothing contained in this Section 13.1 shall, and shall not be construed to, impair, prevent or prejudice the right of a holder of a Permitted Mortgage to pay any sum of money or to perform any act on behalf of the Owner of the Unit encumbered by such holder's Permitted Mortgage, which the Condominium Board shall accept with the same force and effect as if the same were paid or performed by said Owner in accordance with Section 15.14.1 of the By-Laws.

Section 13.2 **Authority for Dispositions**. The Condominium Board, on behalf and as agent of all Unit Owners, is hereby granted the further Power to make all Dispositions whatsoever with respect to each Unit acquired, purchased or Leased by the Condominium Board or its Affiliated Nominee or

Designee pursuant to Section 13.1 (but not to cast the votes appurtenant to a Unit owned by the Condominium Board or its Affiliated Nominee or Designee), including the following:

(a) to hold, Lease and Operate such Unit and its Facilities;

(b) (in the case of a Unit acquired or purchased) to mortgage and grant security interests in such Unit and its appurtenant Common Interest, subject to obtaining the Discretionary Consent of Sponsor during only the Sponsor Veto Control Period;

(c) (in the case of a Unit acquired or purchased) to offer and contract for sale at public or (at the option and discretion of the Condominium Board) private sale, on terms and conditions determined by the Condominium Board (in its sole Business Judgment), and convey such Unit and its appurtenant Common Interest; and

(d) to make such other Dispositions of such Unit and its appurtenant Common Interest as may be determined by the Condominium Board, in its sole Business Judgment (but not to cast the votes appurtenant to a Unit owned by the Condominium Board or its Affiliated Nominee or Designee).

The Condominium Board shall have the Power to make all Dispositions of Personal Property and chattel real purchased, Leased or otherwise acquired, held or Operated by the Condominium Board or its Affiliated Nominee or Designee pursuant to Section 13.1.

Section 13.3 Included in Association's Assets. Each Unit and all Personal Property purchased, Leased or otherwise acquired, held or Operated by the Condominium Board (or its Affiliated Nominee or Designee) shall be part of the Association's Assets and all Owners shall conclusively be deemed to have irrevocably and unconditionally waived all rights of partition, use and occupancy thereof.

Section 13.4 Allocation of Costs and Expenses. The purchase price and related acquisition expenses payable by the Condominium Board (or its Affiliated Nominee or Designee) to purchase, acquire, finance or Lease a Unit, or to purchase, acquire, finance or Lease Personal Property, and all Costs and Expenses to own, Lease, hold, finance, Maintain, Repair, Restore, Alter and Operate a Unit or Personal Property (including the rent, fee, charge and other related expenses), and to make any Disposition of such Unit or Personal Property, shall be a Common Expense and charged to all Owners Pro Rata to their respective Common Interests, except the amounts paid by the Condominium Board (or its Affiliated Nominee or Designee) to purchase a Unit pursuant to the Board's Right of First Refusal shall not be assessed to the Owner selling its Unit.

ARTICLE 14

POWER OF ATTORNEY FROM EACH UNIT OWNER

Section 14.1 Definitions. The following terms shall have meanings indicated:

(a) "**Attorney-in-Fact**": The Party indicated is appointed to act as agent and attorney-in-fact of a Principal pursuant to a Limited Power of Attorney for only the matter, transaction, action and/or Disposition indicated therein.

(b) "**Durable**": The Limited Power of Attorney shall be forever lasting and shall not be affected by the subsequent disability or incompetence of a Principal.

(c) "**Limited Power of Attorney**": An irrevocable, Durable appointment of the Party indicated to act as Attorney-in-Fact of Principal, "coupled with an interest", for valuable consideration and with full Power of Substitution, and in the name, place and stead of said Principal in any way in which said Principal could do if personally present, to the full extent said Principal is permitted by Law to act through an agent, having the Power with respect only to the matter, transaction, action and/or Disposition specified therein.

(d) "**Power of Substitution**" means the full and unqualified authority of each Attorney-in-Fact to delegate any or all of the Powers given or conferred upon an Attorney-in-Fact to any Person or Persons whom such Attorney-in-Fact shall select.

(e) "**Principal**" means the Party appointing another specified Party to act as its Attorney-in-Fact pursuant to a Limited Power of Attorney.

Section 14.2 Grant of Limited Power of Attorney. Sponsor (as the initial Owner of all Units) does hereby irrevocably grant, and each and every Owner of a Unit at the time in question (by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise) shall thereupon automatically and conclusively be deemed to have irrevocably and unconditionally granted, a Limited Power of Attorney to each of the Parties indicated, with respect only to all of those matters, transactions and Dispositions specified, in Section 14.3; subject, however, to obtaining the Discretionary or Reasonable Consent (as the case may be) of the Condominium Board and/or the Sponsor, if and to the extent expressly required elsewhere in this Declaration or the By-Laws.

Section 14.3 Matters, Transactions and Dispositions. Pursuant to this Declaration or the By-Laws and the Limited Power of Attorney granted in Section 14.2, each Principal (i.e., the Sponsor and/or each Owner, as applicable) hereby appoints the following Parties to act as its Attorney-in-Fact with respect only to the matters, transactions and Dispositions specified below, without further authorization of a Principal:

(a) Sponsor, each Unsold Unit Owner and the Persons who shall from time to time constitute the Condominium Board (collectively, in their capacity as Board Members, and by resolution adopted by a majority of Board Members attending a duly constituted Board meeting at which a quorum is present), separately, as Attorney-in-Fact of Principal, with respect only: to prepare and duly execute,

acknowledge and record in the Register's Office Amendments to the Condominium Documents in accordance with Article 13 of the By-Laws;

(b) Sponsor and the Persons who shall from time to time constitute the Condominium Board (collectively, in their capacity as Board Members, and by resolution adopted by a majority of Board Members attending a duly constituted Board meeting at which a quorum is present), separately, as Attorney-in-Fact of Principal, with respect only: to grant Utility Easements and Rights in accordance with Section 11.7.1;

(c) Sponsor and the Persons who shall from time to time constitute the Condominium Board (collectively, in their capacity as Board Members, and by resolution adopted by a majority of Board Members attending a duly constituted Board meeting at which a quorum is present), as Attorney-in-Fact of Principal, with respect only to: prepare and duly execute, acknowledge and record in the Register's Office a correction Amendments to the Declaration and By-Laws required by an Institutional Lender, Governmental Authority or title insurer, or to correct inconsistencies, ambiguities or scrivener's errors, in accordance with, and as more fully provided in, Article 13 of the By-Laws;

(d) the Persons who shall from time to time constitute the Condominium Board (collectively, in their capacity as Board Members, and by resolution adopted by a majority of Board Members attending a duly constituted Board meeting at which a quorum is present), as Attorney-in-Fact of Principal, with respect only to: exercise, perform, implement and conduct all affairs, business and transactions of the Condominium Association granted to the Board under the Condominium Documents, which include the following Powers:

(d-1) to acquire and purchase or Lease any Sold Unit, together with its appurtenant Common Interest, from any Sold Unit Owner desiring to sell, convey, transfer, assign or Lease the same in accordance with the Board's Right of First Refusal, upon such terms and conditions as shall be approved by the Board, in its discretion, but subject to obtaining the consent of a majority in Common Interest of those Unit Owners attending a duly constituted meeting of Unit Owners called for such purpose at which a quorum is present;

(d-2) to acquire any Unit, together with its appurtenant Common Interest, whose Owner elects to surrender the same pursuant to Section 13. 1 hereof or Section 8.7 of the By-Laws;

(d-3) to acquire and purchase any Unit, together with its appurtenant Common Interest, at a sale following a foreclosure of the Board's lien for unpaid Common Charges pursuant to the By-Laws and Section 339-aa of the Condominium Act, or to so acquire a Unit and its appurtenant Common Interest by deed given in lieu of such foreclosure, and in either case upon such terms and conditions as shall be approved by the Board, in its sole Business Judgment;

(d-4) to acquire, purchase, Lease, hold and Operate Personal Property and chattel real, pursuant to Section 13.1 or Section 2.4.2 of the By-Laws, upon such terms and conditions as shall be determined by the Board, in its sole Business Judgment; and

(d-5) to convey, assign, transfer, sell, Lease and otherwise deal with any such Unit or Personal Property or chattel real so acquired, purchased, Leased, held or Operated pursuant to the foregoing upon such terms and conditions as shall be determined by the Board, in its sole Business Judgment, without obtaining any further authorization by the Unit Owners, but not to vote the Common Interest appurtenant to a Unit owned by the Board or its Affiliated Nominee or Designee;

(d-6) to incur debt and to mortgage, finance, refinance any Unit or Personal Property or chattel real acquired, purchased, Leased or held by the Board in accordance with the By-Laws, upon such terms and conditions as shall be determined by the Board, in its sole Business Judgment; and

(e) to execute, acknowledge, deliver and, if necessary, record or file any Government Document, Litigation Document, application, declaration, easement, agreement or other document or instrument, or any change thereto, affecting:

(e-1) the Condominium Association, the Property, the Common Elements or the Association's Assets, or a portion of any of the foregoing, that the Condominium Board deems necessary or appropriate or is required to so do under this Declaration or the By-Laws in connection with the following:

(e-1.1) to comply with any Law (including a zoning resolution or variance, or a requirement of a Governmental Authority, such as the DOB, the City Planning Commission or the Board of Standards and Appeals); or

(e-1.2) to permit or facilitate the Permitted Use and Enjoyment of all or part of the Common Elements, the Association's Assets or the Units by the respective Owners and Tenants of Units in accordance with the Condominium Documents; or

(e-1.3) a Unit (including a Sponsor Unit or an Unsold Unit) or its appurtenant Limited Common Elements that the Owner of such Unit requests, if required by this Declaration or the By-Laws or if deemed appropriate by the Condominium Board, in its sole Business Judgment; and

(f) Sponsor, as Attorney-in-Fact of the Condominium Board and all Owners, with respect only to exercise and implement the Excess Development Rights in accordance with Article 28.

ARTICLE 15

TERMINATION OF CONDOMINIUM

Section 15.1 Condominium Termination Events. Subject to the rights of Institutional Lenders holding "Federally Financed Permitted First Mortgages" (as defined and provided below) and Section 15.2, the Condominium shall continue until the occurrence of any of the following events ("**Condominium Termination Events**"):

(a) a Substantial Taking of the Property by condemnation or eminent domain or an Insubstantial Taking and not less than 80% in number and Common Interest (fractions shall be rounded down) of all Owners vote or consent in writing (duly signed, acknowledged and recorded in the Register's Office) to withdraw the remaining portion of the Property from the Condominium Act; or

(b) a withdrawal of the Property from the Condominium Act authorized by not less than 80% in number and Common Interest (fractions shall be rounded down) of all Unit Owners:

(b-1) by vote cast by written ballot at a meeting of Unit Owners at which a quorum is present, duly constituted and called for such purpose; or

(b-2) in writing (duly signed, acknowledged and recorded in the Register's Office) in lieu of such meeting,

in either such case Section 15.2 shall apply; provided, however, that a vote of a Unit Owner in favor of withdrawal shall not be effective or counted without obtaining the Discretionary Consent of the holder of each Registered Mortgage on such Owner's Unit, if such Registered Mortgage so expressly provides; and provided further that Sponsor and all other Owners of Unsold Units (if any) shall not vote its interests appurtenant to any Unsold Unit for withdrawal unless at least 80% in number and Common Interest (fractions shall be rounded down) of all other Unit Owners have voted in favor of such withdrawal, at which time Sponsor and said other Owners of Unsold Units may vote either in favor of, or against, withdrawal from condominium ownership, as each sees fit; or

(c) a Substantial Casualty and not less than 80% in number and Common Interest (fractions shall be rounded down) of all Unit Owners elect to withdraw the Property from the Condominium Act as provided more fully in Section 7.1(a) of the By-Laws.

The Condominium Board and its Affiliated Nominee or Designee shall have no voting rights with respect to any Units owned by each of them and such Parties and Units shall be excluded from the base number of Owners, Units and Common Interests for quorum and voting purposes in determining whether such 80% threshold is met.

Any action to terminate the legal status of the Property as a condominium under the Condominium Act after the occurrence of a Condominium Termination Event shall be subject to obtaining the Discretionary Consent in writing of Institutional Lenders holding Fannie Mae, FHA or other federally insured, guaranteed or financed Permitted First Mortgages ("**Federally Financed Permitted First Mortgages**") comprising at least 51% of the Common Interests of Units subject to mortgages. The rights of such Institutional Lenders of Federally Financed Permitted First Mortgages are subject to any superior rights of a Taking Authority by eminent domain or in condemnation under applicable Law.

Section 15.2 Partition. In the event of the occurrence of a Condominium Termination Event pursuant to Section 15.1(a), then Article 12 of the By-Laws shall apply. In the case of the occurrence of all other Condominium Terminations Events, the Property (including the portion not taken by the Taking

Authority) shall be subject to an action for partition by any Unit Owner or lienor as if owned in common. In such case, the net proceeds of sale resulting from such action for partition, together with the net proceeds of any insurance maintained by the Board, after deducting all reasonable Costs and Expenses together with any Legal Expenses paid or incurred by the Board in connection therewith (including the Costs and Expenses to secure and fence in the Property boundary, raze and remove the Building (if and to the extent necessary) and otherwise make the Building secure and safe), shall be regarded as one fund and shall be divided among all of the Unit Owners Pro Rata to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid out of such Owner's share of such funds, such amounts as may be necessary to discharge all unpaid liens on said Owner's Unit in the order of the priority of such liens.

ARTICLE 16

AMENDMENTS TO DECLARATION

Section 16.1 Application to Declaration and By-Laws. The terms of Article 13 of the By-Laws shall apply to, and shall govern and control, the requirements to execute, acknowledge and record Amendments to this Declaration or the By-Laws.

ARTICLE 17

SPONSOR'S RIGHTS

Section 17.1 Who May Exercise. The Sponsor's Rights:

(a) shall be applicable to all Unsold Units owned by Sponsor or a Sponsor Designee or a Designee of an Unsold Unit Owner at the time in question;

(b) shall automatically inure to the benefit of, and shall apply to a Sponsor Designee or a Designee of an Unsold Unit Owner with respect to only those Unsold Units conveyed to the Sponsor Designee or a Designee of an Unsold Unit Owner at the time in question, and shall be enforceable by each Designee as third-party beneficiary;

(c) shall be superior and paramount to the Board's Governance Rights;

(d) shall be superior and paramount to, and take preference over, the rights of the Condominium Board and Unit Owners to use the Common Elements and the Sidewalk; and

(e) shall be subject to the limitations, restrictions, prohibitions and requirements expressly contained in the Condominium Documents, the Plan or a Plan Amendment.

The Sponsor's Rights shall be superior and paramount to, and take preference over, the Sponsor's Rights of a Designee.

Each Unsold Unit Owner shall have, and must be given, the right to designate a Person as a Designee in the deed of conveyance, an Amendment to the Plan, an Amendment to the Declaration or

other instrument duly executed and acknowledged in recordable form by such designating Unsold Unit Owner.

Sponsor and an Unsold Unit Owner shall each continue to have, and may exercise and perform, its Sponsor's Rights for so long as it owns an Unsold Unit and (with respect to only Sponsor) until issuance of the Final Certificate of Occupancy of the Building. A Unit conveyed and reacquired by Sponsor or an Unsold Unit Owner (whether such reacquisition results from the exercise of a right of rescission, or a right to sell back to such Party or a mortgage foreclosure, or a deed given in lieu of such foreclosure, or otherwise) shall be reinstated as an Unsold Unit to which the Sponsor's Rights shall apply for all purposes, other than for purposes of determining the expiration of the Sponsor Board Control Period and the Sponsor Veto Control Period.

Section 17.2 Other Unit Owners. The Owner of a Unit who is not the Sponsor or designated an Unsold Unit Owner shall not have, or benefit from, and may not exercise or enforce, any of such Sponsor's Rights under this Declaration or the By-Laws.

Section 17.3 Amendment. The provisions of this Article 17 and all provisions of the Condominium Documents containing Sponsor's Rights cannot be amended without obtaining the Discretionary Consent of Sponsor and each Unsold Unit Owner (if any), duly executed, acknowledged and recorded in the Register's Office together with such Amendment. Any purported change thereto without such recorded Discretionary Consent shall be null and void *ab initio*.

Section 17.4 Covenants with Land Supplemented. This Article 17 is in furtherance of, supplements and supersedes any inconsistencies in Section 22.1.

ARTICLE 18

CONSENT OF SPONSOR

Section 18.1 Consent of Sponsor. Any provision of the Condominium Documents or the Plan that requires the Discretionary or Reasonable Consent of Sponsor (as applicable) shall continue unabated for so long as Sponsor owns an Unsold Unit or until the issuance of a Final Certificate of Occupancy of the Building, whichever is the later to occur, unless otherwise expressly provided.

Section 18.2 Consent of Unsold Unit Owner. Subject to Section 21.3, an Unsold Unit Owner (if any) shall automatically succeed to Sponsor's Rights hereunder and under the By-Laws and the Plan as provided in Article 17, and the Discretionary or Reasonable Consent of such Unsold Unit Owner (as applicable) shall be required in place and stead of Sponsor with respect to only any Acts or Omissions that affect such Owner's Unsold Unit(s).

Section 18.3 Supremacy of Sponsor. For so long as Sponsor owns an Unsold Unit or until the issuance of a Final Certificate of Occupancy of the Building, whichever is the later to occur, the Discretionary or Reasonable Consent of Sponsor (as applicable) shall be sufficient for all Unsold Units whenever the Discretionary or Reasonable Consent of Sponsor (as applicable) is required under the

Condominium Documents, except the Discretionary or Reasonable Consent of the applicable Unsold Unit Owner (as applicable) will be required if (and only if): (a) the required Discretionary or Reasonable Consent in question will affect only such Owner's Unsold Unit(s) and in no way will Sponsor's Unsold Unit(s) be affected by giving, conditioning, withholding or denying the required Discretionary or Reasonable Consent; or (b) the Common Interest, size, configuration or use of such Owner's Unsold Unit(s) will change by reason thereof.

Section 18.4 Expiration. From and after the date of issuance of the Final Certificate of Occupancy of the Building and there are no longer any Sponsor Units or Unsold Units, the Discretionary or Reasonable Consent respectively of Sponsor or an Unsold Unit Owner shall no longer be required.

ARTICLE 19

INTERNATIONAL ORGANIZATIONS

Section 19.1 Waiver of Immunity. A foreign government or the United Nations, or any agency, department, embassy, consulate or mission or governmental entity of a foreign state or the United Nations, or any other international organization or instrumentality, or any individual, entitled to diplomatic or sovereign immunity (each, an "**International Organization**" or "**Diplomat**", as applicable), by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise), or Leasing or occupying a Unit, shall conclusively be deemed to have automatically, irrevocably and unconditionally covenanted and agreed as follows:

(a) to own, Lease or occupy a Unit constitutes commercial activity within the meaning of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1602, et seq., as the same may be amended ("**FSIA**");

(b) to voluntarily waive any sovereign or diplomatic immunity (as applicable) from the personal jurisdiction of the courts of the United States of America and of the individual States comprising the United States of America with respect to any Claim or Litigation in connection with the Condominium Documents, as each may be amended from time to time in accordance with the By-Laws, the Property or its ownership, Lease, use, occupancy, Maintenance, Repair, Restoration, Alteration or Operation of such Unit;

(c) to voluntarily waive all rights to sovereign or diplomatic immunity (as applicable) from pre-judgment attachment, attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States of America or of said individual States comprising the United States of America even though the Unit may be used for the purposes of maintaining a diplomatic or consular mission or the residence of the chief of such mission or the Diplomat (as applicable), or otherwise;

(d) to consent to any suit, action or proceeding arising from the Condominium Documents, as each may be amended from time to time in accordance with the By-Laws, the Property or the ownership, Lease, use, occupancy, Maintenance, Repair, Restoration, Alteration or Operation of the Unit

owned, Leased or occupied by such International Organization or Diplomat (as applicable), being brought in any state or federal court in the State of New York only;

(e) to waive any objection that such International Organization or Diplomat (as applicable) may have now or hereafter to the laying of the venue of any such suit, action or proceeding under clause (d) above, in any such court, or claim that any such suit, action or proceeding under clause (d) above, has been brought in an inconvenient forum;

(f) to acknowledge the competence of any such court, and to submit to the jurisdiction of any such court in any such suit, action or proceeding;

(g) to any final non-appealable order or judgment issued by any such court in any such suit, action or proceeding shall be conclusive and binding upon such International Organization or Diplomat (as applicable) and may be enforced in the courts of such International Organization's or Diplomat's (as applicable) country of origin once a further judgment has been obtained in the courts of said International Organization's or Diplomat's (as applicable) country of origin, which further judgment may as a matter of practice be obtained without re-Litigation on the merits of the matter adjudicated upon by such state or federal court in the State of New York, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its obligation; provided that service of process is effected upon it in the manner specified above or as otherwise permitted by Laws;

(h) to service of process upon such International Organization or Diplomat (as applicable) out of said courts in any such suit, action or proceeding by mailing copies thereof by registered or certified mail, return receipt requested, postage prepaid, to such International Organization or Diplomat (as applicable) at the Property or at any other address of which such International Organization or Diplomat (as applicable) has given Notice in accordance with Section 17.1.2 of the By-Laws; and

(i) in connection with any such suit, action or proceeding in the state or federal courts in the State of New York, to the extent that FSIA is applicable to such International Organization or Diplomat (as applicable), the waiver of immunity and arrangements for service of process set out herein are made in conformity with, and shall be governed by FSIA, and the foregoing provisions constitute a special arrangement for service between such International Organization or Diplomat (as applicable) and each other Person entitled to enforce the provisions of this Article 19 for the purposes of FSIA.

Section 19.2 Designation of Agent for Service of Process. For the purpose of any suit, action or proceeding taken in any state or federal court in the State of New York, each International Organization or Diplomat (as applicable) shall maintain an agent for service of process in the City and State of New York. Absent a written designation of another Person executed and delivered to the Condominium Board by the International Organization or Diplomat (as applicable), each International Organization or Diplomat (as applicable) shall conclusively be deemed to have automatically, irrevocably and unconditionally designated, appointed and empowered the Managing Agent or (if none) the Condominium Board as its duly authorized and lawful agent to receive process for and on behalf of such International Organization or Diplomat (as applicable) in any state or federal suit, action or

proceeding in the State of New York based on or arising from the Condominium Documents, as each may be amended from time to time in accordance with the By-Laws, the Property or the ownership, Lease, use, occupancy, Maintenance, Repair, Restoration, Alteration or Operation of the Unit owned, Leased or occupied by such International Organization or Diplomat (as applicable). Nothing contained herein is intended or shall be deemed to limit the rights of the Condominium Board or any other Unit Owner to serve process in any other country or any other manner permitted by Laws or to bring any legal action or proceeding or to obtain an attachment or execution of judgment in any competent jurisdiction, including in the courts of the International Organization's or Diplomat's (as applicable) country of origin.

Section 19.3 **Compliance with Laws**. If, as a result of its status as a Governmental Authority or International Organization or Diplomat (as applicable), any Unit Owner is exempt from compliance with any applicable Laws required to be complied with under this Declaration or the By-Laws, as each may be amended from time to time in accordance with the By-Laws, such Governmental Authority or International Organization or Diplomat (as applicable), by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether by gift, decent, inheritance, distributions, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise), or Leasing or occupying a Unit:

(a) shall conclusively be deemed to have automatically, irrevocably and unconditionally agreed to comply with, and shall be required hereunder to comply with, such applicable Laws notwithstanding any exemption therefrom; and

(b) shall be Liable to the other Unit Owners, the Condominium Association and the Condominium Board for any Claims, Litigations, Liabilities and Losses attributable to its non-compliance with such applicable Laws.

Notwithstanding the foregoing, no Unit Owner shall be required to pay any Real Estate Taxes or sales and use taxes for which it has an exemption and documents proof thereof as required by Section 9.1.4 of the By-Laws, or to comply with any applicable Laws which it has successfully contested, to the extent (x) such contest is permitted under this Declaration or the By-Laws; and (y) the basis for such contest is not such Unit Owner's status as a Governmental Authority or International Organization or Diplomat (as applicable).

ARTICLE 20

FOREIGN PERSON

Section 20.1 **Foreign Person**. A Foreign Person, by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise), or Leasing or occupying a Unit, shall conclusively be deemed to automatically, irrevocably and unconditionally covenant and agree:

(a) to be personally subject to the jurisdiction of the Supreme Court of the State of New York or (if such court lacks jurisdiction) a court of competent jurisdiction in the State of New York (including federal courts sitting in New York) and to the American Arbitration Association (or any successor thereto with similar function) under Article 18 of the By-Laws with respect to all Litigation arising, directly or indirectly, out of the Condominium Documents, the Property or its Lease, use, occupancy, Maintenance, Repair, Restoration, Alteration or Operation of such Foreign Person's Unit, and any defenses by a Foreign Person with respect to jurisdictional defects shall conclusively be deemed to have been automatically, irrevocably and unconditionally waived;

(b) to duly execute and deliver to the Condominium Board or the Condominium Association's then Managing Agent, if any (as directed by either), at or prior to the time such Foreign Person becomes a Unit Owner or a Registered Tenant of a Unit, an irrevocable and unconditional written designation or appointment of:

(b-1) (in the case of Entity) the Secretary of State of the State of New York as agent of the Foreign Person upon whom process against such Foreign Person may be served; or

(b-2) (in the case of an Individual) an attorney admitted to practice and maintaining an office in the State of New York pursuant to a subject to jurisdiction and irrevocable designation of agent for service of process instrument in form and content acceptable to the Condominium Board, in its sole Business Judgment;

failing which such Foreign Person irrevocably and unconditionally agrees that the provisions of Section 19.2 shall apply to such Foreign Person with respect to service of process, which may be relied upon by the Condominium Board and Unit Owners;

(c) to consent to service of process upon such Foreign Person in any Litigation by mailing copies thereof by registered or certified mail, return receipt requested, postage prepaid, to it at the Property or any other address in the United States of America or by reputable international courier service to any international address which it has given in a Notice in accordance with Section 17.1.2 of the By-Laws;

(d) to all such Litigation:

(d-1) being determined in accordance with the internal laws of the State of New York without regard to legal principles or conflicts of laws, which shall govern as provided in Section 29.3;

(d-2) being adjudicated in only the Supreme Court of the State of New York or (if such court lacks jurisdiction) a court of competent jurisdiction in the State of New York (including federal courts sitting in New York) or arbitrated as provided in Article 18 of the By-Laws (if and as applicable); and

(d-3) being brought in New York County;

(e) to waive any motion, defense or objection that it may now or hereafter have in any Litigation arising, directly or indirectly, out of this Declaration or the By-Laws:

(e-1) to the laying of the venue in any such court or arbitration panel;

(e-2) any claim that the Litigation brought in any such court has been brought in an inconvenient forum; and

(e-3) any claim that it is not personally subject to the jurisdiction of such courts or arbitration panel;

(f) to any non-appealable final judgment in said Litigation or award in arbitration (as applicable) being conclusive and binding upon it and enforceable against it in the courts of any state or any federal court and any other courts having jurisdiction over it by suit upon such judgment or award (as applicable) and that it shall not assert (and shall conclusively be deemed to have automatically, irrevocably and unconditionally waived the right to assert) any defense, counterclaim or set-off in any such suit upon said judgment or award;

(g) to duly execute, deliver and file all such further instruments as may be necessary under the Laws of the State of New York in order to implement its consent, waivers and agreements to the foregoing provisions;

(h) to any judgment, order or award obtained by the Condominium Board, Sponsor, an Unsold Unit Owner or whomsoever against it in a Litigation being fully enforceable against it, subject to any rights of appeal; but any defense by it as to the validity or enforceability of same shall conclusively be deemed to have been automatically, irrevocably and unconditionally waived; and

(i) to fail or refuse to comply with the provisions of this Section 20.1 shall entitle the Condominium Board, in addition to all other legal and equitable rights and remedies, to withhold or deny furnishing the Certificate of Waiver or Exemption set forth in Section 15.6.1 of the By-Laws and the Estoppel Certificate set forth in Section 15.12 of the By-Laws, without the Condominium Board and all other Unit Owners, and their respective Related Parties, incurring any Liability or Loss to it, and without it having recourse of any kind by reason thereof against the Condominium Board or Unit Owners, or their respective Related Parties.

ARTICLE 21

COOPERATION AND FURTHER ASSURANCES

Section 21.1 **Covenant to Cooperate**. The Condominium Board (including the members and officers of the Board), Sponsor, each Unit Owner, all other Persons (including Tenants of Units) who, or whose interests or estate in the Property or a Unit, are subject to this Declaration, and the Related Parties to any of the foregoing (each of the foregoing, an "**Interested Party**"), shall fully cooperate with each other to effectuate the purposes and provisions of the Condominium Documents, including the Maintenance, Repair, Restoration and Alteration of a Unit Property, the Common Elements or the

Association's Assets. The Interested Party whose cooperation is sought is hereafter in this Article, the "**Cooperating Party**", and the Interested Party requesting such cooperation is hereafter in this Article, the "**Requesting Party**".

Section 21.2 Actions and Documents. Subject to compliance with Section 21.3, in furtherance of such cooperation, the Cooperating Party shall diligently and in good faith take such actions and shall diligently and properly complete, sign, have notarized or acknowledged (if and as required) and deliver such documents (including Government Documents and Litigation Documents) as may reasonably be requested by the Requesting Party in order to effectuate the purposes and provisions of the Condominium Documents and to realize the benefits intended to be conferred thereby; provided, however:

(a) in the case of the Condominium Board or Sponsor being the Cooperating Party, any required Discretionary or Reasonable Consent (as the case may be) of the Condominium Board or Sponsor (as applicable) will have been given; and

(b) no other Unit or the Building Services being provided to another Unit will be adversely affected beyond a *de minims* extent.

Section 21.2.1 Immunity of Board and Other Unit Owners. The Condominium Board and its Related Parties, and Unit Owners (other than the applicable Requesting Party) shall not be Liable for any Claims, Litigations, Liabilities or Losses in connection with the preparation, execution or submission of a Government Document or Litigation Document or other document, or that may be asserted by: (a) any Construction Parties engaged in the Work undertaken by or on behalf of said Requesting Party; or (b) any Person for bodily injury or death, or property damage, attributable to such Work and any defects in such Work.

Section 21.3 Rights and Obligations of Requesting Party. The Requesting Party shall:

(a) pay or reimburse (as directed) each Cooperating Party for the reasonable Costs and Expenses to perform a request made by a Requesting Party under Section 21.2 (including the reasonable fees and disbursements of the Construction Parties and the Managing Agent, and the Legal Expenses of the attorneys, of the Cooperating Party to review and offer advice on a Government Document or litigation Document or other document), unless otherwise expressly stated elsewhere in the Condominium Documents to be performed by a Cooperating Party without fee, charge or payment whatsoever (such as in the case of a Requesting Party who is the Condominium Board or an Unsold Unit Owner, including Sponsor);

(b) pay the governmental fees and charges required in connection with a Government Document;

(c) unless caused by the Acts or Omissions of a Cooperating Party or its Tenant, assume full and sole responsibility and obligation to pay all Claims, Litigations, Liabilities and Losses:

(c-1) attributable to a Government Document, any accompanying drawings and specifications and All Work based thereon, including payments to Construction Parties and other Persons engaged in the Work; and

(c-2) for bodily injury and death, and property damage, arising from said Work and any defects in such Work;

(d) Indemnify each and every Cooperating Party and its Indemnified Parties, on the terms set forth in Article 27, from and against any and all Claims, Litigations, Liabilities and Losses attributable to:

(d-1) the execution of a Government Document or Litigation Document by the Cooperating Party;

(d-2) any Work and any defects in such Work performed by the Requesting Party or its Construction Parties pursuant to a Government Document executed by a Cooperating Party,

(d-3) any action or inaction taken or omitted by a Cooperating Party in accordance with these provisions;

(d-4) any Claims asserted by, and Liabilities or Losses to, any Construction Parties or other Persons engaged in said Work; and

(d-5) any Claims and Litigations for bodily injury or death, and/or property damage, attributable to said Work and any defects in such Work; and

(e) the Requesting Party shall pay or reimburse the amount owed to the Cooperating Party pursuant to the preceding clause (d) pursuant to the Payment and Collection provisions of Section 1.9; and

(f) the execution of a Government Document or Litigation Document by a Cooperating Party shall not excuse or abate the amount payable to such Cooperating Party under clauses (d) and (e) above and shall not constitute an assumption by a Cooperating Party of any Liability for the Maintenance, Repair, Restoration or other Work arising from said Government Document, nor an approval, acknowledgment or admission of the accuracy, suitability or soundness of any drawings or specifications given by or on behalf of the Requesting Party in connection therewith or their compliance with applicable Law, nor a limitation on the rights or remedies of a Cooperating Party or the obligations of said Requesting Party.

Section 21.4 Giving Assurances. Each Cooperating Party shall make and give such assurances as may reasonably be requested by a Requesting Party to confirm or effectuate the provisions of the Condominium Documents or any transaction or action, any of the Rights of the Requesting Party, or other matter provided, authorized, permitted or contemplated in the Condominium Documents (collectively, "**Assurances**").

Section 21.5 **Giving Instruments and Documents**. The making and giving of Assurances include the requirement for the Cooperating Party to sign, have notarized or acknowledged (if and as applicable) and deliver to the Requesting Party, and the Requesting Party to receive within ten (10) Days after written request therefor is given, instruments or documents (in addition to those specifically provided in the Condominium Documents) prepared or provided by, and at the Sole Cost and Expense of, the Requesting Party in accordance with, and if and to the extent required in, Section 21.2.

Section 21.6 **Default of Cooperating Party**. A Cooperating Party who Violates or fails to comply with its obligations under this Article 21 shall be regarded as an offending Party and the Requesting Party shall be regarded as the aggrieved Party under the remedies provided in the By-Laws in Section 5.7.6 and Article 16, which shall govern and apply to the remedies of the aggrieved Requesting Party and the amounts to be reimbursed to the aggrieved Requesting Party by the offending Cooperating Party set forth therein.

Section 21.7 **Limited Power of Attorney**. A Cooperating Party who improperly refuses or fails to timely make or give an Assurance, shall automatically have, and conclusively be deemed to have, irrevocably and unconditionally granted to the Requesting Party a Limited Power of Attorney to act as the Attorney-in-Fact of such Cooperating Party, "coupled with an interest" and for valuable consideration, with respect to only the matters involved in the making and giving of such Assurances.

ARTICLE 22

COVENANTS TO RUN WITH THE LAND

Section 22.1 **Covenants Run With Land**. All provisions of this Declaration, the By-Laws and the Rules and Regulations to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, are, and shall be construed: (a) to be perpetual; (b) to be covenants running with the Land and with every part thereof and interest and estate therein; (c) to inure to, benefit and bind each owner of all or any part thereof, or interest or estate therein, and such owner's heirs, legatees, distributees, executors, administrators, legal representatives, successors and assigns; and (d) to not create any rights in, or for the benefit of, the general public.

Section 22.2 **Binding Effect**. This Declaration, the By Laws and the Rules and Regulations shall be binding upon the following Persons, who shall be legally bound thereby and shall comply therewith:

(a) all present and future Unit Owners;

(b) all Tenants who enter into Leases after the recording of this Declaration;

(c) each Existing Tenant (if any) who agrees to be legally bound thereby or whose Lease provides that it is automatically subordinate to the Condominium Documents and said Existing Tenant shall be legally bound thereby;

(d) each mortgagee of a Unit whose mortgage is recorded after the recording of this Declaration or who records an instrument subordinating its mortgage lien to this Declaration; and

(e) all other Persons ("**Transactional Persons**") who may use or enter upon the Property or any portion thereof after the recording of this Declaration or enters into a written contract, agreement or other instrument with, or legally binding arrangement with, the Condominium Board.

Section 22.3 Acceptance, Adoption and Ratification. The recording or the acceptance of a deed or other form of conveyance of title to a Unit, or the succeeding to title to a Unit (whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise), or the entering into a Lease or occupancy of a Unit, or the recording of a mortgage of a Unit after the recording of this Declaration, or said mortgage subordination instrument, or said other Transactional Persons using or entering any portion of the Property after the recording of this Declaration, or entering into written contracts, agreements or instruments with, or legally binding arrangements with, the Board, shall automatically constitute, and conclusively be deemed to constitute, an irrevocable and unconditional agreement that the provisions of this Declaration, the By Laws and the Rules and Regulations are accepted, adopted and ratified by the Owner, Tenant, said mortgagee of such Unit and said other Transactional Persons as covenants running with the Land and binding upon such Owner, Tenant, said mortgagee and said other Transactional Persons, as well as all other Persons having, at any time, any interest or estate in such Unit or a portion thereof, with the same force and effect as though such provisions were recited and stipulated at length in each and every deed, conveyance, Lease, mortgage, transactional instrument or other instrument granting or establishing an interest or estate in such Unit.

Section 22.4 Invalidity and Reformation. If any provision of the Condominium Documents is invalid under, or would cause the Condominium Documents to be insufficient to submit the Property to, the provisions of the Condominium Act, or otherwise fails to comply with the Condominium Act, such provision shall be deemed deleted from the Condominium Documents for the purpose only of submitting the Property to the provisions of the Condominium Act or shall be deemed to be reformed appropriately so as to be in compliance with the Condominium Act. However, to the extent the validity of establishment of condominium ownership of the Property under the Condominium Act is not adversely affected, such provision shall nevertheless be valid, enforceable and binding upon, and shall inure to the benefit of, the Unit Owners and their respective heirs, legatees, distributees, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest and estate therein under other applicable Law, to the extent permitted under such other applicable Law, with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land, and each and every succeeding Owner of a Unit, upon accepting or recording in the Register's Office a deed or otherwise succeeding to title to its Unit, shall automatically, irrevocably, unconditionally and conclusively be deemed to have covenanted and agreed to the foregoing with the same force and effect as if, immediately after succeeding to title to

its Unit, each and every succeeding Owner shall have duly signed and acknowledged in recordable form, and recorded in the Register's Office, a separate instrument accepting and ratifying same.

Section 22.5 **Deemed Inclusion of Necessary Provisions**. If any provision that is necessary to cause this Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included as a part of this Declaration or the By-Laws, as the case may be, for the purposes of submitting the Property to the provisions of the Condominium Act. Such deemed included provision shall also be regarded as part of the covenants running with Land as provided in this Article 22.

Section 22.6 **Correction Amendment to Declaration**. Sponsor (while it owns any Unit) or the Persons who shall from time to time constitute the Condominium Board (collectively, in their capacity as Board Members, by resolution adopted by a majority of Board Members attending a duly constituted Board meeting at which a quorum is present), as agent and on behalf of all Owners, shall have a Limited Power of Attorney to act as Attorney-in-Fact of all Owners to record a correction Amendment to the Declaration to correct or reform the Condominium Documents in order to implement the provisions of Sections 22.4 and 22.5, as provided in Section 14.3.

Section 22.7 **Savings**. If any provision is missing from the Condominium Documents that is necessary to cause the Condominium Documents to be sufficient to bind the respective Unit Owners and the Condominium Board, then such provision shall be deemed included herein for the purposes of binding the respective Unit Owners and the Condominium Board. Such deemed included provision shall also be regarded as part of the covenants running with the Land.

ARTICLE 23

SERVICE OF PROCESS

Section 23.1 **Designation of Secretary of State**. The Secretary of State of the State of New York is hereby appointed the agent of the Condominium Board upon whom process against it or the Condominium Association may be served. Service of process on the Secretary of State as agent of the Condominium Board and the Condominium Association shall be made by personally delivering to, and leaving with, the Secretary of State or his or her deputy, or with any Person authorized by the Secretary of State to receive such service, at the office of the New York State Department of State in Albany, New York, duplicate copies of such process together with the statutory fee, which shall be a taxable disbursement. Service of process on the Condominium Board and the Condominium Association shall be complete when the Secretary of State is so served. Nothing in this Section 23.1 shall affect the right of any Person to serve process against the Condominium Board on behalf of the Condominium Association in any other manner permitted by Law.

Section 23.2 **Person and Address to Whom Process is To Be Sent**. W 108 Development LLC, having a post office address at 119 West 72nd Street, #401, New York, New York 10023 is hereby designated as the Person and address to which the Secretary of State shall mail a copy of any such process

served upon the Secretary of State with respect to any Litigation against the Condominium Association or the Condominium Board. The Condominium Board shall have the Power and Duty, from time to time, without obtaining the consent of Unit Owners, to change the name and/or post office address of the Person designated to receive a copy of such service of process from the Secretary of State. The Person so designated to receive a copy of such service of process from the Secretary of State is hereby authorized, without obtaining the consent of the Condominium Board or Unit Owners, to also change its post office address to which a copy of service of process is to be sent. The foregoing changes shall be appropriately updated with reasonable promptness by filing such updated information with the Secretary of State in a form then acceptable to the Secretary of State. The Person designated at the time in question to receive such service of process shall with commercially prompt diligence after receipt thereof give copies of such process to the Condominium Board and the then Owner of each Unit.

ARTICLE 24

GOVERNING DOCUMENTS

Section 24.1 **Governing Documents**. This Declaration and the EXHIBITS attached to this Declaration, together with the Floor Plans of the Units, are contemporaneously being recorded or filed in the Register's Office and shall govern the management, function and administration of the affairs and business of the Condominium Association.

Section 24.2 **Inconsistency or Conflict**. In the event of any inconsistency or conflict between:

(a) the provisions of this Declaration and the provisions of the By-Laws or the Rules and Regulations, the provisions of this Declaration shall govern and prevail, and said inconsistent or conflicting provisions of the By-Laws or the Rules and Regulations (as applicable) shall automatically be null and void *ab initio*;

(b) the provisions of the By-Laws and the provisions of Rules and Regulations, the provisions of the By-Laws shall govern and prevail, and said inconsistent or conflicting provisions of the Rules and Regulations shall automatically be null and void *ab initio*;

(c) the provisions of an Amendment to this Declaration and the provisions of any subsequently recorded Amendment to the By-Laws or subsequently adopted Amendment to the Rules and Regulations, the provisions of said previously recorded Amendment to this Declaration shall govern and prevail, and said inconsistent or conflicting provisions in a subsequently recorded Amendment to the By-Laws or subsequently adopted Amendment to the Rules and Regulations shall automatically be null and void *ab initio*; or

(d) the provisions of an Amendment to the By-Laws and the provisions of any subsequently adopted Amendment to the Rules and Regulations, the provisions of said previously recorded Amendment to the By-Laws Declaration shall govern and prevail, and said inconsistent or conflicting provisions in a subsequently adopted Amendment to the Rules and Regulations shall automatically be null and void *ab initio*

(e) the material statements contained in Part I of the Plan and those statements contained in the Condominium Documents, the material statements of the Plan are paramount and shall govern and prevail; it being understood and agreed, however, that the Plan contains only a summary of certain required disclosures under the applicable Laws and omissions from the Plan of material and other provisions of the Condominium Documents shall not be regarded as an inconsistency or conflict.

ARTICLE 25

CHANGES AND WAIVER

Section 25.1 Changes. The provisions of this Declaration may be changed only by Amendment made, executed, filed and/or recorded in accordance with Article 13 of the By-Laws, except the Rules and Regulations may be amended without recording an Amendment to this Declaration or the By-Laws as provided in Section 14.5 of the By-Laws.

Section 25.2 No Waiver of Consent. The provisions of this Declaration or the Condominium Act requiring the consent of a specified percentage of Unit Owners in Common Interest or number may not be waived (subject to the right to provide a different percentage or number as provided in Section 339-e(8) of the Condominium Act); provided, however, the consent expressly stated to be deemed to have been given (such as in the case of certain Amendments under Article 13 of the By-Laws or as otherwise set forth in this Declaration or the By-Laws) shall conclusively, unconditionally and irrevocably deemed to be consistent and to comply with, and construed to be consistent and to comply with, any consent requirement contained in the Condominium Act.

Section 25.3 Waiver in Writing. The provisions of this Declaration may be waived only in writing signed by or on behalf (through a duly authorized representative or agent) of the Unit Owner or Condominium Board (as applicable) waiving a provision hereof, unless such provision is expressly stated to have been waived or deemed waived if not exercised, satisfied or performed within a specified period.

Section 25.4 No Inference of Waiver. The delay or failure to enforce or insist on strict performance of, or compliance with, any provision of this Declaration shall not mean or infer that the provision has been waived or that the right to enforce or insist then or thereafter on strict performance of, or compliance with, that or any other provision of this Declaration has been waived. A waiver of any Violation or requirement of this Declaration shall not be, or construed to be, a waiver of any subsequent or other Violation or requirement hereof.

Section 25.5 Ratification. Any Violation of this Declaration or the By Laws may be waived and/or ratified retroactively by the applicable aggrieved Party and thereby render the act or matter at issue valid and enforceable. For example, the requirement to obtain the Discretionary or Reasonable Consent (as applicable) of a Party may be given retroactively by such Party and thereby have the same force and effect as though such Discretionary or Reasonable Consent had been given before the act or matter at issue had been undertaken or commenced.

ARTICLE 26

SEVERABILITY

Section 26.1 Valid and Enforceable. Subject to the provisions of Sections 22.4: (a) the invalidity or unenforceability of any provision of this Declaration shall not affect the validity or enforceability of any other provision hereof; and (b) each provision of this Declaration is, and shall be construed to be, valid, binding and enforceable to the fullest extent permitted by Law.

Section 26.2 Condominium Act is Paramount. The Condominium Act is paramount and shall govern and supersede any provision of the Condominium Documents which is contrary to, or inconsistent with, the Condominium Act.

ARTICLE 27

INDEMNIFICATION

Section 27.1 Indemnification Generally. Whenever a Party (the "**Indemnifying Party**") is required under any provision of this Declaration of the By-Laws to Indemnify any other Party or Person, then such Indemnifying Party shall Indemnify such other Party or Person and all past, present and future Related Parties of such Party or Person (each, an "**Indemnified Party**"), to the full extent lawful and on the terms set forth in this Article 27, from and against all Claims, Litigations, Liabilities and Losses arising from the Indemnified matter. The terms of the Indemnity are as follows:

Section 27.1.1 Notice of Claim or Litigation. With prompt diligence after an Indemnified Party receives Notice of any Claim or is served with a summons and/or pleadings in a Litigation for which Indemnity is sought from the Indemnifying Party, such Indemnified Party shall notify said Indemnifying Party in writing of such Claim accompanied by copies of any writings thereof or the commencement of such Litigation accompanied by copies of such summons and/or pleadings, as applicable.

Section 27.1.2 Selection of Attorneys and Compromise and Settlement. The said Indemnifying Party, at its Sole Cost and Expense:

(a) shall diligently and in good faith defend the Indemnified Party with counsel chosen by the Indemnifying Party;

(b) shall keep the applicable Indemnified Party and its representatives and counsel reasonably apprised of all compromise and settlement negotiations and legal proceedings; and

(c) shall be entitled to control and conduct the defense, compromise and settlement of the indemnified matter (including a Claim or Litigation for which Indemnity is sought), subject to compliance with the following Section 27.1.3.

Section 27.1.3 Requirement. If and to the extent that the Indemnified Party is named as a party in any Claim or Litigation and such Claim or Litigation is compromised or settled:

(a) the Indemnified Party shall not be adversely affected beyond a de minimis extent by a proposed compromise or settlement of such Claim or Litigation (as applicable) without obtaining the Discretionary Consent of the Indemnified Party; without any manner of recourse against the Indemnified Party and without affecting the Liability of the Indemnifying Party under the Indemnity;

(b) the Indemnified Party shall be fully and unconditionally released and discharged in writing from all Liabilities with respect to such Claim by all claimants or (if applicable) by all plaintiffs or petitioners or counter-claimants or cross-claimants in such Litigation; and

(c) the Indemnifying Party shall give the Indemnified Party or its attorney a fully executed original or counterpart original of such compromise or settlement agreement (as applicable) with prompt diligence after the execution thereof.

Section 27.1.4 Cooperation of Indemnified Party. The Indemnified Party, without fee or charge, shall fully cooperate with the Indemnifying Party and its counsel in the defense of said Claim or Litigation (as applicable), including:

(a) to appear and testify in any Litigation in which the Indemnified Party is named as a defendant;

(b) to preserve any documents (whether paper or electronic or similar records, material or data capable of reproduction) reasonably related to the defense of said Claim or Litigation (as applicable) in the possession or under the control of the Indemnified Party and existing at the time the Indemnified Party was given Notice of the Claim or Litigation (as applicable);

(c) to make such documents within the actual possession or under the actual control of the Indemnified Party, and any information within the actual knowledge of the Indemnified Party, reasonably related to the defense of said Claim or Litigation (as applicable), available to the Indemnifying Party and its counsel in a commercially reasonable period; and

(d) to otherwise act with reasonable diligence and in good faith in the defense of said Claim or Litigation (as applicable).

If the failure of the Indemnified Party to comply with the foregoing demonstrably and materially prejudices or materially impairs the ability of the Indemnifying Party to defend the Claim or Litigation (as applicable), then the Indemnifying Party shall be relieved from Liability under the Indemnity.

Section 27.1.5 Cooperation of Indemnifying Party. The Indemnifying Party, without fee or charge, shall fully cooperate with the Indemnified Party and its representatives and counsel, including:

(a) to consult with the Indemnified Party and its representatives and counsel with respect to the proposed terms and writings with respect to the defense, compromise and settlement of such Claim or Litigation (as applicable); and

(b) to give such Indemnified Party and its representatives and counsel, with commercially prompt diligence after being received by the Indemnifying Party or its counsel, and (to the extent

practicable) a commercially reasonable period in advance before being given by the Indemnifying Party or its counsel to the claimants or their respective counsel in said Claim or the plaintiffs or petitioners or counter-claimants or cross claimants, or their respective counsel, in said Litigation (as applicable), copies of the following:

(b-1) all Notices and writings with respect to said Claim received or to be given;

(b-2) all pleadings, motions, briefs, memoranda, affidavits, transcriptions of depositions, and other writings with respect to said Litigation received or to be given;

(b-3) any proposed compromise or settlement agreement with respect to such Claim or Litigation (as applicable) and all revisions thereto received or to be given; and

(b-4) to consult with the Indemnified Party and its representatives and counsel with respect to the proposed terms and writings with respect to the defense, compromise and settlement of such Claim or Litigation (as applicable).

Section 27.1.6 Participation of Indemnified Party. The Indemnified Party shall have the right, but not the obligation, to participate and be represented by separate counsel (chosen by such Indemnified Party) in the defense, compromise and settlement of said Claim or said Litigation (as applicable). The Indemnified Party shall pay the fees and disbursements of its separate counsel, unless such participation is necessitated by a conflict of interest between the Indemnified Party and the Indemnifying Party's counsel, in which case the Indemnifying Party shall pay the Legal Expenses of the Indemnified Party's counsel.

Section 27.1.7 Contribution. If the Indemnity were for any reason not to be available with respect to any matter, the Indemnifying Party shall contribute to the compromise or settlement of said Claim or Litigation (as applicable) and related Losses in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other hand, as well as any other relevant equitable considerations, absent a non-appealable finding of a court or other resolution body having jurisdiction of bad faith or intentional wrongdoing of the Indemnified Party.

Section 27.1.8 Exclusions from Indemnity. The Indemnity shall exclude all Claims, Litigations, Liabilities and Losses resulting from the negligence or intentional wrongdoing of the Indemnified Party.

Section 27.1.9 Payment and Collection. The Payment and Collection provisions of Section 1.9 shall apply to all amounts owed under this Article 27.

Section 27.1.10 Allocation of Costs and Expenses. If the Indemnifying Party is the Condominium Board, then the Costs and Expenses of the Condominium Board in connection with an Indemnification shall be allocated to the Common Expense and charged to all Owners Pro Rata to their respective Common Interests or only the Owner or (if more than one Owner) the Owners (Pro Rata to their respective Common Interests) for whom the Board acted or primarily benefitted therefrom, as indicated in the text.

Section 27.1.11 Liability Not Limited to Indemnity. The Indemnity shall be in addition to any Liability that such Indemnifying Party may otherwise have. Nothing contained in this Article 27 shall be deemed to supersede or circumscribe any express limitation on or express expansion of any Indemnity given or required to be given under the provisions of this Declaration or the By-Laws.

Section 27.2 Indemnification of Board Parties.

Section 27.2.1 Business Corporation Law. The Indemnification provisions of the New York Business Corporation Law ("**BCL**") for corporate directors and officers shall apply respectively to the Board Members and officers of the Condominium Association to the same effect as though the Condominium Association of Unit Owners were a corporation and the Board Members and officers of the Condominium Association were respectively directors and officers of such corporation.

Section 27.2.2 Indemnity. The Condominium Board on behalf and as agent of the Unit Owners shall Indemnify to the fullest extent provided in the BCL, the Board Members and officers of the Condominium, and their respective Indemnified Parties, made, or threatened to be made, a party to an action or proceeding, whether civil or criminal, including an action by or in the right of the Board or any corporation of any type or kind, or any partnership, limited liability partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, whether domestic or foreign, which such Board Member or officer or other Person on behalf of the Board heretofore or hereafter served in any capacity at the request of the Board, by reason of the fact that such Person, whether testate or intestate, was a Board Member or officer, or served such other corporation, limited liability partnership, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including Legal Expenses actually and necessarily incurred as a result of the threat of, the commencement of and/or the continuation of such action or proceeding, or any appeal therein, if such Board Member or officer acted, in good faith, for a purpose which such Person reasonably believed to be in, or, in the case of service for any such other corporation, partnership, limited liability partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the Board and the Condominium Association and, in criminal proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful. The Liability of each Unit Owner under this Indemnity shall be limited as provided in Section 4.12 of the By-Laws.

Section 27.2.3 No Presumption. The termination of any such civil or criminal proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such Board Member or officer did not act in good faith, for a purpose which such Person reasonably believed to be in, or, in the case of service for any such other corporation, partnership, limited liability partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the Board and the Condominium Association or that such Person had reasonable cause to believe that his or her conduct was unlawful.

Section 27.2.4 Expenses. Expenses incurred in defending a civil or criminal action or proceeding by a Board Member, officer or other Person to be Indemnified under this Article 27 shall be paid by the Board on behalf and as agent of the Unit Owners in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such Board Member, officer or other Person to repay such amounts as, and to the extent, required by BCL Section 725(a). The Indemnification provided by Section 27.2.2 shall not be deemed exclusive of any other rights to which a Board Member or officer seeking Indemnification or advancement of expenses may be entitled, whether contained in this Declaration or the By-Laws, or a resolution of Unit Owners, a resolution of disinterested Board Members, or an agreement providing for such Indemnification or under any statute, provided that no Indemnification may be made to or on behalf of any Board Member or officer if a judgment or other final adjudication adverse to the Board Member or officer establishes that such Board Member's or officer's acts were committed in bad faith or were the result of active and deliberate dishonesty or willful misconduct and were material to the cause of action so adjudicated, or that such Board Member or officer thereby personally gained a financial profit or other advantage to which he or she was not legally entitled.

Section 27.2.5 Other Person. A Person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in BCL Section 722 shall be entitled to Indemnification as authorized by such section.

Section 27.2.6 Specific Case. Except as provided in BCL Section 723(a), any Indemnification under BCL Section 721, unless ordered by a court under BCL Section 724, shall be made by the Condominium Board on behalf and as agent of the Unit Owners, only if authorized in the specific case set forth in BCL Section 723(b).

Section 27.2.7 Standard of Conduct. Any determination as to whether a Person has met an applicable standard of conduct shall be made in accordance with the provisions of BCL Section 723.

Section 27.2.8 Employees Agents and Committee Members. The Condominium Board on behalf and as agent of the Unit Owners may, to the extent authorized from time to time by resolution of a majority of the Board Members, provide Indemnification to employees or agents of the Board or members of committees appointed by the Board, with such scope and effect as determined by said majority of the Board Members, but in no event shall such Indemnification be greater than would be available to such Individual under this Declaration or the By-Laws, if such Individual were a Board Member.

Section 27.2.9 Remedies. If a claim for Indemnification under this Article is not paid in full by the Condominium Board within thirty (30) days after a written claim has been received by the Board, the claimant may at any time thereafter bring suit against the Board to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the reasonable expense (including Legal Expenses and Per Diem Interest thereon) of prosecuting such claim. It shall be a defense to any such action (other than action brought to enforce a claim for expenses incurred in

defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Board) that the claimant has not met the standards of conduct prescribed hereunder, but the burden of proving such defense shall be on the Condominium Board. Neither the failure of the Condominium Board (including its independent legal counsel or the Unit Owners) to have made a determination prior to the commencement of such action that Indemnification of the claimant is proper under the circumstances because he or she has met the applicable standard of conduct set forth herein or in the BCL, nor an actual determination by the Board (including its independent legal counsel or the Unit Owners) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 27.2.10 Insurance. The Condominium Board, on behalf and as agent of the Unit Owners, shall have, and must be given, the Power to purchase and maintain insurance to Indemnify: (a) the Condominium Board for any obligation which it incurs as a result of the Indemnification of Board Members and officers under the provisions of this Article; (b) the Board Members and officers in instances in which they may be Indemnified by the Board under the provisions of this Article; (c) the Condominium Board for any obligation which the Board incurs on behalf and as agent of the Unit Owners; and (d) Board Members and officers under any Indemnification provided in this Declaration or the By-Laws, a resolution of Unit Owners, a resolution of the Board, or any agreement.

Section 27.2.11 Interpretation. The intent of the foregoing Indemnification provisions in this Article 27 is both to provide and to expand upon the Indemnification provided by the BCL, as the BCL may from time to time be amended, so as to maintain and continue to attract persons of high quality to serve on the Condominium Board as Board Members, officers or in similar capacities. The provisions of Section 27.2.1 to Section 27.2.11 shall apply to the provisions of this Section 27.2.12 to the extent not inconsistent with this Section 27.2.12.

ARTICLE 28

EXCESS DEVELOPMENT RIGHTS

Section 28.1 Definitions. The following terms used in below shall have the meanings indicated:

(a) "**324 West 108th Street Zoning Lot**" shall mean the zoning lot consisting of the Land, the Building and all appurtenances constituting all of the tax lots that collectively constitute the Condominium, including all Common Elements.

(b) "**Additional Development Rights**" shall mean: (a-1) any Bonus Development Rights and Upzoning Development Rights granted to the 324 West 108th Street Zoning Lot after the date hereof as a result of the provision of an amenity or public benefit or otherwise; (a-2) any Special Permit Rights granted to the 324 West 108th Street Zoning Lot as a result of an application by the Sponsor for use solely in connection with a Sponsor Unit; and (a-3) any Development Rights acquired solely by the

Sponsor by way of transfer to the 324 West 108th Street Zoning Lot from an additional parcel that is added to and made a part of the 324 West 108th Street Zoning Lot by merger;

(c) "**Base Utilized Development Rights**" shall mean all of the Development Rights appurtenant to the 324 West 108th Street Zoning Lot that are utilized by the Building, including the Units and the Common Elements, as it exists on completion of construction and rehabilitation of the Building and issuance of a Final Certificate of Occupancy authorizing the permitted use of all Units for the purposes set forth in this Declaration;

(d) "**Bonus Development Rights**" shall mean any Development Rights that may be available to the 324 West 108th Street Zoning Lot for inclusion in the Building from and after the date hereof through the provision of an amenity or public benefit, either on or off the 324 West 108th Street Zoning Lot;

(e) "**Development Rights**" shall mean the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop the zoning lot by enlarging an existing building or other structure thereon or by erecting a new building or other structure thereon, in each case having a total floor area determined by: (d-1) multiplying the area of the zoning lot by the floor area ratio established for the zoning district or districts in which the zoning lot is located, plus (d-2) the inclusion of any bonus floor area available to the zoning lot pursuant to the Zoning Resolution, and plus (d-3) the inclusion of any use, bulk, density and other development rights permitted under the Zoning Resolution and/or which may be authorized to be developed by the appropriate agency of The City of New York from time to time;

(f) "**Development Rights Applications**" refers to any applications, approvals, permits, variances, special permits, certifications, authorizations or other discretionary land use approvals related to the acquisition, transfer or utilization of any Excess Development Rights, including the execution and delivery of any such applications, agreements, declarations, authorizations, consents or instruments in connection with the foregoing, and any restrictive declaration required to be executed and recorded in connection therewith;

(g) "**Development Rights Documents**" refers to any agreements, declarations, declarations of zoning lot restrictions, zoning lot development and easement agreements, notice of restrictions, transfer of development rights, authorizations, waivers, consents or other instruments to be executed and delivered in connection with the Development Rights Applications;

(h) "**DR Owner**" shall mean Sponsor or any Person to whom Sponsor may transfer all or a portion of the Excess Development Rights.

(i) "**Exercising Party**" shall mean Sponsor or a Person to whom Sponsor transfers all or a portion of the Excess Development Rights who exercises and implements its rights in connection with its Excess Development Rights;

(j) "**Excess Development Rights**" shall mean all Development Rights appurtenant to the 324 West 108th Street Zoning Lot that are available on completion of construction of the Building and issuance of a Final Certificate of Occupancy authorizing the permitted use of all Units for the purposes set forth in this Declaration, excluding the Base Utilized Development Rights;

(k) "**Special Permit Rights**" shall mean any Development Rights that become available by reason of a variance or special permit granted pursuant to an application for a variance or special permit from the provisions of the Zoning Resolution that increases the floor area and Development Rights that are permitted to be developed on the 324 West 108th Street Zoning Lot;

(l) "**Upzoning Rights**" shall mean any Development Rights that may become available to the 324 West 108th Street Zoning Lot as a result of a validly enacted change of the Zoning Resolution increasing the Development Rights that may be utilized on the 324 West 108th Street Zoning Lot; and

(m) "**Zoning Resolution**" means the Zoning Resolution of The City of New York, effective December 15, 1961, as amended or restated from time to time.

Undefined terms used in this Article 28 or used in the definitions of the defined terms used in this Section which are defined in the Zoning Resolution, such as the terms "**bulk**", "**dwelling unit**", "**height**", "**floor area**", "**floor area ratio**", "**lot area**", "**parties in interest**," and "**zoning lot**" shall be defined and construed as those terms are defined in and construed pursuant to Section 12-10 of the Zoning Resolution.

Section 28.2 Control and Benefits of Excess Development Rights. Subject to the terms and conditions of this Declaration and the By-Laws, the Excess Development Rights and the Disposition thereof shall be controlled exclusively by, and all benefits derived therefrom shall be owned and belong exclusively to the DR Owner at the time in question and the Unit (if any) owned by the DR Owner, in each case without participation by the Condominium Board or other Unit Owners, it being intended that at such time as Sponsor shall convey title to, or otherwise cease to own fee title to, a Sponsor Unit, each and every succeeding Owner (the "**Succeeding Owner**") of such Unit (including a Sold Unit Owner and a Designee Owner of an Unsold Unit), by accepting a deed or otherwise succeeding to title to said Unit (whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise), shall thereupon automatically have, and shall conclusively be deemed to have, irrevocably and unconditionally agreed that the Excess Development Rights and the Disposition thereof shall be controlled exclusively by, and all benefits derived therefrom shall be owned and belong exclusively to, the DR Owner at the time in question and the Unit (if any) owned by the DR Owner, without participation by the Condominium Board or other Unit Owners, including each and every Succeeding Owner of a Unit. In no event shall the Condominium Board or a Succeeding Owner of a Sponsor Unit use, transfer, affect, impair, infringe, abridge or otherwise prejudice the Unused Development Rights, the Disposition thereof or the benefits derived therefrom.

Section 28.3 **Acceptance and Agreement**. In confirmation and furtherance of the foregoing, the Condominium Board and each and every Succeeding Owner of a Unit, by accepting or recording a deed conveying title to such Succeeding Owner's Unit or otherwise succeeding to title thereto (whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise), shall thereupon automatically have, and shall conclusively be deemed to have, irrevocably and unconditionally covenanted and agreed as follows:

(a) the DR Owner at the time in question, for its own account and sole benefit, shall have (and shall be given) the exclusive Power to make any use and Disposition of the Excess Development Rights in accordance with the terms of this Declaration as the DR Owner at the time in question shall determine in its sole discretion;

(b) the DR Owner at the time in question, for its own account and sole benefit, shall have (and shall be given) the exclusive right to retain all proceeds realized from the use and Disposition of the Excess Development Rights without participation, or recourse against said the DR Owner or its Related Parties, by the Condominium Board or the then Succeeding Owners;

(c) each and every Succeeding Owner and its successors (upon succeeding to title to such Succeeding Owner's Unit) shall freely and without fee, charge, condition, limitation or other restriction, fully cooperate with the DR Owner at the time in question in connection with its use and Disposition of the Excess Development Rights, including duly executing, acknowledging in recordable form (where required) and delivering to said DR Owner, within thirty (30) Days after being requested in writing, such instruments as said DR Owner may require, from time to time, to implement the foregoing;

(d) each and every Succeeding Owner of a Unit shall not do or suffer (knowingly or unknowingly) any Act or Omission inconsistent herewith or Section 28.2 above; and

(e) a Succeeding Owner who Violates the foregoing covenants and agreements shall be Liable for all Losses paid, incurred or suffered by said DR Owner by reason thereof, and shall reimburse the amount owed to said DR Owner in accordance with the Payment and Collection provisions of Section 1.9.

Section 28.4 **Use of Excess Development Rights**. The DR Owner at the time in question shall have (and must be given) the Unfettered right to exercise and implement the following Powers:

(a) the Power to use its Excess Development Rights to increase the available floor area ratio of any one or more Units then owned by said the DR Owner or otherwise in connection with a Unit Change to a Unit owned by said DR Owner (if any) in accordance with Article 12;

(b) the Power to separately sell, transfer, convey or otherwise Dispose of its Excess Development Rights to any other Person, in its sole and absolute discretion;

(c) the Power to separately acquire and Dispose of any Additional Development Rights, which shall be added to, and included in, the Excess Development Rights;

(d) the Power to retain all proceeds from its sale, transfer, conveyance or other Disposition of its Excess Development Rights and/or the termination of the rights and restrictions with respect thereto, without the Condominium Board or any other Unit Owner participating therein or having any manner of recourse against said DR Owner, or its Related Parties or a Unit owned by said DR Owner (if any);

(e) the Power to execute, acknowledge or notarize (if and as applicable), deliver and (when applicable) record or file with Governmental Authorities having jurisdiction all Development Rights Applications and/or Development Rights Documents; and

(f) generally, the Power to execute, acknowledge or notarize (if and as applicable), deliver and record or file with Governmental Authorities having jurisdiction all instruments and take all actions necessary or appropriate as determined by said DR Owner, in its sole discretion, to exercise and implement the Excess Development Rights.

Any Person may be a transferee or assignee of the Excess Development Rights, and no such transferee or assignee is required to be a Unit Owner. Neither the use nor sale, transfer, conveyance or other Disposition of the Excess Development Rights by a DR Owner shall require the consent of any other Unit Owner or the Condominium Board.

Nothing contained herein or in the By-Laws is intended or shall be deemed to require a DR Owner to use its Excess Development Rights for any particular purpose.

Section 28.5 **Cooperation**. The Condominium Board and each and every Succeeding Owner shall execute, acknowledge and deliver to a DR Owner, freely and without fee, charge, condition, limitation or other restriction or requirement, as parties-in-interest or otherwise, as necessary or, in the Business Judgment of said DR Owner, within a deadline of thirty (30) Days after giving a written request therefor by Sponsor ("TIME BEING OF THE ESSENCE"), any and all Development Rights Applications and/or Development Rights Documents (including waivers of rights as parties in interest) in form and content reasonably acceptable to said DR Owner in connection with the use, sale, transfer, conveyance or other Disposition by said DR Owner of its Excess Development Rights made in accordance with the provisions of Section 28.4.

Section 28.6 **Power of Attorney**. The signatures of the other Unit Owners (i.e., the respective Owners of all Units other than a Unit or Units owned by a DR Owner) and/or the Condominium Board shall not be required on any application or other document necessary or convenient to the exercise and implementation by a DR Owner of any of its Powers under Section 28.4, including the right (and the obligation to do so when required by applicable Law) of a DR Owner, from time to time, to reflect the Excess Development Rights granted exclusively to a DR Owner and the Unit owned by a DR Owner (if any) and pursuant to this Article 28 in a duly recorded Amendment to this Declaration or the By-Laws or the Floor Plans, any application or document required by the DOB, the Tax Map Unit of the Division of Land Records of The City of New York or any other Governmental Authority in connection with an amendment to the Certificate of Occupancy of the Building by reason thereof.

The Condominium Board (upon the recording of this Declaration in the Register's Office) and each and every Succeeding Owner (upon accepting or recording a deed to its Unit or otherwise succeeding to title to its Unit, whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise) shall each conclusively be deemed to have separately, automatically, irrevocably and unconditionally granted to a DR Owner a Limited Power of Attorney to act as its Attorney-in-Fact, "coupled with an interest" and for valuable consideration, with respect only to execute, deliver and record in the Register's Office, on their behalf and in their name, any and all Development Rights Applications and Development Rights Documents.

In accordance with the foregoing Limited Power of Attorney, in the event the Condominium Board and/or a Succeeding Owner shall refuse or fail to execute and deliver to the Exercising Party a Development Rights Application and other Development Rights Document, freely and without fee, charge, condition, limitation or other restriction, within said deadline thirty (30)-Day period, after written request therefor is given, as provided in Section 28.5, the Exercising Party, as Attorney-in-Fact of such defaulting Party, shall have the Power to execute, deliver and (where applicable) record in the Register's Office any such Development Rights Application and/or Development Rights Document (as applicable) on behalf and in the name of said defaulting Party, and any such execution, delivery and/or recording shall not require the vote or consent of the Condominium Board or the other Unit Owners.

Section 28.7 Covenants Running With the Land. The provisions of this Article 28 are covenants running with the Land and shall inure to the benefit of, and shall be enforceable by a DR Owner in accordance with Article 22. No provisions of this Article 28 may be amended without obtaining the Discretionary Consent of each DR Owner, duly executed, acknowledged and recorded in the Register's Office with such Amendment, and any purported change hereof without obtaining said duly executed, acknowledged and recorded Discretionary Consent of each DR Owner and its Registered Mortgagee (if any) shall be null and void *ab initio*, and of no force or effect.

ARTICLE 29

MISCELLANEOUS: USAGES AND GRAMMAR

Section 29.1 Table of Contents and Captions. The Table of Contents, and the Article and Section headings, of this Declaration are for convenience and reference only and do not, and shall not be construed to, affect the meaning or interpretation of any provision of this Declaration.

Section 29.2 Notices. Unless otherwise expressly provided elsewhere in this Declaration or the By-Laws, any Notice to be given or made under this Declaration or the By-Laws (including the Rules and Regulations) must be in writing and delivered or sent as provided in Article 17 of the By-Laws, all of whose provisions shall apply to the giving of Notices hereunder and are hereby incorporated herein with the same force and effect as though set forth at length.

Section 29.3 **Governing Law**. The internal laws of the State of New York will govern and control this Declaration (including al Exhibits hereto) and the interpretation and enforcement of its provisions, without regard to legal principles or conflicts of laws.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE OF DECLARATION OF 324 WEST 108 CONDOMINIUM

IN WITNESS WHEREOF, Sponsor has caused this Declaration to be executed as of _____ __, 20__.

W 108 Development LLC

By:

Signature:_____

Orly Gilat, Member

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this _____ day of _____, 20__, before me, the undersigned, personally appeared Orly Gilat, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____

Signature and Office of Individual
Taking Acknowledgment

EXHIBIT A
TO
DECLARATION OF CONDOMINIUM
ESTABLISHING 324 WEST 108 CONDOMINIUM

DESCRIPTION OF LAND

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH OF MANHATTAN AND THE COUNTY, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a point on the southerly side of One Hundred Eighth Street, distant one hundred forty three feet, four and one half inches easterly from the corner formed by the intersection of the southerly side of One Hundred Eighth Street with the easterly side of Riverside Drive,

Running Thence SOUTHERLY parallel with Riverside Drive and part of the way through a party wall, one hundred feet, eleven inches to the centre line of the block;

Thence EASTERLY along said centre line of the block and parallel with One Hundred Eighth Street, 43 feet 6 inches;

Thence NORTHERLY parallel with Riverside Drive and part of the way through a party wall, one hundred feet eleven inches to the southerly side of One Hundred and Eighth Street; and

Thence WESTERLY along the southerly side of One Hundred Eighth Street, 43 feet 6 inches to the point or place of BEGINNING.

Said premises being known as 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York.

END OF EXHIBIT A

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM
ESTABLISHING 324 WEST 108 CONDOMINIUM

DESCRIPTION OF UNITS

Unit Designation	No. of Rooms/ Baths (1)	Tax Lot No. .	Floor Location	Approx. Interior Unit Square Footage (2)	Approx. Exterior Square Footage (2)	Unit Total Square Footage (3)	Common Elements to Which Unit Has Immediate Access	Percentage of Common Interest (4)
Residential Unit								
101	1/1		1	754	9 (SL)	763	Street, Stairs/Elevator	5.43%
102	3/2		1	1,207	423 (Y) 9 (SL)	1,639	Street, Stairs/Elevator	9.45%
201	3/2		2	1,305	89 (JT) 9 (SL)	1,403	Stairs/Elevator	9.55%
202	3/2		2	1,207	9 (SL)	1,216	Stairs/Elevator	8.69%
301	3/2		3	1,305	9 (SL)	1,314	Stairs/Elevator	9.39%
302	3/2		3	1,207	80 (2B) 9 (SL)	1,296	Stairs/Elevator	8.83%

Legend:
B: Balcony; JT: Juliette Terrace; SL: Storage Locker; T: Terrace; Y: Yard.
Footnotes start after end of EXHIBIT B.

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Unit Designation	No. of Rooms/ Baths (1)	Tax Lot No.	Floor Location	Approx. Interior Unit Square Footage (2)	Approx. Exterior Square Footage (2)	Unit Total Square Footage (3)	Common Elements to Which Unit Has Immediate Access	Percentage of Common Interest (4)
401	3/2		4	1,239	9 (SL)	1,248	Stairs/Elevator	8.92%
402	3/2		4	1,207	80 (2B) 9 (SL)	1,296	Stairs/Elevator	8.83%
501	5/2.5		5	2,362	239 (T) 9 (SL)	2,610	Stairs/Elevator	17.41%
PH	4/2		6	1,727	653 (2T) 9 (SL)	2,389	Stairs, Elevator	13.51%

Legend:
B: Balcony; JT: Juliette Terrace; SL: Storage Locker; T: Terrace; Y: Yard.
Footnotes start after end of EXHIBIT B.

EXHIBIT B
-continued-

FOOTNOTES TO EXHIBIT B
DESCRIPTION OF UNITS

1. Number of Residential Rooms and Baths.

1.1 Room Count. Each bedroom, study/bedroom, living room/dining room and dining room is counted as one room. A kitchen, laundry, gallery, foyer and Storage Locker are not being counted as a separate room. A bathroom with a bathtub or shower is counted as one bathroom, and a powder room (i.e., a lavatory without either a bathtub or shower) is counted as a half-bathroom.

2. Floor Area of Unit.

2.1 Unit Dimensions. The approximate interior contiguous floor area of each Unit has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line) enclosing the Unit, or from the midpoint of a Boundary Wall separating the Unit from another Unit. The approximate non-contiguous floor area of a Unit's Storage Locker has been measured from the exterior side of the Boundary Wall enclosing the Storage Locker, or from the midpoint of a Boundary Wall separating two Storage Lockers. The approximate outdoor floor area of a Unit's Balcony, Terrace, Juliette Terrace or Yard (if any) has been measured from the exterior side of the prevailing Boundary Wall (but not beyond the Property line), or from the exposed surface of the prevailing Building Wall, enclosing such outdoor floor area. All Common Elements bordering or within the indoor or outdoor floor areas of a Unit have been included in the computation of the floor areas of the Unit, but such Common Elements are not part of the Unit.

2.2 Inclusion of Common Elements. The floor area occupied by any Common Elements bordering or within a Unit (such as the Boundary Wall, Boundary Floor, Boundary Ceiling, vent, chase wall or area, conduit, duct, cove, shelve and shaft) have been included in the computation of the floor area of the Unit, but such Common Elements are not part of the Unit.

2.3 Allowance. All floor areas used in the calculations of Common Interests are approximations within a tolerance of about 5%.

2.4 Based on Full (Actual) Square Footage. The approximate floor areas shown in the "Unit" column and the "Balcony/Terrace/ Juliette Terrace/ Yard" column equal the full (actual) square footages of the Unit and the Balcony, Terrace, Juliette Terrace or Yard (as applicable), respectively.

2.5 Balcony, Terrace, Juliette Terrace or Yard. The Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) appurtenant to a specified Unit is included in, and is part of the private and exclusive ownership and possession of, such Unit.

3. Unit Total.

3.1 Based on Full (Actual) Square Footage. The approximate floor area shown in the "Unit Total" column equals the full (actual) square footage of the Unit and its appurtenant Balcony, Terrace, Juliette Terrace or Yard (if and as applicable).

4. Common Interest. The Common Interest of 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 for exclusive or shared use, and the overall dimensions of the particular Unit, in accordance with Section 339-i(1)(iv) of the Condominium Act.

END OF EXHIBIT B

EXHIBIT C TO DECLARATION OF CONDOMINIUM

ESTABLISHING

324 WEST 108 CONDOMINIUM

GLOSSARY

Certain of the capitalized terms set forth below are defined where indicated in the Condominium Documents to which this EXHIBIT C is attached. The meanings given to other capitalized terms used in the Condominium Documents are defined below. See Section 1.2.2 of the Declaration for Rules of Interpretation applicable to certain lower case words used in the Condominium Documents.

"**10-Day Rebuttal Period**": Defined in Section 18.4.2(b) of the By-Laws.

"**10-Day Submission Period**": Defined in Section 18.4.2(a) of the By-Laws.

"**24/7**": Twenty-four (24) hours a Day, seven days a week.

"**324 West 108th Street Public Areas**": Defined in Section 7.2.1(c) of the Declaration.

"**324 West 108th Street Zoning Lot**": Defined in Section 28.1(a) of the Declaration.

"**Acceptable Architect/Engineer**": Defined in Section 5.7.23(f-3.1) of the By-Laws.

"**Acceptable Non-Structural Plans and Specifications**": Defined in Section 5.7.2(f-4) of the By-Laws.

"**Acceptable Structural Engineer**": Defined in Section 5.7.2(e-2) of the By-Laws.

"**Acceptable Structural Plans and Specifications**": Defined in Section 5.7.2(e-4) of the By-Laws.

"**Acceptance Notice**": Defined in Section 15.2.8 of the By-Laws.

"**Access Notice**": Defined in Section 5.7.3(a) of the By-Laws.

"**Access Party**": Defined in Section 5.7.3(a) of the By-Laws.

"**Accessible**": The Facility or other item in question are accessible from within the interior of a Unit without damage or destruction to partitions, Boundary Walls, Boundary Floors, Boundary Ceilings, Building Walls, or similar elements within or bordering a Unit.

"**Acts or Omissions**": Actions, abuse, neglect, mistakes or oversights, whether proper or improper, right or wrong, inadvertent or intentional, with or without negligence, lawful or unlawful, or in compliance with or in Violation of the Condominium Documents.

"**Additional Common Charges**": Defined in Section 8.2(b) of the By-Laws.

"**Additional Development Rights**"; Defined in Section 28.1(b) of the Declaration.

"**Adjusted Casualty Estimates**": Defined in Section 7.6 of the By-Laws.

"**Adjusted for Inflation**": The dollar amount to be "Adjusted for Inflation" shall be adjusted every five years, commencing on the first "Reset Date" (defined below), by multiplying such amount (as the same may have been previously Adjusted for Inflation) by a fraction, the numerator of which is the "Price Index" on the last Day of the calendar quarter immediately preceding the Reset Date as of which such adjustment is being made, and the denominator of which is the Price Index on the last Day of the calendar quarter immediately preceding the prior "Reset Date" (or in the case of the first Adjustment for Inflation, the last Day of the calendar quarter immediately preceding the date of the Declaration). The term "Price Index" is the Consumer Price Index for all Urban Consumers, New York-Northeastern New Jersey, All Items, (1982-84=100) issued by the Bureau of Labor Statistics of the United States Department of Labor. If the Price Index shall hereafter be converted to a different standard reference base or a change is made in the components or the number of items contained in the Price Index, or if the Price Index is altered, modified, converted or revised in any other way, the Price Index shall be adjusted to the figure that would have been arrived at had the conversion, change, alteration, modification or revision not occurred. In the event that the Price Index is no longer issued, a conversion factor, formula or table as may be published by Prentice Hall, Inc. shall be used, or failing such publication, any other nationally recognized publisher of similar statistical information as is then generally recognized and accepted for similar determinations of the cost of living increases shall be used. The term "**Reset Date**" means each fifth (5th) anniversary of the date of the Declaration.

"**Adjusted Condemnation Estimates**": Defined in Section 12.3.3(j) of the By-Laws.

"**Administrative Expenses**": Defined in Section 8.1(c) of the By-Laws.

"**Affiliated Nominee or Designee**": Any nominee or designee, incorporated or otherwise, organized by the Board to act on behalf of the Condominium Board or the Condominium Association.

"**All Work**": All manner of Work, including Structural and Non-Structural Work, Extraordinary Work and Ordinary Work.

"**Alter**" and derivations thereof: To alter, improve, modify, add to, adjust, vary, change, amend, revise, rework, correct, demolish, remove or replace, whether Structural or Non-Structural, or extraordinary or ordinary.

"**Alteration Agreement**": Defined in Section 5.7.2(k) of the By-Laws.

"**Alteration Notice**": Defined in Section 5.7.2(k-1) of the By-Laws.

"**Amendment**": An amendment to the Plan accepted and filed by the New York State Department of Law or an amendment to any of the Condominium Documents (as indicated by the text).

"**Annual Report**": Defined in Section 2.23 of the By-Laws.

"**Applicable Response Period**": Defined in Section 5.7.4.2 of the By-Laws.

"**Arbitration Panel**": Defined in Section 18.4(a) of the By-Laws.

"**Appointing Authority**": Defined in Section 18.3.1 of the By-Laws.

"**Arbitration Costs**": Defined in Section 18.6 of the By-Laws.

"**Arbitration Notice**": Defined in Section 18.2 of the By-Laws.

"**Association**": Defined in Section 1.11 of the Declaration.

"**Association's Assets**": Defined in Section 7.5 of the Declaration.

"**Assurances**": Defined in Section 21.4 of the Declaration.

"**Attorney-in-Fact**": Defined in Section 14.1(a) of the Declaration.

"**Award**": Defined in Section 12.2 of the By-Laws.

"**Balcony**": The concrete floor (or other construction material) and sealant, if and to the extent existing at the date of recording the Declaration or to be built pursuant to Sponsor's Plans and Specifications, which is immediately accessible through a Door from within the interior of a Unit. The Structural Components of a Balcony are part of the Common Elements. The volume of space bordered in part by the Structural Components of a Balcony is part of the private and exclusive ownership and possession of a Unit which has immediate access thereto through a Door from within the interior of a Unit.

"**Balcony Structures**": The Boundary Wall, parapet, coping, railing, drainage System (including drains, gutters, leaders and similar elements) and all other structures enclosing and supporting or serving a Balcony, if and to the extent existing at the date of recording the Declaration or to be built pursuant to Sponsor's Plans and Specifications, which are part of the Common Elements.

"**Base Utilized Development Rights**": Defined in Section 28.1(c) of the Declaration.

"**Baseball Arbitration**": Defined in Section 18.1.1 of the By-Laws.

"**BCL**": Defined in Section 27.12.1 of the Declaration.

"**Board**": The same as Condominium Board.

"**Board Governance**": Same as Board's Governance Rights.

"**Board Unit**": Defined in Section 1.5(c) of the Declaration.

"**Board's Governance Rights**": The rights of the Condominium Board to (a) govern and conduct the affairs of the Condominium Association; (b) administer, manage, direct, control, rule, and regulate the use of, and access to, the Common Elements; (c) supervise the use of the Limited Common Elements and the actions and activities of Owners and tenants in, on and to their respective Units and each Unit's Appurtenances (i.e., Storage Locker in the cellar and (if and as applicable) Yard, Terrace, Juliette Terrace or Balcony); (d) implement the powers and duties vested in the Board in the Condominium Documents; and (e) generally, to do, perform, exercise, pursue, enforce, uphold, protect and defend the easements,

rights, remedies, indemnities, protections, privileges, exemptions and other benefits of the Condominium Board as set forth in the Condominium Documents.

"**Board Member**": A member of the Condominium Board, including an Independent Board Member or (for so long as there is an Unsold Unit) a Sponsor Board Member.

"**Bona Fide Purchaser**": A Purchaser under the Plan who may be (but need not be) counted toward declaring the Plan effective pursuant to Part 20 of Title 13 NYCRR (the Department of Law regulations applicable to the Plan).

"**Bonus Development Rights**": Defined in Section 28.1(d) of the Declaration.

"**Boundary Ceiling**": The Structural Ceiling enclosing a Unit.

"**Boundary Floor**": The Structural Floor enclosing a Unit.

"**Boundary Wall**": A Building Wall or a perimeter wall enclosing a Unit or a Common Element, composed of masonry, concrete block, gypsum board, glass or other construction material, including (to the extent existing) the struts, studs, plaster, insulation, frame or other components thereof.

"**Budget**" or "**Budget of Condominium Operation**": The Budget of Projected Receipts and Expenses of Condominium Operation of the Property for a Budget Year, as determined and adopted in accordance with Article 8 of the By-Laws.

"**Budget Year**": A Budget for the twelve (12)-month period (fiscal or calendar) determined and adopted by the Condominium Board.

"**Building**": The building known by the street address of 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York 10025.

"**Building Services**": The services to be provided by the Common Elements (including, if and to the extent applicable at the time in question, HVAC/Mechanical/Utility Building Systems, or only the portions thereof), as well as all other services and amenities contemplated in the Declaration, the By-Laws or the Plan, to be provided to all or a portion of one or more Unit Properties.

"**Building Standard**": To perform all Work affecting a Unit Property, a Common Element, an Association's Asset or the Sidewalk in a good, safe, clean, neat and sanitary first class condition and appearance, in proper working order, free and clear of water leaks, water accumulations, snow, ice, debris, dirt and undue air penetration, in keeping with the high quality, character, standards and dignity of the Building, in accordance with Laws, Good Construction Practices and all other Work Requirements.

"**Building Systems**": All Systems of the Building serving or benefiting more than one Unit or its appurtenant Limited Common Elements or the Common Elements.

"**Building Wall**": An exterior wall of the Building and its components (including fire retardant insulation and furring, together with all exterior Window sills, ornaments, heads and jambs).

"**Bulkhead**": The exterior structure located on the Main Roof which encloses and protects Egress Stairs and/or Elevator Equipment (if and as applicable), as shown on the Floor Plans and EXHIBIT F to the Declaration.

"**Bulkhead Roof**": The Roof of a Bulkhead located on the Main Roof.

"**Business Day**": Any Day of the year that is not a Saturday, Sunday or a legal holiday of the State of New York or United States government.

"**Business Hours**": Between the hours of 9:00 a.m. and 5:30 p.m.

"**Business Judgment**": The decisions, approvals, consents, actions and transactions of the Condominium Board, or a specified Board Member or Board Members, or Sponsor under the Condominium Documents that are made in good faith, for the purposes set forth in the Condominium Documents and within the scope of the party's authority, absent bad faith, breach of a fiduciary obligation, self-dealing, breach of contract or disparate treatment, shall have the equivalent status of those made by a cooperative housing corporation as to which the so-called "business judgment rule" articulated in Levandusky v. One Fifth Ave Corp. (75 NY2d 530 [1990]).

"**By-Laws**": The By-Laws of the Condominium set forth as EXHIBIT D to the Declaration, as such By-Laws or a provision thereof may be amended from time to time in accordance with its provisions.

"**Casualty**": A fire, explosion, flood, earthquake, severe and unusual inclement weather or other act or incident causing damage or destruction.

"**Casualty Estimates**": Defined in Section 7.6 of the By-Laws.

"**Casualty Repair Ratios**": Defined in Section 7.6 of the By-Laws.

"**Certificate**" or "**Certificate of Waiver or Exemption**": Defined in Section 15.6.1 of the By-Laws.

"**Claim**": Any manner of contention, dispute, controversy or and disagreement.

"**Commercial Arbitration Rules**": Defined in Section 18.3.1 of the By-Laws.

"**Commercial Reasonableness Standard**": Defined in Section 2.17.4 of the By-Laws.

"**Common Areas**": Defined in Section 7.2 of the Declaration.

"**Common Charges**": Defined in Section 8.2(a) of the By-Laws.

"**Common Elements**": Defined in Section 7.1 of the Declaration.

"**Common Expenses**": Defined in Section (.1(a) of the Declaration.

"**Common Facilities**": Defined in Section 7.2 of the Declaration.

"**Common Interest**": Defined in Section 7.1 of the Declaration.

"**Communications Facilities**": All antennae, satellite dishes and other communication devices and related Facilities (including fiber optic cable and other communication lines, wires, cables and conduits), plus any and all other new and/or additional communication Facilities that service or benefit the Units and/or the general public.

"**Condemnation Estimates**": Defined in Section 12.3.3(i-2) of the By-Laws.

"**Condemnation Repair Ratios**": Defined in Section 12.3.3(k) of the By-Laws.

"**Condominium**": Defined in Section 1.11 of the Declaration.

"**Condominium Act**": Article 9-B of the Real Property Law of the State of New York.

"**Condominium Association**": Defined in Section 1.11 of the Declaration.

"**Condominium Board**": The Board of Managers of the Condominium, which is the body that governs, manages, administers and Operates the affairs and business of the Condominium Association, the Common Elements and the Association's Assets.

"**Condominium Charges**": Defined in Section 8.2 of the By-Laws.

"**Condominium Document**": One of the Condominium Documents.

"**Condominium Documents**": The Declaration, including the Exhibits thereto (e.g., the By-Laws and Rules and Regulations, among others), and Floor Plans of the Condominium, as each may be duly amended from time-to-time.

"**Condominium Expenses**": Defined in Section 81 of the By-Laws.

"**Condominium Termination Events**": Defined in Section 15.1 of the Declaration.

"**Consenting Party**": Defined in Section 5.7.4.1 of the By-Laws.

"**Construction Parties**": All architects, engineers, construction managers, contractors, subcontractors, construction workers, consultants, expediters, experts, decorators and other professionals; all agents, employees and representatives of a Party; and all vendors of materials and supplies.

"**Controlling Interest**": The owner of a majority of the legal, equity or beneficial interest of an Entity that owns a Unit or the owner of the controlling number of votes to transact business of such Entity.

"**Cooperating Party**": Defined in Section 21.1 of the Declaration.

"**Costs and Expenses**" or "**Costs or Expenses**" or derivations thereof: Any kind of pecuniary expenditure, outlay, charge, price, fee, imposition, penalty or fine; provided, however, the pecuniary or monetary expenditures to be paid or reimbursed to a Party shall be out-of-pocket and at commercially competitive, market rates and amounts.

"**Contingency Reserve**": Defined in Section 8.5.3 of the By-Laws.

"**Creditor Party**": Defined in Section 1.9 of the Declaration.

"**Customized Changes and Improvements**": All Personal Property, Decorations, additions and other improvements to a Unit Property or the Common Elements that are not included in Sponsor's Plans and Specifications, as amended from time to time, whether existing on the date of recording the Declaration or added, improved or otherwise Altered thereafter.

"**Day**": Any day of the year, unless expressly stated to be a Business Day.

"**Debtor Party**": Defined in Section 1.9 of the Declaration.

"**Declarant**": W 108 Development LLC, the Declarant of the Declaration and the offeror of the Residential Units under the Plan. Same as Sponsor.

"**Declaration**": The instrument to which this EXHIBIT C is attached, executed by the Declarant (Sponsor) and recorded in the Register's Office, which submits the Property to the Condominium Act.

"**Decorate**" or "**Decorations**" or derivations thereof: All manner of: ornaments; furnishings; furniture; fixtures; embellishments; floorings (e.g., ceramic, marble, granite, stone, vinyl or other tiles of any composition, carpeting, rugs and other floor coverings); wall and ceiling finishes and coverings (e.g., paint, paper, fabric, wood, glass, tile and other materials); baseboards; moldings, lighting fixtures and chandeliers and related switch plates and electrical outlets; doorknobs, hinges and other hardware; and plants, flowers and gardening.

"**Deemed Consent Notice**": Defined in Section 5.7.4.2 of the By-Laws.

"**Department of Law**": The Department of Law of the State of New York.

"**Description Change**": Defined in Section 12.1(f) of the Declaration.

"**Designee**": A Person who is designated by Sponsor or an Unsold Residential Unit Owner in an Amendment to the Plan or a deed, or an Amendment to the Declaration or other instrument executed and acknowledged in recordable form, as a "Designee" with respect to each every Unsold Unit owned by such Designee.

"**Development Rights**": Defined in Section 28.1(e) of the Declaration.

"**Development Rights Applications**": Defined in Section 28.1(f) of the Declaration.

"**Development Rights Documents**": Defined in Section 28.1(g) of the Declaration.

"**Diplomat**": Defined in Section 19.1 of the Declaration.

"**Discretionary Consent**" or similar words: The consent to be given by a Party is discretionary and may be conditioned, delayed, withheld or denied, without cause or explanation, in the sole and absolute

discretion of the Party whose consent is sought or required to be given, without recourse against such Party or its Related Parties in the event the required consent is conditioned, delayed, withheld or denied.

"**Discretionary or Reasonable Consent**": The consent to be given by a Party is either the Discretionary Consent or the Reasonable Consent, as the case may be.

"**Disposition**": To Lease, rent, grant easements or concessions, license, mortgage, securitize, collateralize, assign, transfer, sell, convey, market, advertise, improve, combine, divide, expand, contract and to otherwise transact any matter.

"**Disputant**" and "**Disputants**": Defined in Section 18.4(a) of the By-Laws.

"**DOB**": The New York City Department of Buildings.

"**Domestic Hot and Cold Water Systems**": All domestic hot and cold water Facilities of the Building serving or benefiting the Common Elements or all or portions of more than one Unit.

"**Door**": The wood, metal or other construction material comprising a door, together with its frame, hardware (e.g., hinges, levers, pulls, knobs and locks), saddles and other components comprising a door.

"**DR Owner**": Defined in Section 28.1(h) of the Declaration.

"**Durable**": Defined in Section 14.1(b) of the Declaration.

"**Duty**": The obligation, burden, responsibility and requirement.

"**Egress Stair**": A fire or public egress stair leading to a Common Element or a street together its, hand rails, lighting, landing, fire-rated enclosing walls, ceilings and other related Facilities comprising and serving exclusively such public egress stair.

"**Elevator**": All references to an elevator shall include all components, such as its cab, shaft, pit, cables and all other Facilities serving exclusively the elevator.

"**Emergency**": A dangerous, hazardous or other condition or activity that threatens: (a) the preservation of the Building; or (b) the life, health, safety, protection or security of an Owner or Occupant of a Unit or pedestrians on a Sidewalk adjacent to the Property; or (c) to cause bodily harm or death, or damage to a Unit or a Common Element; or (d) to suspend or disrupt any necessary Building Service, other than permitted shutdowns as provided in the Declaration or the By-Laws; or (e) to render a Unit substantially unusable for its Permitted Use and Enjoyment.

"**Emergency Condition**": A state, circumstance, situation, event or activity constituting an Emergency.

"**Entity**": A partnership, limited liability partnership or company, corporation, trust, estate, fiduciary, unincorporated association, syndicate, joint venture, organization, government, embassy, consulate, Governmental Authority or any other entity legally competent to own real property in the State of New York.

"**Entity Board Member**": Defined in Section 2.10.1 of the By-Laws.

"**Entity Board Member Representative**": Defined in Section 2.20.1 of the By-Laws.

"**Entity-Owner**": An Entity that is the Owner of a Unit.

"**Entrance Door**": An entrance Door to the Building or to a Unit or a Unit's Balcony, Terrace, Juliette Terrace or Yard.

"**Environmental Laws**": Defined in Section 14.4 of the By-Laws.

"**E-Smoking**": Defined in Section 14.12.1 of the By-Laws.

"**Estoppel Certificate**": Defined in Section 15.12.1 of the By-Laws.

"**Equipment**": All manner of machinery, tools, apparatus, devices and implements comprising part of a Common Element or Unit (as applicable), now or hereafter, whether mechanical, electrical, electronic, plumbing, heating, ventilation, cooling or otherwise (e.g., the HVAC/Mechanical/Utility Building Systems), and their respective Lines and Conduits, including: boilers, converters, radiator, heaters, blowers, exchanges and related equipment forming part of a heating system; motors; pumps; water and electric meters, electrical panels, circuit breakers, transformers, switches and related equipment forming part of an electrical system; air-conditioners (including cooling tower, all chillers, condensers, compressors, fan coil units and related equipment forming part of an air conditioning system); fans; telephones and related equipment forming part of a telephone system; intercom (including all equipment forming part of an intercom system); cameras, monitors and related equipment forming part of a security system); televisions, antennae and related equipment forming part of a television system (cable or wireless); appliances (including washers, dryers, refrigerators, cook tops, ranges and ovens); sinks; toilets; fire alarms; smoke detectors; tanks and tank assemblies; sprinkler heads and alarms and related equipment forming part of a sprinkler system; bells; thermostats; thermometers; vents; sensors; valves; panels; receptacles; outlets; wiring; siamese connections; hoses, electrical, lighting, plumbing and other fixtures and bulbs; Signs; pipes; lines; ducts; conduits; cables; risers; mains; shafts; pits, flues and caps; chases; hardware; locks; screens, strainers; traps; drains; catch basins; leaders; filters; incinerators; compactors; canopies; closets; cabinets; doors; railings; metal stairs; furniture; mirrors; furnishings; appurtenances; urns, baskets, mail chutes; mail boxes; carpeting; tiles; floor coverings; draperies; shades; window coverings; wallpaper; wall coverings; trees; shrubbery; flowers; plants; horticultural tubs; horticultural boxes; equipment used for cleaning halls, floors, carpets, walls and other areas (whether interior or exterior) including for snow removal; and all other equipment forming a part of a system of the Building.

"**Exercising Party**": Defined in Section 28.1(i) of the Declaration.

"**Excess Development Rights**": Defined in Section 28.1(j) of the Declaration.

"**Exempt Transaction**": Defined in Section 15.2.1 of the By-Laws.

"**Exempt Unit Owner**": Defined in Section 15.6.1 of the By-Laws.

"**Extraordinary Work**": All Work other than Ordinary Work.

"**Façade**": The portion of a Building Wall facing a street.

"**Facilities**": All manner of Equipment, Systems, structures, fixtures, Personal Property, Decorations, materials, amenities and improvements at any time located in, on, under or adjacent to the Land or Building and forming part of a Unit or the Common Elements and serving or benefiting, at the time in question, one or more Units or the Common Elements, or necessary or desirable for the Use and Enjoyment of the Property or any portion thereof.

"**Federally Financed Permitted First Mortgages**": Defined in Section 15.1 of the Declaration.

"**Final Certificate of Occupancy**": The final certificate of occupancy of the Building upon completion of its construction issued by the DOB authorizing the occupancy of all Units for the purposes contained in the Plan and the Condominium Documents.

"**Fire Protection System**": All fire protection Facilities of the Building (e.g., pumps, sprinklers, sprinkler alarm, hoses, nozzles, Siamese connection, standpipe and related Facilities) serving or benefiting the Common Elements or all or portions of more than one Unit.

"**First Unit Closing**": The first conveyance of a Unit to a Bona Fide Purchaser under the Plan.

"**First Year's Budget**": Defined in Section 2.4.2(a-2) of the By-Laws.

"**Floor Plans**": The floor plans of the Building (showing, among other things, the layout, location and approximate dimensions of the Units as built), certified by a registered architect or licensed professional engineer, and filed with the Real Property Assessment Department for the Borough of Manhattan, in the County, City and State of New York and in the Register's Office contemporaneously with the recording of the Declaration.

"**Force Majeure**": Acts of nature (such as flood, earthquake or severe or unusually inclement weather), explosion, fire, strikes, work stoppage or slowdown, unavailability of materials supplies, war, emergencies, national defense preemptions, governmental restrictions or actions, injunctions or court orders, or any other cause or event beyond the reasonable control of Sponsor, the Condominium Board or other Person in question (as applicable) and not attributable to the improper or bad faith Acts or Omissions of such Person.

"**Foreign Person**": Any organization that is not formed or organized under the Laws of the State of New York or is not an instrumentality of the State of New York or any county, municipality, village or other Governmental Authority of the State of New York, or any Individual who does not maintain his or her principal residence in the State of New York.

"**FSIA**": Defined in Section 19.1(a) of the Declaration.

"**General Requirements**": Defined in Section 10.1 of the Declaration.

"**GBL**": Article 23-A of the General Business Law of the State of New York and Part 20 of Title 13 NYCRR, which are the regulations promulgated by the Department of Law applicable to the Plan.

"**Good Construction Practices**": The quality of the workmanship and materials to Maintain, Repair, Restore, Alter or perform other Work in, on, to or affecting the Building (including the Common Elements and the Unit Properties) and the Sidewalk shall meet or exceed any relevant specific standards required by applicable Laws as well as the standards of locally accepted building practices for high quality residential buildings in the locale of the Building and comparable to the construction and amenities of the Building.

"**Government Documents**": All notices, reports, registrations, applications, petitions, declarations, easements, licenses, authorizations, forms, items, papers and other documents to be filed with, or submitted to, or given by a Governmental Authority, including any Governmental Work Permits and Governmental Approvals, consents, authorizations, waivers, exemptions, variances or licenses.

"**Governmental Approval**": One of the Governmental Approvals.

"**Governmental Approvals**": The approvals, sign-offs, closing of open applications, letters of completion, new or amended temporary of final Certificate of Occupancy of the Building, a Certificate of Appropriateness or a Certificate of No Effect (as applicable) from the Landmarks Preservation Commission of The City of New York pursuant to Section 302 of the Landmarks Preservation Law, and all other required Government Documents evidencing the Work at issue has been completed in accordance with applicable Laws and the codes, regulations and other requirements of Governmental Authorities having jurisdiction thereover.

"**Governmental Authorities**": All authorities, agencies, departments, assessors, boards, bodies, and other instrumentalities of federal, state, county, municipal, village, local, foreign, international, regional, domestic and other governmental and quasi-governmental authorities having jurisdiction, including the Landmarks Preservation Commission (if applicable).

"**Governmental Violation**": A violation noted or issued by a Governmental Authority.

"**Governmental Work Permits**": All required approvals, licenses, authorizations, certificates, and permits of Governmental Authorities having jurisdiction in connection with any Work to be undertaken in or on a Unit Property or a Common Element.

"**Guests**": The visitors and invitees of an Owner or a Registered Tenant of a Unit, or of a Household member of such Owner or said Registered Tenant (as applicable) who do not pay any manner of consideration or value or provide any service or exchange to occupy the Unit or any portion thereof and whose relationship to the Owner or said Registered Tenant (as applicable), or a Household member of such Owner or said Registered Tenant (as applicable), is not attributable to advertising on any media

platform (such as the Internet, Airbnb, Home Away, Roomorama or other social media site) or to a broker or other intermediary.

"**Household**": To the extent not prohibited by Laws, the Immediate Family or a domestic partner and such domestic partner's dependent children, domestic employees and health aides or care givers of an Owner or a Registered Tenant of a Unit. If the Owner or Registered Tenant is a corporation, partnership, limited liability company, trust, consulate, mission, sovereign government or other Entity, then the term Household shall mean the Immediate Family or a domestic partner and such domestic partner's dependent children, domestic employees and health aides or care givers of an Individual who is an officer, director, shareholder, member, partner, fiduciary, trust grantor or beneficiary, principal or governmental official or employee designated by such Entity.

"**HVAC**": Heating, ventilating and air conditioning.

"**HVAC/Mechanical/Utility Building Systems**": All Building Systems serving all or a portion of one or more Units (other than Unit Facilities), or serving the Common Elements, including (if and as applicable at the time in question): HVAC; hot and cold water; Refuse Disposal System; storm drainage; sanitary sewerage or waste lines; fire protection (e.g., sprinkler, sprinkler alarm, hoses, standpipe, siamese connection and related Facilities); Utilities; intercom; security cameras, monitors and other devices.

"**Immediate Family**": A spouse, child (whether by blood, marriage or adoption), parent (including a step-parent or parent-in-law), grandparent and sibling.

"**Inaccessible**": The Facility or other item in question is not Accessible.

"**Indemnification**": The giving of an Indemnity.

"**Indemnify**" or derivations thereof: Whenever this term is used, it shall be deemed to include the words "to defend and hold harmless", and shall benefit and apply to all Related Parties of the Party being indemnified and the respective heirs, distributees, legatees, executors, administrators, legal representatives, successors and assigns of such Indemnified Party and Related Parties.

"**Indemnified Party**": Defined in Section 27.1 of the Declaration.

"**Indemnity**": An indemnity given under or pursuant to the Plan, a Plan Amendment filed prior to the First Unit Closing, the Declaration or the By-Laws.

"**Independent Board Members**": The members of the Condominium Board who have no family (by blood, marriage or adoption), employment or business relationship or affiliation with Sponsor or an Unsold Unit Owner or a Related Party to Sponsor or an Unsold Unit Owner. Generally, the Independent Board Members are the Owners or occupants or Registered Tenants of Sold Units or their respective family members or Related Parties.

"**Individual**": A natural person.

"**Install**" or derivations thereof: To erect, construct, affix, mount, fasten, project or otherwise attach to, in, on, under, above or from, or to hang on, under or from.

"**Institutional Lender**": A savings bank; a savings and loan association; a bank or trust company; a credit union; an insurance company; a real estate investment trust; a mortgage trust; a federal, state or municipal union or similar organization; a welfare, pension or retirement fund or system; or the holder of a mortgage encumbering one (1) or more Unsold Units.

"**Institutional Mortgage**": Any mortgage covering one or more Units whose initial holder is either an Unsold Unit Owner (including Sponsor), or its designee, or an Institutional Lender.

"**Instruments**": Defined in Section 3.1.3 of the By-Laws.

"**Insubstantial Casualty**": Defined in Section 7.1(b) of the By-Laws.

"**Insubstantial Taking**": Defined in Section 12.3.1 of the By-Laws.

"**Insurance Conditions**": Defined in Section 6.12(i) of the By-Laws.

"**Insurance Trustee**": An Institutional Lender having both an office in the City and State of New York and a capital surplus and undivided profits of $100,000,000 or more, from time-to-time appointed to serve as such by the Condominium Board.

"**Insurers**": Defined in Section 7.5 of the By-Laws.

"**Intercom System**": All intercom Facilities of the Building serving or benefiting the Common Elements or all or portions of more than one Unit.

"**Interested Board Party**": Defined in Section 2.21.2 of the By-Laws.

"**Interested Party**": Defined in Section 21.1 of the Declaration.

"**Interested Party Transaction**": Defined in Section 2.19.2 of the By-Laws.

"**International Organization**": Defined in Section 19.1 of the Declaration.

"**Juliette Terrace**": A non-walkable concrete floor (or other construction material) Terrace.

"**Juliette Terrace Structures**": The Boundary Wall, railing, parapet, coping, soffit, drainage System (including drains, gutters, leaders and similar elements) and other structures under, enclosing and supporting or serving a Juliette Terrace, if and to the extent existing at the date of recording the Declaration or to be built pursuant to Sponsor's Plan and Specifications.

"**Land**": The parcel on which the Building is located together with the air space thereover, such parcel being more particularly identified in EXHIBIT A to the Declaration. The portions of said air space occupied by the Units or their respective Limited Common Elements are part of said parcel, but are included in, and are part of, such Unit or its appurtenant Limited Common Elements, respectively. All portions of said air space not utilized by Sponsor which remain after completion of rehabilitation and

construction of the Building and the issuance of a Final Certificate of Occupancy of the Building are excluded from such parcel, are not being submitted to condominium ownership and are included in the Excess Development Rights owned exclusively by Sponsor. All other air space are part of said parcel and owned in common by all Unit Owners and included in, and part of, the Common Elements. The Land includes, and is subject to, all easements, agreements, covenants, restrictions, rights, privileges, benefits, encumbrances, burdens and other matters of record appurtenant thereto.

"**Landmarks Commission**": Defined in Section 5.7.2(i) of the By-Laws.

"**Laws**": All laws and ordinances of federal, state, city or other local Governmental Authorities, including the New York City Landmarks Preservation Law, and all applicable regulations, codes, rules, orders, permits, directives and requirements of all Governmental Authorities having jurisdiction over the Property or the Condominium Association, as each may be duly amended from time to time.

"**Lease**" or derivations thereof: A lease, license, operating agreement or other occupancy agreement of a Unit or a Common Elements, as indicated by the text.

"**Lease Agreement**": Defined in Section 15.2.2 of the By-Laws.

"**Legal Expenses**": All reasonable legal fees and disbursements, and (if applicable) associated Litigation Costs and Expenses.

"**Liable**" or derivations thereof: All manner of legal responsibility, obligation or accountability.

"**Lighting System**": All lighting Facilities of the Building serving or benefiting the Common Elements or all or portions of more than one Unit.

"**Limited Common Elements**": Defined in Section 7.1 of the Declaration.

"**Limited Power of Attorney**": Defined in Section 14.1(c) of the Declaration.

"**Lines and Conduits**": All manner of cables, wires, fibers, optic fibers, filaments and lines (including risers and distribution and branch lines), together with the pipes, tubes, ducts, insulation and other conduits, together with their components, protecting or enclosing them.

"**Litigation**": All suits, proceedings, cross-claims, counterclaims, whether legal or equitable, brought in or before any court (whether federal, state or otherwise) or arbitration, mediation or other dispute resolution body having jurisdiction, together with all pleadings, motions, briefs, memoranda, interrogatories, discovery requests, affidavits, documents, transcripts of depositions, compromise and settlement agreements and other writings in arising therefrom.

"**Litigation Document**": Any pleading, complaint, answer, counterclaim, cross-claim, petition, application, certification, affidavit, motion, brief, memoranda, deposition transcript or recording, interrogatory, tolling agreement, compromise or settlement agreement, or release or discharge agreement.

"**Losing Disputant**": Defined in Section 18.6 of the By-Laws.

"**Loss**" or derivations thereof: All manner of actual or compensatory damages, but not consequential, indirect, incidental, special, punitive or otherwise (unless otherwise expressly specified), as well as all Costs and Expenses.

"**Main Roof**": The Roof above floor 6.

"**Maintain**", "**Maintenance**" or derivations thereof: To inspect, test, preserve, clean, wash, paint, waterproof and otherwise keep in good and proper working order and first-class condition and appearance in accordance with, and to prevent a decline, lapse or cessation from, the Building Standard.

"**Malfeasance**": An act, omission or conduct involving bad faith, breach of a fiduciary duty or obligation, self-dealing, dishonesty, fraud, theft, gross negligence, willful misconduct, illegality or other intentional wrongdoing.

"**Managing Agent**": The Person engaged from time-to-time by the Condominium Board to perform the Duties of a managing agent of the Building and initially will mean the management firm identified in Part I of the Plan, the proposed first managing agent chosen by Sponsor to be engaged by the Condominium Board.

"**Mortgage Representatives**": Defined in Section 15.15.2 of the By-Laws.

"**Net Award**": Defined in Section 12.2 of the By-Laws.

"**Net Insurance Trust Funds**": Defined in Section 7.5 of the By-Laws.

"**Non-Occupying Owner**": Defined in Section 14.11 of the By-Laws.

"**Non-Recourse, Limited and Several Liability**": Defined in Section 4.12 of the By-Laws.

"**Non-Structural**": Not Structural.

"**Non-Structural Work**": All Work, other than Structural Work.

"**Notice**": Defined in Section 17.1.1 of the By-Laws.

"**Occupant**": The Owner or a Registered Tenant, or a Household member, guest or invitee of the Owner or a Registered Tenant of a Unit.

"**Offeree**": Defined in Section 15.2.4 of the By-Laws.

"**Offeror-Owner**": Defined in Section 15.2.4 of the By-Laws.

"**Offeror's Unit**" : Defined in Section 15.2.4 of the By-Laws.

"**Operate**" or derivations thereof: To govern, administer, manage, control, perform, conduct and transact business or affairs or other activities; or to run, work or function, as indicated or inferred by the text.

"**Option Period**": Defined in Section 15.2.8 of the By-Laws.

"**Ordinary Work**": Defined in Section 5.3.1 of the By-Laws.

"**Outdoor Objects**": Defined in Section 10.7.1.1(c) of the Declaration.

"**Owner**": The legal (record) owner of fee simple title of a Unit and sometimes referred to in the Declaration and By-Laws alternately as a Unit Owner or a Residential Unit Owner.

"**Owner-Related Party**": A member of an Owner's Immediate Family or an officer, director, shareholder, member, partner, trustee, executor, administrator, guardian, legal representative, beneficiary, government official or employee of a corporation, limited liability company, partnership, trust, sovereign government, consulate or other Entity which owns the Unit, or a member of the Immediate Family of any of the foregoing.

"**Party**": A Unit Owner, the Condominium Board, a Board Member or officer, Sponsor, an Unsold Unit Owner, a Permitted Mortgagee, a Registered Mortgagee, a Registered Tenant, a Utility Provider and an Insurance Trustee are each a party.

"**Payment and Collection**": Defined in Section 1.9 of the Declaration.

"**Per Diem Interest**": Daily interest at the rate equal to the lower of nine per cent (9%) a year or the maximum legal rate, computed from the date paid to the date each amount owed is reimbursed.

"**Permitted First Mortgage**": A first mortgage placed on a Unit in compliance with the By-Laws.

"**Permitted First Mortgagee**": The holder of a Permitted First Mortgage.

"**Permitted Mortgage**": Defined in Section 15.13.1 of the By-Laws.

"**Permitted Mortgagee**": Defined in Section 15.13.1 of the By-Laws.

"**Permitted Use and Enjoyment**": The Use and Enjoyment of a Unit, the Common Elements, the Building Services and/or an easement or right is in accordance with the terms, agreements, obligations, prohibitions, limitations and restrictions stated in the Condominium Documents.

"**Permitted Users**": Defined in Section 14.12.1 of the By-Laws.

"**Person**": A natural person (i.e., an Individual) or an Entity.

"**Personal Property**": All manner of furniture, furnishings, cabinets, appliances, fixtures, supplies, household goods and belongings, and other items that are removable without damage or destruction to a Unit or the Common Elements beyond a *de minimis* extent.

"**Plan**": The Condominium Offering Plan for the Property and all Amendments thereto accepted and filed by the New York State Department of Law prior to the First Unit Closing.

"**Plan and Sale Obligations**": The obligations or Work undertaken by Sponsor in or pursuant to the Plan, a Plan Amendment or a Purchase and Sale Agreement for an Unsold Unit.

"**Plans and Specifications**": The plans and specifications for rehabilitating the Building with newly constructed, equipped and outfitted Units and Building Facilities, which (to the extent required by Law) have been filed with the DOB and which may, from time to time, be amended in accordance with the provisions of the Plan.

"**Position Memorandum**": Defined in Section 18.4(a) of the By-Laws.

"**Power**": The authority of a Party set forth in the Condominium Documents or the Plan or the Condominium Act.

"**Power of Substitution**": Defined in Section 14.1(d) of the Declaration.

"**Prevailing Disputant**": Defined in Section 18.6 of the By-Laws.

"**Principal**": Defined in Section 14.1(e) of the Declaration.

"**Pro Rata**": In the proportion that the Common Interest of a Unit bears to the total Common Interests of all Units or as otherwise specified or indicated by the text.

"**Professional Judgment**": The judgment to be rendered by an architect, engineer or other Work Party shall be based upon its experience and shall be without recourse against it or its Related Parties, absent Malfeasance.

"**Prohibited Uses**": Defined in Section 10.1(a) of the Declaration.

"**Promote**", "**Promotion**" or derivations thereof: All manner of offering, advertising, marketing, Signage, displays and other promotion and promotional activities in connection with the sale, rental or Operation of a Unit or the lawful business home occupation conducted in a Unit.

"**Property**": Defined in Section 2.1 of the Declaration.

"**Purchase and Sale Agreement**": The agreement between Sponsor and a Purchaser under the Plan for the purchase and sale of a Unit in the form set forth as DOCUMENT 1 in Part II of the Plan.

"**Purchaser**": A Person or Persons buying a Residential Unit under a fully executed Purchase and Sale Agreement with Sponsor pursuant to the Plan, whether for personal occupancy or use of the Purchaser or a member of Purchaser's Immediate Family or for rental investment or resale purposes.

"**Qualified Arbitrator**": Defined in Section 18.3.1 of the By-Laws.

"**Real Estate Tax**" or "**Real Estate Taxes**": Defined in Section 9.1.1 of the By-Laws.

"**Reasonably Acceptable**" or similar words or derivations thereof: The acceptance or acceptability required to be obtained shall not be arbitrarily conditioned, withheld, denied or delayed, and instead shall be determined in accordance with reasonable criteria and if not given, or if no response is given within a specified period (or if none) a commercially reasonable period, then the reason to condition, withhold, deny or delay, or to not respond, shall be explained upon written request.

"**Reasonable Consent**" or similar words or derivations thereof: The consent required to be obtained shall not be arbitrarily conditioned, withheld, denied or delayed, and instead shall be determined in accordance with reasonable criteria and if the consent is not given, or if no response is given within a specified period (or if none) a commercially reasonable period, then the reason to condition, withhold, deny or delay, or to not respond, shall be explained upon written request.

"**Reasonable Judgment**": The judgment to be exercised shall not be unreasonably conditioned, withheld, denied or delayed, and if not given, or if no response is given within a specified period (or if none) a commercially reasonable period, then upon written request the reason to condition, withhold, deny or delay, or to not respond, shall be explained based upon appropriate criteria.

"**Rebuttal Memorandum**" Defined in Section 18.4(b) of the By-Laws.

"**Reconfigured Unit**": Defined in Section 12.1(c) of the Declaration.

"**Refuse**": Defined in Section 14.4 of the By-Laws.

"**Refuse Disposal System**": Defined in Section 14.4 of the By-Laws.

"**Registered First Mortgage**": A Registered Mortgage that is a first mortgage lien against a Unit.

"**Registered First Mortgagee**": The holder of a Registered First Mortgage.

"**Registered Mortgage**": Defined in Section 15.12 of the By-Laws.

"**Registered Mortgagee**": Defined in Section 15.12 of the By-Laws.

"**Registered Tenant**": Defined in Section 15.17 of the By-Laws.

"**Register's Office**": The office of the City Register of the borough of Manhattan, in the County and State of New York.

"**Related Parties**": All current and former partners, members, managers, shareholders, officers, directors and principals of a Party or of an Entity comprising a Party; all Entities in which a Party owns or holds a legal, equity or beneficial interest and their respective current and former partners, members, managers, shareholders, officers, directors and principals; all current and former employees, agents or attorneys of each of the foregoing; and the respective heirs, legatees, distributees, executors, administrators, legal representatives, successors and assigns of all of the foregoing.

"**Related Party**": One of the Related Parties.

"**Reminder Notice**": Defined in Section 5.7.4.2 of the By-Laws.

"**Repair**" or derivations thereof: To, fix, correct, refurbish, replace and substitute, and to remove decay or dilapidation, whether Structural or Non-Structural, or extraordinary or ordinary (unless otherwise expressly provided).

"**Replacement Value**": Defined in Section 6.2.1(a) of the By-Laws.

"**Reply Notice**": Defined in Section 5.7.4.2 of the By-Laws.

"**Request Notice**": Defined in Section 5.7.4.2 of the By-Laws.

"**Requesting Party**": Defined in Section 21.1 of the Declaration or Sections 5.8.4.2 and 15.12.1 of the By-Laws, as applicable.

"**Reserve for Capital Replacements**": Defined in Section 8.5.4 of the By-Laws.

"**Reserve for Contingencies**": Defined in Section 8.5.3 of the By-Laws.

"**Residential Unit**": One of the dwelling Units in the Building (including a Sold Residential Unit and an Unsold Residential Unit, unless the context expressly provides otherwise) and constituting one of the Condominium Units established under, and so designated as such in EXHIBIT B to, the Declaration and on the Floor Plans, together with the Common Interest appurtenant to such Unit.

"**Residential Unit Owner**": The Owner of a Residential Unit.

"**Responsible Party**": The Party obligated or accountable under the Condominium Documents: (a) to Maintain and Repair a Common Element, the Sidewalk, an Association's Asset or a Unit Property, or as otherwise expressly stated in the Declaration or the By-Laws.

"**Restore**" or derivations thereof: To reinstate or rebuild.

"**Right**": Same as Power.

"**Right of First Refusal**": Defined in Section 15.2.8 of the By-Laws.

"**Right of Self-Help**": Defined in Section 16.1.1 of the By-Laws.

"**Rights and Powers**": All Rights and Powers (including all authorizations, easements, licenses, remedies, indemnities, protections, privileges, exemptions and other benefits) of a Party contained in the Condominium Documents or the Plan or the Condominium Act; subject, however, to the limitations, restrictions, prohibitions and requirements applicable to such Party, if and to the extent expressly contained in the Condominium Documents or the Plan.

"**Roof**": The top weather protection of the Building or a Building setback composed of concrete on metal deck (or other construction material) with a roofing system composed of liquid applied membrane, insulation fastened over flat roof insulation board with roof board, surface finish of non-granulated white and rubberized pavers at Equipment locations, flashing and counterflashing (or other construction material and fabrication, if and to the extent existing upon completion of rehabilitation of the Building and issuance of the Final Certificate of Occupancy). A reference to a "Roof" shall be deemed to include all Roof Structures appurtenant to such Roof, unless otherwise expressly provided.

"**Roof Structures**": If and to the extent existing at the time in question: the drainage System of a Roof (including drains, gutters, leaders and similar elements), the parapets, copings, railings, walls and other structures enclosing a Roof or Roof set-back, and the Bulkheads.

"**RPL**": New York State Real Property Law.

"**RPL §339-m**": New York State Real Property Law §339-m.

"**Rules and Regulations**": Defined in, Section 14.5 of the By-Laws.

"**Sale Agreement**": Defined in Section 15.2.2 of the By-Laws.

"**Sale or Lease Agreement**": Defined in Section 15.2.2 of the By-Laws.

"**Sale or Lease Notice**": Defined in Section 15.2.4 of the By-Laws.

"**Security Deposit**": Defined in Section 8.9.3 of the By-Laws.

"**Security Devices**": All manner of gates, bars, locks, lighting, cameras, alarms and other security devices and their respective related Lines and Conduits.

"**Security System**": All Security Devices and related Facilities serving or benefiting the Common Elements or more than one Unit.

"**Self-Help Notice**": Defined in Section 16.1.1 of the By-Laws.

"**Sidewalk**": A sidewalk adjacent to, and fronting, the Property.

"**Sidewalk Structure**": Defined in Section 5.7.2(m) of the By-Laws.

"**Sign**", "**Signs**" or "**Signage**" or similar words: Each and every kind whatsoever of item for use in connection sale, rental or Promotion or any business related thereto of a Unit or for any other lawful purpose, composed of any material, design, size, illumination, configuration, fabrication, quality, character, color, appearance or content, including the following: sign, inscription or lettering (on doors, windows, or elsewhere); picture; banner; flag; awning; canopy; planter; container; structure, placard, board, stanchion or other object.

"**Smoke**": Defined in Section 14.12.1 of the By-Laws.

"**Smoking**": Defined in Section 14.12.1 of the By-Laws.

"**Smoking and E-Smoking Ban**": Defined in Section 14.12.2 of the By-Laws.

"**Sold Residential Unit**" or "**Sold Unit**": A Residential Unit that is sold and conveyed to a Bona Fide Purchaser under the Plan (including a Bona Fide Purchaser who is buying for personal use or occupancy by the Purchaser or Purchaser's Immediate Family or for rental and investment). Generally, a Sold Unit is any Residential Unit that is not an Unsold Residential Unit.

"**Sold Residential Unit Owner**" or "**Sold Unit Owner**": The Owner of a Sold Residential Unit .

"**Sole Cost and Expense**" or similar words: The Costs and Expenses shall be borne solely by the applicable Party without reimbursement from, or any manner of recourse against, another Party or its Related Parties.

"**Special Assessment**": Defined in Section 8.2 of the By-Laws.

"**Special Permit Rights**": Defined in Section 28.1(k) of the Declaration.

"**Specially Allocated Expense**": One of the Specially Allocated Expenses.

"**Specially Allocated Expenses**": Defined in Section 8.1(b) of the By-Laws.

"**Sponsor**": W 108 Development LLC, the Declarant of the Declaration and the offeror of the Residential Units under the Plan.

"**Sponsor Board Control Period**": The period ending on the *earlier* of: (a) the fifth anniversary of the First Unit Closing; or (b) whenever the Unsold Units constitute less than twenty-five percent (25%) of all Units in number and Common Interest.

"**Sponsor Board Member**": A Board Member designated exclusively by Sponsor or (after Sponsor no longer owns any Unsold Unit) other Unsold Unit Owners (if any) to serve as a Board Member and represent the interests of Sponsor and other Unsold Unit Owners on the Condominium Board.

"**Sponsor Designee**": A Person who is designated by Sponsor in an Amendment to the Plan or a deed, or an Amendment to the Declaration or other instrument executed and acknowledged in recordable form by Sponsor as a "Designee" or a "Sponsor Designee". Each Designee shall have the same right to designate a Person as a Sponsor Designee in the same manner as Sponsor provided herein. All of Sponsor's Rights under the Plan, Plan Amendments and the Condominium Documents shall inure to the benefit of a Sponsor Designee and shall apply to the Unsold Units owned by such Designee at the time in question.

"**Sponsor Related Party**": A Person who is a Related Party to Sponsor.

"**Sponsor Unit**": An Unsold Unit owned by Sponsor at the time in question.

"**Sponsor Veto Control Period**": The period ending on the *earlier* to occur of: (a) the date that the Common Interests appurtenant to the Unsold Units constitute less than 25% of the aggregate Common Interests appurtenant to all Residential Units; or (b) the fifth (5th) anniversary of the First Unit Closing with a Bona Fide Purchaser under the Plan.

"**Sponsor's Rights**": The special easements, rights, licenses, exemptions, remedies, indemnities, privileges, benefits and protections of Sponsor set forth in the Plan or the Condominium Documents, as each may be duly amended by Sponsor from time to time.

"**Standard Document Package**": Defined in Section 15.2.7 of the By-Laws.

"**Storage Locker**": The indoor noncontiguous area of each Unit located in the cellar consisting of the volume of space enclosed by prefabricated link or corrugated type metal or other construction material, which is part of the Common Elements.

"**Storage Locker Structures**": The prefabricated link or corrugated type metal or other construction material enclosing a Storage Locker.

"**Structural**": Comprising one or more Structural Components of the Building.

"**Structural Ceiling**": The wood joist or reinforced concrete or other construction material (if and as applicable) and its components comprising a ceiling of the Building.

"**Structural Components**": The following components of the Building (if and to the extent existing at the time in question) that contribute to the physical support, soundness and integrity of a Building: foundations, foundation walls, retaining walls, pilings, columns, beams, supports, girders, wood joists, load-bearing and shear walls, ceilings and floors (but not the finishes, coverings, floorings or supports thereunder or thereon), Building Walls, Roofs (including the Roof Structures appurtenant thereto), Balcony Structures, Terrace Structures, and all similar structural members of the Building and their respective components.

"**Structural Engineer**": A duly licensed and qualified engineer specializing for at least ten (10) recent years in structural engineering in the City and State of New York.

"**Structural Floor**": The wood joist or reinforced concrete or other construction material (if and a applicable)) and its components comprising a floor of the Building.

"**Structural Repairs**": Repairs to the Structural Components of the Building.

"**Structural Work**": All Work on or affecting the Structural Components of the Building or the structural support, integrity or soundness of said Structural Components, but excluding Ordinary Work on the Building's Structural Components that does not affect the structural support, integrity or soundness of said Structural Components, such as Installing on, to or in or removing from, Boundary Walls, Boundary Floors and Boundary Ceilings all manner of finishes and coverings, and customary mounting devices in accordance the applicable Work Requirements.

"**Subdivided Unit**": Defined in Section 12.1(a-1) of the Declaration.

"**Substantial Casualty**": Defined in Section 7.1(a) of the By-Laws.

"**Substantial Taking**": Defined in Section 12.3.1 of the By-Laws.

"**Succeeding Owner**": Defined in Section 28.2 of the Declaration.

"**Supporting Documentation**": Defined in Section 18.4(a) of the By-Laws.

"**Systems**": All systems (if and to the extent existing upon issuance of the Final Certificate of Occupancy) serving or benefitting more than one Unit or Unit Property or the Common Elements, including the HVAC/Mechanical/Utility Building Systems, the Fire Protection System, the Domestic Hot and Cold Water Systems, the Lighting System, the Intercom System, the Refuse Disposal System, the Security System and the Telecommunications System, and their respective components.

"**Taken**": Defined in Section 12.1 of the By-Laws.

"**Taking**" Defined in Section 12.1 of the By-Laws.

"**Taking Authority**": Defined in Section 12.1 of the By-Laws.

"**Tax Share**": Defined in Section 9.1.2 of the By-Laws.

"**Telecommunications Facilities**": All antennae, satellite dishes and other media and telecommunications devices and apparatus, and their respective related Facilities (including fiber optic cable and other media or telecommunication lines, wires, cables, conduits, receivers and relays) that service or benefit a Unit.

"**Telecommunications System**": All telephone, internet and Telecommunication Facilities, and their respective Lines and Conduits, that serve or benefit the Common Elements or all or portions of more than one Unit.

"**Temporary Certificate of Occupancy**": The certificate of occupancy of the Building or a portion of the Building issued by the DOB authorizing the occupancy one or more or all Units for the purposes contained in Plan and the Condominium Documents.

"**Tenant**": A Person entitled to use, occupy and possess a Unit pursuant to a Lease made by the Owner of such Unit.

"**Tenant Obligations**": The obligations or Work undertaken by Sponsor to a Tenant of an Unsold Unit pursuant to a Lease or otherwise.

"**Terrace**": The pavers, tiles, wood deck or other construction material and the supporting pedestals located above and protecting a Roof or Roof setback. The Terrace does not include the portion of the Roof or Roof set-back under and supporting a Terrace or Juliette Terrace, or the Terrace Structures enclosing a Terrace or Juliette Terrace, all of which are part of the Common Elements.

"**Terrace Structures**": The guard Boundary Walls, Building Wall, railing, parapet, coping, soffit, drainage System (including drains, gutters, leaders and similar elements) and other structures under, enclosing and supporting or serving a Terrace, if and to the extent existing at the date of recording the Declaration or to be built pursuant to Sponsor's Plan and Specifications.

"**Transactional Persons**": Defined in Section 22.2(e) of the Declaration.

"**TRIA**": Defined in Section 6.2.1(c) of the By-Laws.

"**Unfettered**": Unrestrained, without and free of any consent, approval, fee, charge, imposition, payment, condition, restriction, limitation, prohibition or requirement, other than compliance with the General Requirements and any other expressly stated restriction, limitation, prohibition or requirement.

"**Unit**" or "**Units**": Defined in Section 6.1 of the Declaration and shall have the meaning contained in RPL §339-e(14).

"**Unit Areas**": Defined in Section 6.7 of the Declaration.

"**Unit Alteration**": Defined in Section 12.1(e) of the Declaration.

"**Unit Change**": Defined in Section 12.1 of the Declaration.

"**Unit Combination**": Defined in Section 12.1(b) of the Declaration.

"**Unit Division**": Defined in Section 12.1(a) of the Declaration.

"**Unit Expansion**": Defined in Section 12.1(d) of the Declaration.

"**Unit Facilities**": Defined in Section 6.7 of the Declaration.

"**Unit Owner**": The Owner of a Unit, including a Sold Unit Owner and an Unsold Unit Owner.

"**Unit Property**": A Unit and its appurtenant Limited Common Elements.

"**Unit Reconfiguration**": Defined in Section 12.1(c) of the Declaration.

"**Unit Users**": An Owner or a Registered Tenant of a Unit, members of the Household of such Owner or said Registered Tenant, and Guests of such Owner or said Registered Tenant or members of their respective Households.

"**Unsold Residential Unit**": A Residential Unit owned at the time in question by an Unsold Residential Unit Owner (regardless of whether such Owner is Sponsor or a Designee). A Sold Unit that is reacquired by Sponsor shall be regarded as an Unsold Unit for all purposes other than for determining the expiration of the Sponsor Board Control Period or the Sponsor Veto Control Period. An Unsold Residential Unit shall retain its status and character as an Unsold Residential Unit until it is conveyed to a Bona Fide Purchaser under the Plan or is occupied by the Owner thereof or a Related Party to such Owner.

"**Unsold Residential Unit Owner**": Sponsor or a Designee, whoever owns an Unsold Residential Unit at the time in question.

"**Unsold Unit**": Same as Unsold Residential Unit.

"**Unsold Unit Owner**": Same as Unsold Residential Unit Owner.

"**Upzoning Rights**": Defined in Section 28.1(l) of the Declaration.

"**Usage**": Defined in Section 8.1(b) of the By-Laws.

"**Use and Enjoy**" and derivations thereof: To use, enjoy, possess, occupy and obtain all benefits, either exclusively or in common with respect to a portion of the Property for its permitted purposes, under the terms and conditions contained in Condominium Documents.

"**Utilities**": Electricity or other source of energy for heating, cooling, lighting and providing power; water; sewerage; storm drainage; and all manner of media and communications (e.g., cable or wireless or satellite television, telephone, cellular phone and Internet.

"**Utility Easements and Rights**": Utility Leases granted to Utility Providers for Utility Services.

"**Utility Equipment and Related Facilities**": All Equipment and related Facilities for Utilities, including their respective related Lines and Conduits.

"**Utility Grantor**": Defined in Section 11.7.1 of the Declaration.

"**Utility Lease**": A lease, license, concession or easement granted for a Utility Service.

"**Utility Provider**": The provider of a Utility Service.

"**Utility Services**": All services provided or permitted to be provided for Utilities to a Unit or its appurtenant Limited Common Element, or to the Common Elements, in accordance with the Declaration or the By-Laws.

"**Vapors**": Defined in Section 14.12.1 of the By-Laws.

"**Violate**" or derivations thereof: To default or breach, or (where expressly provided) to suffer a default or breach, or to fail to observe, perform or comply with (whether intentional or inadvertent) an obligation, restriction, limitation, prohibition or other requirement contained in the Condominium Documents.

"**Window**": The pane, muntins, mullions, sashes, latches, mechanisms, frames and any other components comprising a window (if and to the extent applicable), whether a fixed or operable window, including a the portion of a window in the Building's Façade or a Building Wall.

"**Winning Position Memorandum**": Defined in Section 18.4(h) of the By-Laws.

"**Work**" or derivations thereof: To Maintain, Repair, Restore, Alter or otherwise perform all manner of labor, job, action and activity, whether Structural or Non-Structural, extraordinary or ordinary, affecting a Unit, a Limited Common Element, a Common Element, an Association's Asset or the Sidewalk.

"**Work Access Requirements**": Defined in Section 5.7.3 of the By-Laws.

"**Work Assumption of Liability Requirements**": Defined in Section 5.7.7 of the By-Laws.

"**Work Consent Requirements**": Defined in Section 5.7.4 of the By-Laws.

"**Work Indemnity Requirements**": Defined in Section 5.7.8 of the By-Laws.

"**Work Parties**": All agents, employees and representatives of a Party, all Construction Parties authorized by or on behalf of a Party to perform Work, and their respective agents, employees and workers, and all vendors of materials and supplies engaged in Work by or on behalf of a Party or its Construction Parties.

"**Work Performance Requirements**": Defined in Section 5.7.2 of the By-Laws.

"**Work Remedies Requirements**": Defined in Section 5.7.6 of the By-Laws.

"**Work Repair and Restoration Requirements**": Defined in Section 5.7.5 of the By-Laws.

"**Work Requirements**": Defined in Section 5.7 of the By-Laws.

"**Yard**": The pavement, tile or other construction material comprising a part of a Unit.

"**Yard Structures**": The fences, exterior Building Walls or other construction material bordering and enclosing a Yard.

"**Zoning Resolution**": Defined in Section 28.1(m) of the Declaration.

END OF EXHIBIT C

EXHIBIT D
By-Laws of 324 West 108 Condominium

DOCUMENT 7

EXHIBIT D TO DECLARATION OF CONDOMINIUM

BY-LAWS

OF

Name of Condominium:	**324 West 108 Condominium**
Address of Condominium:	**324 West 108th Street (a/k/a 324-326 West 108th Street)** **New York, New York 10025**
Declarant:	**W 108 Development LLC**
Prepared by:	

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RULES AND REGULATIONS OF 324 WEST 108 CONDOMINIUM 1

BY-LAWS

OF

324 West 108 Condominium

ARTICLE 1

GENERAL

Section 1.3 **Purpose**. The purpose of these By-Laws is to set forth the requirements, rules and procedures concerning the Board's Governance to conduct the affairs and business of the Condominium Association as well as certain Powers and Duties of the Condominium Board and the Unit Owners, including the Disposition of the Common Elements, the Units and their respective Limited Common Elements, the Sidewalk, and the Association's Assets, as provided herein and in the Declaration and the Rules and Regulations.

Section 1.4 **General**. The provisions of Section 1 of the Declarations are hereby incorporated herein the same force and effect as thought set forth at length, except the words "Article", "Section", "provision", "paragraph", "clause", "EXHIBIT" or similar words refer to an Article, Section, provision, paragraph and clause of these By-Laws and the words "hereof", "herein", "above", "below" and similar words mean these By-Laws, unless otherwise expressly stated.

Section 1.5 **Applicability of By-Laws**. These By-Laws are applicable to the Property and to the Use and Enjoyment thereof.

ARTICLE 2

THE CONDOMINIUM BOARD

Section 2.1 **General**. The affairs and business of the Condominium Association and the Operation of the Property and the Association's Assets shall be governed by the Condominium Board as provided in Section 2.4 and elsewhere herein and in the Declaration and the Rules and Regulations. In exercising its Powers and performing its Duties under the Declaration and these By-Laws, the Condominium Board shall act on behalf, and shall be the agent, of all or (where otherwise expressly provided) certain of the Unit Owners.

Section 2.2 **Status of the Condominium Board**. Unless and until the Condominium Board shall incorporate in accordance with the terms of Section 2.4, the Condominium Board shall have, to the extent permitted by Laws, the status conferred upon the governing body of unincorporated associations under, or pursuant to, the terms of the General Association Law of the State of New York. If the Condominium Board shall incorporate in accordance with the terms of Section 2.4, the Condominium Board shall have, to the extent permitted by Laws, the status conferred upon governing body under, or pursuant to, the terms of the applicable statutes of the State of New York. In either event, however, the Condominium Board shall also have the status conferred upon it under, or pursuant to, the terms of the Condominium Act.

Section 2.3 **Principal Office of the Condominium Board**. The principal office of the Condominium Board shall be located either at the Property or at such other place reasonably convenient thereto as may be designated from time to time by the Condominium Board.

Section 2.4 **Powers and Duties of the Board**.

Section 2.4.1 General Powers and Duties. The Condominium Board, as agent of the Unit Owners, shall have all of the Powers and Duties necessary, or incidental, to control, conduct, administer, manage and otherwise Operate and govern the affairs and business of the Condominium Association, the Property (including the Units and the Common Elements), the Association's Assets and the Sidewalk in accordance with the terms of the Declaration, these By-Laws and the Rules and Regulations. Each Board Member shall act in the best interests of the Unit Owner or Unit Owners who elected or designated such Board Member (i.e., all Sold Unit Owners in the case of an Independent Board Member; and the Sponsor and all Unsold Unit Owners in the case of a Sponsor Board Member), with due regard to the fiduciary duty of each Board Members to properly Maintain and protect the Property as a whole and the life, health, safety, protection and security of Owners and Occupants of Units. The Condominium Board may do all such acts and things in furtherance of its Powers and Duties as are generally conferred upon an agent of an owner of real estate, except those that by Laws, or pursuant to the terms of the Declaration or these By-Laws, may not be, or are expressly not, delegated to the Condominium Board by the Unit Owners, or are limited or restricted. The Condominium Board shall exercise its Powers and perform its Duties in a manner consistent with the management of a high quality, first-class residential building in the vicinity of the Building which is similar or nearest in size and amenities of the Building, with each Unit being used for its permitted uses set forth in the Declaration and these By-Laws.

Section 2.4.2 Specific Powers and Duties. The Condominium Board shall have all of the Powers and Duties expressly set forth in the Declaration, these By-Laws and the Rules and Regulations. Without limiting the generality of the foregoing and Section 2.4.1 in any respect, these include the following specific Powers and Duties of the Condominium Board:

(a) to Lease, Maintain, Repair, Restore, Alter and Dispose of the Common Elements, the Association's Assets (including any Units or other real property, Personal Property or assets owned, Leased or otherwise held by the Condominium Board or its Affiliated Nominee or Designee) and the Sidewalk, and in connection therewith to do the following as the Condominium Board shall deem necessary or proper:

(a-1) purchase and Lease supplies, material and Facilities;

(a-2) employ or engage, compensate and dismiss Building personnel, including the Building staff disclosed in the First Year's Budget -- Schedule B in Section F of Part I of the Plan (hereafter, the "**First Year's Budget**"), except and as to the extent allowed in the First Year's Budget; subject to Sponsor's veto rights during only the Sponsor Veto Control Period as provided in Section 2.5.8 below), a Managing Agent, attorneys, accountants, Construction Parties and other professionals and consultants; and

(a-3) Lease and grant agreements, licenses and easements for portions of the Common Elements and the Association's Assets;

(b) to accept a surrender and acquire a Unit and its appurtenant Common Interest in accordance with Article 13 of the Declaration in the name of the Condominium Board or its Affiliated Nominee or Designee, as agent of the Unit Owners;

(c) to acquire and Lease Units in accordance with Section 16.2 of these By-Laws, to purchase or acquire a Unit at foreclosure or other judicial sale in connection with the foreclosure of the Board's lien for unpaid Common Charges, and generally to acquire and Lease all rights, titles and interests in real property and Personal Property deemed necessary or proper by the Condominium Board for use in connection with the ownership, Maintenance, Repair, Restoration, Alteration and Disposition of the Common Elements, the Association's Assets and the Sidewalk as a condominium regime; each of such acquisitions and Leases to be in the name of the Condominium Board or its Affiliated Nominee or Designee, as agent of the Unit Owners;

(d) subject to obtaining the Discretionary Consent of Sponsor for any borrowing during only the Sponsor Veto Control Period, to borrow money on behalf of Unit Owners and to grant mortgages and other security interests and collateral in Units acquired and purchased by the Board

(e) to sell, Lease and otherwise deal with, and make any Disposition of, Units or other real property and Personal Property acquired by, and to sublease Units Leased by, the Condominium Board or its Affiliated Nominee or Designee, on behalf and as agent of the Unit Owners, provided, however, that the Condominium Board or its Affiliated Nominee or Designee shall in no event be entitled to vote the votes appurtenant to any such Unit and, provided, further, no debt shall be incurred without obtaining the Discretionary Consent of Sponsor for during only the Sponsor Veto Control Period;

(f) to maintain books and records with respect to the finances and the Operation of the Condominium Association, including:

(f-1) accounts of receipts and expenditures affecting the Common Elements, the Association's Assets, the Sidewalk and the overall affairs and business of the Condominium Association and all Unit Properties, and expenditures undertaken on behalf and for the account of all or a specified Owner or Owners (if and as applicable) in accordance with these By-Laws or the Declaration;

(f-2) books of account of the Condominium Board;

(f-3) other financial records, as well as other books of account of the Condominium Association as may be required to be kept pursuant to the terms of these By-Laws; and

(f-4) minutes and other records of all meetings of the Board and Unit Owners held pursuant to the terms of these By-Laws;

(g) to prepare and adopt a Budget of Condominium operation of the Property and the Condominium Association for each Budget Year in accordance with Article 8 below, setting forth, without limitation:

(g-1) a detailed and itemized accounting of the anticipated Common Expenses for the ensuing Budget Year with detailed footnotes or documents, if available;

(g-2) a detailed projection of all sources and amounts of income and receipts necessary to discharge the same;

(g-3) a Reserve for Contingencies for unanticipated expenses, contingencies, Alterations and capital replacements and Repairs with respect to the Common Elements, the Association's Assets and the Sidewalk as the Board may consider appropriate in its sole Business Judgment, subject to compliance with Article 8 below; and

(g-4) a Reserve for Capital Replacements, if applicable under Article 8 below;

(h) to determine the amount, establish the means and methods of payment of, and collect Common Charges and Additional Common Charges (including Special Assessments) from the Unit Owners, and to institute appropriate Litigation for nonpayment thereof against defaulting Unit Owners;

(i) subject to obtaining the Discretionary Consent of Sponsor for any borrowing during only the Sponsor Veto Control Period, to incur debt on behalf of all Unit Owners in connection with the Maintenance, Repair, Restoration, Alteration, or Disposition of the Common Elements, the Association's Assets (including real property and Personal Property owned, Leased or otherwise held by the Condominium Board or its Affiliated Nominee or Designee), the Sidewalk or the Operation of the Condominium Association, including in furtherance thereof, to duly execute, acknowledge and deliver to a lender such instruments to securitize the debt pursuant to which (among other things) the Board, in its sole Business Judgment, may grant, pledge and assign to the lender the Power to levy and collect Common Charges and Special Assessments, to apply such Common Charges and Special Assessments to repay the debt, to enforce the timely payment of Common Charges and Special Assessments by the Board exercising the remedies for unpaid Common Charges in accordance with Section 8.2 and the Condominium Act, and to apply the net proceeds realized on a foreclosure sale or other remedy to repay the debt; provided, however, that:

(i-1) no debt shall be incurred for major or minor Maintenance, Repairs, Restoration or Alteration of the Common Elements, the Association's Assets or the Sidewalk, or for working capital, bad debts, unpaid Condominium Expenses, depreciation, obsolescence or similar purposes, earlier than the fifth (5th) anniversary of the first conveyance of a Unit as provided in Section 339-jj.1 of the Condominium Act, except all Owners shall conclusively be deemed to have irrevocably and unconditionally waived said five-year restriction on incurring debt by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit to the full extent such waiver is permitted by Laws;

(i-2) the incurrence of such debt shall require the Discretionary Consent of a majority of Owners in Common Interest;

(i-3) no lien to secure repayment of any debt may be created on any Unit or its appurtenant Common Interest (other than a Unit owned by the Board or its Affiliated Nominee or Designee) without obtaining the Discretionary Consent of the Owner of such Unit; and

(i-4) the Liability of each such Owner shall be Non-Recourse and Limited Liability, and if the debt shall not be fully repaid by the Board and such Owner shall pay the lender such proportion of the then outstanding indebtedness represented or secured thereby as the Common Interest of such Owner's Unit bears to 100% (i.e., the total Common Interests of all Owners), such Owner shall be entitled to obtain from the lender a release and discharge of any judgment or other lien that the said lender shall have filed, or shall have the right to file, against such Owner's Unit, and the loan documentation shall so provide;

(j) to open and maintain bank accounts on behalf of the Condominium Association and to designate the signatories required therefor;

(k) to use the Common Charges and Additional Common Charges (including Special Assessments) collected from Unit Owners, as well as all other assets and funds held by the Condominium Board or received in connection with the Operation of the Property, including:

(k-1) to pay the Common Expenses;

(k-2) to Maintain, Repair, Restore, Alter and Dispose the Common Elements, the Association's Assets and the Sidewalk in accordance with the Building Standard;

(k-3) to Repair and Restore the Common Elements after damage or destruction by flood, earthquake, storm, hurricane or other severe or unusually inclement weather, explosion fire or other casualty, or as a result of condemnation or eminent domain proceedings, all in accordance with the terms of the Declaration and these By-Laws; and

(k-4) to enter into contracts with Construction Parties to undertake all Work to be undertaken by the Board; and

(k-5) to Operate the Condominium Association;

(l) to obtain insurance for the Property, including the Units, pursuant to the terms of Article 6;

(m) to adjust, compromise and settle Claims under insurance policies obtained pursuant to the terms of Article 6, and to execute and deliver releases and discharges upon such adjustment, compromise and settlement on behalf and as agent of:

(m-1) all Unit Owners;

(m-2) all holders of mortgages and other liens on Units; and

(m-3) all holders of any other interest or estate in the Property or the Association's Assets;

(n) to obtain and keep in force (as part of the Common Expenses) fidelity bonds, in amounts deemed appropriate by the Condominium Board, but in no event less than the amount therefor set forth in the First Year's Budget for:

(n-1) all members of the Condominium Board;

(n-2) all officers and employees of the Condominium Association; and

(n-3) the Managing Agent;

(o) to amend the Rules and Regulations from time to time (all without recording an Amendment to the Declaration or these By-Laws) and to adopt, impose, levy and collect charges, fees, interest and fines against Sold Unit Owners (but not against Unsold Unit Owners) for Violations of the Declaration, the By-Laws and the Rules and Regulations, as each may be duly amended from time to time;

(p) to enforce by any legal means (including Litigation) the terms, covenants, conditions and provisions contained in the Condominium Documents and to bring, prosecute, defend, compromise and settle any Claims and Litigation that may be instituted on behalf of two or more Unit Owners or against the Unit Owners or the Board pursuant to the Declaration, these By-Laws or the Condominium Act;

(q) to organize as a corporation, limited liability company or other Entity, to the extent and in the manner provided or permitted in the Condominium Act, provided, however, that:

(q-1) the organizational documents of any such resulting corporation, limited liability company or other Entity shall conform as closely as practicable to the terms of the Declaration and these By-Laws; and

(q-2) the terms of the Declaration and these By-Laws shall prevail in the event of any inconsistency or conflict between the terms thereof and the terms of such organizational documents;

(r) to organize corporations, limited liability companies and other Entities to act as the nominees or designees of the Condominium Board in acquiring title to, or Leasing of, Units and in acquiring rights, titles and interests in real property and Personal Property for use in connection with:

(r-1) the Operation of the Common Elements and the Condominium Association; and

(r-2) the ownership, Leasing and holding of the Association's Assets;

(s) to execute, acknowledge and deliver the following with respect to the Condominium Association, or all or part of the Property or the Association's Assets or the Sidewalk (unless expressly

prohibited, restricted, limited or conditioned by the Declaration or these By-Laws to be executed and delivered by the Board):

(s-1) any application, declaration, consent, document or other instrument (including any Government Document or Litigation Document) that the Condominium Board deems necessary or appropriate in accordance with the Declaration or these By-Laws or to comply with any Laws, including a zoning resolution or requirement of any Governmental Authority, applicable to the Maintenance, Repair, Restoration, Alteration or Disposition of all or part of the Property or the Association's Assets or the Sidewalk; and

(s-2) any agreement, application, document, consent, covenant, restriction, license, easement or declaration, or any change thereto that the Condominium Board deems necessary or appropriate;

(t) to exercise and implement all Powers vested in the Condominium Board pursuant to a Power of Attorney granted to the Condominium Board in the Declaration or these By-Laws;

(u) to do the following act on behalf and as agent for two or more Owners who have authorized the Board in writing to so act (subject to the right of any Owner to revoke such agency by Notice to the Condominium Board, provided such Notice is received before the Condominium Board has commenced the applicable action):

(u-1) to protest, complain or apply to the appropriate taxing authority to correct the tax assessments of the Units for any year by filing one or more complaints on behalf of one or more of such Owners;

(u-2) to commence and prosecute a special proceeding for the review of assessments of real property as an aggrieved person under the Real Property Tax Law;

(u-3) to seek administrative and judicial review of the tax assessments for any year;

(u-4) to negotiate, compromise and settle with the taxing authority the tax assessments and any resulting Litigation;

(u-5) to execute and acknowledge in the name of each Owner for which it is acting on behalf and as agent, as such Owner's attorney-in-fact, all applications, certifications, petitions, complaints, compromise or settlement agreements, releases, discharges and other documents in furtherance of the foregoing; and

(u-6) to retain legal counsel and other professionals and experts on behalf and as agent of the Owners for whom it is so acting to represent such Unit Owners in connection with the foregoing;

(v) to do the following on behalf and as agent for all Owners or (where appropriate) only the affected Owners where required or permitted in carrying out the Duties imposed upon the Condominium Board under these By-Laws, the Declaration or the Condominium Act:

(v-1) to commence and prosecute as well as defend Claims and Litigation;

(v-2) to seek administrative and judicial review;

(v-3) to conduct all depositions, trials, appeals, and to negotiate, compromise and settle any such Claims or Litigation;

(v-4) to execute and acknowledge in the name of each the affected Owners for which it is acting as agent, as such affected Owners' attorney-in-fact, all Litigation Documents in furtherance of the foregoing; and

(v-5) to retain legal counsel and other professionals on behalf and as agent of each of the affected Owners for whom it is so acting to represent such affected Owners in connection with the foregoing:

provided, however, that nothing herein will preclude an Owner from commencing, defending, compromising and settling any Claim or Litigation affecting only such Owner or such Owner's Unit, and

provided further that all Costs and Expenses, Legal Expenses, awards, judgments, compromise and settlement payments incurred or collected in connection with any Claim or Litigation by the Condominium Board, as agent of each of the affected Owners on whose behalf the Board is acting, shall be charged to, or the net amount collected (after deducting the Costs and Expenses (including Legal Expenses) paid to, such affected Owners (all such amounts shall be charged or paid (as applicable) to such affected Owners Pro Rata to the respective economic impact on each of such affected Owners or (if speculative or not readily ascertainable) Pro Rata to the Common Interest appurtenant to each of such affected Owner's Unit);

(w) to control power shut-offs and other interruptions of the normal functioning of the Property, necessary to facilitate the performance of Work in, on or to a particular Unit and/or Common Element (if and as applicable), which is permitted or required under the Declaration or these By-Laws; provided, however, the Condominium Board will endeavor to the extent commercially reasonable and economically practicable to minimize any disruption in the Use and Enjoyment of Units and the Common Elements serving Units;

(x) to invest any excess funds held by the Board in obligations of federal, state and local governments, certificates of deposit of Institutional Lenders, market instruments and funds which invest in any such obligations, and similar investment-grade securities; and

(y) generally, to carry out any and all other Powers and Duties granted or imposed upon the Condominium Board pursuant to the Declaration, these By-Laws, the Rules and Regulations and the Condominium Act.

The Condominium Board shall be responsible for carrying out the Duties imposed upon it under the Condominium Documents regardless of whether a Unit is vacant or occupied by its Owner or a Tenant.

Section 2.5 Delegation and Restrictions.

Section 2.5.1 Right to Delegate. The Condominium Board shall have the Unfettered right to delegate its Powers and Duties under the Condominium Documents, the Condominium Act and other Laws to its authorized employees, agents, representatives, Construction Parties and Affiliated Nominees or Designees under the terms and conditions provided in Section 1.7.1 of the Declaration.

Section 2.5.2 Executive Committee. The Condominium Board may appoint an Executive Committee by duly adopted resolution, which Executive Committee shall have, and may exercise and perform, all of the Powers and Duties of the Condominium Board during the intervals between the meetings of the Condominium Board, subject to both the prohibitions contained in Section 2.5.6 and the exception contained in Section 2.5.7, and such additional exceptions, limitations and restrictions as the Condominium Board may from time to time deem appropriate.

Section 2.5.3 Other Committees. In addition, the Condominium Board may from time to time appoint, by duly adopted resolutions, such other committees as the Condominium Board may deem appropriate to exercise and perform such Powers and Duties as the Condominium Board shall direct, each of which committees shall have, and may exercise and perform, all of the Powers and Duties delegated to it in its enabling resolution, subject, however, the prohibitions contained in Section 2.5.6 and the exception contained in Section 2.5.7, and such additional exceptions, limitations and restrictions as the Condominium Board may from time to time deem appropriate.

Section 2.5.4 Sponsor Board Member Requirement. So long as there is a Sponsor Board Member, the Executive Committee and each other committee appointed by the Condominium Board shall consist of two or more Board Members, of whom at least one shall be a Sponsor Board Member, unless waived in writing by Sponsor or the Sponsor Board Member.

Section 2.5.5 Managing Agent and/or Manager. The Condominium Board may employ a Managing Agent to serve at a compensation to be negotiated by, and acceptable to, the Condominium Board and to perform such Duties and services as the Condominium Board shall direct; provided, however, the compensation to the Managing Agent shall comply with the Commercial Reasonableness Standard. Subject to the prohibitions contained in Section 2.5.6 and the exception contained in Section 2.5.7, the Condominium Board may delegate to such Managing Agent employed by it any of the delegable Powers and Duties granted to the Condominium Board in these By-Laws.

Section 2.5.6 Non-Delegable Powers and Duties. Notwithstanding anything to the contrary contained in this Section 2.5, the Executive Committee and the Managing Agent shall neither have nor be entitled to exercise or perform, and the Condominium Board shall not delegate to either of them or to any other committee, any of the Powers or Duties that are expressly prohibited from being delegated:

(a) under the Condominium Act or other Laws; or

(b) by a board of directors of a corporation under the New York Business Corporation Law.

Section 2.5.7 Exception. The prohibitions in Section 2.5.6, however, do not apply to:

(a) a manager or other Person designated by the Condominium Board, to whom the Powers and Duties of the Board may be delegated under such terms and conditions approved and determined by the Condominium Board in connection with a loan (secured or unsecured) obtained by the Condominium Board in accordance with its authority under these By-Laws as agent for all Unit Owners; or

(b) a Sponsor Board Member who is expressly authorized to act in the name and on behalf the Board in the Declaration or these By-Laws..

Section 2.5.8 Sponsor Veto Control Period Restrictions. Notwithstanding anything to the contrary contained in these By-Laws, during only the Sponsor Veto Control Period, the Condominium Board and Unit Owners shall and must obtain Discretionary Consent of Sponsor or (after Sponsor no longer owns an Unsold Unit) a majority in Common Interest of all other Unsold Unit Owners with respect to any of the expenditures, decisions and actions set forth in Section 8.6.

Section 2.6 Number of Board Members. Until the first meeting of the Unit Owners following the First Unit Closing under the Plan is held pursuant to the terms of Section 4.1, the Condominium Board shall consist of one Board Member designated from time to time exclusively by Sponsor (i.e., a Sponsor Board Member). From and after such first meeting of Unit Owners to elect the Condominium Board, the Board shall be composed of three Board Members, unless changed pursuant to Section 2.9.

Section 2.7 Composition. During the Sponsor Board Control Period and from and after the first meeting of Unit Owners as provided in Section 4.1.1, two Sponsor Board Members and one Independent Board Member shall comprise the Condominium Board. After the end of the Sponsor Control Period and for so long as there is at least one Unsold Unit, two Independent Board Members and one Sponsor Board Member shall comprise the Condominium Board. After all Unsold Units are sold and conveyed, all three Board Members shall be Independent Board Members.

Section 2.8 Election or Designation. From and after the first meeting of Unit Owners to elect or designate the three-member Condominium Board and for so long as there is at least one Unsold Unit, the Unfettered rights of Sponsor and other Unsold Unit Owners (if any) to vote for the Independent Board Member(s) and to designate the Sponsor Board Member(s) are as follows:

(a) during the Sponsor Board Control Period:

(a-1) Sponsor or (after Sponsor no longer owns any Unsold Unit) the Owner or Owners of a majority in Common Interest of Unsold Units shall have the exclusive Unfettered right to designate two Sponsor Board Members; and

(a-2) all Sold and Unsold Unit Owners shall elect one Independent Board Member; and

(b) after the end of the Sponsor Board Control Period:

(b-1) Sponsor or (after Sponsor no longer owns any Unsold Unit) the Owner or Owners of a majority in Common Interest of Unsold Units shall have the exclusive Unfettered right to designate one Sponsor Board Member; and

(b-2) all Sold and Unsold Unit Owners shall elect one Independent Board Member.

At all Board elections held during and after the end of the Sponsor Board Control Period and for so long as there is at least one Unsold Unit, Sponsor and other Unsold Unit Owners (if any) shall have the Unfettered right to nominate and vote for the candidates to serve as the Independent Board Member(s).

The Condominium Board and its Affiliated Nominee or Designee shall have no nomination or voting rights with respect to any Units owned by each of them, whether for the election of the Independent Board Members or otherwise.

Section 2.9 **Change in Number**. The number of Board Members may be increased or decreased by vote of a majority in number and Common Interest of Unit Owners without recording an Amendment to the By-Laws in the Register's Office, but only on the following terms and conditions:

(a) Sponsor (or, after Sponsor no longer owns any Unsold Unit, all Owners of Unsold Units) must Consent in writing to the proposed change so long as there is any Unsold Unit;

(b) the vote may be taken at any annual or special meeting of Unit Owners, except that the vote must be taken at an annual meeting to decrease the number below those then in office;

(c) (in the event the number of Board Members is decreased) such decrease shall be implemented at the annual meeting at which the vote was taken, but in no event shall the decrease affect the exclusive Unfettered right of Sponsor or (after Sponsor no longer owns any Unsold Residential Unit) other Owner(s) of an Unsold Unit(s) to designate the number of Sponsor Board Members set forth in these By-Laws;

(d) (in the case of an increase) the number of Board Members to be appointed and designated exclusively by Sponsor or (after Sponsor no longer owns any Unsold Residential Unit) other Owner(s) of an Unsold Unit(s) shall increase proportionately so as to maintain the same proportional Board representation for the Sponsor Board Members as existed at the election of the first Condominium Board by the Unit Owners after the First Unit Closing (any fraction will be rounded up to the next whole number); and

(e) no change in the number of Board Members shall affect, abridge or otherwise impair: (e-1) the voting control of the Sponsor Board Members over the Condominium Board at all elections held during the Sponsor Board Control Period; or (e-2) the voting control of the Independent Board Members over the Condominium Board at all elections held after the end of the Sponsor Board Control Period.

Section 2.10 **Qualification; Ineligibility**.

Section 2.10.1 Qualification. Each Board Member shall be at least 18 years old or an Entity qualified to do business in the State of New York (an "**Entity Board Member**"), other than an International Organization, unless such International Organization shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the International Organization irrevocably and unconditionally confirms and agrees that the provisions of Article 19 of the Declaration are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense. An Entity Board Member shall designate in writing an individual (at least 18 years old) to act as its authorized representative on the Board. A Board Member need not be a Unit Owner.

Each Independent Board Member shall be either a Sold Unit Owner (including a Sponsor Related Party who acquires a Sold Unit for the bona fide use and occupancy of such Sponsor Related Party or the Sponsor Related Party's Immediate Family) or any of the following: (a) a Sold Unit mortgage lender; (b) an officer, director, shareholder, partner, member, principal, employee, trustee, executor, administrator or beneficiary of a corporation, partnership, limited liability company, trust, estate or other Entity that owns a Sold Unit or is a Sold Unit mortgage lender; (c) a Person appointed and designated by a sovereign government, consulate or other governmental instrumentality that owns a Sold Unit (provided an International Organization complies with the requirements of the preceding paragraph); (d) a permitted non-paying occupant of a Sold Unit; or (e) an adult member of the Immediate Family of a Sold Unit Owner who resides in the Unit, or any combination of the foregoing.

There are no requirements to qualify as a Sponsor Board Member. Sponsor (or after Sponsor no longer owns any Unsold Unit, other Unsold Unit Owners) shall have the exclusive Unfettered right to designate any Person (regardless of relationship or lack of relationship) to serve as a Sponsor Board Member. Sponsor, as Owner of two or more Unsold Units, shall have the right to designate the same Person to serve as both Sponsor Board Members and be counted as a separate Board Member for each such appointment and designation for quorum and voting purposes.

Any Entity serving as a Board member either must be organized under New York State law or must have designated the New York State Secretary of State for service or process. An Entity Board Member shall be represented on the Board by a Related Party to such Entity Board Member.

Section 2.10.2 Ineligibility. With respect to only an Independent Board Member and a Sold Unit Owner, in the event:

(a) the Condominium Board perfects a lien against a Sold Unit for unpaid Common Charges, the following shall apply until the lien is paid or discharged by bonding or otherwise:

(a-1) the Owner of such Sold Unit may not nominate or vote for the election of Board Members;

(a-2) such Owner and such Owner's Sold Unit Owner Affiliate shall not be eligible to be elected as an Independent Board Member; and

(a-3) the Board membership of such Sold Unit Owner or Sold Unit Owner Affiliate (as applicable) shall immediately be suspended upon perfection of the lien and such Board membership shall automatically cease thirty (30) Days thereafter unless the lien is paid or discharged by bond or otherwise during such thirty (30)-Day period;

(b) a Sold Unit Owner no longer owns a Sold Unit, the Board membership of a Sold Unit Owner or a Sold Unit Owner Affiliate (as applicable) shall automatically end; and

(c) a Sold Unit Owner Affiliate no longer qualifies as a Sold Unit Owner Affiliate, the Board membership of said Sold Unit Owner Affiliate shall automatically end.

Section 2.11 Term of Office. The initial Board Member(s) appointed and designated by Sponsor will serve at the pleasure of Sponsor and until the first meeting of Unit Owners following the First Unit Closing under the Plan when the new three Board Members are qualified and elected (as to the Independent Board Member) or appointed and designated (as to the Sponsor Board Members). All Board Members elected at and after said first meeting of Unit Owners will serve for a term of one year and until their respective successors are elected and qualified. There is no limit on the number of terms, successive or otherwise, a Board Member may serve.

Section 2.12 Removal and Resignation of Board Members.

Section 2.12.1 Removal. An Independent Board Member may be removed "with" or "without" cause, and a Sponsor Boar Member may be removed solely for Malfeasance, by a vote of a majority in number and Common Interest of Owners of Sold and Unsold Units cast at a duly constituted meeting of Unit Owners at which a quorum is present. In determining such majority vote, the Units and Common Interests owned by the following shall be excluded from the count of the base number of Unit Owners and Common Interests for quorum and voting purposes:

(a) the Condominium Board or its Affiliated Nominee or Designee; and

(b) the Board Member to be removed, or a Related Party to such Board Member.

Any Independent Board Member or Sponsor Board Member who is to be removed shall be given a written explanation of the basis of removal at least seven Business Days in advance of the meeting of Unit Owners and a reasonable opportunity to be heard at the meeting before the vote is taken.

A Sponsor Board Member serves at the will of Sponsor or the Unsold Unit Owner or Owners (as applicable) who appointed and designated such Sponsor Board Member and may be removed "with" or "without" cause and without explanation by only Sponsor or said Unsold Unit Owner or Owners (as applicable).

Section 2.12.2 Resignation. A Board Member may resign at any time by giving Notice to the following:

(a) in the case of a resignation by an Independent Board Member: the resignation shall be given to any of the remaining Independent Board Members or (if none) to a Sponsor Board Member; or

(b) in the case of a resignation by a Sponsor Board Member: the resignation shall be given to the Sponsor or appropriate Unsold Unit Owner or Owners (as applicable) who appointed and designated such Board Member.

The resignation shall be effective upon giving the Notice, unless expressly stated otherwise in the Notice.

In addition, an Independent Board Member who shall cease to be qualified for membership pursuant to the terms of Section 2.10.2 shall conclusively be deemed to have automatically resigned as a Board Member effective as of the date upon which such qualification shall cease.

Section 2.13 Vacancies.

Section 2.13.1 Replacement. A vacancy on the Condominium Board resulting from removal, resignation, death, incompetency, incapacity or other cessation of Board membership will be filled as follows:

(a) in the case of a vacancy by an Independent Board Member: such vacancy shall be filled as follows:

(a-1) (during the Sponsor Board Control Period) the vacancy shall be filled by vote of Sold and Unsold Unit Owners at a special meeting called to be held for such purpose within sixty (60) Days after the vacancy occurs or at the next annual meeting of Unit Owners, whichever occurs first; or

(a-2) (after the end of the Sponsor Board Control Period) the vacancy shall be filled by the remaining Independent Board Member(s); or

(b) in the case of a vacancy by a Sponsor Board Member: such vacancy shall be filled exclusively by Sponsor or the appropriate Unsold Unit Owner or Owners (as applicable) who originally appointed and designated the vacating Sponsor Board Member.

Section 2.13.2 Pre-emption. However, in the case only of a removal of an Independent Board Member by the Owners of the Sold and Unsold Units, such Owners shall have the right to pre-empt the Condominium Board and elect the replacement at the same meeting the removal is voted upon or at a subsequent special or annual meeting of Unit Owners called for such purpose.

Section 2.13.3 Term. The individual elected (in the case of Independent Board Member) or appointed and designated (in the case of a Sponsor Board Member) to fill the vacancy will serve as a member of the Condominium Board for the remainder of the term of the Board Member being replaced.

Section 2.13.4 Special Board Meeting. A Notice of a special meeting of the Condominium Board to fill the vacancy of an Independent Board Member shall be sent in the manner provided in

Section 2.14.4 within three Business Days after learning of the vacancy and to be held within five Business Days after sending the Notice. The election held thereat shall be effective to fill such vacancy even if the number of Board Members present at such meeting shall not constitute a quorum. Sponsor or the appropriate Unsold Unit Owner or Owners (as applicable) who originally appointed and designated a vacating Sponsor Board Member will fill such vacancy by Notice to the other Board Members or to the President, Vice President or Secretary of the Condominium Association without the need to hold a special or regular meeting of the Board.

Section 2.14 Meetings of the Condominium Board.

Section 2.14.1 Organizational Meeting. From and after the First Unit Closing under the Plan, the first meeting of each Condominium Board elected annually by the Unit Owners may be held immediately after such annual meeting and no Notice of such Board meeting shall be necessary to the newly elected Board Members in order to legally constitute the meeting, provided a quorum shall be present. Alternatively, such first Board meeting may convene at such place, date and time as shall be fixed by a majority of the Board Members present at said annual meeting of Unit Owners or (if less than a quorum shall be present) those Board Members present at such annual meeting. In any such case, Notice thereof shall be given to all Board Members in the manner prescribes in Section 2.14. 4. In any event, however, such first meeting of each newly elected Board shall be held within approximately thirty (30) Days following the Board's election by the Unit Owners.

Section 2.14.2 Regular Meetings of the Condominium Board. Regular meetings of the Condominium Board may be held at such date, time and place as shall be determined from time to time by a majority of the Board Members attending a Board meeting or (in their absence) the President; provided, however, that at least four (4) such meetings of the Condominium Board shall be held during each Budget Year and the meetings shall be held at the principal office of the Condominium Association or other place in the Building or a nearby reasonably convenient and suitable location.

Section 2.14.3 Special Meetings of the Condominium Board. Except in the case of an Emergency, the President may call a special meeting of the Condominium Board whenever determined by the President to be necessary or desirable. Upon the written request of two or more Board Members, the President shall call a special meeting of the Board to be held within ten (10) Business Days after such written request is received by the President. The special meeting shall be held at such date, time and place as shall be determined by whomever is calling the special meeting; provided, however, the special meeting shall be held at the principal office of the Condominium Association or other place in the Building or a nearby reasonably convenient and suitable location. In the case of an Emergency, any Board Member may call a special meeting of the Condominium Board to be held on the same Day, given to all the other Board Members by telephone or (if unsuccessful) by telecopier or email (in each case with electronic confirmation of transmission) and stating the condition constituting the Emergency.

Section 2.14.4 Notice of Meetings. Notice of all regular meetings and special meetings of the Condominium Board shall state the date, time, place and purpose of the meeting and shall be given by the Secretary uniformly to each Board Member at least two Business Days (if sent by hand delivery, telecopier or email (with electronic confirmation of transmission) or overnight courier for next Business Day delivery by a recognized national courier service), or at least five Business Days (if sent by ordinary first class mail), prior to the Day fixed for such meeting.

Section 2.14.5 Waiver of Notice of Meetings. Any Board Member may, at any time, waive Notice of any meeting of the Board or any committee thereof in writing, and such waiver shall be deemed equivalent to the giving of Notice. Attendance by a Board Member at any such meeting of the Board or any committee thereof shall constitute a binding and conclusive waiver by such Board Member of Notice of the meeting. However, if all of the Board Members or committee members are present at any said meeting of the Board or any said committee, respectively, no Notice of such meeting shall be required and any business authorized pursuant to these By-Laws may be transacted at such meeting.

Section 2.15 Quorum.

Section 2.15.1 Quorum. Except in the case of an Emergency, a majority of the Board Members is necessary to constitute a quorum of the Condominium Board. Each and every determination of, and business to be transacted by, the Condominium Board relating solely to one or more of the following, shall be made at a Board meeting at which a quorum is present or, alternatively, without a meeting if all Board Members consent in writing to the determination or transaction:

(a) the Common Elements;

(b) the Association's Assets;

(c) the Common Expenses;

(d) the Common Charges; or

(e) any other matter involving the affairs of the entire Property or the whole Condominium Association to be conducted by the Board as provided in the Condominium Documents, including the specific Powers and Duties contained in Section 2.4.2.

In the case of an Emergency, attendance at a special meeting of the Condominium Board by at least two Board Members in person or by conference telephone or video (Skype-type) conference or other communication's equipment permitting all individuals participating in the meeting to hear or otherwise effectively communicate with each other at the same time shall constitute a quorum for the purpose only of temporarily remediating the condition constituting the Emergency.

The Sponsor Board Member(s) or (at the exclusive option of Sponsor) Sponsor in lieu of the Sponsor Board Member(s) shall have the Unfettered right, without attendance by any Independent Board Member, to make any determination and transact any business relating solely to one or more Unsold Unit Properties, subject only to complying with any limitations, restrictions or conditions expressly stated in the Declaration or these By-Laws.

Section 2.15.2 Attendance Requirements. Attendance at a meeting of the Condominium Board or any committee of thereof shall be in person or by conference telephone or video (Skype-type) conference or other communication's equipment permitting all individuals participating in the meeting to hear or otherwise effectively communicate with each other at the same time, and such participation shall constitute presence at such meeting for all purposes. In addition, a Sponsor Board Member (but not an Independent Board Member) shall be permitted to attend such Board or committee meeting by proxy, provided the proxy is signed by Sponsor or the Unsold Unit Owner or Owners (as applicable) who appointed and designated such Sponsor Board Member.

Section 2.15.3 Adjournment. If, at any meeting of the Condominium Board there shall be less than a quorum present, a majority of the Board Members in attendance may adjourn the meeting from time to time to a date, time and place set by said majority of Board Members, which shall not be sooner five (5) Business Days thereafter. Notice of the adjourned date, time and place shall be given by the Secretary in the same manner as provided in Section 2.14.4. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called but for the lack of a quorum may be transacted.

Section 2.16 Conduct of Meetings.

Section 2.16.1 Presiding Officer. Except in the case of a special meeting of the Board to deal with an Emergency, the President shall preside at all meetings of the Condominium Board and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Condominium Board and a record of all transactions and proceedings occurring thereat.

Section 2.16.2 Robert's Rules of Order. Unless in conflict with the terms of the Declaration, these By-Laws or the Condominium Act, each meeting of the Condominium Board shall be conducted in accordance with the then current edition of Robert's Rules of Order, or any other rules of procedure from time to time acceptable to a majority of the Board Members attending the meeting.

Section 2.17 Decisions by the Condominium Board.

Section 2.17.1 Decisions. Except in the case of a special meeting of the Board to deal with an Emergency, all decisions of the Condominium Board relating solely to one or more of the following, shall be made at a majority of the Board Members attending a Board meeting at which a quorum is present or, alternatively, without a meeting if all Board Members shall individually or collectively consent in writing to such decision:

(a) the Common Elements;

(b) the Association's Assets;

(c) the Common Expenses, subject, however, to Sponsor's veto control over certain Common Expenses during the Sponsor Veto Control Period set forth in Section 8.6;

(d) the Common Charges; or

(e) any other matter involving the affairs of the entire Property or the whole Condominium Association to be conducted by the Board as provided in the Condominium Documents, including the specific Powers and Duties contained in Section 2.4.2.

All such written consents to decisions of the Board made without a meeting shall be duly filed by the Secretary of the Condominium in the minutes of the Condominium Board.

In the case of an Emergency, a majority of Board Members attending the special meeting of the Condominium Board at which a quorum is present shall constitute the decision of the Board.

The Sponsor Board Member(s) or (at the exclusive option of Sponsor) the Sponsor in lieu of the Sponsor Board Member(s) shall decide all matters on behalf of the Board (without the necessity of a Board meeting) relating solely to one or more Unsold Unit Properties, subject only to complying with any limitations, restrictions or conditions expressly stated in the Declaration or these By-Laws.

Section 2.17.2 Number of Votes. Each Board Member shall have one vote on all matters and transactions to be determined and voted upon by the Condominium Board, except a Person appointed and designated to serve as two Sponsor Board Members shall have one vote for each such Sponsor Board Member position.

Section 2.17.3 Business Judgment Rule. The decisions and transactions of the Condominium Board shall have the equivalent status of the decisions and transactions of a cooperative housing corporation as to which the so-called "business judgment rule" articulated in Levandusky v. One Fifth Ave Corp. (75 NY2d 530 [1990]) shall apply, except said "business judgment rule" shall not apply to any decisions or transactions affecting, directly or indirectly, Sponsor or other Owner of an Unsold Unit, Sponsor's Plan and Sale Obligations, Sponsor's Tenant Obligations, or an Unsold Unit, all of which shall be subject to scrutiny and determined solely on the merits by a court, arbitration panel or other forum having jurisdiction, without any deference, weight or favorable assumption being given to the Condominium Board.

Section 2.17.4 Commercial Reasonableness Standard. All decisions of the Condominium Board involving an Interested Party Transaction shall be meet the Commercial Reasonable Standard.

Section 2.18 Compensation of Members. No member of the Condominium Board or any committee thereof shall receive any compensation from the Condominium for acting as such.

Section 2.19 Standards for Fiduciary Responsibility and Self-Dealing.

Section 2.19.1 General Standard. All Powers and Duties shall be exercised and performed by each Board Member and officer, in good faith and with a view to the interests of the Unit Owners or Unit Owner who elected such Board Member, but with due regard to the Maintenance, protection and value of the Property as a whole and the life, security, protection, safety and health of Owners and Occupants of Units.

Section 2.19.2 Interested Party Transactions. The Condominium Board may contract or effect any other transaction with any Interested Party (each, an "**Interested Party Transaction**") without the Condominium Board or such Interested Party incurring any Liability for self-dealing,

provided, however, that the terms of such Interested Party Transaction, including any compensation paid in respect thereof, shall be on no less favorable terms than those commercially reasonable and at competitive rates at the time such Interested Party Transaction is entered into and reasonable evidence or documentation thereof is given to the Board ("**Commercial Reasonableness Standard**").

Section 2.19.3 Disclosure. No Interested Party Transaction between the Condominium Board and an Interested Party shall be deemed either void or voidable because of the interest (pecuniary or otherwise) therein of such Interested Party or the presence of such Interested Party at the meeting or meetings of the Board during which such contract or transaction was discussed, authorized, approved or ratified; provided, however, that the Interested Party Transaction shall meet the Commercial Reasonableness Standard at the time that the same is authorized, approved, ratified, executed or otherwise consummated and either:

(a) the terms of the Interested Party Transaction are disclosed to all Board Members or the fact thereof is disclosed to, or known by, a majority of the Board Members or noted in the minutes thereof, and a majority of such Board Members having a majority of the votes shall authorize, approve or ratify such contract or transaction in good faith, less the number of votes of such interested Board Member(s); or

(b) the fact thereof is disclosed to, or known by, a majority in number and Common Interest of the Unit Owners affected thereby, excluding any Unit Owner who or whose Related Party also has an interest in such Interested Party Transaction, and a majority in number and Common Interest of such affected Unit Owners, excluding any such interested Unit Owner from the base number of Unit Owners from the count for quorum and voting purposes, shall authorize, approve or ratify such contract or transaction.

Section 2.19.4 Quorum. The votes of any such interested Board Member may be counted in determining the presence of a quorum of any meeting of the Board that authorizes, approves or ratifies any such Interested Party Transaction, but no such Board Member shall be entitled to vote thereat to authorize, approve or ratify such Interested Party Transaction.

Section 2.20 Standards for Fiduciary Responsibility and Self-Dealing

Section 2.20.1 General Standard. All Powers and Duties of the Condominium Board shall be exercised and performed by each Board Member, including an individual authorized by the Entity Board Member to act as its representative on the Board (an "**Entity Board Member Representative**"), in good faith and in the best interests of the Unit Owners who elected or the Unit Owner who appointed and designated such Board Member.

Section 2.20.2 Interested Party Transactions. The Condominium Board may contract or enter into an Interested Party Transaction with any Interested Party without the Condominium Board or such Interested Party incurring any Liability for self-dealing; provided, however, that any compensation paid in respect thereof shall meet the Commercial Reasonableness Standard. Upon the written request of any Board Member who was unaware of the Interested Party Transaction when it was voted and approved by the Board Members, the Interested Party Transaction shall be disclosed

to such Board Member within a commercially reasonable period after request is received by the Condominium Board.

Section 2.21 Liability of the Condominium Board.

Section 2.21.1 Standard for Liability. The members of the Condominium Board shall have no Liability to the Unit Owners for errors of judgment, ordinary negligence or otherwise, except that each member of the Condominium Board shall be Liable thereto for such member's Malfeasance. An Entity Board Member Representative shall be personally Liable for his or her Malfeasance and the Persons owning a Controlling Interest of an Entity Board Member shall be personally Liable, jointly and severally, for the Entity Board Member's Malfeasance.

Section 2.21.2 Interested Party Transactions. A Board Member shall not be deemed either to have committed Misfeasance by reason of any self-dealing in connection with any Interested Party Transaction entered into between the Condominium Board and such Board Member (including a Sponsor Board Member) or a Related Party to such Board Member (collectively, "**Interested Board Party**"); provided, however, that any compensation paid, or to be paid, to such Interested Board Party in connection with any such Interested Party Transaction is either:

(a) in accordance with the Commercial Reasonableness Standard for goods sold or services rendered in the Borough of Manhattan, in the County, City and State of New York, and (if such compensation is part of the Common Expenses) is approved by majority of the Board Members who are not an Interested Board Party; or

(b) is disclosed in the Plan or a Plan Amendment.

Section 2.21.3 Immunity. The Board Members and the agents (including the Managing Agent) shall have no personal Liability for merely having acted in such capacity. Such immunity from personal Liability shall apply to all transactions of the Board authorized in these By-Laws or the Declaration, including each and every contract made, and other document or instrument executed, by or on behalf of the Condominium Board in accordance with these By-Laws or the Declaration, and each such contract or other document or instrument shall so provide; however, the failure to so provide shall not, and shall not be construed to, in any way affect, change or waive such immunity from personal Liability. Such contract or other document or instrument shall be regarded as being made or executed by or on behalf of the Board as agent of all Unit Owners and the Liability thereunder of a Board Member shall be to the extent only that such Board Member is a Unit Owner and then only as limited in Section 4.12.1.

Section 2.21.4 Service Interruptions and Force Majeure. Neither the Condominium Board nor any Board Member (in such capacity as a Board Member) shall be responsible or accountable for any Claims, Litigations, Liabilities or Losses for the following, except to the extent covered by insurance maintained by the Board:

(a) any failure or interruption of any Utility or Building Service to be obtained by, or on behalf of, the Condominium Association or to be paid for as a Common Expense; or

(b) any bodily injury or death, or property damage, occurring in or upon either a Unit or the Common Elements or the Association's Assets due to Force Majeure, including:

(b-1) failure or interruption of any Utility or Building Service;

(b-2) the Acts or Omissions of any Owner or Occupant of a Unit or by any other Person;

(b-3) weather conditions;

(b-4) water that may leak or flow from a Unit (including its appurtenant Balcony, Terrace, Juliette Terrace or Yard, if and as applicable), or any portion of the Common Elements; or

(b-5) arising out of theft or otherwise.

Section 2.21.5 Indemnity. Subject to the limitation of Liability contained in Section 4.12.1 and to the full extent permitted by Laws:

(a) only the Owner on whose individual behalf the Board solely acted shall Indemnify; or

(b) only the Owners on whose behalf the Board acted shall (jointly and severally Pro Rata to their respective Common Interests) Indemnify,

the Condominium Board and each and every Board Member (including an Entity Board Member Representative), on the terms more fully set forth in Article 27 of the Declaration, from and against any and all Claims, Litigations, Liabilities and Losses to others arising from the Acts or Omissions of the Board or a Board Member (in the capacity as a Board Member); provided, however, the Board and a Board Member (including an Entity Board Member Representative) shall not be Indemnified, if and to the extent that such Liability shall be due to Malfeasance or negligence or intentional wrongdoing.

Accordingly, the Sponsor Board Member(s) shall not be Indemnified by the Sold Unit Owners if and to the extent that the Claim, Litigation, Liability or Loss arose solely from a decision or transaction made alone by the Sponsor Board Member(s) which affect only the Unsold Unit Properties, and do not affect the Condominium Association, the Common Elements, the Association's Assets, the Common Expenses or the Common Charges.

Section 2.22 Interim Transactions by Sponsor. During the interim period following the recording of the Declaration and the consummation of the First Unit Closing, Sponsor (as the initial Owner of all Units) shall alone make all decisions and conduct all business to be transacted by the Board with the same validity, force and effect as though same had been decided and conducted by the Board.

Section 2.23 Annual Report for Interested Board Member Contracts.In accordance with BCL §727, within approximately ninety (90) days after the end of each fiscal year of Condominium operation, the Board shall give each Board Member a copy of BCL §713 and shall submit an annual

report to all Unit Owners, signed by each Board Member, containing information on any contracts made, entered into, or otherwise voted on by the Board where one or more Board Members or any corporation, firm, association or other entity in which one or more Board Members have a substantial financial interest. Such annual report shall include the following:

(a) a list of all contracts voted on by the Board, including information on the contract, the recipient, the contract amount, and the purpose of entering into the contact;

(b) the record of each meeting, including Board Member attendance, voting records for contracts and how each Board Member voted on such contracts; and

(c) the date of each vote on each contract, and the date the contract would be and remain valid.

If said annual report would contain no information required to be provided pursuant to the foregoing because of the absence of any actions taken by the Board, then the Board shall instead submit to the Unit Owners a document signed by each Board Member indicating "No actions were taken by the Board were subject to the Annual Report required pursuant to BCL §727."

The Costs and Expenses incurred in connection with the foregoing shall be included in the Common Expense charged to all Unit Owners Pro Rata to their respective Common Interests.

ARTICLE 3

OFFICERS

Section 3.1 General.

Section 3.1.1 Election. The principal officers of the Condominium Association shall consist of a President, Vice President, Secretary and Treasurer, each of whom shall be elected by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present. The Condominium Board shall also have the right to elect such other officers and assistant officers as it deem appropriate. After the end of the Sponsor Board Control Period and for so long as Sponsor owns a Unit, the Sponsor Board Member shall exclusively elect a co-Vice President and an Assistant Secretary.

Section 3.1.2 Powers and Duties. Generally, the officers will have all of the same Powers and Duties of the equivalent officer of a stock corporation organized under the BCL. Assistant officers, in order of their seniority or in any other order determined by the Board shall, in the absence or disability of the applicable principal officer, as the case may be, perform the Duties and exercise the Powers of said applicable principal officer, and shall perform such other Duties as the Board may prescribe, except that the co-Vice President and Assistant Secretary elected exclusively by the Sponsor Board Member shall exercise such Powers and perform such Duties as the Sponsor Board Member shall prescribe, even though the President and Secretary shall not be absent or disabled, and except further that said officers elected exclusively by the Sponsor Board Member may act only in

connection with the Operation of, and Unit Changes to, the Unsold Unit Properties, unless otherwise authorized by the Independent Board Members.

Section 3.1.3 Execution of Documents. Unless otherwise expressly provided elsewhere in these By-Laws or the Declaration or required by Laws, the Condominium Board shall appoint the officer or officers or other Person to execute and deliver such agreements, contracts, deeds, mortgages, Leases, checks and other instruments and documents (collectively, "**Instruments**") affecting the Common Elements, the Association's Assets, the Condominium Expenses, the Condominium Charges, all or a portion of more than one Unit or any other matter involving the Operation of the Property or the Condominium Association (and not just one Unit) as the Condominium Board directs.

Section 3.1.4 Authorization. The Condominium Board may, by resolution passed in accordance with the provisions hereof, authorize any officer to execute and deliver on behalf and in the name of the Board such Instruments as the Board directs and considers necessary or desirable to implement the decisions made, and the transactions conducted by, Condominium Board in accordance with the Declaration or these By-Laws.

If authorized by the Condominium Board, the President or Vice President shall execute and deliver such statements or estoppel certificates as may be directed by the Board regarding the payment of Common Charges, the waiver of exemption for the Board's Right of First Refusal under Article 16 or other matters related to a Unit or its Owner to a Registered Mortgagee or a purchaser or Tenant of an Owner's Unit or other Persons reasonably entitled to such information.

Section 3.2 President. The President shall be the chief executive officer of the Condominium Association, shall preside at meetings of Unit Owners and of the Condominium Board, shall sign in the name of the Condominium Board all contracts, Leases, easements, declarations and other agreements, documents and instruments authorized by the Board, shall have general management and administration of the affairs and business of the Condominium Association subject to the control of the Board, and in general, shall perform all of the general Powers and Duties that are incident to the office of a president of a stock corporation organized under the BCL, including the Power to appoint the members of all committees created by the Board from among the Unit Owners, and other Persons, subject to compliance with Section 2.5, including in particular (but not limited to) Section 2.5.4.

Section 3.3 Vice President and Co-Vice President. The Vice President elected by the Board shall take the place of the President and exercise and perform such President's Powers and Duties whenever same shall be absent or unable to act or whenever authorized by the Board or expressly authorized in the Declaration or these By-Laws. If the President and the Vice President are unable to act, the Condominium Board shall appoint some other member of the Condominium Board (in the case of the President) or other individual (in the case of the Vice President) to act in the place of such absent or incapacitated officer on an interim basis. The Vice President shall also perform such other Powers and Duties as shall be required from time to time by the Condominium Board or

the President (as applicable). The co-Vice President elected exclusively by the Sponsor Board Member(s) shall perform such Powers and Duties as shall be required from time to time by the Sponsor Board Member, but shall act in connection with only the Operation of, and Unit Changes to, the Unsold Unit Properties, unless otherwise authorized in writing by the Independent Board Members.

Section 3.4 **Secretary and Assistant Secretary**. The Secretary shall keep the minutes of all meetings of the Unit Owners and the Condominium Board, shall attend to giving and serving all Notices set forth in the Condominium Documents, unless otherwise expressly provided, shall be empowered to sign all certifications with respect to the actions of the Board or Unit Owners, and all other instruments and documents authorized by the Board, shall cause to be kept a list containing the names, in alphabetical order, of all Persons who are Unit Owners and their contact information, and the date they became Unit Owners, shall have charge of such books and papers as the Condominium Board shall direct, and in general, shall have all of the Powers and Duties that are incident to the office of a secretary of a stock corporation organized under the BCL. The Assistant Secretary elected exclusively by the Sponsor Board Member shall have all of the same Powers and Duties as shall be required from time to time by the Sponsor Board Member, but shall act only in connection with the Operation of, and Unit Changes to, the Unsold Units, unless otherwise authorized in writing by the Independent Board Members.

Section 3.5 **Treasurer**. The Treasurer shall have the care and custody of the funds and securities of the Condominium Association, shall deposit such funds in the name of the Condominium Board in such banks, trust companies or similar depositories as may from time-to-time be designated by the Board, shall be responsible for keeping full and accurate financial records and books of account thereof, showing all receipts and disbursements necessary for the preparation of all required financial data, and in general, shall have all of the Powers and Duties incident to the office of a treasurer of a stock corporation organized under the BCL.

Section 3.6 **Election, Term of Office and Qualifications of Officers**.

Section 3.6.1 Election and Term. Each of the officers of the Condominium Board shall be elected annually by a majority of those Board Members attending a duly constituted organizational meeting of each new Condominium Board at which a quorum is present (except in case of an election to fill a vacancy or to create an additional or new officer), and shall serve at the pleasure of the Condominium Board; subject, however, to the right of the Sponsor Board Member to always exclusively elect a co-Vice President and an Assistant Secretary as provided in Section 3.1.1.

Section 3.6.2 Qualifications. The President shall be elected from among the members of the Condominium Board. The other officers of the Condominium Board, however, need not be members of the Condominium Board and need not be Unit Owners or have any interest in the Property or a Unit. Any single individual may hold any combination of offices, except that the offices of President, Vice President and Secretary shall be held by different individuals.

Section 3.7 **Removal and Resignation of Officers**.

Section 3.7.1 Removal. An officer may be removed at any time "with" or "without cause" by an affirmative vote of a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present, except the co-Vice President and Assistant Secretary appointed and designated exclusively by the Sponsor Board Member may be removed "with" or "without cause" by only the Sponsor Board Member or "with" cause based solely on Malfeasance by a majority of all Board Members at a duly constituted meeting of the Condominium Board at which a quorum is present, excluding the Sponsor Board Member(s) for quorum and voting requirements. The officer appointed and designated exclusively by the Sponsor Board Member(s) who is to be removed for "cause" shall be given a written explanation of the basis of removal at least seven Business Days in advance of the meeting of Board at which the vote is to be taken and a reasonable opportunity to be heard thereat before the vote is taken.

Section 3.7.2 Resignation. Each officer may resign at any time by giving Notice to the Condominium Board or (in the case of an officer appointed and designated exclusively by the Sponsor Board Member(s)) to said Sponsor Board member(s). However, the President will be regarded as having resigned automatically effective on the date such officer ceases to be a Board Member.

Section 3.8 **Vacancies**. A vacancy in an office shall be filled by a majority of those Board Members attending a duly constituted regular meeting of the Condominium Board or at a special meeting thereof called for such purpose, except that a vacancy of the co-Vice President or Assistant Secretary appointed and designated exclusively by the Sponsor Board Member(s) shall be filled by vote of only the Sponsor Board Member(s), without the necessity of a Board meeting.

Section 3.9 **Compensation of Officers**. No officer shall receive any compensation from the Condominium Association for acting as such.

Section 3.10 **Liability of the Officers of the Condominium**.

Section 3.10.1 Standard for Liability. The officers of the Condominium Association shall have no Liability to the Unit Owners for errors of judgment, ordinary negligence or otherwise, except that each officer shall be Liable thereto for such officer's own Malfeasance.

Section 3.10.2 Immunity. The officers of the Condominium Association shall have no personal Liability for having acted in such capacity and such immunity from personal Liability shall apply to all transactions of the Board authorized in these By-Laws or the Declaration, including each and every contract made, and other document or instrument executed, by or on behalf of the Condominium Board in accordance with these By-Laws or the Declaration, and each such contract, document and instrument shall so provide; however, the failure to so provide shall not, and shall not be construed to, in any way affect, change or waive such immunity from personal Liability. Such contract or other document or instrument shall be regarded as being made or executed by or on behalf of the Board as agent of all Unit Owners and the Liability thereunder of an officer shall be to the extent only that such officer is a Unit Owner and then only as limited in Section 4.12.

Section 3.10.3 Service Interruptions and Force Majeure. No officer of the Condominium Association (in his or her capacity as an officer) shall be responsible or accountable for any Claims, Litigations, Liabilities or Losses arising from any of the items contained in Section 2.21.4.

Section 3.10.4 Indemnity. Subject to the limitation of Liability contained in Section 4.12.1 and to the full extent permitted by Laws:

(a) only the Owner on whose individual behalf an officer of the Board solely acted shall Indemnify; or

(b) only the Owners on whose behalf an officer of the Board acted shall (jointly and severally Pro Rata to their respective Common Interests) Indemnify,

such officer, on the terms more fully set forth in Article 27 of the Declaration, from and against any and all Claims, Litigations, Liabilities and Losses to others arising from such officer's Acts or Omissions; provided, however, said officer shall not be Indemnified, if and to the extent that such Liability shall be due to Malfeasance or negligence or intentional wrongdoing.

Accordingly, the co-Vice President and Assistant Secretary appointed and designated exclusively by the Sponsor Board Member(s) shall not be Indemnified by the Sold Unit Owners if and to the extent that the Claim, Litigation, Liability or Loss arose solely from a decision or transaction made alone by the Sponsor Board Member(s) and implemented by such officer which affect only the Unsold Unit Properties, and do not affect the Condominium Association, the Common Elements, the Association's Assets, the Common Expenses or the Common Charges.

ARTICLE 4

UNIT OWNERS

Section 4.1 Annual Meetings of the Unit Owners.

Section 4.1.1 First Meeting. The first meeting of Unit Owners shall be called to be held within approximately sixty (60) Days after the second anniversary of the First Unit Closing under the Plan. If prior thereto, the number and Common Interest of the Sold Units constitute eighty percent (80%) or in number and Common Interest of all Units, such first meeting will be called to be held within approximately sixty (60) Days after such eighty percent (80%) threshold is exceeded. At such first meeting, the incumbent Condominium Board Member shall resign, or shall be deemed to have resigned, effective upon the qualification (in the case of an Independent Board Member) and election of a successor three-member Condominium Board by the Unit Owners, as provided both in this Article 4 and in Article 2.

Section 4.1.2 Subsequent Annual Meetings. Thereafter, annual meetings of the Unit Owners shall be held within approximately thirty (30) Days of the anniversary of the previous annual meeting, subject to the right of the Condominium Board (in its sole and absolute discretion) to change the date such annual meeting is to be held. Each such annual meeting is to be held at such date, time and place in the Borough of Manhattan and County of New York as shall be determined by the

Condominium Board. At each such subsequent annual meeting, the Unit Owners shall elect and (while there is any Unsold Unit) designate a new Condominium Board and shall transact such other business as may properly come before such meeting. The new Condominium Board may consist of the same Board members or a mix of the same and new Board Members or all new Board Members, as elected and appointed or designated in accordance with Article 2.

Section 4.2 Special Meetings of the Unit Owners.

Section 4.2.1 Requirements For Special Meeting. The President shall cause the Secretary to call a special meeting of the Unit Owners whenever so directed by a duly adopted resolution of the Condominium Board signed by any two Board Members or upon receipt by the President of a petition or written request calling for such a meeting signed Owners of not less than twenty-five (25%) percent of the Common Interests of all Units; provided, however, the same Board Members or the same Unit Owners shall not have the right to call for more than one special meeting of Unit Owners for the same or a related purpose in any twelve (12)-month period.

Each such resolution or petition or writing shall set forth, in reasonable detail, the purpose for calling such a meeting. Within ten (10) Business Days after receipt of such resolution or petition or writing (as applicable), the President shall cause the Secretary to call such special meeting to be held within twenty (20) Business Days following said receipt thereof, unless the purpose of a meeting is to consider an Amendment to the Declaration or these By-Laws, or to remove a Board Member, in which case the provisions of Section 4.4.3 shall apply. If the President fails to so timely call such special meeting, then any Board Member who voted for such resolution or any Unit Owner who signed such petition or writing (as applicable) may call such meeting by a Notice of meeting in accordance with the requirements of Section 4.4, except that such Notice need not be given by the Secretary.

Section 4.2.2 Business of Meeting. No business shall be transacted at such special meeting except business that is reasonably related to the purpose stated in the Notice of special meeting or said petition.

Section 4.2.3 Expiration of Sponsor Board Control Period. Notwithstanding anything to the contrary contained herein, after the expiration of the Sponsor Board Control Period, Sponsor will cause the Sponsor Board Members to call a special meeting of the Unit Owners to elect one additional Independent Board Member to replace one Sponsor Board Member, who will resign or be deemed to have resigned automatically upon the election and qualification of such Independent Board Member.

Section 4.3 Date, Time and Place of Meetings. Meetings of the Unit Owners, whether annual or special, shall be held on a Business Day, starting at an hour, at the principal office of the Condominium Association or at such other suitable and convenient place in the borough of Manhattan as may be determined by the following:

(a) in the case of an annual or special meeting of Unit Owners, the Condominium Board shall make such determination; or

(b) in the case of a special meeting of Unit Owners which is not called within said ten (10)-Business Day period after receipt of said resolution or petition or writing (as applicable), any Board Member who signed the resolution or any Unit Owner who signed the petition or writing (as applicable) may make such determination.

Section 4.4 Notice of Meetings.

Section 4.4.1 Contents. The Secretary of the Condominium Association shall give Notice of each annual or special meeting of the Unit Owners to all Unit Owners then of record on the books of the Condominium Association entitled to vote at such meeting, which Notice shall set forth the date, time, place and purpose of such meeting.

Section 4.4.2 Procedure. Such Notice shall be given to a Unit Owner at least ten (10) Days prior to the Day fixed for the meeting (except as otherwise provided in Section 4.2.1 above). Notices are to be sent the Owner's address as provided in Article 17.

Section 4.4.3 Required Consent of Unit Owners. Supplementing, modifying and superseding any inconsistency in Section 4.4.2 hereof, if the business to be conducted at any regular or special meeting of the Unit Owners shall include the consideration of a proposed Amendment to the Declaration or these By-Laws or a transaction or matter requiring the consent of the Unit Owners, or a proposal to remove a Board Member, the Notice of such meeting shall be mailed to all Unit Owners at least thirty (30) Days prior to the Day fixed for such meeting and shall be accompanied by a copy of the text of such proposed Amendment, or shall include a reasonably detailed Notice of the transaction or matter requiring consent, or the basis for removal of the Board Member (as applicable). In such case, the President shall call such meeting to be held not sooner than thirty-one (31) Days nor later than sixty (60) Days following receipt by the President of a Board resolution or a petition or writing signed by the requisite percentage of Unit Owners calling for such meetings.

Section 4.5 Quorum of the Unit Owners.

Section 4.5.1 Quorum Requirement. Subject to Section 4.5.3, attendance (in person or by proxy) of Owners comprising a majority in Common Interest of all Units will be required if the business or purpose of the meeting involves one or more of the following: (a) the Common Elements; (b) the Association's Assets; (c) the Common Expenses; (d) the Common Charges; or (e) the election or removal of an Independent Board Member; or (f) any other matter involving the Operation of the entire Property or the whole Condominium Association. Attendance at such meeting of Unit Owners shall be in person or by proxy. Any business or transaction that affects only the Unsold Unit Properties may be conducted by the Sponsor Board Member(s) or the Sponsor (at its exclusive option) in lieu of the Sponsor Board Member(s), without the necessity of a meeting of the Condominium Board or the other Unit Owners, without the consent of the Independent Board Members or the other Unit Owners, and without complying with any restriction, limitation or requirement.

Section 4.5.2 Adjournment. If, at any meeting of the Unit Owners there shall be less than a quorum present, the meeting shall be adjourned to a new Business Day, time and place determined by the Board. Notice of the adjourned date shall be sent to all Unit Owners in accordance with Section

4.4.2, except that the adjourned date shall be fixed at a date that shall not be sooner than five Business Days prior to giving the Notice.

Section 4.5.3 Reduced Quorum. The provisions of Section 4.5.1 to the contrary notwithstanding, if a meeting is adjourned two or more times for the failure to attain a quorum, then the Unit Owners attending the next adjourned date for the meeting shall constitute a quorum for the transaction of business and the absentee Unit Owners shall conclusively be deemed to have irrevocably and unconditionally consented to or approved the transactions affirmatively voted upon by those Unit Owners attending such next meeting comprising a majority in number of Units and/or Common Interest (as applicable), or a majority in Common Interest if not otherwise expressly stated; provided, however, that:

(a) all Unit Owners are given not less than ten (10) Business Days advance Notice of such adjourned date;

(b) the Notice shall set forth in reasonable detail the actions or business proposed to be transacted;

(c) the transaction shall not involve a matter that impairs, infringes or otherwise affects Sponsor's Rights, or requires:

(c-1) the Discretionary Consent of an absentee Unit Owner; or

(c-2) the vote of Unit Owners in number and/or Common Interest that is not met without the consent or vote of one or more absentee Unit Owners;

(d) the Notice shall expressly state the reduced quorum set forth herein for the transaction to be voted upon at the meeting; and

(e) the failure of an Unsold Unit Owner (including Sponsor) to attend on such adjourned date shall not be caused by Force Majeure.

Section 4.6 Conduct of Meetings.

Section 4.6.1 Presiding Officer. The President shall preside at the meetings of Unit Owners and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Unit Owners and a record of all transactions and proceedings occurring thereat. All votes of the Unit Owners shall be tallied by the individual(s) appointed by the presiding officer of the meeting.

Section 4.6.2 Robert's Rules of Order. Unless in conflict with the terms of the Declaration, these By-Laws or the Condominium Act, each annual or special meeting of Unit Owners shall be conducted in accordance with the then current edition of Robert's Rules of Order, or any other rules of procedure acceptable to: (a) a majority in Common Interest of those Unit Owners present at such meeting, in person or by proxy; and (b) (while there is any Unsold Unit) Sponsor or (if Sponsor no longer owns an Unsold Unit) a majority in Common Interest of Unsold Unit Owners.

Section 4.7 **Order of Business**. The order of business at all meetings of the Unit Owners shall be as follows: (a) roll call; (b) proof of notice of meeting; (c) reading of the minutes of the preceding meeting (unless waived); (d) reports of officers of the Condominium Board; (e) reports of members of the Condominium Board; (f) reports of committees; (g) election of inspector(s) of election (when so required); (h) election and (if applicable) appointment and designation of members of the Condominium Board (when so required); (i) unfinished business; (j) new business; and (k) adjournment (i.e., end of meeting).

Section 4.8 **Voting**.

Section 4.8.1 Number of Votes. Subject to the terms of Section 1.5 of the Declaration and Sections 4.8.2 and 4.9, each Unit Owner (including Sponsor and other Owners of Unsold Units) shall be entitled to cast one vote at all meetings of the Unit Owners for each percentage of Common Interest appurtenant to each Unit owned by such Owner (e.g., 543 votes for 5.43% of Common Interest).

Section 4.8.2 Disqualification. Notwithstanding the terms contained in Section 4.8.1, no Unit Owner may vote at any meeting of the Unit Owners if the Condominium Board has perfected a lien against such Owner's Unit and the amount necessary to release such lien has not been paid or discharged by bonding or otherwise at the time of such meeting. The Units and their appurtenant Common Interests of all Owners who are precluded from voting pursuant to the terms of this Section 4.8.2 shall be excluded when computing the aggregate number and/or Common Interests (as applicable) of all Units and Owners for quorum and voting purposes.

Section 4.8.3 Fiduciary. A fiduciary shall be the voting member with respect to a Unit owned in a fiduciary capacity.

Section 4.8.4 Co-Owners. If two or more Persons own a Unit, they shall designate one Person amongst them to cast the votes appurtenant to their Unit in a writing given to the Secretary, and the vote of such designee shall be binding upon all of such Persons. Failing such designation being made, all of such Persons shall mutually cast such votes under one ballot without division, and the concurrence of all such Persons shall conclusively be presumed if any one of them purports to cast such votes without protest being made contemporaneously to the individual presiding over the meeting at which such vote is taken. If protest is made, the Common Interest appurtenant to such Unit shall be counted solely for the purpose of determining whether a quorum is present for such meeting.

Section 4.8.5 Proxy. The Owner of any Unit may designate any individual to act as a proxy on such Owner's behalf. The designation of any such proxy shall be made in a writing both signed and dated by the Unit Owner and delivered to the Secretary or an Assistant Secretary at or before the appointed time for the meeting during which the same is to be effective.

Section 4.8.6 Revocation of Proxy. Any such proxy designation shall be revocable at any time upon Notice given to the Secretary or an Assistant Secretary; provided, however, no revocation of such designation shall be effective with respect to any votes cast by such proxy prior to the receipt of such revocation Notice by the Secretary or an Assistant Secretary. In addition, a proxy may be

revoked by a Unit Owner who is personally present at a meeting of the Unit Owners, provided such Unit Owner submits a ballot on the form prescribed by the Secretary or an Assistant Secretary, which ballot states the name of the Unit Owner, the Owner's Unit designation number and is signed by the Unit Owner. In such case, the votes cast by the proxy holder shall not be counted and the votes cast by the Unit Owner's ballot shall be counted. The foregoing shall not preclude or prohibit a Unit Owner from giving an irrevocable proxy to a Permitted Mortgagee or a Registered Tenant under a Lease of a Unit; provided, however, the proxy is expressly stated to be irrevocable.

Section 4.8.7 Duration. Except with respect to the designation of a Permitted Mortgagee or a Registered Tenant of a Unit to act as the proxy of the Owner of such Unit, no designation to act as a proxy shall be effective for a period in excess of eleven (11) months after the date thereof. Photocopies, facsimiles, emails or other mechanical reproductions of proxies shall be valid and counted for all purposes.

Section 4.8.8 Decision. Except when otherwise required by Laws or otherwise provided in the Declaration or in these By-Laws and subject to Section 1.5 of the Declaration and Sponsor's veto control during only the Sponsor Veto Control Period, the affirmative vote of Owners comprising a majority in Common Interest of all Units attending a duly constituted meeting of Unit Owners at which a quorum is present shall be binding upon all Unit Owners for all purposes.

Section 4.8.9 Record Date for Voting. For purposes of determining the Unit Owners entitled to vote at any meeting of Unit Owners or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting of Unit Owners, or for the purpose of any other action, the record date on the books of the Condominium Association for any such determination of Unit Owners shall be at the close of business on the Day next preceding the Day of such meeting of Unit Owners or such adjourned meeting of Unit Owners or (if no meeting is held) the Day on which consent or dissent on a proposal is expressed, even though a Unit Owner was not the Unit Owner of record on the books of the Condominium Association on the date of service of Notice of the meeting. No additional Notice of an annual or special meeting of Unit Owners or a proposal without a meeting of Unit Owners need be given to a new Unit Owner who was not the record Owner on the books of the Condominium Association on the date of giving such Notice, and the failure of said new Unit Owner to receive such Notice shall not be the basis of an objection or otherwise affect the validity, effectiveness or enforceability of the votes cast by Unit Owners.

Section 4.8.10 Suspension of Voting Rights. If the Condominium Board perfects its lien against a Unit for unpaid Common Charges, then until the lien is paid or discharged by bonding or otherwise, the Owner of such Unit will not have the right to nominate candidates to serve on the Condominium Board or to vote for election of the Condominium Board or to serve as a member of the Condominium Board.

Section 4.9 Election of the Condominium Board.

Section 4.9.1 Number and Composition of Condominium Board. The number and composition of the Condominium Board are set forth in Sections 2.6 and 2.7, which shall govern and

control.

Section 4.9.2 Election of Independent Board Members. The number of Independent Board Members to be elected each year shall be governed and controlled by Section 2.8.

Section 4.9.3 Vote Count. Each Unit Owner eligible to elect the Independent Board Member(s) in accordance with the terms of the Declaration and these By-Laws shall be entitled to cast for each Independent Board Member to be elected not more or less than one vote for each percentage of Common Interest appurtenant to each and every Unit owned by such Owner. Accordingly, the number of votes received by each candidate for whom an eligible Unit Owner casts a ballot will equal the total number of votes such Owner is entitled to cast.

Section 4.9.4 No Cumulative Voting. A Unit Owner may not cumulate, split or otherwise transfer the number of votes such Unit Owner is entitled to cast from one candidate to another candidate.

Section 4.9.5 Plurality. All elections of the Independent Board Members shall be determined by plurality vote.

Section 4.9.6 Ballots. All elections of the Independent Board Members held from and after the first meeting of Unit Owners following the First Unit Closing under the Plan shall be by written ballot. Each ballot cast shall state: (a) the name of the Unit Owner and, if such ballot is cast by proxy, the name of the proxy; (b) the designation number(s) of the Unit(s) owned by the Unit Owner; and (c) the names of the candidates for whom such ballot is cast (the number of which names shall not exceed the number of members to be elected). Any ballot that is not cast substantially in conformity with this Section 4.9.6 shall not be counted. All election ballots shall be retained in the records of the Condominium Association for at least three years, appropriately segregated by election.

Section 4.9.7 Board Member Designations. The Sponsor Board Member(s) shall be appointed and designated exclusively by Sponsor so long as it owns any Unsold Unit and (after Sponsor no longer owns any Unsold Unit) the then existing Unsold Unit Owners (if any) comprising a majority in Common Interests of all Unsold Units. Each such appointment and designation shall be in writing delivered at the duly constituted meeting of Unit Owners at which a quorum is present or delivered in advance of such meeting to the Managing Agent or the President, Vice President, co-Vice President, Secretary or Assistant Secretary. Such written appointment and designation shall be retained in the records of the Condominium Association for at least three years, appropriately segregated by election.

In the event that Sponsor no longer owns any Unsold Unit and there is more than one Unsold Unit Owner, then the Sponsor Board Member(s) shall be designated by mutual agreement of the Unsold Unit Owners. If they cannot agree, then the Sponsor Board Member(s) shall be elected by plurality in Common Interests of the votes cast by those Unsold Unit Owners who are present (in person or by proxy) and voting at such meeting.

Section 4.9.8 Voting and Designation Rights of Sponsor and Unsold Unit Owners. The Unfettered rights of Sponsor and (after Sponsor no longer owns any Unsold Unit) the Unsold Unit Owners (if any) to exclusively appoint and designate the Sponsor Board Member(s) and to vote for the Independent Board Member(s) are set forth in Section 2.8.

Section 4.10 Action Without a Meeting. Any action required or permitted to be taken by the Unit Owners at a duly constituted meeting of Unit Owners at which a quorum is present may be taken without such a meeting if such action is consented to, or approved, in writing by the required number and/or Common Interest (as applicable) of Unit Owners. All written consents given by such Unit Owners pursuant to this Section 4.10 shall be retained in the records of the Condominium Association for at least three years together with a true copy of the resolutions to which they relate.

Section 4.11 Title to Units. Title to any Unit may be taken by any Person or by any two or more Persons as joint tenants, tenants in common or tenants by the entirety, as may be appropriate, but not as Owners in severalty.

Section 4.12 Non-Recourse, Limited and Several Liability of Unit Owners. The Liability of each Unit Owner to a judgment creditor, solely by reason of being a Unit Owner, for torts relating to the Common Elements or for contracts entered into, or transactions conducted, by the Condominium Board on behalf of one or more Unit Owners, including each and every contract made and other document executed by or on behalf of the Condominium Board:

(a) shall be without recourse for personal Liability of the Unit Owner;

(b) shall be limited to the Owner's legal and equity interest in the Owner's Unit and its appurtenant Common Interest; and

(c) shall be further limited to only the applicable Unit Owner or Owners on whose behalf the Board is acting or the transaction primarily benefits and (if more than one Unit Owner), each of whom shall be Liable severally to such portion of the total Liability as the Common Interest appurtenant to such Owner's Unit bears to the total Common Interests of all such applicable Unit Owners on whose behalf the Board is acting or the transaction primarily benefits (e.g., all Unit Owners in the case of an act affecting, or primarily benefiting, the Common Elements or the Association's Assets), as determined by the Board in its sole Business Judgment.

The foregoing Liability under the preceding clauses (a) and (b) are collectively, "**Non-Recourse, Limited and Several Liability**".

Each contract made by, or on behalf of, the Condominium Board shall expressly provide for such Non-Recourse, Limited and Several Liability in accordance with the foregoing. However, the failure to so expressly provide shall not, and shall not be construed to, in any way affect, change or waive the Non-Recourse, Limited and Several Liability of Unit Owners as set forth herein.

Section 4.12.1 Exceptions. The provisions of this Section 4.12 are not applicable to, and shall not excuse, the personal liability of each Unit Owner for:

(a) the payment of Common Charges (including Special Assessments and other Additional Common Charges) levied or imposed by the Condominium Board;

(b) Claims, Litigations, Liabilities and Losses attributable to:

(b-1) torts relating to the Owner's Unit Property;

(b-2) contracts entered into, or transactions conducted by, such Unit Owner with respect such Owner's Unit Property; and

(b-3) Acts or Omissions of said Owner or a Person for whom such Owner is responsible or accountable, as provided in Section 1.7.2 of the Declaration or Section 5.7.1 hereof.

ARTICLE 5

WORK

Section 5.1 Unit Property.

Section 5.1.1 Rights and Obligations. Subject to Section 5.1.2, each Owner, at said Owner's Sole Cost and Expense, shall have the right and obligation to:

(a) Maintain, Repair, Restore, Alter and Decorate Owner's Unit Property including (if and to the extent applicable) Balcony, Terrace, Juliette Terrace, Yard, Entrance Doors, Windows and all other items set forth in said Sections 6.7 and 7.3 of the Declaration in accordance with the Building Standard and all applicable Work Requirements;

(b) implement all such Work with commercially reasonable diligence, or (in the case of an Emergency Condition or Governmental Violation) prompt diligence, and continuity to completion in accordance with any plans and specifications for the Work, Governmental Work Permits therefor, Good Construction Practices and all other applicable Work Requirements;

(c) substitute or replace or otherwise Alter Unit Facilities with Facilities that shall be consistent in design, compatibility, aesthetics and architectural integrity and appearance to the original items being Altered;

(d) Repair undue air and water penetrating a Unit's Exterior Door; except any air or water penetration between a Building Wall or Façade and a Window shall be Repaired by the Condominium Board as a Common Expense;

(e) correct with prompt diligence and continuity to completion all conditions constituting Governmental Violations and remove of record all Governmental Violations noted or issued against the Unit Property;

(f) diligently and properly wash and keep clean the exterior and interior sides of all Windows and both sides of all Entrance Doors leading to a Unit or to its Balcony, Terrace, Juliette Terrace or Yard (as applicable); and

(g) keep the Balcony, Terrace, Juliette Terrace, Yard, and all other Areas of such Owner's Unit that affect the exterior appearance of the Building or are otherwise exposed to public view, free and clear of snow, ice, water accumulation, debris and dirt and otherwise properly Maintained.

Section 5.1.2 Restrictions. Owner shall not Alter, furnish, paint, color, cover or otherwise Decorate or Install any manner of Signage on the exterior or interior sides of Windows, Entrance Doors, or other portions of a Unit Property that affect the exterior appearance of the Building or are otherwise exposed to public view, without obtaining the Discretionary Consents of the Condominium Board and the Sponsor, in each instance. All Window blinds, shades, curtains or other Window treatments shall be light colored facing the outdoors and comply with the uniform standard requirements adopted by the Condominium Board.

Section 5.1.3 Indemnity. Each Owner shall Indemnify the Condominium Board and all other Unit Owners, and their respective Related Parties, on the terms more fully set forth in Article 27 of the Declaration, from and against all manner of Claims, Litigations, Liabilities and Losses suffered or incurred by any of them due to the Owner's Violation of the terms of this Section 5.1.

Section 5.1.4 Board Remedy. If an Owner Violates the terms of this Section 5.1 (including a failure or refusal of the Owner to comply with the Owner's obligations under this Section), then the Condominium Board shall have the right (but shall not be obligated) to remedy such Violation and/or perform any obligation for the account and at the expense of such offending Owner, in which case all Costs and Expenses expended by the Board to perform such Work shall be charged to the offending Owner as Additional Common Charges and reimbursed by the offending Owner to the Board in accordance with the Payment and Collection provisions of Section 1.8 of the Declaration.

Section 5.2 Common Elements, Association's Assets and Sidewalk. Unless otherwise expressly provided elsewhere in these By-Laws or the Declaration, the Condominium Board, as a Common Expense assessed to all Units Pro Rata to their respective Common Interests, shall have the right and obligation to:

(a) Maintain, Repair, Restore, Alter and Decorate the Common Elements, the Association's Assets and the Sidewalk in good and proper working order and first-class neat, clean and sanitary condition and appearance in accordance with the Building Standard and all applicable Work Requirements;

(b) implement all such Work with commercially reasonable diligence, or (in the case of an Emergency Condition or Governmental Violation), prompt diligence and continuity to completion in accordance with any plans and specifications for the Work, Governmental Work Permits therefor, Good Construction Practices and all other applicable Work Requirements;

(c) substitute or replace or otherwise Alter the Common Facilities with Facilities that shall be consistent in design, compatibility, aesthetics and architectural integrity and appearance to the original items being Altered;

(d) Repair undue air and water penetration between a Building Wall or Façade and a Window as a Common Expense assessed to all Unit Owners Pro Rata to their respective Common Interests;

(e) correct with prompt diligence and continuity to completion all conditions constituting Governmental Violations and remove of record all Governmental Violations noted or issued against the Common Elements, the Association's Assets and the Sidewalk;

(f) diligently and properly wash and keep clean the exterior and interior sides of glass and other surfaces of items comprising the Common Elements, and the Association's Assets; and

(g) keep the Common Elements and the Association's Assets that affect the exterior appearance of the Building or are exposed to public view, and the Sidewalk, free and clear of snow, ice, water accumulation, debris and dirt and otherwise properly Maintained.

Section 5.2.2 Board Indemnity. The Condominium Board shall Indemnify all Unit Owners, and their respective Related Parties, on the terms more fully set forth in Article 27 of the Declaration, from and against all manner of Claims, Litigations, Liabilities and Losses suffered or incurred by any of them due to the Board's Violation of the terms of this Sections 5.2 and the Work undertaken hereunder. All amounts payable by the Board pursuant to this Indemnity shall be included in the Common Expense and assessed to all Unit Owners Pro Rata to their respective Common Interests.

Section 5.3 Ordinary Work.

Section 5.3.1 Definition. The term "**Ordinary Work**" means Work that does not:

(a) require an application to a Governmental Authority or the issuance of a Governmental Work Permit;

(b) affect the aesthetics, architectural integrity or exterior appearance of the Building;

(c) affect the Structural Components of the Building;

(d) affect any Building Systems or Building Services affecting another Unit or the Common Elements serving another Unit;

(e) affect any interior or exterior waterproofing of the Building; or

(f) have an acoustical impact on a Unit or the Common Elements.

Section 5.3.2 Requirements. All Ordinary Work shall be performed in accordance with Good Construction Practices and all other applicable Work Requirements, but without the approval or consent of a Party, other than the Owner of a Unit in the case of Work by a Tenant of such Unit, and unless otherwise expressly provided in these By-Laws or the Declaration.

Section 5.4 Cooperation of Board. Each Unit Owner shall fully cooperate with every other Unit Owner or the Condominium Board (as applicable) in connection with the Maintenance, Repairs, Alterations and other Work permitted or required to be performed by such other Unit Owner

or the Board, and the Condominium Board shall fully cooperate with each Unit Owner in connection with the Maintenance, Repairs, Alterations and other Work permitted or required to be performed by such Unit Owner, all as more particularly set forth in Article 21 of the Declaration.

Section 5.5 **Report of Defects**. Any defect or need for Repairs for which the Condominium Board is responsible to Maintain pursuant to the terms of these By-Laws or the Declaration shall be reported to the Condominium Board or to the Managing Agent by an Owner promptly upon learning thereof.

Section 5.6 **Neglect**. Each Party shall be responsible and accountable for all Claims, Litigations, Liabilities and Losses incurred or suffered by another Party arising from the failure of the offending Party to Maintain, Repair or Restore the portion of the Property it is responsible to Maintain, Repair or Restore in accordance with these By-Laws or the Declaration. In the case of the failure of the Board to Maintain, Repair and Restore the Common Elements, Association's Assets or Sidewalk, all amounts payable to an aggrieved Party hereunder shall be included in the Common Expense and assessed to all Owners Pro Rata to their respective Common Interests.

Section 5.7 **Work Requirements**. All Work (including a permitted or required Maintenance, Repair, Restoration, Alteration, Unit Change and other Work) undertaken with respect to a Unit, a Limited Common Element, a Common Element, an Association's Asset or the Sidewalk shall be governed by, and shall comply with the requirements of, this Section 5.7 (collectively, the "**Work Requirements**"), which shall apply whether or not so expressly provided elsewhere in these By-Laws or the Declaration.

Section 5.7.1 Joint and Several Liability.

Section 5.7.1.1 Unit Owner. With respect to All Work being undertaken by or behalf of an Owner or a Tenant of an Owner's Unit or a Utility Provider engaged by such Owner or Tenant, such Owner:

(a) shall comply with, or shall cause said Tenant or Utility Provider, and the respective Construction Parties of each of the foregoing, to comply with all applicable Work Requirements; and

(b) shall be responsible and accountable, jointly and severally, with said Tenant or Utility Provider (as applicable):

(b-1) for all Claims, Litigations, Liabilities and Losses attributable to the Work (including the Acts and Omissions of all Work Parties undertaking the Work) and all defects in the Work, whether due to the failure to perform the Work in accordance with these Work Requirements or otherwise; but excluding Claims, Litigations, Liabilities and Losses caused by, or arising from the negligence or intentional wrongdoing of an aggrieved Party or its Related Parties or a Person for whom such aggrieved Party is responsible or accountable, as provided in Section 1.7.2 of the Declaration or Section 5.7.1 hereof; and

(b-2) to reimburse the aggrieved Party, in accordance with the Payment and Collection provisions of Section 1.8 of the Declaration, for the Costs and Expenses incurred

or paid by it to Repair all destruction and damage attributable to the Work or defects in the Work and to Restore the destroyed or damaged Areas and Facilities (including all Customized Changes and Improvements) to the condition existing immediately before being destroyed or damaged.

Nothing contained herein shall be deemed to waive of any Claims the Board or a Unit Owner may have against an insurer or otherwise. In addition, if the Liability of an offending Unit Owner hereunder is the result of a casualty that is insured under a policy maintained by the Condominium Board containing a waiver of subrogation or equivalent provision, then such Unit Owner's Liability shall be reduced by the amount of any insurance proceeds received and collected by the Condominium Board in connection therewith.

Section 5.7.1.2 Condominium Board. With respect to All Work being undertaken by or behalf of the Condominium Board or a Utility Provider engaged by the Condominium Board, the Board:

(a) shall comply with, or shall cause said Utility Provider, and their respective Construction Parties, to comply with all applicable Work Requirements; and

(b) shall be responsible and accountable, jointly and severally, with said Utility Provider:

(b-1) for all Claims, Litigations, Liabilities and Losses attributable to the Work and all defects in the Work, whether due to the failure to perform the Work in accordance with the Work Requirements or otherwise; but excluding Claims, Litigations, Liabilities and Losses arising from the negligence or intentional wrongdoing of an aggrieved Party or its Related Parties or a Person for whom said aggrieved Party is responsible or accountable, as provided in Section 1.7 of the Declaration; and

(b-2) to reimburse the aggrieved Party, in accordance with the Payment and Collection provisions of Section 1.8 of the Declaration, for the Costs and Expenses incurred or paid by the aggrieved Party to Repair damage and destruction attributable to the Work and defects in the Work, and to Restore the damaged and destroyed Areas and Facilities (including all Customized Changes and Improvements) to the condition existing immediately before being damaged or destroyed.

If the Work in question primarily benefits: (i) all Owners, the amounts payable by the Board shall be included in the Common Expenses and charged to all Owners Pro Rata to their respective Common Interests; or (ii) less than all Owners, the amounts payable by the Board shall be a Specially Allocated Expense and charged to only the Owner (or if more than one Owner) the Owners (Pro Rata to their respective Common Interests) for whom the Work primarily benefits, as determined by the Board in its sole Business Judgment.

Section 5.7.1.3 Additional Common Charges. All amounts payable by an Owner to the Condominium Board under this Section 5.7.1 shall constitute Additional Common Charges.

Section 5.7.1.4 Application. The Work Requirements shall apply to All Work undertaken with respect to the Property, the Association's Assets, the Sidewalk and the affairs of the Condominium, whether or not expressly provided, unless otherwise expressly stated, and are in addition to all other requirements and obligations contained elsewhere in the Condominium Documents. The Condominium Board and Sponsor shall have the right, in its sole Business Judgment, to waive one or more Work Requirements.

All Work undertaken by Sponsor shall be exempt from all Work Requirements, other than the requirement to comply with applicable Laws, unless otherwise expressly provided. All references in the following Work Requirements to an "Owner" or a "Unit" shall exclude Sponsor or other Unsold Unit Owner and an Unsold Unit, unless otherwise expressly provided.

Section 5.7.1.5 Sponsor's Rights. Until Sponsor no longer owns a Unit or the Final Certificate of Occupancy of the Building is issued, whichever is the last to occur:

(c) a Work Requirement that requires the consent or acceptance of the Condominium Board (including an Acceptable Structural Engineer, or an Acceptable Architect/Engineer, or Acceptable Structural Plans and Specifications, or Acceptable Non-Structural Plans and Specifications), shall require the consent or acceptance of Sponsor, which shall be discretionary in Sponsor's sole and absolute determination, whether or not expressly provided;

(d) a Work Requirement that requires the submission or delivery to the Board of plans and specifications, other documents or instruments, or information, or a certification, shall be submitted or certified (as applicable) simultaneously and in like manner to Sponsor, whether or not expressly provided;

(e) a Work Requirement that requires the Reasonable or Discretionary Consent of the Board to an architect or engineer or other Work Party to perform Work shall also require the Discretionary Consent of Sponsor to such architect, engineer or other Work Party to perform Work, whether or not expressly provided.

The rights of Sponsor under a Work Requirement shall be paramount and take preference and priority over the rights of the Board hereunder. In the event of any ambiguity or inconsistency the rights of Sponsor and the rights of the Board under the Work Requirements, the rights of Sponsor shall govern and control.

Section 5.7.1.6 Limitation on Damages. Notwithstanding anything to the contrary contained herein or elsewhere in the Declaration or these By-Laws, no Party shall be accountable or Liable for consequential, special and punitive damages with respect to Violations of the Declaration or these By-Laws (including Violations of the Work Requirements or otherwise), other than Liability for consequential, special and punitive damages owed or made to unrelated third parties as to which: (a) a Unit Owner is otherwise responsible to Indemnify another Unit Owner or the Board; or (b) the Board is otherwise responsible to Indemnify a Unit Owner; or (c) Sponsor is otherwise responsible to Indemnify an Owner or the Owner's Related Parties or the Board or the Board's Related Parties, which are expressly reserved.

Section 5.7.2 Work Performance Requirements. The Work shall comply with the following requirements (the "**Work Performance Requirements**"), if and to the extent applicable to the Work to be performed:

(a) the requirement to implement the Work (whether Structural Work or Non-Structural Work) with commercially reasonable diligence, or (in the case of an Emergency Condition or Governmental Violation) prompt diligence, and continuity to completion in accordance with Good Construction Practices and all other applicable Work Requirements, and subject to compliance with Laws, any plans and specifications for the Work and Governmental Work Permits issued therefor;

(b) the requirement to comply with the General Requirements;

(c) the requirement to perform the Work by Construction Parties and suppliers who are acceptable to Sponsor and (if acceptable to Sponsor or after the Final Certificate of Occupancy of the Building is issued) the Board or its Managing Agent, and in a manner that:

(c-1) shall not permanently prevent or diminish by more than a *de minimis* extent the permitted Use and Enjoyment (including the use, occupancy, Operation and habitability of the Owner and/or a Tenant) of a Unit (including the Facilities serving such Unit), other than the Unit of the Owner or a Tenant of such Owner's Unit undertaking the Work;

(c-2) shall not overload or materially impair the proper and efficient performance, function, capacity or utility of the Common Elements or a Unit, or the Facilities serving a Unit, other than the Unit of the Owner or a Tenant of such Owner's Unit undertaking the Work;

(c-3) shall not invade or penetrate any portion of the Common Elements, or a Unit, without obtaining the Reasonable Consent of the Board (with respect to the Common Elements) or the Owner of such affected Unit, other than:

(c-3.1) those portions of the Common Elements or a Unit, that are subject to an easement or right in favor of the Responsible Party undertaking the Work (including the easements and rights set forth in Article 11 of the Declaration); or

(c-3.2) the Unit of the Owner or a Tenant of such Owner's Unit undertaking the Work;

(c-4) shall not change by more than a *de minimis* extent the dimensions or floor Areas of the Common Elements or a Unit, other than the Unit of the Owner or a Tenant of such Owner's Unit undertaking the Work (in which case the Unit Change Restrictions and Requirements shall apply);

(c-5) shall not impair or jeopardize the structural integrity or soundness of any portion of the Building;

(c-6) shall not reduce, impair or jeopardize the acoustical performance of the Boundary Walls enclosing a Common Element or a Unit, other than the Unit of the Owner or a Tenant of such Owner's Unit undertaking the Work;

(c-7) shall not unlawfully prevent or impair legal access to a street or to the Common Elements; and

(c-8) shall not interfere with, or cause any labor disturbances or stoppages in, the Work of the Condominium Association's employees or the Construction Parties engaged by or on behalf of the Condominium Board or Sponsor in connection with any services being provided to, or Work being performed in, the Units or the Building;

(d) the requirement to comply with the insurance requirements contained in Article 6 and to maintain such insurance in full force and effect at the start and until the completion of the Work and obtaining all required Governmental Approvals;

(e) in the case of Structural Work to be undertaken by an Owner or a Tenant of a Unit, such Owner shall comply with, and shall cause its Tenant to comply with, the following requirements, which shall be binding upon them:

(e-1) the requirement that such Work shall not affect the Structural Components comprising the Common Elements without obtaining the Discretionary Consent of the Board, unless otherwise expressly provided in these By-Laws or the Declaration; and

(e-2) the requirement to engage a Structural Engineer having at least ten (10) years' recent experience in the nature of the Work to be performed, who shall be chosen by such Owner or its Tenant (as applicable), but must be Reasonably Acceptable to the Board (the Reasonably Acceptable Structural Engineer is hereafter, the "**Acceptable Structural Engineer**");

(e-3) before undertaking Structural Work, the requirements to deliver to the Condominium Board for its Consent at least twenty (20) Business Days before beginning any Structural Work:

(e-3.1) the signed and sealed plans and specifications of the Structural Work prepared by the Acceptable Structural Engineer, accompanied by a written certification by such Acceptable Structural Engineer addressed to the Board and the Unit Owners, certifying that the structural integrity and soundness of the Building shall not be impaired or otherwise adversely affected by such Structural Work; and

(e-3.2) such additional documents and information as the Board may request in order to evaluate whether the Structural Work complies with these requirements;

(e-4) the requirement to modify and otherwise change the plans and specifications for said Structural Work in a manner acceptable to the structural engineer chosen by the Board, in such structural engineer's sole Professional Judgment (such acceptable plans and

specifications, as modified or changed (if applicable), are hereafter, the "**Acceptable Structural Plans and Specifications**");

(e-5) the requirement to deliver to the Board, at least five Business Days before the Structural Work begins:

(e-5.1) (if and to the extent required by Laws to perform the Work) the Acceptable Structural Plans and Specifications, perforated and stamped or otherwise approved by the DOB, together with copies of all required Governmental Work Permits; and

(e-5.2) a policy or original certificates of insurance for such insurance coverage and amounts, and issued by such insurer, as required in Article 6, and naming the Board, Unit Owners and Registered Mortgagees as additional insureds or loss payees (as applicable) as their interests may appear;

(e-6) the requirement to cause said Acceptable Structural Engineer to supervise and monitor the Structural Work throughout its duration;

(e-7) the requirement to follow the foregoing procedure to amend the Acceptable Structural Plans and Specifications; and

(e-8) the requirement to cause the Structural Work to be performed in accordance with the Acceptable Structural Plans and Specifications, as they may be duly amended in accordance with the foregoing, Governmental Work Permits therefor, Good Construction Practices and all other applicable Work Requirements;

(f) in the case of Non-Structural Work (other than Ordinary Work) to be undertaken by an Owner or Owner's Tenant with respect to such Owner's Unit Property, such Owner shall comply with, and shall cause Owner's Tenant and their respective Construction Parties, to comply with, the following requirements, which shall be binding upon them, jointly and severally:

(f-1) except for temporary interruptions permitted or authorized in writing by the Board, in its sole Business Judgment, the requirement that such Work shall not affect the Common Elements or another Unit Property without obtaining the Discretionary Consent of the Board and (in the case only of the affected Unit Property) the Owner thereof, unless otherwise expressly provided in these By-Laws or the Declaration;

(f-2) the requirement to obtain the Reasonable Consent of the Board before undertaking such Non-Structural Work;

(f-3) before undertaking such Non-Structural Work, the requirement of such Owner to cause to be prepared and submitted to the Board, at least twenty (20) Business Days before commencing such Work:

(f-3.1) copies of all signed and sealed detailed plans and specifications of such Work, prepared by a duly licensed and qualified registered architect and/or

engineer having at least ten (10) years' recent experience in the nature of the Work to be performed, who shall be chosen by such Owner or its Tenant (as applicable) and Reasonably Acceptable to the Board (the "**Acceptable Architect/Engineer**"); and

(f-3.2) such additional documents and information as the Board may request, in its sole Business Judgment, in order to evaluate whether the Non-Structural Work complies with these requirements;

(f-4) the requirement to modify and otherwise change the plans and specifications for said Non-Structural Work in a manner acceptable to the architect, engineer or other Work Party chosen by the Board, in such Work Party's sole Professional Judgment (such acceptable plans and specifications are hereafter, the "**Acceptable Non-Structural Plans and Specifications**");

(f-5) the requirement to deliver to the Board at least five Business Days before the Non-Structural Work begins:

(f-5.1) (if and to the extent required by Laws to perform the Work) the Acceptable Non-Structural Plans and Specifications, perforated and stamped or otherwise approved by the DOB, together with copies of all required Governmental Work Permits; and

(f-5.2) a policy or original certificates of insurance for such insurance coverage and amounts, and issued by such insurer, as required in Article 6, and naming the Board, Unit Owners and Registered Mortgagees as additional insureds or loss payees (as applicable) as their interests may appear;

(f-6) the requirement to follow the foregoing procedure to amend the Acceptable Non-Structural Plans and Specifications; and

(f-7) the requirement to cause the Non-Structural Work to be performed in accordance with the Acceptable Non-Structural Work Plans and Specifications, as they may be duly amended in accordance with the foregoing, Governmental Work Permits therefor, Good Construction Practices and other applicable Work Requirements;

(g) the requirement to perform the Work utilizing materials and Facilities compatible with, and of at least substantially equal or better in quality, design, function and utility than, those then existing in the Building for any material or Facility that impacts a Common Element (including a Structural Component) or another Unit or is exposed to public view;

(h) the requirement that any Lines and Conduits in connection with the permitted Work affecting:

(h-1) the Common Elements, shall be Installed in Areas concealed from view (e.g., behind Boundary Walls or under Base Floors or above Base Ceilings) or within unutilized or under-utilized Areas of existing chases, chase walls, ducts or the like that can accommodate such Lines and Conduits, and if in the Business Judgment of the Board such Lines and

Conduits shall not impact, beyond a *de minimis* extent, another Unit, said Lines and Conduits may invade, penetrate or otherwise disturb to the minimal extent commercially reasonable and economically practicable, any exposed indoor Areas of said affected Common Elements, without obtaining the Discretionary or Reasonable Consents of the Owners of the Units which are served by said affected Common Elements; provided, however, such Lines and Conduits shall be appropriately boxed-in or otherwise covered to the reasonable satisfaction of the Condominium Board; or

(h-2) a Unit which is not owned by the Owner or its Tenant undertaking the Work, shall be Installed in Areas concealed from view (e.g., behind Boundary Walls or under Base Floors or above Base Ceilings) or within unutilized or under-utilized Areas of existing chases, chases walls, ducts or the like that can accommodate such Lines and Conduits; provided, however, such Lines and Conduits:

(h-2.1) shall not invade any Areas of such Unit without obtaining the Discretionary Consent of the Owner thereof; and

(h-2.2) shall be appropriately boxed-in or otherwise covered to the reasonable satisfaction of said affected Owner;

(i) if Governmental Work Permits or Governmental Approvals, or a Certificate of No Effect or a Certificate of Appropriateness from the New York City Landmarks Preservation Commission (the "**Landmarks Commission**") pursuant to the New York City Landmarks Law, are required by Laws:

(i-1) before commencing the Work, the requirement to file as and when required all necessary Governmental Documents with the appropriate Governmental Authorities having jurisdiction, obtain all required DOB approved plans and specifications together with required Governmental Work Permits and a Certificate of No Effect or a Certificate of Appropriateness from the Landmarks Commission, and to deliver true, accurate and complete copies thereof to the Board at least five Business Days prior to commencing the Work; and

(i-2) upon completion of the permitted Work:

(i-2.1) the requirement to obtain with commercially reasonable diligence and continuity all required Governmental Approvals (including sign-offs) and to furnish such Governmental Approvals to the Board; and

(i-2.2) if all such Governmental Approvals are not obtained and furnished to the Board as required by clause (i-2.1) above, the Board shall have the right (in addition to all other rights and remedies in these By-laws and at law and in equity, without any manner of recourse against the Board or the Board's Related Parties, to refuse to grant consent to any future Work until such time as all of said Governmental Approvals for such prior Work are obtained and delivered to the Board;

(j) the requirement to promptly and within thirty (30) Days satisfy or discharge by bond or otherwise any and all mechanic's liens for labor or materials filed against a Unit or the Common Elements or the Building; except the foregoing shall not apply if Sponsor is the Responsible Party and a title insurer or agent acceptable to the Sponsor shall agree to affirmatively insure against enforcement and collection of any such mechanic's liens against said Unit or Common Elements or Building (as applicable);

(k) all Work to a Sold Unit and its Limited Common Elements (other than Ordinary Work) shall require the prior written Discretionary Consent of the Condominium Board and if given, the Condominium Board shall have the right to condition its Discretionary Consent on the applicable Sold Unit Owner to enter into an agreement, on the form adopted by the Board, with such modifications as may be required by the Board, in its sole Business Judgment, setting forth the terms and conditions for performing the Work (the "**Alteration Agreement**"), including the following:

(k-1) the Board's customary Work rules (as to staging, construction worker access, protection, construction noise mitigation, loading of construction materials, debris removal, construction personnel access, security, hours, Days, containment of dust and dirt, and the like);

(k-2) insurance requirements;

(k-3) an Indemnity in favor of the Condominium Board and all other Unit Owners, and their respective Related Parties, in accordance with the terms contained in Section 27.2 of the Declaration, from and against all Claims, Litigations, Liabilities and Losses attributable to the Work;

(k-4) a security deposit;

(k-5) submission of DOB approved plans and specifications of the Work prepared by an Acceptable Architect/Engineer for acceptance of the Board's architect and/or engineer, in its sole Professional Judgment;

(k-6) a period within which the Work must be completed or substantially completed;

(k-7) requirements to perform the Work:

(k-7.1) in accordance with Building Standard and all applicable Work Requirements;

(k-7.2) by duly licensed contractors and subcontractors to the extent required by Laws and prosecuted with commercially reasonable diligence and continuity to completion; and

(k-7.3) using new or replacement Common Facilities that shall be consistent in design, compatibility, aesthetics and architectural integrity and appearance to the original items being altered;

(k-8) rights and remedies of the Board to (among others) suspend the Work and perform corrective Work at the expense of the Owner who or whose Tenant undertakes the Work and violates the Alteration Agreement;

(k-9) payment of all governmental and other fees; and

(k-10) payment or reimbursement (as directed by the Board), in accordance with the Payment and Collection provisions of Section 1.8 of the Declaration, of the reasonable Costs and Expenses incurred by the Board in connection with the preparation, review and execution of the Alteration Agreement, including the fees and charges of any architect, engineer, consultant or other expert engaged by the Board to review the proposed plans and specifications of the Work and to monitor the Work, and the fees and charges of the Managing Agent and any attorney retained by the Board in connection with such Alteration Agreement and the performance of the Work; all such Costs and Expenses shall be added to and constitute Additional Common Charges payable by such Unit Owner;

(l) until Sponsor has fulfilled its obligation under the Plan to obtain a Final Certificate of Occupancy of the Building authorizing the use of the Units for their intended purposes as set forth in the Plan and the Declaration:

(l-1) the Condominium Board and Sold Unit Owners shall not undertake any of the following Work without obtaining the prior written Discretionary Consent of Sponsor in each instance:

(l-1.1) any Work that requires an application to a Governmental Authority for a Governmental Work Permit from the DOB, or a Certificate of No Effect or a Certificate of Appropriateness (as applicable) from the Landmarks Commission (if applicable), or other governmental license or authorization;

(l-1.2) any Work or decoration affecting a Sold Unit's windows (other than window shades, blinds, curtains and other window treatments that are light colored and have light colored backings facing the outdoors in conformity with the Rules and Regulations, as they may be duly amended from time to time by the Condominium Board) or other portion of a Sold Unit exposed to public view; and

(l-1.3) any Work affecting all or a portion of a Building System serving one or more other Units, or serving the Common Elements;

(l-2) Sponsor shall have the right to condition giving its Discretionary Consent on the applicable Unit Owner, at such Owner's Sole Cost and Expense, or Condominium Board as a Common Expense charged to all Unit Owner's Pro Rata to their respective Common Interests (as the case may be), giving Sponsor, at least twenty (20) Business Days before the Work is scheduled to begin:

(l-2.1) a reasonably detailed Notice of the Work, copies of DOB approved plans and specifications of the Work acceptable to Sponsor, prepared by an architect

and/or engineer acceptable to Sponsor, and such further information as Sponsor may require, in its sole Business Judgment;

(l-2.2) copies of all required Governmental Work Permits of Governmental Authorities having jurisdiction of the Work and a Certificate of No Effect or a Certificate of Appropriateness from the Landmarks Commission;

(l-2.3) a policy or original certificate of insurance for such insurance coverage and amounts, and issued by such insurer, as shall be Reasonably Acceptable to Sponsor (any dispute as to such insurance shall be resolved by arbitration pursuant to these By-Laws), and providing that Sponsor shall be given at least thirty (30) Days' advance Notice by the insurer before such insurance coverage is terminated, cancelled or expires; and

(l-2.4) if requested by Sponsor, said Unit Owner or the Condominium Board (as applicable) shall post a bond or other security acceptable to Sponsor, in such amount and issued by such insurer or other issuer acceptable to Sponsor, in order to secure the diligent and lien-free completion of such Work and compliance with all applicable Laws;

(l-3) if Sponsor gives its Discretionary Consent to the Work:

(l-3.1) any revision to the DOB approved plans and specifications shall be subject to obtaining the prior written Discretionary Consent of Sponsor and, if given, Sponsor receiving a copy of the DOB approved revision to the approved plans and specifications before implementing the Work contained in the revision;

(l-3.2) the Work shall be performed by duly licensed contractors and subcontractors to the extent required by Laws, and shall be prosecuted with commercially reasonable diligence and continuity to completion in compliance with all DOB approved plans and specifications, DOB approved revisions thereto, and in conformity with all Governmental Work Permits and the Certificate of No Effect or the Certificate of Appropriateness (as applicable);

(l-3.3) Sponsor and its representatives, upon oral or written demand, shall be given reasonable access to the Unit or the Common Elements (as applicable), from time to time, to inspect and monitor such Work as it progresses;

(l-3.4) promptly after the completion of the Work, all necessary Governmental Approvals of the same shall be obtained, all necessary notices and/or certifications shall be filed with the appropriate Governmental Authorities, and Sponsor shall be given copies of all such Governmental Approvals, notices and certificates promptly after receipt;

(l-3.5) the Unit Owner or the Condominium Board (as applicable) undertaking the Work shall Indemnify Sponsor, on the terms more fully set forth in

Article 27 of the Declaration, from and against any and all Claims, Litigations, Liabilities and Losses arising, directly or indirectly, from Work or the failure to comply with any of the requirements set forth in this clause (l), including: (i) any violation of Laws; (ii) any delay in obtaining a Temporary Certificate of Occupancy or an extension of a previously issued Temporary Certificate of Occupancy or the Final Certificate of Occupancy of the Building; or (iii) the failure to make all appropriate filings with Governmental Authorities in connection with the Work;

(l-3.6) the Owner or the Condominium Board (as applicable) undertaking the Work shall pay or reimburse Sponsor (as directed by Sponsor), pursuant to the Payment and Collection provisions of Section 1.8 of the Declaration, for the reasonable Costs and Expenses incurred or paid by Sponsor to Sponsor's Construction Parties and counsel to: (i) review of the plans and specifications of the Work, the related Governmental Work Permits, Certificate of No Effect or Certificate of Appropriateness (as applicable), and Governmental Approvals; and (ii) inspect and monitor the Work; and

(l-3.7) Sponsor reserves the right at any time to revoke its Discretionary Consent, without any manner of recourse against Sponsor or its Related Parties, for failure to comply with any of the requirements contained in this clause 1 or if the continuance of the Work or any condition arising therefrom would (in Sponsor's sole and absolute discretion) delay the extension of a previously issued Temporary Certificate of Occupancy or the issuance of said Final Certificate of Occupancy, in which case immediately after being given the revocation Notice, said Unit Owner or the Condominium Board (as applicable) shall cease all Work, remove any such condition and Restore such Unit Owner's Unit Property or the Common Elements (as applicable) to the condition existing before commencing such Work, all as and to the extent required by Sponsor; failing which the provisions of Section 5.7.6 shall apply;

(m) all Work that requires the erection of a sidewalk bridge, shed, scaffolding or other structure, or the hanging of a scaffold from a Building's Roof (all of the foregoing are collectively "**Sidewalk Structure**") shall require the Discretionary Consent of Sponsor or (after the issuance of the Final Certificate of Occupancy) the Discretionary Consent of the Condominium Board, unless such Sidewalk structure is required by Laws;

(n) if a Sidewalk Structure is permitted or required by Laws to be erected, Sponsor or (after the issuance of the Final Certificate of Occupancy) the Condominium Board:

(n-1) shall exclusively control and determine the timing, duration, specifications and manner of performance of the Work applicable to the Sidewalk Structure, including the erection, removal, design, fabrication and composition of the Sidewalk Structure and all other incidental Work related to such Sidewalk Structure and Building Walls:

(n-2) shall have the right to pass upon the contractors and all subcontractors to be engaged by the Party undertaking the Work;

(n-3) shall have the right to have its Construction Parties, for the account and at the expense of the Party undertaking the Work, pass upon the plans and specifications (including the height and design) of the Sidewalk Structure and all other terms of all contracts for such Work (the Payment and Collection provisions of Section 1.8 of the Declaration shall apply to the amounts to be paid or reimbursed under this clause);

(n-4) shall exclusively control and determine the commencement date and duration of the Work, provided the Work and the erection and removal of the Sidewalk Structure shall be performed in a reasonably timely manner and in accordance with all applicable Laws, except that in the case of an Emergency requiring immediate remedial action to avoid bodily injury or death, or property damage, the Work shall commence with reasonably prompt diligence as required by the circumstances; and

(n-5) shall have the right to pass upon the Signage on the Sidewalk Structure (each Sign is to be of such size, material, fabrication, color, composition and appearance as shall be acceptable to Sponsor or the Board (as applicable), in its sole and absolute discretion);

(o) the requirement to comply with the Rules and Regulations of the Condominium;

(p) the requirement to provide the Board and Sponsor, and their respective Construction Parties, for the account and at the expense of the Party undertaking the Work (the Payment and Collection provisions of Section 1.8 of the Declaration shall apply to the amounts to be paid or reimbursed under this clause), with reasonable access and an opportunity to inspect and monitor the Work (including the Work involving a Sidewalk Structure) as it progresses;

(q) except in the case of an Emergency, if the permitted Work undertaken by a Responsible Party requires a temporary interruption or reduction of Building Services to one or more Units or the permitted Use and Enjoyment of a Unit or the Facilities serving a Unit, the requirement of the Responsible Party to comply with the following:

(q-1) the requirement to give the Condominium Board not less than five Business Days prior Notice of any such contemplated interruption or reduction in Building Services and the planned duration thereof;

(q-2) the requirement to obtain the Reasonable Consent of the Condominium Board with respect to the timing and duration of said temporary interruption or reduction of Building Services;

(q-3) if such interruption or reduction of Building Services requires a shutdown of, or other change to, the Common Elements, such shutdown or other change shall be performed by the Condominium Board for the account, and at the expense, of said Responsible Party using Building staff or contractors chosen by the Board, as determined by the Board, in its sole Business Judgment; and

(q-4) to the extent commercially reasonable and economically practicable, the Responsible Party shall endeavor to minimize any such interruption or reduction; provided, however, in the event of an Emergency, the interruption or reduction in Building Services may be immediate, and the following requirements shall apply:

(q-4.1) such Responsible Party shall make commercially reasonable efforts to promptly notify the Condominium Board or the Managing Agent, or its property manager, and Sponsor by telephone or (if unsuccessful) by email, of the Emergency Condition and the Building Service affected thereby;

(q-4.2) the shutdown or other change with respect to the Common Elements shall nonetheless be performed by the Condominium Board for the account, and at the expense, of said Responsible Party in accordance with clause (q-3) above; and

(q-4.3) if the permitted Work requires access to (including the right to transport Equipment, materials and supplies to, from, on and across) a Common Element or a Unit, such access shall be performed in accordance with the Work Access Requirements set forth Section 5.7.3 by the Board for the account, and at the expense, of said Responsible Party in accordance with clause (q-3) above.

The Payment and Collection provisions of Section 1.8 of the Declaration shall apply to the amounts to be paid or reimbursed to the Board under this clause (q).

The Board shall use commercially reasonable efforts to give at least two Business Days advance Notice to the Owners and Tenants of the Units to be affected by the temporary interruption or reduction in Building Services, by Building Link (if any) and/or in writing left at an entrance door to the affected Units , of the proposed date, time, and duration of said temporary interruption or reduction of Building Services; except no Notice shall be required in the case of an Emergency.

Section 5.7.3 Work Access Requirements. With respect to Work that requires access to the Common Elements or a Unit (other than the Unit owned by the Owner, or Leased to the Owner's Authorized Tenant undertaking the Work), the following access requirements (collectively, "**Work Access Requirements**") shall be met:

(a) the Party seeking access (the "**Access Party**") shall give at least five Business Days' advance Notice (the "**Access Notice**") to the following:

(a-1) in the case of the Common Elements, to the Condominium Board of the need and proposed duration to access the affected Common Elements; or

(a-2) in the case of a Unit, to the affected Owner of the need and proposed duration to access such Owner's the affected Unit);

provided, however, in the case of an Emergency, access to the foregoing may be immediate without advance Notice (written or oral), without being guilty or Liable in any manner for trespass or otherwise, and without any manner of recourse against the Access Party or its Related Parties or Construction Parties by reason thereof; but such Responsible Party shall make commercially

reasonable efforts to promptly notify the Board or its Managing Agent (in the case of the affected Common Elements) or the affected Owner (in the case of its affected Unit) by telephone or (if unsuccessful) by email of the Emergency Condition and the Building Service affected thereby;

(b) (except in the case of an Emergency, in which case clause (a) above shall apply), access to the affected Common Elements or to the affected Unit, shall be on such Business Day and during such Business Hours as shall be mutually convenient to the Board or said affected Owner (as applicable) and the Access Party or, if they shall be unable or fail to agree thereon within said five-Business Day period, then access to such affected Common Elements or such affected Unit, shall be permitted within three Business Days thereafter and commencing at such Business Hour as the Board or the affected Owner (as applicable) shall determine in writing given (in the same manner as the Access Notice) to the Access Party;

(c) the Access Party and its Construction Parties shall comply with any and all commercially reasonable security and protection procedures and requirements (including protecting walls, floors and other surfaces against damage) as may be required by the Board or the affected Owner (as applicable), and subject to the right of the Board or said affected Owner (as applicable) to have a representative present at all times during the period of access; provided and on condition that:

(c-1) such procedures and requirements of the Board or said affected Owner (as applicable) shall not impede or unreasonably delay, impair or interfere with such access; and

(c-2) in the case of an Emergency, access by the Access Party and its Construction Parties to the affected Common Elements or to the affected Unit (as applicable), may be immediate, without the Access Party and its Related Parties and Construction Parties being guilty or Liable for trespass or otherwise, without meeting any security or protection procedures and without the Board or the affected Owner (as applicable) or its representative being present;

(d) in the case of an Emergency, the Access Party shall perform the remedial Work to correct the Emergency Condition with commercially prompt diligence and continuity to completion, subject to compliance with Good Construction Practices;

(e) in the case of access by the Condominium Board or the Owner of another Unit to a Unit, upon request of the affected Owner thereof, the Access Party shall prepare or obtain, at its Sole Cost and Expense, and submit to the affected Owner, and such Owner shall receive, at least two Business Days before entering such Owner's Unit, the following documents, unless access is due to an Emergency or a Violation by said Owner of its obligations under the Condominium Documents (in which case the following requirements shall not apply):

(e-1) copies of reasonably detailed plans and specifications, or (if no Governmental Work Permit is required for the Work in question) a reasonable description of the Work in the Business Judgment of the Board (if it is the Access Party) or the Reasonable Judgment of the applicable Owner (if it is the Access Party); and

(e-2) a policy or original certificates of insurance for such insurance coverage and amounts, and issued by such insurer, as shall be determined by the Access Party, in its Reasonable Judgment, naming the affected Owner as an additional insured party and (if obtainable at reasonable rates) stating that at least thirty (30) Days advance Notice shall be given to said affected Owner by the insurer before such insurance coverage is terminated, canceled or expires;

(f) in the case of access by a Unit Owner to a Common Element, upon request of the Condominium Board, the Access Party shall prepare or obtain, at its Sole Cost and Expense, and submit to the Condominium Board, and the Board shall receive, at least five Business Days before entering the affected Common Element, the following documents, unless access is due to an Emergency (in which case the following requirements shall not apply):

(f-1) copies of reasonably detailed plans and specifications, or a description, of the Work, as applicable and appropriate in the sole Business Judgment of the Board; and

(f-2) a policy or original certificates of insurance for such insurance coverage and amounts, and issued by such insurer, as shall be determined by the Condominium Board, in its sole Business Judgment, naming the Board and all Unit Owners as additional insured parties and (if obtainable at reasonable rates) stating that at least thirty (30) Days advance Notice shall be given to the Board by the insurer before such insurance coverage is terminated, canceled or expires; and

(g) all other Work Requirements shall apply to any Work to be performed by the Access Party that affects the Common Elements or the Building Services being provided to a Unit (other than the Unit of the Access Party (as applicable).

Section 5.7.3.1 Access by Sponsor. The only Work Access Requirement applicable to Sponsor and Sponsor's Construction Parties shall be those set forth in clauses (a) and (b) of this Section 5.7 with respect access to a Unit only.

Section 5.7.4 Work Consent Requirements. Unless otherwise expressly provided elsewhere in the Declaration or these By-Laws, before Work begins that will affect a Common Element (unless the Board or its Utility Provider is undertaking the Work), or a Unit (unless the Owner or a Tenant of such Unit is undertaking the Work), the Party undertaking the Work shall comply with following Discretionary or Reasonable Consent requirements ("**Work Consent Requirements**"), if and as applicable:

(a) in the case of Work that requires access to, or will have a material adverse effect on, the Use and Enjoyment of a Common Element, an Association Asset or the Sidewalk (other than a temporary interruption): the requirement to obtain the Discretionary Consent of the Board; except if the Work is required:

(a-1) by Laws, the Reasonable Consent of the Board shall be required; or

(a-2) to correct an Emergency Condition, no Consent of the Board shall be required;

provided, however, the foregoing shall not permit (except in the case of Sponsor until issuance of the Final Certificate of Occupancy) such Party to perform Work on or to the Common Elements, which shall be performed by only the Board;

(b) in the case of Work permitted under these By-Laws or the Declaration that would temporarily interrupt or impair the Use and Enjoyment of a Common Element, an Association Asset or the Sidewalk: the requirement to obtain the Reasonable Consent of the Condominium Board, which shall reasonably cooperate with said Party in accordance with Article 21 of the Declaration;

(c) in the case of Work that would permanently prevent the proper and efficient performance, function, capacity or utility of a Unit, or the Building Services being provided to, a Unit: the requirement to obtain the Discretionary Consent of the Owner of the affected Unit;

(d) in the case of Work permitted under these By-Laws or the Declaration that would temporarily interrupt or impair the Building Services being provided to a Unit or would invade, penetrate or otherwise disturb the exposed indoor Areas of a Unit (including the easements and rights set forth in Article 11 of the Declaration): the consent of the Owner thereof shall not be required, but all other applicable Work Requirements shall apply;

(e) in the case of Work that requires a Work Permit or would delay or impact on obtaining the issuance of a Temporary Certificate of Occupancy of the Building or an extension of a previously issued Temporary Certificate of Occupancy or a Final Certificate of Occupancy of the Building: the requirement to obtain the Discretionary Consent of Sponsor;

(f) in the case of Work requiring a new or amended Certificate of Occupancy: the requirement to not change the existing use or a permitted change in use of a Unit (other than the Unit of the Party undertaking the Work) without obtaining the Discretionary Consent of the Owner of such affected Unit and the Discretionary Consent of Sponsor until issuance of the Final Certificate of Occupancy of the Building;

(g) in the case of permitted Work by a Sold Unit Owner requiring a Governmental Work Permit: the requirement to sign an Alteration Agreement (unless waived by the Board) and the requirement for the Board to sign the application for the Governmental Work Permit if the application and all plans and specifications and/or other information and documents to be submitted in connection therewith are acceptable to the Board;

(h) in the case of Work that would affect or impact the Structural Components of the Building: the requirement to obtain the Discretionary Consent of:

(h-1) the Board and Sponsor if the Work is to be undertaken by or on behalf of a Unit Owner or for which a Unit Owner is responsible or accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof; or

(h-2) Sponsor, if the Work is to be undertaken by or on behalf of the Board;

(i) in the case of Work that would affect or impact the aesthetics, architectural integrity or exterior appearance of the Building or Areas of the Building otherwise exposed to public view: the requirement to obtain the Discretionary Consent of:

(i-1) the Board and Sponsor, if to be undertaken by or on behalf of a Unit Owner or for whom a Unit Owner is accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof; or

(i-2) Sponsor, if to be undertaken by or on behalf of the Board; and

(j) in the case of Work that affects any plumbing or mechanical components of the Common Elements or affects any interior or exterior waterproofing: the requirement to obtain the Discretionary Consent of:

(j-1) the Board and Sponsor, if to be undertaken by or on behalf of a Unit Owner or for which a Unit Owner is responsible or accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof; or

(j-2) Sponsor, if to be undertaken by or on behalf of the Board.

No Consent shall be required for Ordinary Work (as provided in Section 5.3 above).

Section 5.7.4.1 Procedure to Obtain Consent. Unless otherwise expressly provided elsewhere in the Declaration or these By-Laws, whenever a Responsible Party is required to obtain the Discretionary or Reasonable Consent of the Condominium Board or Sponsor or an Owner in the Declaration or these By-Laws (herein, the "**Consenting Party**"), the following shall apply:

(a) such Responsible Party, at its Sole Cost and Expense, shall submit to the Consenting Party, plans, specifications and/or a description of any proposed Maintenance, Repair, Restoration, Alteration or other Work) as the Consenting Party may reasonably request;

(b) the Consenting Party, at the Sole Cost and Expense of the Responsible Party, may engage one or more Construction Parties to review, consult and advise on such documents and information, and to monitor the Work affecting the Common Elements (if the Board or Sponsor is the Consenting Party) or the Work affecting the Unit (if a Unit Owner is the Consenting Party), as applicable, and generally on the matters for which the Discretionary or Reasonable Consent is required; except:

(b-1) if the Responsible Party is the Sponsor, said the engagement of one or more Construction Parties shall be at the Sole Cost and Expense of the Consenting Party; or

(b-2) if the Responsible Party is the Board and Consenting Party is a Unit Owner, other than Sponsor, said the engagement of one or more Construction Parties shall be at the Sole Cost and Expense of said Consenting Party;

(c) the Payment and Collection provisions of Section 1.8 of the Declaration shall apply to the amounts to be paid or reimbursed under this Section 5.7.4 ; and

(d) if the Owner is the Responsible Party, all amounts payable by said Owner to the Condominium Board pursuant to the foregoing shall constitute Additional Common Charges.

Section 5.7.4.1 30 Days to Approve or Deny. The Consenting Party shall respond to such request for Discretionary or Reasonable Consent within thirty (30) Days after it receives the request and all such related documents and information. Failure to timely respond shall not constitute the requisite Consent of the Consenting Party. In the event the Reasonable Consent of the Consenting Party is required and the Consenting Party withholds, denies or conditions its Reasonable Consent, the Consenting Party shall set forth its basis or explanation of such withholding, denial or condition, including (if applicable) a failure of the Responsible Party to submit adequate documents or information to make a determination on whether to give, deny, withhold or condition its Reasonable Consent. In all cases not expressly providing for the Reasonable Consent of the Consenting Party, the Consent to be obtained shall be the Discretionary Consent and, accordingly, may be withheld, denied, delayed or conditioned without cause or explanation and without Liability or other recourse against the Consenting Party or its Related Parties by reason thereof.

Section 5.7.4.2 Deemed Consent. Whenever the Reasonable Consent of a Consenting Party is required to be obtained under the Declaration or these By-Laws, as each may be duly amended from time to time, such Consenting Party shall respond, in writing, to the Party requesting such Reasonable Consent (the "**Requesting Party**") within thirty (30) Days after such request for Reasonable Consent is given to the Consenting Party (the "**Applicable Response Period**"). Each request shall be in writing and shall contain or shall be accompanied by a reasonably detailed description of the proposed action or matter for which such Reasonable Consent is being requested (the "**Request Notice**") together with plans, specifications and/or descriptions as is reasonably necessary for the Consenting Party to determine whether or not to give or deny its Reasonable Consent.

If the Reasonable Consent of the Consenting Party is withheld, denied, conditioned or delayed, the basis or explanation for so doing shall be given to the Requesting Party in a reply Notice (the "**Reply Notice**").

If the Consenting Party fails to respond to the Request Notice within the Applicable Response Period, the Requesting Party may thereafter give the Consenting Party a Notice (the "**Reminder Notice**") reminding the Consenting Party of the action or matter for which its Reasonable Consent is being requested, accompanied by a copy of the Request Notice and stating at or near the top of the first page in bold, upper case letters of at least 12 point font:

REMINDER NOTICE OF REQUEST FOR

REASONABLE CONSENT

If the Consenting Party still fails to respond to the Reminder Notice within five Business Days after it is given, the Requesting Party may thereafter give the Consenting Party a final Notice (the "**Deemed Consent Notice**") reminding the Consenting Party of the action or matter for which its Reasonable Consent is being requested, accompanied by a copy of the Request Notice and the

Reminder Notice and stating at or near the top of the first page, in bold, upper case letters of at least 12 point font:

DEEMED CONSENT NOTICE

ENCLOSED HEREWITH IS OUR REQUEST NOTICE REQUESTING YOUR REASONABLE CONSENT TO THE PROPOSED ACTION OR MATTER REFERRED TO THEREIN. YOUR CONTINUED FAILURE TO RESPOND TO THIS REQUEST WITHIN FIFTEEN (15) DAYS FROM THE GIVING OF THIS "DEEMED CONSENT NOTICE" SHALL CONCLUSIVELY BE DEEMED TO IRREVOCABLY AND UNCONDITIONALLY CONSTITUTE YOUR CONSENT TO SUCH PROPOSED ACTION OR MATTER, AND YOU SHALL BE BOUND THEREBY.

If, within fifteen (15) Days from giving the Deemed Consent Notice ("TIME BEING OF THE ESSENCE"), the Consenting Party fails to give Notice to the Requesting Party explaining the reason it is withholding, denying or conditioning its Consent and explaining a plausible basis or reason therefor or stating in effect that the Requesting Party has not provided adequate information and/or documentation in order for the Consenting Party to determine whether to give or to withhold, deny or condition its Reasonable Consent, then the Consenting Party shall conclusively be deemed to have irrevocably and unconditionally given its Reasonable Consent to the action or matter as to which its Reasonable Consent has been requested.

Section 5.7.4.3 Consent is Not an Assumption or Admission. The Consent of the Consenting Party with respect to the proposed action or matter, any Work to be performed in connection therewith and any plans and specifications or the other information or documents submitted in connection with the Requesting Party's request for the Reasonable Consent of the Consenting Party, shall not constitute, and shall not be deemed or inferred to constitute, an assumption by the Consenting Party of any Liability for the Maintenance, Repair, Restoration, Alteration or other Work to which the same relates, nor an approval, acknowledgment or admission of the accuracy, suitability or soundness of such action or matter or any plans and specifications or other information or documents submitted by the Requesting Party, or their conformity with applicable Laws, nor a limitation on the rights and remedies of the Consenting Party, or the obligations and Liability of the Requesting Party, who shall: (a) assume full and sole responsibility and Liability for the accuracy, suitability and soundness of all Work and any plans and specification of the Work; and (b) remain fully and solely responsible and accountable for any and all Claims, Litigations, Liabilities and Losses attributable to such action or matter, including any Work performed in connection therewith and any defects in such Work.

Section 5.7.5 Work Repair and Restoration Requirements. The Party responsible to Maintain, Repair and Restore a Common Element, an Association's Asset, the Sidewalk or a Unit Property shall be required to Repair any damage and destruction thereto and to Restore the damaged and destroyed Areas and Facilities with commercially reasonable diligence and continuity to completion, and in accordance with all other applicable Work Requirements, to as near as

commercially reasonable and economically practicable to its former condition and finish immediately before being destroyed or damaged (the "**Work Repair and Restoration Requirements**").

If the damage or destruction is attributable to the Acts or Omissions of another Party who is responsible or accountable for such damage or destruction under the Condominium Documents, then such offending Party shall be responsible to reimburse the aggrieved Party for the Costs and Expenses incurred and paid in connection therewith pursuant to the Payment and Collection provision of Section 1.8 of the Declaration.

Section 5.7.6 Work Remedies Requirements. The Board and the Sponsor shall have the following rights and remedies (collectively, the "**Work Remedies Requirements**"), in addition to all rights and remedies available at law and in equity, to pursue enforce, uphold, protect and defend compliance with the Work Requirements and to enforce any Violation of the Work Requirements in accordance with this Section 5.7.6.

Section 5.7.6.1 Work Remedies of Condominium Board and Sponsor. If an Owner or Owner's Tenant, or their respective Construction Parties, fails to timely perform, observe or fulfill, or otherwise Violates, any of the Work Requirements, the Board or (in lieu of the Board) the Sponsor (if in the sole Judgment of Sponsor, the Board fails to exercise a Work Remedy with prompt diligence and continuity to completion) shall have the following remedies against such Owner so long as such Violation continues and until all Work Requirements are performed, fulfilled, observed, corrected or cured:

(a) (except as otherwise provided in clause (b) below) if the offending Owner fails to commence to cure the Violation at issue within two Business Days after being given Notice thereof and to thereafter to diligently and in good faith prosecute the curative Work with continuity to completion:

(a-1) the right of the Board or (if applicable) Sponsor, without recourse against either or their respective Related Parties or Construction Parties:

(a-1.1) to suspend, prohibit and enjoin the Work, and

(a-1.2) to cause the Work by the offending Owner or the offending Owner's Tenant (as applicable) to be halted, including to deny access by the Construction Parties and deliveries of material and supplies to the Building, other than to permit the Construction Parties to remove their tools and Equipment; provided and on condition that they are accompanied at all times by a representative designated by the Board or Sponsor (as applicable); and

(a-2) the exclusive right of the Board or (if applicable) Sponsor to bar future Work by the offending Owner or the Owner's offending Tenant (as applicable) in or on or to such Owner's Unit until the Violation of the applicable Work Requirement is corrected (as applicable) to the satisfaction of the Board or (if applicable) Sponsor; or

(b) in the case of an Emergency or if reasonably required to avoid or discharge a Violation of Laws or a Violation of the Condominium Documents, or an impermissible prevention or interruption or impairment in the permitted Use and Enjoyment of the Common Elements, or to avoid the suspension of, or to Restore, a Building Service, or as otherwise permitted under these By-Laws or the Declaration, the Condominium Board or (if applicable) Sponsor, in its sole Business Judgment, at the Sole Cost and Expense of the offending Owner (if said Owner or a Tenant of said Owner's Unit, or the respective Unit Users or Construction Parties of said Owner or Tenant (as applicable) is the offending Party), without being guilty or Liable for trespass or other recourse against the Condominium Board or (if applicable) Sponsor or their respective Related Parties and Construction Parties, shall have the "Right of Self-Help" as defined in Section 16.1.1, including:

(b-1) to access such Owner's Unit in accordance with the Work Access Requirements and perform or cause to be performed all Work to remedy said Emergency Condition or Violation of the Condominium Documents, or impermissible prevention or interruption or impairment in the permitted Use and Enjoyment of the Common Elements, or to avoid the suspension of, or to Restore, a Building Service (as applicable), whether or not such Work shall be in compliance with the plans and specifications for the Work theretofore performed by, or on behalf of, such offending Owner or the offending Owner's Tenant (as applicable); and/or

(b-2) to cause the offending Work to be removed and Restore the affected Common Elements, the affected Association's Assets or the affected Sidewalk (as applicable) to as near as commercially reasonable and economically practicable to its former condition immediately before undertaking the Work.

Section 5.7.6.2 Work Remedies of Sponsor. If the Condominium Board fails to timely perform, observe or fulfill, or otherwise Violates, any of the Work Requirements, Sponsor shall all of the same remedies set forth in Section 5.7.6.1 as the Board has against an offending Owner or such Owner's Tenant, or their respective Construction Parties.

Section 5.7.6.3 Work Remedies of Owner. If the Condominium Board or Sponsor, or their respective Construction Parties, fail to timely perform, observe or fulfill, or otherwise Violates, any of the Work Requirements applicable to the Board or Sponsor, the aggrieved Owner who is materially and adversely affected thereby shall have the remedies set forth in Section 16.2.3.

Section 5.7.6.4 General. This Section 5.7.6 supplements the remedies contained in Article 16. The Payment and Collection provisions of Section 1.8 of the Declaration shall apply to the amounts to be paid or reimbursed under this Section 5.7.6.

Section 5.7.7 Work Assumption of Liability Requirements. The Party undertaking, permitting or authorizing, or is responsible and accountable, for the Work in question shall assume the full Liability with respect to the following requirements (the "**Work Assumption of Liability Requirements**"):

(a) to obtain all required Governmental Work Permits, Governmental Approvals and all other Governmental Documents for the Work;

(b) to perform the Work or cause the Work to be performed timely in accordance with all Work Requirements;

(c) to pay the Construction Parties and others engaged in the Work and to vendors and suppliers of material or Equipment in accordance with all contractual requirements, or causing them to be so paid;

(d) to be responsible and accountable for:

(d-1) damage to property (including a Unit and the Common Elements, and the Personal Property contained in each), bodily injury or death and Loss attributable to the Work or defects therein;

(d-2) the accuracy, suitability and soundness of the Work and any plans and specification of the Work;

(d-3) a material failure attributable to the Work (excluding permitted temporary interruptions) of the proper and efficient performance, function, capacity, utility and Operation of any Facilities affected by the Work;

(d-4) the failure in weather-tightness and waterproofing of the Building structure (including the Building Walls, Windows, Storefronts, Roofs and/or Bulkheads, as applicable) attributable to the Work;

(d-5) plumbing leaks attributable to the Work; and

(d-6) all Claims, Litigations, Liabilities and Losses attributable to:

(d-6.1) said Work (unless attributable to the negligence or intentional wrongdoing of a Party seeking recovery, which is excluded from this Liability); or

(d-6.2) said plans and specifications; or

(d-6.3) defects (latent and patent, Structural and Non-Structural, Extraordinary Work and Ordinary Work) attributable to the Work and Liability for the Costs and Expenses incurred or paid by an aggrieved Party to properly correct such defects, as to which the Work Repair and Restoration Requirements shall apply.

Section 5.7.8 Work Indemnity Requirements. The following requirements (the "**Work Indemnity Requirements**") shall apply to Work undertaken by or on behalf of: (a) an Owner undertaking Work, or a Tenant of such Owner's Unit or a Utility Provider engaged by such Owner or Tenant, or their respective Construction Parties; or (b) the Board or a Utility Provider engaged by the Board, or their respective Construction Parties; or Sponsor or a Utility Provider engaged by Sponsor, or their respective Construction Parties.

Section 5.7.8.1 Owner. The applicable Owner shall Indemnify all other Owners, the Board and Sponsor, on the terms set forth in Article 27 of the Declaration, from and against any and all Claims, Litigations, Liabilities and Losses attributable to said Work and any defects in said Work, including a failure (unless *de minimis* and excluding permitted temporary interruptions) of the proper and efficient performance, function, capacity, utility and Operation of any Facilities affected by the Work, or the failure (unless *de minimis*) to comply with any Work Requirements applicable to an Owner.

Section 5.7.8.2 Board. The Condominium Board shall Indemnify all aggrieved Owners, on the terms set forth in Article 27 of the Declaration, from and against any and all Claims, Litigations, Liabilities and Losses attributable to said Work and any defects in said Work, including a failure (unless *de minimis* and excluding permitted temporary interruptions) of the proper and efficient performance, function, capacity, utility and Operation of any Facilities affected by the Work, or the failure (unless *de minimis*) to comply with any Work Requirements applicable to the Board. If the Work in question primarily benefits: (i) all Owners, the amounts payable by the Board under this Indemnity shall be included in the Common Expenses and charged to all Owners Pro Rata to their respective Common Interests; or (ii) less than all Owners, the amounts payable by the Board under this Indemnity shall be a Specially Allocated Expense and charged to only the Owner (or if more than one Owner) the Owners (Pro Rata to their respective Common Interests) for whom the Work primarily benefits, as determined by the Board in its sole Business Judgment.

Section 5.7.8.3 Sponsor. Sponsor shall Indemnify the Board or an aggrieved Owner, on the terms set forth in Article 27 of the Declaration, from and against any and all Claims, Litigations, Liabilities and Losses attributable to said Work and any defects in said Work, including a failure (unless *de minimis* and excluding permitted temporary interruptions) of the proper and efficient performance, function, capacity, utility and Operation of any Facilities affected by the Work, or the failure (unless *de minimis*) to comply with any Work Requirements applicable to Sponsor.

ARTICLE 6

INSURANCE

Section 6.1 Insurance Requirements for the Condominium Board. At the First Unit Closing under the Plan, Sponsor will provide at the expense of the Condominium Board, the insurance coverage disclosed in a note to the First Year's Budget. Thereafter, the Condominium Board shall obtain and maintain such insurance to the extent obtainable regardless of whether same is obtainable at reasonable rates (unless otherwise noted). However, the Condominium Board may change the insurance from time to time, but may not eliminate insurance coverage that is obtainable and is required to be maintained under these By-Laws. In addition, the Condominium Board may not increase decrease, eliminate or otherwise change the amounts or types of insurance coverage in said SCHEDULE B during only the Sponsor Veto Control Period unless the Discretionary Consent of Sponsor is given as provided in Section 2.5.8 hereof.

Section 6.2 **Fire and Casualty Insurance**.

Section 6.2.1 Coverage and Insured Parties. The Board shall obtain and maintain:

(a) fire and casualty insurance with all risk coverage, vandalism and malicious mischief endorsements or such other endorsements as may be contained in said SCHEDULE B, insuring the Common Elements, including the Boundary Walls separating the Units from the Common Elements and (if applicable) from each other, the Limited Common Elements and the Association's Assets, and covering the interests of the Condominium Board and all Unit Owners and their mortgagees, as their respective interests may appear, in an amount equal to 100% of the full replacement value of the portions of the Property required to be insured against loss or damage pursuant to this clause (exclusive of foundations and footings), without deduction for depreciation (the "**Replacement Value**");

(b) flood and earthquake coverage in amounts, terms and rates to be determined by the Board to be commercially reasonable, adequate and available; and

(c) insurance covering Acts of Terrorism (as defined in the Terrorism Risk Insurance Act of 2002), including any extensions and changes thereof (collectively, "**TRIA**"), but only so long as TRIA is in effect or such insurance is available at reasonable commercial rates and terms; it being understood that if TRIA is no longer in effect and such insurance is not available at reasonable commercial rates and terms, the Condominium Board shall have the right, in its sole Business Judgment, to cease maintaining said TRIA insurance.

Section 6.2.2 Amount The fire and casualty insurance coverage shall be not less than an amount which shall be sufficient for the insurer to waive any co-insurance requirement or is based on an "Agreed Value" or "Agreed Amount" replacement cost (or comparable term) endorsement. In addition, such fire and casualty policies shall contain (if available):

(a) waivers of: (a-1) subrogation in favor of Owners and designated Tenants of Units; (a-2) any defense based upon co-insurance or other insurance; (a-3) invalidity arising out of the acts of an insured party; and (a-4) pro rata reduction of Liability;

(b) a provision that any adjustment of loss will be made by the Condominium Board and that all proceeds will be paid to the Condominium Board or (at the option of the Board) an Insurance Trustee appointed pursuant to these By-Laws where the Board is to Restore the damaged Common Areas and Common Facilities in accordance with these By-Laws;

(c) a New York Standard Mortgagee provision in favor of each Registered Mortgagee, subject, however, to the preceding loss payment provisions in favor of the Condominium Board or (at the option of the Board) Insurance Trustee; and

(d) a provision preventing the policy from being canceled or substantially modified unless at least ten (10) Days' prior Notice is given to the Condominium Board.

Section 6.2.3 Appraisal. Before obtaining any policy of property casualty insurance or any renewal thereof, the Condominium Board may, at its option, obtain an appraisal from a property

insurance company or otherwise of the full Replacement Value of the Property for the purposes of determining the amount of such property casualty insurance to be obtained pursuant to this Section. Any such appraisal of the Building obtained within twelve (12) months preceding the date of issuance of said property casualty insurance policy or a renewal thereof shall suffice for this purpose.

Section 6.2.4 Proof of Insurance. Duplicate originals of all policies of property casualty insurance and of all renewals thereof, together with proof of payment of the premiums, shall be delivered to Sponsor or its successors and assigns as Owner of an Unsold Unit and a Registered Mortgagee of an Unsold Unit at least thirty (30) Days prior to the expiration of the then current policies.

Section 6.2.5 Excluded From Coverage. The property casualty insurance shall not cover the Decorations or finishes of walls, floors or ceilings of the Common Elements (unless otherwise determined by the Condominium Board) or of any Unit not owned, Leased or otherwise held by the Board (or its Affiliated Nominee or Designee), or the contents of any such Unit (including its appliances, kitchen and bathroom fixtures (electric, electronic, plumbing or otherwise), furniture, furnishings, cabinets, countertops, Decorations and other personal property).

Section 6.3 Liability Insurance.

Section 6.3.1 Coverage. The Condominium Board shall obtain and maintain Commercial General Liability coverage written on the Insurance Services Office form - 1986 or later (containing the so-called "occurrence clause"), or equivalent comprehensive general Liability coverage, with respect to ownership, Operation, Maintenance, use and control, insuring against Liability for injury or damage to persons or property in or upon the Common Elements, the Limited Common Elements, the Sidewalk and the Association's Assets (including all Units or other property (if any) owned, Leased or otherwise held by the Condominium Board, or its Affiliated Nominee or Designee). The Condominium Board may, in its discretion, obtain umbrella liability insurance in such amounts in excess of that (if any) provided in the First Year's Budget as the Condominium Board may determine from time to time.

Section 6.3.2 Amount. The Liability coverage shall be in such amounts as the Condominium Board may determine from time to time, but shall not be reduced below the amount set forth in the First Year's Budget without obtaining the Discretionary Consent of Sponsor during only the Sponsor Veto Control Period (as provided in Section 8.6). The Condominium Board shall review the amounts of liability coverage at least once each Budget Year.

Section 6.3.3 Insured Parties. The liability policies shall list as co-insureds: (a) the Condominium Board and each and every member and officer thereof; (b) the Managing Agent or manager (if any); (c) each agent and employee of the Condominium Board; (d) each Unit Owner; and (e) (if required by the terms of a Registered Mortgage of a Unit) the holder of such Registered Mortgage, as their respective interests may appear.

Section 6.3.4 Excluded from Coverage. Such insurance shall not cover Liability of a Unit Owner arising from occurrences within or on the Owner's Unit (including its Balcony, Terrace,

Juliette Terrace or Yard, if and as applicable, or Storage Locker). This exception shall not apply to any Unit owned, Leased or otherwise held by the Condominium Board or its Affiliated Nominee or Designee.

Section 6.3.5 Proof of Insurance. Duplicate originals of all policies of liability insurance and of all renewals thereof, together with proof of payment of premiums for such liability coverage shall be given to Sponsor or its successors and assigns, as Owner of an Unsold Unit, within ten (10) Days after being requested.

Section 6.4 Boiler and Machinery Insurance. The Condominium Board shall obtain and maintain boiler and machinery insurance on Facilities constituting part of the Common Elements, the Limited Common Elements or the Association's Assets (including any Unit owned, Leased or otherwise held by the Board, or its Affiliated Nominee or Designee), in not less than the amount set forth in the First Year's Budget without obtaining the Discretionary Consent of Sponsor during only the Sponsor Veto Control Period (as provided in Section 8.6); but not any Facilities that are part of any other Unit (which may be separately insured by the Owner of such Unit).

Section 6.5 Workmen's Compensation. The Condominium Board shall obtain and maintain workmen's compensation insurance, New York State disability benefits insurance and employer's liability coverage covering any employees hired by the Condominium Board. Each Unit Owner shall be solely responsible to obtain and maintain, at its Sole Cost and Expense, the foregoing insurance for its own employees or contractors.

Section 6.6 Other Insurance. The Condominium Board shall also obtain and maintain the following insurance to the extent available at reasonable rates:

(a) business interruption insurance, including loss of rents in an amount equal to the Common Charges for at least twelve (12) months;

(b) water damage legal liability insurance;

(c) elevator liability and collision insurance;

(d) non-owned and hired automobile liability insurance;

(e) combination crime insurance, including blanket employee dishonesty, forgery or alteration, covering the members and officers of the Condominium Board, the Managing Agent (if any) and employees (if any) handling funds of the Condominium Board;

(f) officers and directors liability insurance for officers and members of the Condominium Board, including Employment Practices Liability insurance and third party discrimination;

(g) such other or additional insurance as the Condominium Board shall determine from time to time, in its sole Business Judgment; and

(h) such insurance with respect to the Units, the Common Elements, the Limited Common Elements and the Condominium Association as would be reasonably required and which are commonly insured against for such properties most similar to the Property, similarly situated to a

prudent lender originating commercial mortgage loans for securitization similar to a then existing mortgage on an Unsold Unit at the time in question, which insurance shall in all cases comply in all respects with the insurance requirements expressly contained in said then existing mortgage for so long as it encumbers an Unsold Unit.

Section 6.7 **Insurance Covering Work Performed by Board**. In connection with Work performed by or on behalf of the Condominium Board, if not already covered by insurance policies then maintained by the Condominium Board, the Condominium Board shall also obtain and maintain installation floater coverage in an amount equal to the cost of the contract for any Work performed by or on behalf of the Condominium Board on the Property or cause its contractors to maintain equivalent insurance, naming the Condominium Board, all Unit Owners and the Registered Mortgagees as their interests may appear, except that such insurance shall not be required if the estimated cost of such Work is less than One Hundred Thousand Dollars ($100,000).

Section 6.8 **Insurance Amounts and Deductibility**. To the extent not specified above, all such insurance shall be in such amounts and may provide for such deductible amounts as the Condominium Board may determine from time to time in its sole and absolute discretion to be reasonable and customary for an entirely residential building most similar in size, quality and amenities of the Building, but subject to obtaining Sponsor's Consent during only the Sponsor Veto Control Period.

Section 6.9 **Adjustment and Payments**.

Section 6.9.1 Adjustments by Board. All of the above policies shall provide that adjustment of loss shall be made by the Condominium Board and all policies of property casualty insurance shall provide that the proceeds of insurance shall be paid as follows: (a) to the Condominium Board, if $1,000,000.00 (Adjusted for Inflation) or less; or (at the option of the Condominium Board) (b) to the Insurance Trustee, if in excess of $1,000,000.00 (Adjusted for Inflation).

Section 6.9.2 Payments. In either instance, all such insurance proceeds actually received by the Board or Insurance Trustee shall be held in trust for the benefit of the following and shall be disbursed as provided in Article 7:

(a) the Owner and Registered Mortgagees of a Unit in the case of a loss to the Owner's Unit Property or a portion thereof; or

(b) all Owners and their respective Registered Mortgagees in the case of a loss to the Common Elements.

Section 6.9.3 Insurance Trustee's Fees and Disbursements. The fees and expenses of any Insurance Trustee shall be paid by the Condominium Board as a Common Expense and charged to all Unit Owners Pro Rata to their respective Common Expenses, unless the funds held by the Insurance Trustee benefit only one Owner, or more than one but not all, Owners, in which case the fees and expenses of the Insurance Trustee shall be charged to only such Owner or Owners (Pro Rata

to their respective Common Interests), as applicable, as a Specially Allocated Expense. The Insurance Trustee shall hold said proceeds as trust funds until paid over or applied as provided in the Declaration and these By-Laws.

Section 6.10 Allocation of Insurance Premiums. Unless otherwise expressly provided elsewhere in the Declaration or these By-Laws, the premiums for insurance maintained by the Condominium Board in accordance with this Article 6 shall be a Common Expense and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 6.11 Insurance Requirements for Unit Owners.

Section 6.11.1 General Prohibitions. A Unit Owner shall not:

(a) do, permit or suffer any Act or Omission to be done or omitted in or to such Owner's Unit that will, with reasonable likelihood, invalidate, or invalidates, or be in conflict with, any public liability, property or other policy of insurance at any time carried by the Condominium Board with respect to the Property, except no such policy maintained by the Condominium Board shall conflict with or prohibit any use of a Unit permitted under the Declaration;

(b) keep anything in its Unit or on its Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) that is prohibited by the Fire Department, Board of Fire Underwriters, or a fire insurance rating organization or other authority having jurisdiction;

(c) do, permit or suffer a Unit to be used in any manner that will, with reasonable likelihood, increase, or increases, the insurance rate for the Property over that in effect as of the First Unit Closing (including uses permitted and intended by the Declaration), unless the Unit Owner responsible for such increase pays the additional cost thereof as provided in the following Section 6.11.2; or

(d) perform or cause to be performed any Work affecting the Common Elements without first obtaining and continuously maintaining until the Work is completed, at the Sole Cost and Expense of such Unit Owner, the insurance required in Section 6.11.3 below.

Section 6.11.2 Unit Owner Liability for Default or Higher Rate. Any Costs and Expenses which shall be imposed upon the Condominium Board by reason of a Violation by a Unit Owner in performing its obligations under this Section 6.11 or by reason of any increase in the premium charged for insurance carried by the Condominium Board resulting from a higher insurance rate for the Property attributable to a use or occupancy of an Owner's Unit or a portion thereof, but not attributable to a Unit caused merely by the normal use of such Unit permitted by the Declaration, shall be assessed as an Additional Common Charge against only such Unit and shall be payable solely by the Owner of such Unit. For all purposes hereunder, a schedule or "make-up" of rate for the Property issued by the New York Fire Insurance Exchange or other body making fire insurance rates applicable to the Property shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate or rates then applicable to the Property.

Section 6.11.3 Work by Unit Owner. A Unit Owner, at such Owner's Sole Cost and Expense, shall maintain, or cause to be maintained by its contractor or otherwise, the following insurance during its performance of any Work, other than Ordinary Work (or such alternate amounts as may be required by the Board based upon the type of Work) during its performance of any Work:

(a) Workmen's Compensation and Disability Benefits Insurance as required by the Laws of the State of New York and Employer's Liability Insurance;

(b) Commercial General Liability and Products/Completed Operations Coverage to the extent such insurance coverage is not included in a policy maintained by the Condominium Board, including the Condominium Board, its agents, successors and assigns, and any Tenant of the Unit as additional insureds with a minimum limit of $5,000,000.00 per occurrence;

(c) Additional Commercial General Liability coverage extensions required: This Insurance is Primary and Non-Contributory as respect to coverage afforded the additional insurance and will be applicable to both the premises and completed operations coverage; Contractual Liability; and Waiver of Subrogation in favor of the Condominium Board and its Related Parties and Unit Owners; and

(d) Installation floater coverage in an amount equal to the cost of the contract for any Work performed in the Common Elements, naming as additional insureds the Unit Owners, the Condominium Board, and any mortgagee of the Unit Owner performing such Work, as their interests may appear, except that such insurance shall not be required if the estimated cost of the Work in the Common Elements is less than One Hundred Thousand Dollars ($100,000) and is covered by insurance policies maintained by the Condominium Board.

Section 6.11.4 Homeowner's Insurance. Each Sold Unit Owner shall obtain and maintain condominium homeowner's insurance with additions and alterations coverage, personal property coverage and personal liability limits of not less than $300,000.00 per occurrence and an umbrella liability policy in the minimum amount of Three Million Dollars ($3,000,000.00), each amount to be Adjusted for Inflation. This requirement is not applicable to Unsold Unit Owners.

Section 6.12 General Insurance Matters. The policies of insurance required to be maintained under this Article 6 shall meet the following criteria:

(a) the policies of insurance shall be from a company rated in the A.M. Best Key Rating Guide with ratings of at least A- and of at least VI and such company shall be licensed to do business in the State of New York;

(b) The policies shall contain a provision that before any change or cancellation of a policy, at least thirty (30) Days' advance Notice by certified mail, return receipt requested, shall be given:

(b-1) in the case of insurance maintained by the Condominium Board under Sections 6.2 to 6.7, to the Condominium Board and (if and to the extent obtainable at reasonable rates) to all Unit Owners and Registered Mortgagees; and

(b-2) in the case of insurance maintained by a Unit Owner under Sections 6.11.3 and 6.11.4, to the Condominium Board;

(c) all policies required to be obtained by the Condominium Board pursuant to this Article shall be renewed or replaced at least ten (10) Days prior to the expiration of the then current term;

(d) all policies for property insurance maintained by the Condominium Board under Section 6.2 shall contain (if and to the extent obtainable) waivers of subrogation and generally all policies maintained by the Condominium Board shall also cover cross-liability claims of one insured against another insured;

(e) all policies shall acknowledge that all Unit Owners and Registered Mortgagees are deemed additional insureds for any liability insurance and loss payees for property insurance although not individually named, and that the Condominium Board is authorized to sign all checks for payment of proceeds or other instruments required in connection with the processing, payment and settlement of Claims and Litigations on such Unit Owner's behalf (other than the Unit Owner owning the policy under which such proceeds are paid, who alone shall have the right to sign said checks and instruments and settle Claims and Litigation under its policy, subject to the rights of its Registered Mortgagee);

(f) each liability policy shall be endorsed (if obtainable) with a severability of interest endorsement, if not otherwise included, stating that if a Claim or Litigation is brought by one insured against another insured under such policy, or by an employee of one insured against another insured under such policy, each insured shall be considered a separate insured for purposes of the insurance and shall meet the following additional criteria (if obtainable):

(f-1) the policies shall be written with a contractual liability endorsement, if not otherwise included, providing coverage for bodily injury or property damage assumed under any type of written contract, except any contract under which the insured assumes liability for the sole negligence of an indemnitee; and

(f-2) the policies shall be written to specifically include coverage for legal liability for damage of any part of the Property by fire;

(g) any policies required to be furnished by a Unit Owner pursuant to Section 6.11:

(g-1) may be maintained by the Unit Owner under a blanket policy or policies; provided, however, that the minimum amount of the total insurance afforded by such blanket policy which shall be allocable to the Owner's Unit(s) and the Work to be performed and any sublimits of such policy allocable to the Unit(s) shall be in amounts which shall not be less than the amounts of the insurance required hereunder and the protection afforded under such policy shall be not less than which would have been afforded under a separate policy or policies;

(g-2) the certificate evidencing such insurance shall contain provisions confirming the foregoing;

(g-3) certificate(s) evidencing the existence of any policy required to be maintained by a Unit Owner under Sections 6.11.3 and 6.11.4 shall be delivered to the Condominium Board with evidence of the payment of the premiums therefor not less than fifteen (15) Days prior to the commencement of the Work; and

(g-4) at least ten (10) Days prior to the expiration or termination date of any policy, the Unit Owner shall deliver a renewal or replacement policy, or certificate(s) evidencing the existence thereof, to the Condominium Board together with proof of the payment of the premium therefor;

(h) all of the conditions contained in Section 6.12 (b) above (other than those contained in Section 6.2.2 (a) through (d) above) are required only to the extent obtainable at reasonable rates from any insurance company meeting the requirements set forth in Section 6.12(a) above.

(i) the requirements set forth in Section 6.11 and this Section 6.12 shall be referred to herein collectively as the "**Insurance Conditions**";

(j) the Condominium Board may amend or waive any of the Insurance Conditions from time to time and/or adopt different or additional requirements in lieu of the Insurance Conditions set forth herein without recording an Amendment to the By-Laws;

(k) without limiting the remedies of the Condominium Board for a Unit Owner's Violation, in the event that any Unit Owner fails to provide evidence of insurance required to be provided by such Unit Owner hereunder and does not cure such Violation within three Business Days after request therefor is given by or on behalf of the Condominium Board, the Condominium Board shall be authorized (but not required) to procure such coverage in the amounts stated with all costs thereof to be assessed against such offending Owner's Unit as an Additional Common Charge;

(l) neither the issuance of any insurance policy hereunder, nor the minimum limits specified herein with respect to a Unit Owner's insurance coverage, shall be deemed to limit or restrict in any way such Unit Owner's liability in connection with or arising out of such Owner's Work and the Indemnification obligations set forth in the Declaration and these By-Laws; and

(m) each Unit Owner may carry for such Owner's own benefit insurance which is in addition or supplemental to that required herein, provided, however, that the insurance coverage for the Condominium Board and other Unit Owners pursuant to this Article 6 shall not be diminished or otherwise adversely affected by reason of any such supplemental or additional insurance carried by such Unit Owner.

Section 6.13 Construction Period Insurance. The insurance requirements outlined in the other Sections of this Article 6 shall apply after completion of Construction of all planned ten (10) Units and the Building. During the period of construction of the Building, the Condominium Board may obtain alternate insurance policies, if required in the Board's sole Business Judgment, provided, however, that the coverage limits of such alternate insurance policies shall be consistent with the coverage limits in Section 6.2. The scope and limits of coverage of any such construction period

policies shall be consistent with the standards of locally accepted building practices for projects comparable in size to the Building, as determined by the Condominium Board, in its sole Business Judgment. The construction period policies may include the following:

(a) Commercial General Liability Insurance;

(b) Builders Risk coverage to be provided based on a Replacement Cost valuation;

(c) automobile coverage for all owned, non-owned rented or leased vehicles which are not covered under the OCIP;

(d) Railroad Protective Liability Insurance with a limit of liability of $20,000,000; and

(e) Pollution Liability with a limit of liability of $2,000,000.

The provisions of this Section 6.12 are paramount and shall govern any inconsistency with the provisions contained in the other Sections of this Article 6 or elsewhere in these By-Laws or the Declaration.

ARTICLE 7

DESTRUCTION OR DAMAGE OF BUILDING

Section 7.1 **Destruction or Damage**. In the event of:

(a) a Casualty in which three-fourths or more of the Building (including the Units, the Building's Structural Components and the Building Services comprising the Common Elements) is destroyed or substantially damaged so as to require re-construction (a "**Substantial Casualty**"), the Unit Owners shall conclusively be deemed to have irrevocably and unconditionally duly resolve to proceed with the Repair and Restoration, regardless of the adequacy of the Net Insurance Trust Funds to Repair and Restore the destruction and/or damage, unless not less than eighty percent (80%) in number and Common Interest (fractions shall be rounded down) of all Unit Owners elect to withdraw the Property from the Condominium Act in accordance with Article 15 of the Declaration; or

(b) a Casualty in which less than three-fourths of the Building (including the Units, the Building's Structural Components and the Building Services comprising the Common Elements) is destroyed and/or substantially damaged so as to require re-construction (an "**Insubstantial Casualty**"), the Board shall Repair and Restore the destruction and/or damage to the Common Elements and the Limited Common Elements in accordance with the terms of this Article 7.

All Owners hereby irrevocably appoint and designate the Condominium Board having the sole and exclusive Power to arrange and make all decisions to Repair and Restore the destroyed and/or damaged Common Elements and the Limited Common Elements in accordance with this Article 7 and (in the case of a Taking) Article 12, including to engage all Construction Parties and to monitor all Work. In addition thereto, the Condominium Board shall: (a) have such Power as a property manager of buildings located in the vicinity of Building and having substantially the most similar

Facilities and amenities of the Building; and (b) be permitted to implement said rights and obligations on behalf of all Owners without their further consent.

The Condominium Board shall perform its Duties under this Article 7 and Article 12 with ordinary prudence and in a manner characteristic of business Persons in similar circumstances, but the Condominium Board and the Board's Related Parties shall not be responsible or accountable to the Unit Owners for any Claims, Litigations, Liabilities or Losses (including Legal Expenses) due to, or caused by, any Act or Omission arising from a mistake in Business Judgment, or any Act or Omission which is believed in good faith and fair dealing to be in the best interests of the Condominium Association. Nothing herein shall excuse a Condominium Board Member from Liability for such Board Member's Malfeasance.

Section 7.2 **Common Elements and Limited Common Elements**. In all cases in which the destruction or damage to the Building is to be Repaired and Restored, the Condominium Board, with commercially prompt diligence, shall have the exclusive authority to act on behalf of all Owners to implement all Repairs to the destroyed or damaged Common Elements and Limited Common Elements necessary to provide all Building Services to each Unit and to Restore the Common Elements and the Limited Common Elements to as near as commercially reasonable and economically practicable to their respective conditions existing immediately prior to the destruction or damage, all as provided below in this Article 7.

Section 7.2.1 Order of Priority of Repairs to Common Elements and Limited Common Elements. All Work to Repair and Restore the destroyed and damaged Common Elements and Limited Common Elements shall be performed to the extent reasonable and economically practicable in the following order of priority and in appropriate progress payments to contractors, vendors and suppliers engaged to Repair and Restore said destruction or damage as reasonably determined by the Condominium Board:

(a) first, in or to the Common Elements that provide structural support to any one or more Units;

(b) second, in or to those Common Elements that provide Building Services to all Units;

(c) third, in or to those Common Elements that provide legal access of each Unit to the street or to the Common Elements that lead to a street;

(d) fourth, in or to those Common Elements and next to those Limited Common Elements that are required to legally use and occupy all Units for the purpose set forth in the Declaration;

(e) fifth, in or to those Limited Common Elements that serve each Unit; and

(f) sixth, in or to the all other Common Elements.

Section 7.3 **Units**. In the case of destruction or damage to a Unit (whether following a Substantial Casualty or otherwise), the affected Owner, with the Construction Parties chosen and engaged by it, in accordance with the Work Requirements set forth above and the requirements of its Registered Mortgage to the extent not inconsistent with this Section 7.3:

(a) with commercially prompt diligence and continuity to completion, shall:

(a-1) remove any rubble and debris resulting from such Casualty; and

(a-2) implement and perform all Work to the Unit necessary to avoid damage to another Unit or the Common Elements, or bodily injury or death; and

(b) with commercially reasonable diligence and continuity to completion, shall thereafter:

(b-1) at its election, either:

(b-1.1) Repair and Restore its Unit so destroyed or damaged (including all individual Unit Areas and Unit Facilities and other items set forth in Section 6.7 of the Declaration) to habitable or tenantable and usable condition in compliance and conformity with applicable Laws and standards generally applicable to high end residential buildings in the vicinity of the Building and most similar in size and amenities to the then existing size and amenities of the Building, and the provisions of the then existing Leases of its Unit (if any); or

(b-1.2) Repair and Restore its Unit to a safe and secure condition in compliance with applicable Laws and with complete and sightly demising walls, Doors and Windows that are visible from the street, another Unit or the Common Elements, including any appropriate Alterations that shall be consistent with the aesthetics, architectural integrity and appearance that existed prior to such destruction or damage; and

(c) implement and perform such other Work to Repair and Restore its Unit as shall be required to avoid or eliminate any other adverse effect on the Use and Enjoyment of another Unit beyond a *de minimis* extent.

Section 7.4 Performance of Work to Common Elements and Limited Common Elements.

Section 7.4.1 Condominium Board. The Condominium Board shall act on behalf of all Owners to cause all Work to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements to be performed in accordance with Section 7.1 and the following provisions of this Section 7.4 and the Work Performance Requirements contained in Section 5.7.2, unless the destruction or damage affects only one Unit and does not impact in any manner on either the Common Elements serving another Unit or the Use and Enjoyment of another Unit, in which case the following shall govern, control and apply:

(a) the provisions of Section 7.3 shall apply to the Work to Repair and Restore such affected Unit;

(b) the following provisions of this Section 7.4 and Sections 7.7 to and including 7.9 shall not apply to the Repair and Restore of such affected Unit Property;

(c) the Owner of said affected Unit shall exercise the Power and Duties of the Condominium Board under, and shall comply with Sections 7.5, 7.6 and 7.9 below;

(d) if the Net Insurance Trust Funds shall be insufficient to pay the Costs and Expenses to Repair and Restore the affected Unit Property, the deficit shall be borne and paid directly and entirely by the Owner of said affected Unit; and

(e) if the Net Insurance Trust Funds shall exceed the Costs and Expenses to Repair and Restore the affected Unit, the Owner thereof shall be paid and retain the entire surplus.

Section 7.4.2 Construction Parties. The Condominium Board, in its Reasonable Judgment, shall select and engage all Construction Parties to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements. The architect, engineers and contractor shall be duly licensed and have at least ten (10) years recent experience the construction, Repair or Restoration of Manhattan residential buildings similar to the Building.

Section 7.4.3 Plans and Specifications. Any plans and specifications to Repair and Restore the destruction or damage to the Common Elements and Limited Common Elements shall be prepared by the architect chosen by the Board in accordance with the instructions given by the Condominium Board. Such plans and specifications shall provide for the Restoration of the destroyed or damaged portions Building to as near as commercially reasonable and economically practicable to their respective conditions existing immediately prior to the destruction or damage, except to the extent limited by any changes in Laws or otherwise mutually agreed to by a majority in Common Interest of the affected Owners.

Section 7.4.4 Insurance. During the course of the Work, the Board may maintain builder's risk insurance required under Article 6 above.

Section 7.4.5 Cooperation. The Condominium Board and all Owners shall reasonably cooperate with the Construction Parties engaged in the Work, including allowing commercially prompt and continuous access to the Common Elements and each Unit on an Emergency basis in order to perform and complete the Work to Repair and Restore the destruction or damage expeditiously.

Each Unit Owner whose Unit, or any portion thereof, shall be the subject of all or part of any Work to be performed by the Board shall be kept reasonably informed as to the scheduling and progress of the Work to Repair and Restore the Owner's Unit Property, but may not supervise or otherwise impair or interfere with the performance of such Work.

Section 7.5 Net Insurance Trust Funds. The proceeds of insurance policies received by the Condominium Board from the "**Insurers**" issuing said insurance policies maintained by the Board by reason of such Casualty, after deducting all commercially reasonable fees and expenses incurred by the Condominium Board to collect said insurance proceeds (hereinafter referred to as the "**Net Insurance Trust Funds**"), shall be held in trust for the benefit of all Owners and their respective Registered Mortgagees, and shall be disbursed pursuant to the terms of this Article 7.

Section 7.6 **Determination of Costs to Repair and Restore**. The Condominium Board shall determine in good faith the estimates ("**Casualty Estimates**") of the total costs to Repair and Restore the Areas and Facilities comprising:

(a) the Common Elements;

(b) the Limited Common Elements; and

(c) (to the extent insurable by the Board) the Units (other than Personal Property of the Owner and Tenants of such Unit).

During the progress of the Work, the Casualty Estimates may be adjusted from time to time by the Board as necessary to correspond to the actual total costs to Repair and Restore the Common Elements, the Limited Common Elements and the Units (the "**Adjusted Casualty Estimates**").

The proportion of the share of the Casualty Estimates, as same may be so adjusted by the Adjusted Casualty Estimates, allocated to each the affected Common Elements, the affected Limited Common Elements and the affected Units is called the "**Casualty Repair Ratios**").

Any increase in the Casualty Estimates or Adjusted Casualty Estimates (as applicable) caused by Force Majeure shall be allocated to the affected Common Elements, the affected Limited Common Elements and the affected Units in accordance with the Casualty Repair Ratios.

Any increase in the Casualty Estimates or Adjusted Casualty Estimates (as applicable) caused by changes requested by an Owner or the Acts or Omissions of an Owner or for whom the Owner is accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof, shall be borne by, and assessed by the Condominium Board as Additional Common Charges to, such Owner.

Section 7.7 **Insufficient Net Insurance Trust Funds**. In the event the Net Insurance Trust Funds, as allocated pursuant to the Casualty Repair Ratios, shall be insufficient to pay the Costs and Expenses to Repair and Restore the destroyed or damaged Common Elements, Limited Common Elements, Association's Assets and (to the extent insurable by the Board) Units, the Board shall assess the deficiency as Additional Common Charges as follows:

(a) in the case of said deficiency to Repair and Restore the destroyed or damaged Common Elements: the deficit shall be assessed as a Common Expense to all Owners, Pro Rata to their respective Common Interests; or

(b) in the case of said deficiency to Repair and Restore the destroyed or damaged Units or Limited Common Elements: the deficit shall be assessed as Additional Common Charges to each of the respective Owners of such Units or to each of the respective Owners of the Units to which such Limited Common Elements are appurtenant, in each case Pro Rata to their respective Common Interests.

The Costs and Expenses shall include the fees and expenses of the Construction Parties engaged by or on behalf of the Board in the Work to Repair and Restore the Common Elements, the Limited Common Elements and the Units, and any Legal Expenses.

Section 7.8 **Excess Net Insurance Trust Funds**. Upon completion of the Work to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements in accordance with this Article 7 and the payment in full of all Costs and Expenses thereof, any excess Net Insurance Trust Funds shall be distributed in the following order of priority:

(a) first, if an Owner failed to contribute to a deficiency in the Net Insurance Trust Funds allocable to the Common Elements or to such Owner's Limited Common Elements, the amount of such deficiency shall be paid to the other Owner or Owners to the extent such deficiency was advanced by such other Owner or Owners (Pro Rata to the amount each advanced); and

(b) second, any remaining balance thereof shall be allocated in accordance with the Casualty Repair Ratios and paid in the following order of priority:

(b-1) first, the amount allocated to the affected Common Elements shall be paid to all Owners Pro Rata to their respective Common Interests; and

(b-2) second, the amount allocated to the affected Limited Common Elements shall be paid to the respective Owners of the Units to which such Limited Common Elements are appurtenant Pro-Rata to their respective Common Interests; and

(b-3) third, the amount allocated to the affected Units shall be paid to the respective Owners thereof Pro-Rata to their respective Common Interests,

in each case, however, subject to Claims by holders of liens on each such Owner's Unit in the order priority of such liens.

Section 7.9 **Settlement of Claims**. The Condominium Board shall adjust, compromise and settle all Claims and Litigations with the Insurers under the insurance policies maintained by the Board. If the Casualty involves only one Unit Property, the Owner of the affected Unit Property shall have the exclusive Power to adjust, compromise and settle the Claims and Litigations with said Insurers; provided, and on condition, the Casualty does not involve or affect or impact another Unit Property, or the Common Elements.

Section 7.10 **Abatement in Common Charges**.

Section 7.10.1 Abatement. If, through no fault of a Unit Owner or for which a Unit Owner is accountable, a destruction or damage renders a Unit wholly or partially unusable for the purposes permitted in the Declaration, or the means of reasonable access thereto is prevented, the Common Charges otherwise payable by the Owner thereof shall proportionately abate until such Unit shall again be rendered useable for the purposes permitted in the Declaration and/or until the means of reasonable access thereto shall be Restored, as the case may be. The amount of abatement shall be determined by the Condominium Board based on:

(a) the net amount not recovered by the Board and the affected Owner from insurance maintained by each;

(b) the resulting increase in Common Charges not being unduly economically burdensome; and

(c) equitable considerations, as determined by the Board in its discretion, reasonably exercised.

The foregoing notwithstanding, if the destruction or damage shall be caused by an Act or Omission of the Unit Owner or for which a Unit Owner is responsible or accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof, the Common Charges otherwise payable by such Owner shall abate to the extent only of any proceeds of business interruption or similar insurance actually collected by the Condominium Board with respect to such Owner's affected Unit.

If the Common Charges of a Unit is abated, such abatement shall not excuse the other Unit Owners from the obligation to pay the full amount of the Common Expenses assessed by the Board to such Unit Owners, including their respective Pro Rata share of the amount abated to the affected Unit.

Section 7.11 **Disputes**. Any dispute under this Article 7 shall be resolved by Arbitration in accordance with Article 18.

ARTICLE 8

CONDOMINIUM EXPENSES AND CHARGES

Section 8.1 **Condominium Expenses**. The expenses of the Condominium Association (the "**Condominium Expenses**") shall consist of the following:

(a) the expenses assessed to all Units Pro Rata to their respective Common Interests to do the following (collectively, the "**Common Expenses**"):

(a-1) Maintain, Repair, Restore, Alter, Lease, manage and otherwise Operate the Common Elements and the Association's Assets;

(a-2) purchase, acquire (including own and Lease), mortgage, securitize, sell, convey, transfer, assign and make other Dispositions of the Association's Assets;

(a-3) provide Building Services to all Owners and Registered Tenants of Units;

(a-4) properly Maintain, Repair and Restore the Sidewalk in accordance with the Building Standard; and

(a-5) generally, conduct the affairs affecting or benefiting the entire Property or all Units or their respective Owners and Tenants;

(b) the expenses assessed to one or more, but not all, Units or Owners to reflect the amounts fairly and properly attributable to such Unit(s) or Owner(s) based on special or exclusive use or availability or exclusive control, or consumption, of the Common Elements or the Building Services provided to such Unit(s), or the Owner(s) or Tenant(s) thereof (collectively, "**Usage**") as

determined by the Condominium Board, in its sole Business Judgment, in accordance with RPL §339-m, and consist of the following (collectively, the "**Specially Allocated Expenses**"):

(b-1) the amount of increase in the Common Expense item for insurance premiums attributable to one Unit caused by a change in use, or the manner of use, or occupancy of such Unit, which shall be charged by the Board as a Specially Allocated Expense to such Unit;

(b-2) the Costs and Expenses to provide utility services from the Building Systems to one or more, but not all, Units, which shall be specially allocated to the applicable Unit or Units based on submetering or if not submetered, at the exclusive option of the Board, in its sole Business Judgment, based upon a utility consumption survey obtained by the Board, and borne by the Owner of such Unit, or borne by the Owners of such Units Pro Rata to their respective Common Interests (as applicable); and

(b-3) the Costs and Expenses to Maintain, Repair, Restore and Alter a Common Element due to the Acts or Omissions of the Owner or for whom such Owner is accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof, shall be specially allocated and assessed to such Unit as therein provided; and

(c) the expenses assessed to only the applicable Owner for such Owner's late payment of Common Charges or other Violations of the Condominium Documents by an Owner or for whom such Owner is accountable in accordance with Section 1.7.2 of the Declaration or Section 5.7.1 hereof (collectively, the "**Administrative Expenses**").

Section 8.2 **Condominium Charges**. The charges of the Condominium Association payable to the Condominium Board are called the "**Condominium Charges**" and consist of the following:

(a) the charges assessed by the Board to all Unit Owners to pay the Common Expenses (collectively, the "**Common Charges**"); and

(b) the charges assessed by the Board to a Unit Owner under the Declaration or these By-Laws, including Specially Allocated Expenses and Administrative Expenses (collectively, the "**Additional Common Charges**").

The Condominium Board shall have all of the same rights and remedies for collection of Additional Common Charges as are applicable for the collection of Common Charges.

The Common Charges shall be assessed to each Unit Pro Rata to its Common Interest percentage (as same may change following a Unit Division or Unit Combination or Unit Reconfiguration, or a Taking as provided in Section 12.6, subject to the right of the Board to require one or more of the Common Expenses to be charged as a Specially Allocated Expense to a Unit in accordance with Section 8.1(b).

All references in this Article 8 or elsewhere in the Declaration or these By-Laws to apportioning and assessing the Common Expenses to each Unit Pro Rata to its Common Interest (or

words of similar import) shall mean in the ratio that the Common Interest appurtenant each Unit bears to one hundred percent (100%) (i.e., total Common Interest percentages appurtenant to all Units).

Unless otherwise determined by the Condominium Board, the Owners shall be obligated to pay the Common Charges in equal monthly installments in advance on the first Day of every month. The Condominium Board shall have the Power to assess one or more Common Expense items in one or more installments, payable at one time or over a period to be specified by the Board, with or without interest, all as shall be determined by the Board, in its sole Business Judgment. The installment payment or installment payments are called "**Special Assessments**", which constitute Additional Common Charges. As a result, the Condominium Board shall have all of the same rights and remedies for collection of Special Assessments as are applicable for the collection of Common Charges.

Section 8.3 Remedies for Nonpayment of Condominium Charges.

Section 8.3.1 Remedies Under the Condominium Act. The Condominium Charges (which consists of the Common Charges and Additional Common Charges) constitute "common charges" as defined in RPL §§339-z and 339-aa. In the event of nonpayment of the Condominium Charges, the Board shall have all of the same remedies for nonpayment of common charges under said RPL §§339-z and 339-aa, including the lien set forth therein. Such lien, however, shall be subordinate to any liens for unpaid real estate taxes assessed against such Unit (to the extent required by Laws) and to any lien of a recorded Registered First Mortgage. Nothing contained herein or elsewhere in these By-Laws or the Declaration is, and shall not be considered, a waiver of, or otherwise prejudice, any remedies available to the Board under the Condominium Act.

Section 8.3.2 Additional Remedies. In addition to the remedies set forth in the Condominium Act, the Board shall have all other remedies available at law and in equity, including those applicable to breach of contract. Each and every Owner of a Unit at the time in question (by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise) shall thereupon automatically and conclusively be deemed to have irrevocably and unconditionally covenanted and agreed that the timely payment of Condominium Charges:

(a) shall be vital to the preservation and value of its Unit and all other Units;

(b) necessary for the protection, safety, security and welfare of all Owners and Tenants of Units and the proper and efficient performance, function, capacity, utility and Operation of the Common Elements;

(c) shall be without set-off, credit or abatement, except as otherwise expressly provided in these By-Laws or the Declaration; and

(d) shall be without defense, and any right to assert a defense shall conclusively, automatically, irrevocably and unconditionally be deemed to have been waived.

Section 8.3.3 Late Charge, Interest and Security Deposit. In the event that a Sold Unit Owner (but not an Unsold Unit Owner) shall fail to make payment of any Condominium Charges on the due date, such Sold Unit Owner shall be obligated to pay to the Condominium Board, as Administrative Expenses, promptly following written demand therefor:

(a) if not paid within ten (10) Days from the date due, a late charge in an amount determined by the Condominium Board, but not to exceed $0.05 on each overdue dollar (non-compounded); and/or

(b) if not paid within thirty (30) Days from the date due, Per Diem Interest thereon, computed from the date due to the date payment is received by the Condominium Board or its Managing Agent.

If a Sold Unit Owner (but not an Unsold Unit Owner) fails to pay Condominium Charges within thirty (30) Days from the date due two or more times within any consecutive twelve (12)-month period, the Board shall have the right, in addition to all other rights and remedies, to require the delinquent Sold Unit Owner to deposit with the Board as security for the payment of Condominium Charges, a sum equal up to one year's Common Charges then payable, as determined by the Board, in its sole Business Judgment. Such security deposit shall be paid to, and received by the Board within thirty (30) Days after written demand therefor is given to the delinquent Sold Unit Owner. The security deposit shall be maintained in a segregated interest or (at the exclusive option of the Board) non-interest bearing bank or other similar depository account designated by the Board. Any interest earned thereon shall be added to the security deposit.

The Board shall have the right, in its Business Judgment, to apply the security deposit to pay the Common Charges and any Additional Common Charges (including late charge and Per Diem Interest for any late payment of Condominium Charges set forth above) that are not paid by said delinquent Sold Unit Owner within ten (10) calendar days of the due date and to pay or reimburse the Board for any other unpaid amounts due and owing by said Sold Unit Owner beyond any applicable payment or cure period pursuant to Condominium Documents, as each is amended from time to time.

If the Board applies the security deposit as provided above, the Board shall give said Sold Unit Owner, within a commercially reasonable period thereafter, a reasonably detailed Notice thereof. Within ten (10) Days from giving such Notice, said Sold Unit Owner shall pay the Board, and the Board shall receive, a sum equal to the amount so applied. At all times, the security deposit shall be an amount equal to the Common Charges then assessed to the Unit for the ensuing twelve (12) months. In the event of a deficiency (whether due to an application of the security deposit or an increase in the Common Charges, or otherwise, said Sold Unit Owner shall pay the Board, and the Board shall receive, the shortfall within ten (10) Days after giving Notice thereof to said Sold Unit Owner.

The failure of said Sold Unit Owner to pay or replenish or increase the security deposit in accordance with the foregoing shall be a material default hereunder entitling the Board, in addition to all other rights and remedies available at law or in equity, to all of the same remedies as in the case

of nonpayment of Common Charges under these By-Laws and the Condominium Act. The Payment and Collection provisions of Section 1.8 of the Declaration shall apply to the amounts payable by a delinquent Sold Unit Owner under this Section 8.3.

The remaining amount of the security deposit, including any interest earned thereon, shall be refunded to said Sold Unit Owner: (a) upon the sale and conveyance of the Sold Unit Owner's Unit; or (b) at the end of twelve (12) consecutive months during which said Sold Unit Owner shall remain current and in good standing in the timely payment of all Common Charges and any Additional Common Charges, and the timely performance of all other obligations under the Condominium Documents, as each may be amended from time to time.

Nothing herein shall excuse the obligation, or extend the time period, to pay when due the Condominium Charges or other indebtedness owed to the Condominium Board.

Section 8.3.4 Enforcement. The Condominium Board shall have the right:

(a) to pursue and enforce all remedies available under the Condominium Act, at law and in equity in the appropriate courts located in the County, City and State of New York; and

(b) to purchase or acquire, directly or through its nominee or designee, any Unit pursuant to any judgment or order of a court of competent jurisdiction rendered in Litigation instituted to enforce the Board's remedies under the Condominium Act and/or to bring a suit to recover a money judgment for unpaid Condominium Charges without waiving any other remedies under the Condominium Act to recover all such unpaid Condominium Charges, together with all additional sums of money collectible by the Condominium Board by reason of such nonpayment pursuant to the terms of this Section 8.3.

Section 8.3.5 Receiver. Subject to any foreclosure action instituted by a Registered First Mortgagee, if the Condominium Board brings an action or proceeding pursuant to the Condominium Act or other law or in equity which entitles the Board to the appointment of a receiver, the defaulting Unit Owner shall be required to pay a reasonable rental for the use of such Owner's Unit, and the Board as plaintiff in such action or proceeding shall be entitled to the appointment of a receiver to collect the same. The defaulting Unit Owner shall conclusively be deemed to have automatically and irrevocably consented to such appointment of the receiver and to all of the following Powers of the receiver, and to have conclusively be deemed to have waived all defenses thereto and to also have automatically and irrevocably waived the right to oppose any application for such appointment or further Powers:

(a) the receiver shall have the Power to determine a reasonable monthly rental for such defaulting Owner's Unit, which shall be payable monthly in advance on the first Day of each month, except the first monthly payment shall be appropriately prorated based on the actual number of Days in such month and shall be payable to the receiver within ten (10) Days following the giving of written demand therefor;

(b) said reasonable monthly rental shall be in a sum equal to not less than the aggregate

of the following monthly amounts with respect to such defaulting Owner's Unit, as appropriately adjusted from month-to-month:

(b-1) the monthly Common Charges and any Special Assessment or an installment thereof and other Additional Common Charges levied by the Board; plus

(b-2) the Costs and Expenses to Maintain, Repair and Restore the defaulting Owner's Unit Property in accordance with the Building Standard; plus

(b-3) a sum equal to one-twelfth (1/12th) of the then current annual Real Estate Taxes; plus

(b-4) the monthly debt service due under a note (if any) secured by one or more mortgage liens against the defaulting Owner's Unit; plus

(b-5) the individually metered or submetered utility charges;

(c) in the event such defaulting Owner shall fail to pay to the receiver, said monthly rental and such failure shall continue for longer than ten (10) Days after the receiver gives such defaulting Owner Notice of said default in payment of the monthly rental then due, the receiver shall have the Power to commence and prosecute an appropriate action or proceeding to evict, eject or otherwise remove such defaulting Owner including by means of a summary dispossess proceeding or otherwise, and (at the discretion of the receiver) any Tenant from such Owner's Unit (but subject to any non-disturbance agreement given by the Board to such Tenant);

(d) upon gaining vacant possession of such defaulting Owner's Unit pursuant to the preceding clause (c) or otherwise, the receiver shall have the Power:

(d-1) (if the Unit is occupied) to collect the rent, fee or other occupancy fee from a Tenant of such Unit who is permitted to remain in possession of the Unit; or

(d-2) (if the Unit is vacant) to Lease such defaulting Owner's Unit for its permitted use to a Tenant chosen by the receiver with the prior written approval or consent of the Board, and at such rent and on such terms as shall be acceptable to the Condominium Board, in its sole Business Judgment, and to perform all obligations of the landlord/owner under such Lease; and

(e) all rental income collected by the receiver, whether from such defaulting Owner or an existing Tenant of the Unit or a new Tenant of such defaulting Owner's Unit (as applicable), shall be applied by the receiver in the following order of priority, unless otherwise required by law or an order or judgment of a court having jurisdiction:

(e-1) first, to the receiver to pay for the receiver's reasonable Costs and Expenses to: (e-1.1) collect the rent; (e-1.2) (if applicable) Lease the Unit and perform the obligations of the landlord/owner under any said Lease of such Owner's Unit; and (e-1.3) enforce and defend its Powers;

(e-2) second, to a Registered First Mortgagee (if any) to pay the unpaid debt service

under its Registered First Mortgage and thereafter to pay said debt service on a current basis;

(e-3) third, to the Condominium Board to pay all amounts owed and thereafter coming due for Condominium Charges (after payment of any arrears in debt service and the then current debt service amount under a Registered First Mortgage) until the conveyance of such Owner's Unit following the enforcement of the Board's remedies;

(e-4) fourth, to the holders of all other Registered Mortgages encumbering the Unit, in the order of priority of the Registered Mortgages; and

(e-5) fifth, to such defaulting Owner any amount remaining after said enforcement of the Board's remedies.

The Condominium Board, in its sole Business Judgment, shall have the right, on behalf and for the account of such defaulting Unit Owner, to pay the Costs and Expenses of the receiver, which shall constitute Additional Common Charges and shall be payable by such defaulting Unit Owner within ten (10) Days after giving the defaulting Unit Owner a reasonably detailed and itemized written accounting therefor accompanied by supporting statements or bills of the receiver. If payment is not received by the Board with said ten (10)-Day period, said defaulting Owner, the Payment and Collection provisions of Section 1.8 of the Declaration shall apply to all amounts owed the Board hereunder.

All rent owed by the defaulting Unit Owner in this Section 8.3.5 shall be added to, and shall constitute, Additional Common Charges payable by such defaulting Unit Owner.

Section 8.3.6 Purchase by Board. In any Litigation brought by the Condominium Board to pursue and enforce its remedies against a Unit because of unpaid Condominium Charges, the Condominium Board shall have the Power, on behalf and as agent of all Unit Owners, in the name of the Condominium Board or in the name of its nominee or designee, to purchase such Unit and to acquire, hold, Lease, Operate, mortgage (subject to compliance with Sections 2.4.2(d) and (i) above), convey and make any other Disposition of such Unit (but not to vote the votes appurtenant to the same).

Section 8.3.7 Deficiency or Surplus. In the event that the proceeds received by the Board after first paying all amounts owed under a Registered First Mortgage encumbering said Unit pursuant to the Condominium Act and thereafter deducting all Legal Expenses, advertising costs, brokerage commissions, receiver's fees and expenses, court costs and other Costs and Expenses paid or incurred in connection therewith:

(a) shall be insufficient to satisfy the defaulting Unit Owner's obligations to the Condominium Board, such Unit Owner shall remain personally Liable for the deficiency; or

(b) shall exceed the defaulting Unit Owner's obligations to the Condominium Board, the remaining surplus shall be paid to the defaulting Unit Owner after first paying all other liens on such Owner's Unit in the order of priority of such liens.

Section 8.3.8 Part of Association's Assets. Each Unit acquired by the Condominium Board or its Affiliated Nominee or Designee in connection with the enforcement of its remedies for unpaid Condominium Charges shall constitute part of the Association's Assets and shall be held by the Condominium Board or its Affiliated Nominee or Designee on behalf and as agent of the Unit Owners.

Section 8.3.9 No Partition or Occupancy. While a Unit is owned by the Condominium Board or its Affiliated Nominee or Designee, it shall be deemed held on behalf of the Unit Owners, as tenants-in-common, and all Owners shall conclusively be deemed to have waived any right to bring an action for partition, or to use or occupy, said Unit.

Section 8.3.10 Acquisition and Operating Expenses. All Costs and Expenses incurred in connection with the acquisition and ownership of any Unit acquired by the Board pursuant to this Section 8.3, as well as the Maintenance, Repair, Restoration, Alteration and Operation and Disposition of such Unit, shall be part of the Common Expenses and, while owned by the Board or its Affiliated Nominee or Designee, shall be charged to the other Unit Owners Pro Rata to their respective Common Interests. Similarly, all net revenues derived from the rental, Operation, sale, permitted mortgaging or other Disposition of such Unit (after deducting said Costs and Expenses to own, lease, Maintain, Repair, Operate and Dispose of such Unit) shall be used to defray the Common Expenses payable by such other Unit Owners, or for such other appropriate purposes as shall be determined by the Board.

Section 8.3.11 Deficit. In case of a default by a Unit Owner, any deficit resulting from unpaid Condominium Charges that are not collected from such defaulting or delinquent Unit Owner shall be deemed a Common Expense collectible only from all those who are Unit Owners at the time that the same is levied, and assessed to them Pro Rata to their respective Common Interests. Any defaulted amounts collected from such defaulting or delinquent Unit Owner shall be credited to the next due Condominium Charges payable by said other Unit Owners, Pro Rata to their respective Common Interests.

Section 8.3.12 Subrogation. Sponsor, at its exclusive option, shall automatically be subrogated to all the rights and remedies of the Condominium Board to recover from the defaulting or delinquent Unit Owner, in the name and on behalf of the Board, all amounts levied and assessed by the Board and paid by the Sponsor pursuant to Section 8.3.11 above.

Section 8.4 Personal Liability.

Section 8.4.1 Personal Liability of Unit Owner. Each Unit Owner shall be personally Liable for the nonpayment of the Condominium Charges assessed to such Unit Owner that are due and payable to and including (but not after) the date of conveyance of title to the Unit together with its appurtenant Common Interest in compliance with the terms of Article 15 hereof. Accordingly, a Unit Owner shall not be Liable for any Condominium Charges, including any installments of a Special

Assessment, due and payable subsequent to the date of such permitted conveyance of the Owner's Unit and its appurtenant Common Interest.

Section 8.4.2 Personal Liability of Succeeding Owner. Each succeeding Owner of a Unit (howsoever title to the Unit is acquired, excluding, however, an acquisition by a Registered First Mortgagee or its nominee or designee, whether at a mortgage foreclosure sale or by deed given in lieu thereof, or a purchaser at such mortgage foreclosure sale) shall be Liable for the payment of all unpaid Condominium Charges and any other unpaid indebtedness owing to the Condominium Board with respect to such Unit prior to such new Owner's acquisition thereof.

Section 8.4.3 Continuing Personal Liability After Foreclosure. In the event a Unit is acquired following the foreclosure of a lien held by a Registered First Mortgage or a taxing authority, or by a deed in lieu of such foreclosure or otherwise, and the net proceeds realized therefrom are insufficient to pay all of the unpaid Condominium Charges and other indebtedness then owed to the Board, the defaulting or delinquent Unit Owner shall remain fully personally Liable for the payment of the deficiency.

Section 8.4.4 No Exemption for Waiver. No Unit Owner shall be exempted from personal Liability for the payment of Condominium Charges by waiving the Use and Enjoyment of any or all of the Common Elements or by abandoning such Owner's Unit (except with respect to a conveyance of a Unit to the Condominium Board, without compensation, pursuant to the terms of Article 13 of the Declaration and Section 8.5 below).

Section 8.4.5 No Abatement for Service Failure: No Unit Owner shall be entitled to a reduction or abatement in, or to delay payment of, the Condominium Charges for any inconvenience or discomfort arising from:

(a) the failure, interruption or diminution of any utility or Building Services;

(b) the construction, equipping, outfitting, Repair, Restoration or Alteration of the Common Elements or any Unit pursuant to the terms of the Declaration or these By-Laws;

(c) any action taken or omitted by the Condominium Board or the officers of the Condominium Association to comply with the Law; or

(d) any action taken by a Unit Owner pursuant to the Declaration or these By-Laws.

Section 8.5 Budget of Condominium Operation. The Budget of Condominium Operation for each Budget Year shall consist of the projected Condominium Expenses (i.e., the estimated Common Expenses and any estimated Specially Allocated Expenses) and the projected Condominium Charges (i.e., the projected Common Charges, any projected Additional Common Charges and other sources of revenue (if any) to pay the projected Common Expenses).

Section 8.5.1 Budget Requirement. In allocating and apportioning the Condominium Expenses and adopting a Budget of Condominium Operation each Budget Year, the principles, rules, requirements and procedures set forth in this Article 8 and the First Year's Budget shall govern, apply and strictly be observed.

Section 8.5.2 Budget Adoption Procedure. Before the start of each Budget Year, the Condominium Board shall prepare, adopt and distribute to all Unit Owners a Budget of Condominium Operation in accordance with the following procedure and requirements:

(a) any Board Member or Sponsor (while Sponsor owns any Unsold Unit) may propose a Budget of Condominium Operation for the next ensuing Budget Year by giving to all Board Members and Sponsor (while Sponsor owns any Unsold Unit) a copy of the proposed Budget of Condominium Operation;

(b) all determinations with respect to the projected Condominium Expenses and the adoption of such Budget shall be made by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present;

(c) if a Budget of Condominium Operation is not timely adopted before the start of a Budget Year, the last duly adopted Budget shall remain in effect;

(d) any failure by the Board Members to agree or dispute as to the adoption of a proposed Budget of Condominium Operation shall be resolved by arbitration pursuant to these By-Laws;

(e) pending the final (non-appealable) award in arbitration, the last duly adopted Budget of Condominium Operation shall remain in effect; however, if the final, non-appealable award in arbitration upholds an increase in Common Charges, then such increase shall be retroactive to the date it would have commenced had there been no such failure to agree or dispute and shall be payable on the first day of the month immediately succeeding such final, non-appealable award;

(f) each Unit Owner shall be given a copy of the Budget of Condominium Operation adopted by the Board at least ten (10) Days before the start of the Budget Year to which it pertains; however, failure to timely receive such Budget shall not be regarded as a waiver of Common Charges or Additional Common Charges, or in any way excuse a Unit Owner from the obligation to timely pay the full amount of the Common Charges, any increase in Common Charges and any Additional Common Charges set forth in such Budget (in such case, Common Charges and any Additional Common Charges shall continue to be paid on the basis of the last adopted Budget until a new Budget is adopted);

(g) the foregoing procedure and requirements shall apply to adopt a revision to a previously adopted Budget, except that any increase Common Charges or any increase or new Additional Common Charges in such revised Budget shall not be applied retroactively and shall not be made for an expired Budget Year; however, this shall not prohibit an increase in Common Charges or any increase or new Additional Common Charges, or both, as determined by the Condominium Board to pay a deficit for a prior period;

(h) all approvals, decisions and actions (including approval of a proposed Budget or a proposed revised Budget and instituting or defending an arbitration of a failure to agree or dispute or an appeal) may be made and taken by Sponsor (while it owns any Unsold Unit) in place of the Sponsor Board Member(s); and

(i) the Common Expenses shall be allocated, apportioned and assessed among all Owners Pro Rata to their respective Common Interests and the Specially Allocated Expenses shall be allocated, apportioned and assessed to or among the appropriate Owner or Owners in accordance with this Article 8.

Section 8.5.3 Reserve for Contingencies. The Budget of Condominium Operation may include a reserve for unanticipated Common Expenses or an allowance for an increase in one or more items of Common Expenses or from potential new or additional Common Expenses, or other contingencies (collectively, "**Reserve for Contingencies**"), but the Reserve for Contingencies in any Budget Year, when added to all amounts unspent in a Reserve for Contingencies with respect thereto for one or more prior Budget Years (excluding funds, if any, held in a separate segregated bank or investment account for application exclusively to make capital or major Repairs or Alterations), shall not exceed five percent (5%) of the projected annual Common Expenses for such Budget Year without obtaining the Discretionary Consent of Sponsor (during only the Sponsor Veto Control Period). Sponsor (as Owner of an Unsold Unit), however, will give its Consent if the proposed Reserve for Contingencies, when added to all other budgeted Common Expenses, will not increase the Common Charges, inclusive of any Special Assessments levied by the Condominium Board, for such Budget Year by more than five percent (5%) above the Common Charges and any Special Assessments for the immediately preceding Budget Year of the Condominium Association.

Section 8.5.4 Reserve for Capital Replacements. If a reserve for capital replacements of major components of the Common Elements (the "**Reserve for Capital Replacements**") is included in First Year's Budget, the Budget of Condominium Operation shall also include as a separate Budget item of a Reserve for Capital Replacements, in not less than the amount required to obtain project approval from Fannie Mae (the Federal National Mortgage Association) or an Institutional Lender, as determined by the Condominium Board from time to time. The major components of the Common Elements include the Roofs, the exterior Building Walls, the HVAC/Mechanical/Utility Building Systems (including the heating, plumbing and electrical Systems), the elevator, and a replacement of a Structural Component of the Building.

The Reserve for Capital Replacements shall be segregated in a separate account of the Condominium Association and may be invested from time to time in investment-grade securities. The Condominium Board shall have the right to apply the funds collected for the Reserve for Capital Replacements to pay for a capital replacement of a major component of a Common Element in accordance with the foregoing without the Consent of Unit Owners.

Section 8.5.5 Budget Surplus. If, in any completed Budget Year, the Common Charges shall exceed the actual Common Expenses, the Condominium Board shall determine how to apply the surplus. The Condominium Board shall have the choice of applying the surplus to defray the projected Common Expenses of the next immediately succeeding Budget Year, distributing all or a portion of the surplus to all then existing Unit Owners and apportioning such distribution among them Pro Rata to their respective Common Interests, holding the surplus for planned capital projects or any combination of the foregoing. In the event the Board fails to make such determination within four

months after the end of such Budget Year, the surplus shall be applied to defray the projected Common Expenses of the next immediately succeeding Budget Year in which such surplus was generated.

Section 8.5.6 Prohibition. The Condominium Board shall not charge an Owner or the Owner's Unit Users any separate fee, rental, charge, imposition or payment of any kind (apart from regular Common Charges and Special Assessments, if any, levied on all Unit Owners) for: (a) the mere individual Use and Enjoyment of the Limited Common Elements appurtenant to such Owner's Unit; or (b) the mere Use and Enjoyment in common of the elevator, lobby, Structural Floors and similar portions of the Common Elements.

Section 8.5.7 Exception to Prohibition. The foregoing provisions in Section 8.5.6 shall not prohibit or prevent:

(a) the Condominium Board from assessing and collecting the regular Common Charges and the following, which constitute Additional Common Charges:

(a-1) Special Assessments imposed in accordance with the provisions of the Declaration or these By-Laws;

(a-2) Real Estate Taxes (until the Units are separately assessed and billed); and

(a-3) water charges and sewer rents for the Building, unless separately metered or billed to individual Units;

(b) the Condominium Board from assessing or charging and collecting from Owners of Sold Units (but not assessing or charging Owners of Unsold Units, who are exempt from this provision):

(b-1) reasonable fees upon the sale, conveyance, transfer or Lease of a Sold Unit which is not exempt from the Right of First Refusal, as provided in Section 15.10.1 below, or in connection with the mortgage financing or refinancing of a Sold Unit if any Board action is requested in connection therewith (such fees include the reasonable fees payable to a Managing Agent and an attorney retained by the Condominium Board in connection with such transaction);

(b-2) license fees or charges for the exclusive right to use a portion of the Common Elements by a Sold Unit Owner; and

(b-3) all such other fees and charges whenever so provided elsewhere in these By-Laws or the Declaration; or

(c) the Condominium Board from Leasing or granting easements for the Use and Enjoyment of portions of the Common Elements, or from imposing and collecting charges for the use of vending equipment (if any) and the like.

All such permitted fees and charges shall constitute Additional Common Charges allocated and assessed to the applicable Unit Owner.

Section 8.6 **Sponsor Veto Control**. During the Sponsor Veto Control Period, Sponsor shall have veto control over the following expenditures, decisions and actions of the Condominium Board and Unit Owners (as to any vote or action by them), and the Board and Unit Owners must obtain Sponsor's Discretionary Consent to do any of the following:

(a) to raise Common Charges or levy a Special Assessment in order to do any of the following:

(a-1) to make an Alteration to the Common Elements, the Association's Assets (the latter include any Unit owned, Leased or otherwise held by the Condominium Board or its Affiliated Nominee or Designee);

(a-2) to establish a fund for reserves for unanticipated expenses and/or contingencies (i.e., Reserve for Contingencies) in excess of five percent (5%) of the projected annual Common Expenses for any Budget Year of Condominium Operation;

(a-3) to establish a Reserve for Capital Replacements not included in the Plan or a Plan Amendment or (if so established under the Plan or a Plan Amendment) to change or eliminate a mandated Reserve for Capital Replacements under the terms set forth in the Plan or a Plan Amendment and required to be included in each Budget in accordance with Section 8.5.4 above;

(a-4) to increase, decrease, eliminate or otherwise change the number, type, classification or working hours of the Building's service staff from those set forth in, and as permitted to be changed pursuant to, the First Year's Budget;

(a-5) to increase, decrease, eliminate or otherwise change Building Services by (for example) entering into contracts for new or additional services or maintenance work not included in said First Year's Budget, or failing to provide any service or maintenance contracts set forth in such First Year's Budget, or otherwise; or

(a-6) to increase, decrease, eliminate or otherwise change the amounts or types of insurance coverage from those provided in said First Year's Budget; or

(b) to borrow money on behalf of the Condominium Association; or

(c) exercise the Right of First Refusal to purchase or lease a Unit.

Sponsor may not, however, exercise veto control over expenses included in said First Year's Budget and as permitted to be changed , and as permitted to be changed pursuant thereto, or over expenses required: (a) to comply with applicable Laws; (b) to remedy a governmental notice of a violation of Laws; or (c) to remedy an order of a Governmental Authority or an insurer of the Building.

In addition, until the Final Certificate of Occupancy of the Building is issued, the Board must obtain the Discretionary Consent of Sponsor to Alter the Common Elements or the Association's Assets if the Alteration requires a Work Permit.

Only Sponsor may exercise Sponsor's veto control while Sponsor owns any Unsold Unit. If Sponsor no longer owns any Unsold Unit, each successor Unsold Unit Owner will have the same right of veto control as Sponsor. In the event there are two or more such successor Unsold Unit Owners, the required Consent of only those Owners of Unsold Units constituting a majority of the Common Interests of all Unsold Units will suffice. Nothing contained herein will extend the Sponsor Veto Control Period.

Section 8.7 **Conveyance to Condominium Board**. Any Unit Owner may convey the Owner's Unit, together with its appurtenant Common Interest, to the Condominium Board or (at the exclusive option of the Board) to its Affiliated Nominee or Designee, on behalf and as agent of Unit Owners, without being compensated therefor, and, in such event, be exempt from the payment of Common Charges and Special Assessments or other Additional Common Charges thereafter accruing; provided, however, that:

(a) all Common Charges, any Special Assessments (including all unpaid installments) and any other Additional Common Charges then due and payable with respect to such Unit have been paid in full and collected;

(b) (unless waived by the Condominium Board in its sole and absolute discretion) such Unit is free and clear of all liens, encumbrances, Leases and occupancies, other than the statutory lien of the Condominium Board for unpaid Common Charges and Special Assessments or other Additional Common Charges (provided no monies are then owing under such statutory lien); and

(c) no Violation of any provision of the Condominium Documents then exists with respect to such Unit.

Section 8.8 **Statement of Common Charges**. The Condominium Board shall with reasonable promptness provide a written statement of all unpaid Common Charges, Special Assessments or other Additional Common Charges and any other indebtedness due from any Unit Owner within ten (10) Days after receipt of a written request therefor from such Unit Owner. Such statement shall be conclusive upon the Condominium Board and the Unit Owners in favor of all Persons who rely thereupon in good faith.

Section 8.8.1 Unsold Unit. Within ten (10) days after written notice of a proposed sale, conveyance, lease or mortgage of an Unsold Unit is hand delivered or mailed to the Condominium Board or its Managing Agent, the Condominium Board shall duly sign and return to Sponsor, and Sponsor shall receive within said ten (10)-day period, a certificate as to:

(a) the status of payment of Common Charges, Special Assessments and other payments (if any) for the applicable Unsold Unit, or of any other indebtedness of Sponsor to the Condominium Board;

(b) whether a notice of default under, or violation of, the Condominium Documents by the Sponsor has been given and (if given) whether or not it has been corrected; and

(c) whether to its best knowledge an event is known to have occurred which with notice or the passage of time or both would constitute violation of, the Condominium Documents by Sponsor.

Each such certificate must be satisfactory in form and content to, and will be prepared by an attorney designated by, Sponsor or such Unsold Unit Owner (as applicable).

Section 8.9 Collection and Remedies on Nonpayment of Common Charges.

Section 8.9.1 Lien and Remedies. The Condominium Board shall take prompt action to collect any Common Charges, Special Assessments or other Additional Common Charges due to the Condominium Board that remains unpaid for more than thirty (30) Days after the due date for the payment thereof. In connection therewith, the Condominium Board shall have the right and obligation: (a) to cause a lien for all sums due and owing to the Condominium Board to be filed against the applicable Unit with reasonable diligence in the County Clerk's Office pursuant to the terms of Section 339-z of the Condominium Act; and (b) to cause such lien to be foreclosed in the manner provided in Section 339-aa of the Condominium Act. So long as the Sponsor Board Members constitute a majority of the Board Members, Sponsor (or other applicable Unsold Unit Owner) shall cause the Condominium Board to file such lien under the Condominium Act on those Unsold Units owned by Sponsor (or other applicable Unsold Unit Owner) in which Sponsor (or other applicable Unsold Unit Owner) is more than thirty (30) Days in arrears in payment of Common Charges, Special Assessments or other Additional Common Charges. In addition, the Condominium Board may (in its sole and absolute discretion) purchase or acquire directly or through its Affiliated Nominee or Designee the applicable Unit by deed in lieu of foreclosure and/or bring a suit to recover a money judgment for unpaid Common Charges, Special Assessments or other Additional Common Charges without foreclosing or waiving the lien securing such charges and/or institute any and all other proceedings and actions deemed necessary or desirable by the Condominium Board to recover all such unpaid Common Charges, Special Assessments or other Additional Common Charges, together with all additional sums of money collectible by the Condominium Board by reason of such nonpayment pursuant to the terms of this Section 8.9.

Section 8.9.2 Interest and Late Charge. In the event that any Sold Unit Owner (but not Sponsor or an Unsold Unit Owner, both of whom shall be exempt from the following interest, late charge and collection payments) shall fail to make payment of Common Charges, Special Assessments or any other Additional Common Charges within ten (10) Days from the due date, such Sold Unit Owner shall be obligated to pay the Condominium Board, promptly following written demand:

(a) Per Diem Interest thereon; and/or (b) a late charge in an amount determined by the Condominium Board (but not to exceed $0.05 on each overdue dollar); together with

(b) all Costs and Expenses paid or incurred by the Condominium Board, the Managing Agent or the manager (if any) in connection with said nonpayment of Common Charges, Special

Assessments or any other Additional Common Charges (including late charges and in filing and foreclosing the aforementioned lien and any default Notices given in connection therewith).

The Payment and Collection provisions of Section 1.8 of the Declaration shall apply to all amounts owed the Board hereunder.

Nothing herein shall excuse the obligation, or extend the time period, to pay the Common Charges, Special Assessments and any other Additional Common Charges or other indebtedness.

Section 8.9.3 Security Deposit. In the event a Sold Unit Owner shall fail to pay Common Charges or Special Assessments: (a) within ten (10) Days from the due date and such failure shall be repeated two or more times within any five-month period after being given Notice thereof; or (b) for more than thirty (30) Days after the due date, the Condominium Board shall have the Power, in addition to all other remedies, to require such delinquent Sold Unit Owner to pay to the Condominium Board, as security for payment of Common Charges and any Special Assessments, a sum equal the projected Common Charges and any Special Assessments payable for the ensuing twelve (12) months (hereafter, "**Security Deposit**"). The Security Deposit shall be maintained in a segregated interest or (at the exclusive option of the Board) non-interest bearing bank account designated by the Board. Any interest earned thereon shall be added to the Security Deposit.

Section 8.9.4 Use of Security Deposit. The Condominium Board shall have the right to apply the Security Deposit to pay the Common Charges and any Special Assessments or other Additional Common Charges that are not paid within ten (10) Days of the due date and to pay or reimburse the Board for any amounts payable by such delinquent Unit Owner pursuant to these By-Laws or the Declaration in connection with the exercise and performance of the Board's rights and remedies under these By-Laws or the Declaration. If the Condominium Board uses the Security Deposit, a reasonably detailed Notice thereof shall be sent to said Sold Unit Owner, who shall pay to the Condominium Board, and the Condominium Board shall receive, within ten (10) Days from giving such Notice, a sum equal to the amount so used. At all times, the Security Deposit shall be an amount equal to the projected Common Charges and Additional Common Charges (including any Special Assessments) payable for the ensuing twelve (12) months. In the event of a deficiency (whether due to an application of the Security Deposit or an increase in the Common Charges or a new Special Assessment or otherwise), said Sold Unit Owner shall pay to the Condominium Board, and the Condominium Board shall receive, the shortfall within ten (10) Days after giving Notice thereof to said Sold Unit Owner.

The failure of said delinquent Sold Unit Owner to pay or replenish or increase the Security Deposit in accordance with the foregoing shall be a material Violation under these By-Laws entitling the Board to all of the same remedies as in the case of nonpayment of Common Charges.

Section 8.9.5 Refund of Security Deposit. The remaining amount of the Security Deposit, including any interest earned thereon, shall be refunded to said Sold Unit Owner: (a) upon the sale and conveyance of the Sold Unit; or (b) at the end of twenty-four (24) consecutive months during which said Sold Unit Owner remains current and in good standing in the timely payment of all

Common Charges (including any Special Assessments or other Additional Common Charges) and the timely performance, observance, compliance and fulfillment of all other obligations under the By-Laws and the Declaration.

Section 8.9.6 Receiver. In addition, if the Condominium Board brings an action to foreclose the aforementioned lien, the defaulting Unit Owner shall be required to pay a reasonable rental for the use of such Owner's Unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The defaulting Unit Owner shall automatically and irrevocably be deemed to have conclusively, irrevocably and unconditionally consented to such appointment of the receiver and to all of the following Powers of the receiver, and to have waived any defenses thereto and to also have waived the right to oppose any application for such appointment or further Powers:

(a) the receiver shall have the Power to determine a reasonable monthly rental for such defaulting Owner's Unit, which shall be payable monthly in advance on the first Day of each month, except the first monthly payment shall be payable on demand following the appointment of the receiver (appropriately prorated based on the actual number of Days in such month) and shall be an amount equal to not less than the aggregate of the following amounts with respect to such Owner's Unit: (a-1) the then current monthly Common Charges and any Special Assessment or installment thereof or other Additional Common Charges levied by the Board, plus one-twelfth (1/12th) of the then current annual real estate taxes, plus any debt service due under an existing note secured by a first mortgage lien and any other then existing security interest in the Unit or the Owner thereof, plus any individually metered utility charges, as each of the foregoing amounts may change from time to time;

(b) in the event such Owner shall fail to pay to the receiver, said monthly rental and such failure shall continue for longer than ten (10) Days after the receiver gives such Owner Notice of said default in payment of the monthly rental then due, the receiver shall have the Power to commence and prosecute an appropriate action or proceeding to evict, eject or remove such Owner and any Tenant or occupant from such Owner's Unit, including by means of a summary dispossess proceeding or otherwise;

(c) upon gaining vacant possession of such Owner's Unit pursuant to the preceding clause (b) or otherwise, the receiver shall have the right and Power to Lease such Owner's Unit to such Tenant and at such rent and terms as shall be acceptable to the Condominium Board, in its sole Business Judgment, and to perform all obligations of the landlord/owner under such Lease; and

(d) all rental income collected by the receiver, whether from such defaulting Owner or a Tenant of such Owner's Unit, shall be applied by the receiver in the following order of priority:

(d-1) first, to the receiver to pay for the receiver's reasonable Costs and Expenses to:

(d-1.1) collect the rent;

(d-1.2) (if applicable) Lease the Unit and perform the obligations of the landlord/owner under any said Lease of such Owner's Unit; and

(d-1.3) enforce and defend its rights and Powers;

(d-2) second, to the Condominium Board to pay all amounts owed and thereafter coming due for Common Charges and Additional Common Charges (including Special Assessments) until the conveyance of such Owner's Unit following the Board's lien foreclosure sale or by deed in lieu of such foreclosure, or the release and discharge of record of the Board's lien (as applicable); and

(d-3) third, (the release and discharge of record of the Board's lien) to such Owner any remaining amount.

The Condominium Board shall have the right, on behalf and for the account of such defaulting Unit Owner, to pay the Costs and Expenses of the receiver, all of which shall constitute Additional Common Charges payable by such defaulting Unit Owner within ten (10) Days after giving a reasonable detailed written demand therefor accompanied by supporting statements or bills of the receiver.

Section 8.9.7 Additional Common Charges. All such interest, late charge and Costs and Expenses provided in Section 8.8.2, the Security Deposit set forth in Sections 8.8.3 and 8.8.4, and such rental and other amounts provided in the preceding Section 8.8.6, shall be added to, and shall constitute, Additional Common Charges payable by such Unit Owner.

Section 8.9.8 Purchase by Board. In any Litigation brought by the Condominium Board to foreclose a lien on a Unit because of unpaid Common Charges, Special Assessments or other Additional Common Charges, the Condominium Board shall have the Power, on behalf and as agent of the Unit Owners, in its own name or in the name of its Affiliated Nominee or Designee, to purchase such Unit at the foreclosure sale thereof and to acquire, hold, Lease, Operate, mortgage, convey and make any other Disposition of such Unit (but not to vote the votes appurtenant to the same), subject to compliance with Sections 2.4.2(d) and (i) above, if applicable.

Section 8.9.9 Deficiency or Surplus. In the event that the net proceeds received on such foreclosure (after deduction of all legal fees and disbursements, advertising costs, brokerage commissions, receiver's fees and expenses, court costs and other Costs and Expenses paid or incurred in connection therewith) shall be insufficient to satisfy the defaulting Unit Owner's obligations to the Condominium Board, such Unit Owner shall remain personally Liable for the deficiency. Any surplus on such foreclosure sale shall be paid to the defaulting Unit Owner after first paying all liens on such Owner's Unit in the order of priority of such liens.

Section 8.9.10 Part of Association's Assets. Each Unit acquired by the Condominium Board or its Affiliated Nominee or Designee in connection with the enforcement of its lien for unpaid Common Charges or otherwise shall constitute part of the Association's Assets and shall be held by the Condominium Board or its Affiliated Nominee or Designee on behalf and as agent of all Unit

Owners. Accordingly and as an example, the purchase price and all Costs and Expenses incurred in connection with the acquisition, Maintenance, Repair, Restoration, Alteration and Disposition of a Unit by the Condominium Board or its Affiliated Nominee or Designee shall be included in the Common Expenses, which shall be allocated to all Unit Owners and apportioned and assessed among them Pro Rata to their respective Common Interests.

Section 8.9.11 No Partition or Occupancy. In the event that any Unit shall be acquired, Leased, held or otherwise Operated by the Condominium Board, or its Affiliated Nominee or Designee, on behalf of Unit Owners, such Unit shall be part of the Association's Assets and the interests of the Condominium Board or its Affiliated Nominee or Designee in such Unit shall be deemed held on behalf of all Unit Owners, as tenants-in-common, and all Owners shall conclusively be deemed to have irrevocably and unconditionally waived all rights of partition, use and occupancy with respect to such Unit. All Costs and Expenses incurred in connection with the acquisition and ownership, or the Lease and any sublease, or the holding or Operation of such Unit, as well as the Maintenance, Repair, Restoration, Alteration and Disposition of such Unit shall be part of the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests. Similarly, all revenues derived from the rental, sale, permitted mortgaging or other Disposition of such Unit shall be used to defray the Common Expenses or for such other purposes as the Board shall determine to be appropriate.

ARTICLE 9

PROPERTY TAXES AND CHARGES

Section 9.1 Real Estate Taxes.

Section 9.1.1 Included in Common Expenses. Until such time as each Unit is separately assessed and billed for real estate taxes, the real estate taxes, business improvement district assessments (if any) or charges and other assessments levied with respect to the Property (collectively, "**Real Estate Taxes**" or "**Real Estate Tax**") shall be included in the Common Expenses and collected by the Condominium Board as Additional Common Charges, as provided herein, and forwarded to the appropriate taxing authority on behalf of the Unit Owners when due and payable before the imposition of interest or penalties for late payment.

Section 9.1.2 Allocation and Apportionment. In accordance with the Plan, the Common Expense item of Real Estate Taxes shall be charged to all Units Pro Rata to their respective Common Interests. The resulting amount so assessed to each Unit is the share ("**Tax Share**") of this item of Common Expense payable by each Unit Owner as Additional Common Charges.

Section 9.1.3 Payment and Application. Each Unit Owner shall pay to the Condominium Board, within ten (10) Days of written demand therefor, an amount equal to such Owner's Tax Share of Real Estate Taxes. At the exclusive option of the Condominium Board, such amount of the respective Owners' Tax Share may be payable in one lump sum or in monthly installments, each installment to be in a sum sufficient to pay the Real Estate Taxes one month prior to the date same

become due and payable without the imposition by the taxing authority of interest or penalties for late payment. All amounts collected by the Board from Unit Owners as their Tax Shares shall be segregated from other monies of the Condominium and used solely to pay the Real Estate Taxes with reference to which such Tax Shares were determined. In lieu of the foregoing, Sponsor, as Owner of Unsold Units, may (at its exclusive option) timely deliver to the Board (on or prior to the morning of the date due before the imposition by the taxing authority of interest or penalties for late payment) a check payable to the New York City Department of Finance (or other applicable taxing authority) in an amount equal to its Tax Share of Real Estate Taxes applicable to its Unsold Units, which check the Board shall remit to the taxing authority along with other payments by the Board of such Real Estate Taxes.

Section 9.1.4 Real Estate Tax Exemption or Abatement. If a Unit Owner receives a Real Estate Tax exemption or abatement for its Unit that is reflected in the tax bill for the Property, then from and after, and for so long as, such Real Estate Tax exemption or abatement is in effect and reflected in the bill for Real Estate Taxes payable by the Board, such Unit Owner shall be entitled to an adjustment in the Tax Share allocated and assessed to its Unit and payable by it on account of its Unit, based on the amount of such Real Estate Tax exemption or abatement; provided, however, that such Unit Owner gives the Board reasonably satisfactory documentation of such exemption or abatement. A Unit Owner receiving a Real Estate Tax exemption or abatement for its Unit shall have the sole right and responsibility to collect from the applicable taxing authority any refund or rebate of Real Estate Taxes to which such Owner is entitled as a result of such exemption or abatement, and such Unit Owner shall not be entitled to any adjustment in the Common Charges. The Board (without incurring any Costs or Expenses, unless paid by such Unit Owner) shall cooperate with such Unit Owner in obtaining such refund or rebate.

Section 9.1.5 Separate Assessment. Once the Units are separately assessed and each Owner is billed directly by the taxing authority for the Real Estate Taxes assessed against the Owner's Unit, each Unit Owner shall be required to pay the Real Estate Taxes directly to said taxing authority.

Section 9.1.6 Application for Remission, Refund, Exemption and/or Abatement. From and after the date a Unit is separately assessed and billed by the taxing authority for real estate taxes, the Owner of such Unit shall have the right, at said Owner's Sole Cost and Expense, to apply for a tax remission, tax refund, tax exemption and/or tax abatement with respect to such Owner's Unit without the consent of the Board and/or any other Unit Owners.

Section 9.1.7 Adjustment. The Condominium Board and each Unit Owner shall have the right, within a deadline of only sixty (60) Days after the Units are separately assessed and billed for Real Estate Taxes ("TIME BEING OF THE ESSENCE"), to adjust any overpayment or underpayment of Real Estate Taxes included in the Common Expenses and paid by such Owner as Additional Common Charges. Such adjustment shall be based on the Tax Share paid by said Unit Owner and the ratio that the initial actual separate assessed valuation of such Unit bears to the aggregate initial actual separate assessed valuations of all Units, in each case inclusive of any real

estate tax exemption or abatement, if applicable pursuant to Section 9.1.4, and the tax rate applicable to the Unit at closing of title.

The amount of the overpayment or underpayment (as applicable) is required to be paid within ten (10) Days after Notice is sent by the Board or a Unit Owner (including Sponsor), as applicable, detailing the calculation of the amount owed, provided such Notice is sent within such sixty (60)-Day deadline period. The Notice shall be accompanied by suitable proof of the initial separate assessed valuation of the Unit and the aggregate initial separate assessed valuations of all Units (such as a real estate tax bill(s) and/or a title report). The Payment and Collection provisions of Section 1.8 of the Declaration shall apply to all amounts owed the aggrieved Party hereunder. Any amounts payable to Condominium Board pursuant to this Section 9.1 shall constitute Additional Common Charges of the applicable Unit.

Section 9.2 Real Estate Tax Benefits.

Section 9.2.1 Right to Apply. Each Unit Owner, without the approval or consent of the Condominium Board and/or any other Unit Owners, shall have the right to apply for Real Estate Tax exemption and/or abatement with respect to such Owner's Unit or Units. The approval, consent and signatures of the other Unit Owners and/or the Board shall not be required in connection with any such application or other document necessary or convenient to the exercise by a Unit Owner of any of its rights or Powers under this Section 9.2, including any application or document required by the Department of Buildings and/or the Real Property Assessment Bureau of The City of New York. Nonetheless, at the request of such Unit Owner, the Board on behalf of all other Unit Owners shall promptly execute and return any such applications or other documents in accordance with Article 21 of the Declaration (and in particular, but not limited to, Section 21.3 thereof).

Section 9.2.2 Limited Power of Attorney. With the intention to constitute a durable limited power of attorney, each and every Unit Owner, by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether by gift, will, inheritance, transfer, merger, consolidation, liquidation, dissolution, distribution, bankruptcy, insolvency, reorganization or otherwise) shall thereupon automatically have, and conclusively be deemed to have, irrevocably and unconditionally authorized, designated Sponsor, as Owner of Unsold Units, as agent and attorney-in-fact, "coupled with an interest" and granted for valuable consideration, and with full power of substitution of such Unit Owner, to act on behalf and as agent, and for the account and at the expense, of such Unit Owner, and in the name, place and stead of such Unit Owner in any way such Unit Owner would do if personally present, to the full extent that such Unit Owner is permitted to act through an agent, with respect only to the execution, delivery and filing of any such application or document referred to in this Section 9.2 applicable to one or more of Sponsor's Unsold Units.

Section 9.3 Water Charges and Sewer Rent. All water and sewer services are obtained by the Condominium Board (on behalf of all Unit Owners) to provide water and sewer services to the Common Elements and the Residential Units for domestic hot and cold water, lavatories and sanitary sewerage. The water charges and sewer rents for said services shall be paid pursuant to one common

meter and shall be charged to all Unit Owners Pro Rata to their respective Common Interests. The Condominium Board shall read, Maintain, the Building's water meter and the Costs and Expenses thereof shall be charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 9.4 **Board Certificate**. In connection with any proposed conveyance, Lease or mortgage of a Unit, for so long as the Condominium Board is paying Real Estate Taxes and/or the water charges and sewer rents for all Units, the Condominium Board or an officer of the Board shall sign on behalf of the Board and deliver to a Unit Owner, within ten (10) Days after written request therefor is given by such Unit Owner, a certification as to the obligation and agreement of the Board to pay the Real Estate Taxes and/or water charges and sewer rents (as applicable) for the Property (including the Units). Such certification shall be addressed to such Unit Owner and/or the proposed purchaser (grantee), Tenant or mortgagee, and any title insurer, as directed by such Unit Owner, and shall be conclusive upon the Condominium Board and Unit Owners in favor of all Persons who rely thereupon in good faith.

Section 9.5 **Sales, Use or Occupancy Tax Exemptions**. The Condominium Board will adopt and follow such procedures as may be available, without additional cost to the Condominium Board (unless the applicable Unit Owner pays same), to enable any Unit Owner eligible for exemption from New York State and/or New York City sales, use and/or occupancy taxes to enjoy such exemption with respect to such Unit Owner's share of the Common Expenses. Any benefits obtained by the Condominium Board as a result thereof shall be passed through to and shall belong exclusively to the Unit Owner(s) entitled to such benefits and if more than one Unit Owner is entitled thereto, such benefits shall be apportioned among said Unit Owners as provided in the benefits or (if not provided) Pro Rata to the Common Expenses allocable to the Units of said Unit Owners entitled to such benefits.

Section 9.6 **Utilities**

Section 9.6.1 Electric Service to Units. Electric service (for lighting, cooling, heating, hot water and power for operating appliances and other Unit Facilities) to each Unit is separately metered and shall be paid by the Owner of such Unit directly to each applicable utility provider.

Section 9.6.2 Electric Service to the Common Elements. Electric service for lighting, cooling, heating and power service for the Common Elements are commonly metered. The costs of such electric services to the Common Elements shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 9.6.3 Utility Installations. All electric and water meters and related Facilities shall be read, Maintained, Repaired, Restored and Altered by the Condominium Board and the Costs and Expenses thereof shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests, except the Costs and Expenses to Maintain, Repair, Restore and Alter the electric meter and related Facilities serving exclusively one Unit shall be charged only to the Owner of such Unit.

ARTICLE 10

USES AND OCCUPANCY OF PROPERTY AND ADJACENT SIDEWALK

Section 10.1 **Declaration Governs**. The Property, including the Common Elements and the Unit Properties, and the Sidewalk, shall be used and occupied in accordance with the provisions of the Declaration, including in particular (but not limited to) Articles 10 and 11 thereof, which are hereby incorporated herein and are paramount and shall govern any provision of these By-Laws inconsistent therewith.

ARTICLE 11

TERMINATION OF THE CONDOMINIUM

Section 11.1 **Provisions of Declaration Apply and Govern**. The provisions of Article 15 of the Declaration are applicable to, and govern, the terms, restrictions, requirements, approvals and consents to be followed or obtained to terminate condominium ownership of the Property. Accordingly, condominium ownership of the Property shall continue until the occurrence of any of the "Condominium Termination Events", as defined and provided in Section 15.1 of the Declaration.

ARTICLE 12

CONDEMNATION OR EMINENT DOMAIN

Section 12.1 **Taking Generally**. If an Owner or the Board receives Notice that all or any part of the Property has been taken or is to be taken through the exercise of the power of eminent domain by a Governmental Authority (the "**Taking Authority**"), whether temporarily or permanently (herein called "**Taken**" or a "**Taking**") or becomes aware of any actual or threatened commencement of any proceedings for the condemnation of all or any part of the Property, such Owner (if it receives said Notice) shall so notify the Board (which shall notify the other Owners) or the Board (if it receives said Notice) shall so notify all Owners.

Section 12.2 **Award**. The award for damages or compensation payable as a result of the Taking is called the "**Award**" and amount of the Award after deducting the commercially reasonable fees and expenses incurred by the Condominium Board and all Owners in determining and collecting the Award is called "**Net Award**".

Section 12.3 **Substantial Taking and Insubstantial Taking**.

Section 12.3.1 Definitions. A "**Substantial Taking**" shall mean:

(a) such portion of the Property as, when Taken, would leave the balance of the Property that, due either to the area taken or the location of the part or parts Taken in relation to the part or parts not Taken, would not, under then existing economic conditions, zoning laws and the code, regulations and requirements of Governmental Authorities having jurisdiction, readily accommodate a new or

reconstructed building or buildings of a type and size generally most similar to the Building existing at the date of the Taking; or

(b) a Taking of seventy-five percent (75%) or more of the rentable square footage of the Building.

An "**Insubstantial Taking**" is any Taking that is not a Substantial Taking.

Section 12.3.2 Award in a Substantial Taking. In the event of a Substantial Taking, the Award of the Taking authority shall be distributed among all Owners Pro Rata to the respective then existing fair market values of the Units and their respective appurtenant Common Interests as determined by the Taking authority. Each Unit Owner shall have the right to pursue a separate claim against the Taking authority for its share of the Award, which may include an Award for all individual Unit Facilities and Custom Changes and Improvements that are appurtenant to the Owner's Unit as well as for relocation and moving expenses and similar allowances designed to facilitate relocation of a displaced business concern.

Section 12.3.3 Award in an Insubstantial Taking. In the event of an Insubstantial Taking in which an entire Unit is Taken permanently or temporarily with portions of the Common Elements, the owner of such Unit shall have the right to pursue a separate Claim against the Taking authority with respect to such Owner's Unit and its appurtenant Common Interest, including the Unit's Facilities and Custom Changes and Improvements, as well as the Owner's moving and relocation expenses. However, the Claim in which portions of the Common Elements are Taken and a Unit is not Taken but that is destroyed or damaged by the Taking, shall be pursued exclusively by the Board, except that the Owner of such destroyed or damaged Unit shall have the exclusive right to pursue any Claim against the Taking authority with respect to the destroyed or damaged Facilities and Custom Changes and Improvements of the such Owner's Unit and the Owner's relocation and moving expenses.

Section 12.3.4 Repair and Restoration. In the event of an Insubstantial Taking, the Condominium Board and the Unit Owners shall fully cooperate with each other and cause the portion of the Property not Taken to be Repaired and Restored with due diligence and in as timely a manner as commercially reasonable and economically practicable under the circumstances in accordance with all of the applicable provisions to Repair and Restore the destruction or damage to the Building following an Insubstantial Casualty set forth in Article 7 above. In accordance with and parallel to said Article 7, the following shall apply (all references to the Common Elements shall include the Association's Assets, if and any and if applicable):

(a) Supervision of Repair and Restoration: The Condominium Board shall supervise the Repair and Restoration and have all of the same rights, authority, responsibilities and immunities contained in Sections 7.1 and 7.2 above.

(b) Order of Priority if Repairs: The order of priority to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements set forth in Section 7.2.1 above shall apply to Repair and Restore the Common Elements and the Limited Common Elements destroyed or damaged by the Taking.

(c) Repair and Restoration of Units: The Affected Owner, at its Sole Cost and Expense, shall exclusively be responsible to Repair and Restore the destruction or damage to its Unit caused by the Taking in the same manner set forth in Section 7.3 above.

(d) Performance of Repairs: The Condominium Board shall act in its name and as agent on behalf of all Owners to cause to be performed all Work required to Repair and Restore the Common Elements and the Limited Common Elements destroyed or damaged in the Taking in accordance with this Section 12.3.4 and the applicable Work Performance Requirements set forth above.

(e) Construction Parties: The Condominium Board, in its discretion, shall select and engage the Construction Parties to Repair and Restore the Common Elements and the Limited Common Elements destroyed or damaged in the Taking.

(f) Plans and Specifications: Similar to Section 7.4.3 above, the architect chosen by the Board shall prepare the plans and specifications necessary to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements in accordance with the instructions of the Condominium Board. Such plans and specifications shall provide to Restore the destroyed or damaged remaining portions of the Common Elements and the Limited Common Elements (but not the Units or their respective Unit Facilities or other individual Unit items listed in Section 6.7 of the Declaration, which shall be the sole responsibility of each Owner, at its Sole Cost and Expense) to as close as commercially reasonable and economically practicable to the condition existing immediately prior to the Taking, except to the extent limited by any changes in Law or otherwise mutually agreed to by all Owners.

(g) Insurance. During the course of the Work, the Board shall maintain builder's risk insurance required under Article 6 above.

(h) Cooperation. The Condominium Board and all Owners shall reasonably cooperate with all Construction Parties engaged to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements, including allowing commercially prompt and continuous access to the Common Elements and the Limited Common Elements and to each Unit on an Emergency basis in order to perform and complete the Work expeditiously.

(i) Determination of Costs. The Condominium Board shall obtain a reasonably detailed and itemized statement setting forth:

(i-1) a reasonably detailed description of the destroyed or damaged Common Elements and Limited Common Elements in the Taking (but not the destroyed or damaged Units); and

(i-2) reasonably detailed and itemized separate estimates ("**Condemnation Estimates**") of the total costs to Repair and Restore the Areas and Facilities destroyed or damaged by the Taking that comprise the Common Elements and the Limited Common Elements.

(j) Adjusted Condemnation Estimates: During the progress of the Work, the Condemnation Estimates shall be adjusted from time to time by the Board as necessary to correspond to the actual total costs to Repair and Restore the destroyed or damaged Common Elements and the Limited Common Elements (the "**Adjusted Condemnation Estimates**").

(k) Condemnation Repair Ratios: The proportion of the share of the Condemnation Estimates, as same may be so adjusted by the Adjusted Condemnation Estimates, allocated to each the Affected Common Elements and the Affected Limited Common Elements is called the "**Condemnation Repair Ratios**").

(l) Force Majeure: Any increase in the Condemnation Estimates or Adjusted Condemnation Estimates (as applicable) caused by Force Majeure shall be allocated to the Affected Common Elements and the Affected Limited Common Elements in accordance with the Condemnation Repair Ratios.

(m) Acts or Omissions: Any increase in the Condemnation Estimates or Adjusted Condemnation Estimates (as applicable) caused by changes requested by an Owner or the Acts or Omissions of an Owner or its Tenant (or their respective Construction Parties) shall be borne by, and assessed by the Condominium Board as Additional Common Charges to, such Owner.

(n) Insufficient Net Award: In the event the Net Award, as allocated pursuant to the Condemnation Repair Ratios, shall be insufficient to pay the Costs and Expenses to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements (including the fees and expenses of the Construction Parties engaged by the Board in the Work (including all Decorations of their respective walls, floors and ceilings), and Legal Expenses, the Board shall assess the deficiency as Additional Common Charges as follows, unless caused by the Acts or Omissions of an Owner or for whom an Owner is accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof (in which case such deficiency shall be assessed as Additional Common Charges to the Offending Owner in accordance with Section 1.7.2 of the Declaration, which shall govern, control and apply):

(n-1) in the case of said deficiency to Repair and Restore the destroyed or damaged Common Elements: the deficit shall be assessed as a Common Expense and charged to all Owners, Pro Rata to their respective Common Interests; or

(n-2) in the case of said deficiency to Repair and Restore the destroyed or damaged Limited Common Elements: the deficit shall be assessed as Additional Common Charges to the Owner of the Unit to which such Limited Common Elements are appurtenant.

(o) Excess Award: Upon completion of Work to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements in accordance with this Section 12.3.3 and the payment in full of all Costs and Expenses thereof, any excess Net Award shall be distributed in the following order of priority:

(o-1) first, if an Owner failed to contribute to a deficiency in the Net Award allocable to the Common Elements or to such Owner's Limited Common Elements, the amount of such deficiency shall be paid to the other Owners to the extent such deficiency was advanced by each of them; and

(o-2) second, any remaining balance thereof shall be allocated in accordance with the Condemnation Repair Ratios and paid in the following order of priority:

(o-2.1) first, the amount so allocated to the Common Elements shall be paid to all Owners Pro Rata to their respective Common Interests;

(o-2.2) second, the amount allocated to the Limited Common Elements shall be paid to the applicable Owner of the Unit to which such Limited Common Elements are appurtenant, subject to claims by holders of liens on each such Owner's Unit in the order priority of such liens.

Section 12.4 Withdrawal from Condominium Ownership After an Insubstantial Taking. In the event of an Insubstantial Taking of one or more Units and not less than 80% in number and Common Interest (fractions shall be rounded down) of all Owners elect to withdraw the remaining portion of the Property from the Condominium Act in accordance, with Section 15.1(b) of the Declaration, then the portions of the Property not Taken shall be subject to an action for partition pursuant to Section 15.2 of the Declaration, which shall apply with respect to said remaining portion of the Property not Taken, it being understood and agreed that the respective fair market values of the Units and their respective appurtenant Common Interests shall be based on the fair market values of said remaining portion of the Units not Taken and their respective appurtenant Common Interests as adjusted pursuant to Section 12.6 below.

Section 12.5 Lien Priority. No payment of any Award for a Substantial Taking of the Property, and no payment of any excess Net Award, shall be made to a Unit Owner until there has first been paid out of such Unit Owner's share thereof, such amounts as may be necessary to pay off all unpaid liens on the Owner's Unit (including the liens of mortgages and the liens of the Condominium Board) in the order of priority of such liens. Notwithstanding the foregoing, however, in the event an assessment is levied pursuant to the terms of Section 12.3(n) above for any projected deficiency in the amount of the Net Award available to the complete the Repairs and Restorations, and after the payment of all Costs and Expenses incurred in connection with the Work to Repair and Restore the destroyed or damaged Common Elements and Limited Common Elements, any portion of the Net Award that remains unspent shall, to the extent such assessment contributed to such excess, be deemed to be, and shall constitute, an excessive assessment and shall be refunded to the Unit Owners in proportion to the amount assessed to them, free of any claim of any lienor, other than the lien of the Condominium Board, but subject to the rights of a Registered Mortgagee set forth in its Registered Mortgage.

Section 12.6 Adjustment of Common Interests.

Section 12.6.1 Changes in Common Interest. If a portion of the Property Taken is no longer subject to the Condominium Documents and the Property shall not be subject to a partition action as provided in Section 15.2 of the Declaration, then the Common Interest of each Unit affected by such Taking shall be eliminated (if an entire Unit is Taken) or proportionately reduced (if only a portion of a Unit is Taken) and the Common Interests appurtenant to all other Units shall be proportionately increased by the amount of change in Common Interest of the affected Unit so that the total Common Interests of all remaining Units shall equal 100%. All such proportionate changes in Common Interests shall be based on the same factors used originally to determine the Common Interests as set forth in Article 8 of the Declaration. Any dispute that may arise hereunder shall be resolved by arbitration pursuant to Article 18 below.

Section 12.6.2 Procedure. All changes in Common Interests shall be reflected in a duly recorded Amendment to the Declaration and (to the extent required by the Condominium Act) the Floor Plans, which shall be prepared by the Condominium Board. The Amendment to the Declaration shall be executed and acknowledged in recordable form by the Condominium Board and the remaining Unit Owners and holders of recorded liens on such Units in accordance with Article 13 below. In lieu of executing the Amendment, such Unit Owners and lienors may execute and acknowledge in recordable form a separate consent which shall be attached to the Amendment.

Section 12.6.3 Changes in Votes. Following said Taking of all or a portion of a Unit and the recording of such Amendment to the Declaration and (if applicable) said consent to such Amendment, the votes based on the Common Interest appurtenant to the affected Unit shall be based on its new Common Interest (in case of only a partial Taking) or shall wholly terminate (in the case of a Taking of the entire Unit) and the votes based on Common Interests appurtenant to all other Units whose Common Interests are changed pursuant to Section 12.6.1 above shall be based on their new Common Interests.

Section 12.7 Abatement in Common Charges. If due to destruction or damage caused by a Taking a Unit is rendered wholly or partially unusable for the purposes permitted in the Declaration, or the means of reasonable access thereto is prevented, the Common Charges otherwise payable by the Owner thereof shall proportionately abate until such Unit shall again be rendered useable for the purposes permitted in the Declaration and/or until the means of reasonable access thereto shall be Restored, as the case may be. The amount of abatement shall be determined by the Condominium Board, in its discretion, reasonably exercised. To the extent that the amount of such abatement is not covered by insurance maintained by the Board, such uninsured amount shall be included in the Common Expenses and charged to all other Unit Owners Pro Rata to their respective Common Interests. The foregoing notwithstanding, if the destruction or damage shall be caused by an Act or Omission of the Owner or for whom the Owner is accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof, the Common Charges otherwise payable by such Owner shall abate only to the extent of any proceeds of business interruption or similar insurance actually collected by the Condominium Board with respect to such affected Unit.

ARTICLE 13

AMENDMENTS TO DECLARATION AND BY-LAWS

Section 13.1 **Application to Declaration and By-Laws**. The provisions of this Article 13 shall apply equally to, and shall govern and control, the requirements and restrictions to be followed in order to record Amendments to the Declaration and these By-Laws, and (when applicable) to file Amendments to the Floor Plans, in the Register's Office.

Section 13.2 **Requirements**. Subject to compliance with Section 13.3:

(a) the Condominium Board, by resolution adopted by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present, shall have the exclusive Power to prepare, execute, acknowledge and record Amendments to the Declaration and these By-Laws in the Register's Office that shall affect only:

(a-1) the Common Elements;

(a-2) the Association's Assets;

(a-3) the Common Expenses;

(a-4) the Common Charges;

(a-5) the affairs and business of the Condominium Association; and

(a-6) all other Amendments to the Declaration or these By-Laws, other than, Amendments to the Declaration or these By-Laws permitted pursuant to the following clauses (b) through (e);

subject, however, to first obtaining in each case the vote at a duly convened meeting of Unit Owners at which a quorum is present, or the written consent, of not less than sixty-six and two-thirds percent (66-2/3rds%) or (in the case of only Section 15.1 of the Declaration and Section 7.1 of these By-Laws) eighty percent (80%) of all Unit Owners, in number and Common Interest (fractions shall be rounded up);

(b) Sponsor and each Unsold Unit Owner shall have the exclusive Power to prepare, execute, acknowledge and record Amendments to the Declaration and these By-Laws, and (in case of Unit Changes) to file Amendments to the Floor Plans, in the Register's Office that affect only its Unsold Unit or such Unit's appurtenant Limited Common Elements, or to implement a Unit Change to its Unsold Unit, in each case without obtaining the consent of the Condominium Board (which shall not be required) and without obtaining the vote or consent of other Unit Owners, all of whom shall conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Amendments by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit;

(c) Sponsor (while it owns an Unsold Unit) shall have the Power to prepare, execute, acknowledge and record in the Register's Office Amendments to the Declaration and these By-Laws:

(c-1) to reflect changes required by:

(c-1.1) an Institutional Lender holding, or having issued a written commitment for, a Unit mortgage;

(c-1.2) a Governmental Authority having jurisdiction over the Property or the Condominium Association; or

(c-1.3) a title insurer of a Unit; or

(c-2) to comply with the Condominium Act; or

(c-3) to correct any inconsistencies or ambiguities between, or scrivener's errors in, the Declaration, these By-Laws and/or the Floor Plans or if necessary to conform to the Condominium Act or to another applicable statute,

in each case without obtaining the consent of the Condominium Board (which shall not be required) and without obtaining the vote or consent of other Unit Owners, all of whom shall conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Amendments by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit;

(d) subject to obtaining the Discretionary Consent of Sponsor until the final Certificate of Occupancy is issued, the Condominium Board, by resolution adopted by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present, shall have the Power to prepare, execute, acknowledge and record in the Register's Office Amendments to the Declaration and these By-Laws:

(d-1) to reflect changes required by:

(d-1.1) an Institutional Lender holding, or having issued a written commitment for, a Unit mortgage;

(d-1.2) a Governmental Authority having jurisdiction over the Property or the Condominium Association;

(d-1.3) title insurer of a Unit; or

(d-1.4) to correct any inconsistencies, ambiguities or scrivener's errors in the Declaration, these By-Laws and/or the Floor Plans,

in each case without obtaining the vote or consent of Unit Owners (other than Sponsor as aforesaid, regardless of whether Sponsor then owns a Unit), all of whom shall conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Amendments by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit;

(e) the Owner of a Sold Unit being divided into two or more Sold Units or the Owner or Owners of the Sold Units being combined into one Sold Unit or being reconfigured, as applicable, shall have the Power to record Amendments to the Declaration and to file Amendments to the Floor Plans in the Register's Office to reflect such Unit Division to said Owner's Sold Unit or Unit

Combination or Unit Reconfiguration to said Owner's or Owners' Sold Units (as applicable) and the proper apportionment of the Common Interest of the Sold Unit being divided, or the combining of the Common Interests of the Sold Units being combined or the proper apportionment of the Common Interests of the Sold Units being reconfigured (as applicable), in each case subject, however, to obtaining the Discretionary Consent of Sponsor until the final Certificate of Occupancy is issued, and subject further, to obtaining the Reasonable Consent of the Condominium Board, but without obtaining the vote or consent of other Unit Owners, all of whom shall conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Amendments by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit.

Section 13.3 **Restrictions**. An Amendment to the Declaration, these By-Laws or the Floor Plans (as applicable) that:

(a) in any manner amends the appurtenant Common Interest or the size or configuration, or the permitted use or occupancy, of a Unit shall not be enforceable against the Owner of such Unit without the consent of such Owner, duly executed, acknowledged and recorded in the Register's Office with such Amendment;

(b) would with reasonable likelihood adversely affect the priority, validity or enforceability of the lien of a purchase money mortgage or a mortgage held by an Institutional Lender on a Unit or is of a materially adverse nature to mortgagees shall not be enforceable against the holder of such mortgage or Institutional Lenders holding Federally Financed Permitted First Mortgages comprising at least 51% of the Common Interests of Units subject to mortgages without the Discretionary Consent of such mortgage holder or said Institutional Lenders, duly executed, acknowledged and recorded in the Register's Office with such Amendment; provided, however, said Discretionary Consent of an Institutional Lender holding a Federally Financed Permitted First Mortgage shall conclusively be deemed to have been given when such Institutional Lender fails to submit a written response to a written proposal to said materially adverse Amendment within sixty (60) days after it receives proper Notice of the proposal sent by certified or registered mail, return receipt requested;

(c) in any manner:

(c-1) interferes with a potential or proposed sale, lease, mortgage or other Disposition of an Unsold Unit;

(c-2) amends Rights and Powers of Sponsor or an Unsold Unit Owner;

(c-3) imposes any new, different or discriminatory charge, fee or other imposition against or on Sponsor or an Unsold Unit Owner, or a Tenant of, an Unsold Unit;

(c-4) limits, restricts, abridges, infringes, prejudices, imposes conditions or new requirements or otherwise amends or changes the permitted use or occupancy of an Unsold Unit;

(c-5) adversely affects the value, marketing or other Disposition of an Unsold Unit; or

(c-6) adversely affects a Tenant of all or part of an Unsold Unit or causes Sponsor or other Owner of such Unsold Unit to incur or suffer any additional obligation or Cost or Expense with respect to any Tenant of all or part of such Party's Unsold Unit,

shall be null and void *ab initio*, and of no force or effect without the consent of Sponsor or the Owner of such Unsold Unit (as applicable), duly executed, acknowledged and recorded in the Register's Office with such Amendment; or

(d) in any manner:

(d-1) impedes, delays or otherwise adversely affects the issuance of a temporary or the final Certificate of Occupancy of the Building or the extension of a previously issued temporary Certificate of Occupancy of the Building; or

(d-2) limits, restricts, abridges, infringes, prejudices or otherwise affects the Excess Development Rights or the benefits derived therefrom,

shall be null and void *ab initio* without the consent of Sponsor, duly executed, acknowledged and recorded with such Amendment.

Section 13.4 **Acknowledgement and Recording**. Each Amendment to the Declaration or these By-Laws must be signed and acknowledged in accordance with the legal requirements for recording a Unit deed, and shall not be effective, binding or enforceable until recorded in the Register's Office.

Section 13.5 **Expenses and Signatories**. In the case of a permitted Amendment to the Declaration or these By Laws pursuant to Section 13.2 by:

(a) the Condominium Board: the Amendment shall be prepared, signed, acknowledged and recorded in the Register's Office by the Condominium Board as part of the Common Expenses assessed to all Owners Pro Rata to their respective Common Interests, and shall be duly signed and acknowledged by either the President or the Vice-President, and by either the Secretary or an Assistant Secretary of the Condominium Association; together with (if applicable) a certification by either the Secretary or an Assistant Secretary, duly signed, acknowledged and recorded together with said Amendment, certifying that the required percentage of Unit Owners (in number and/or Common Interest; if and as applicable) have, or are conclusively be deemed to have automatically, unconditionally and irrevocably to have, voted for, or consented to, such Amendment;

(b) Sponsor or an Unsold Unit Owner: the Amendment shall be prepared, signed, acknowledged and recorded in the Register's Office by Sponsor or said Unsold Unit Owner (as applicable), at such Party's Sole Cost and Expense and (if requested by Sponsor or said Unsold Unit Owner, as applicable) shall include a certification by either the Secretary or an Assistant Secretary of the Condominium Association certifying that the vote or consent to such Amendment by the Condominium Board is not required and the required percentage of Unit Owners (in number and/or

Common Interest; if and as applicable) are conclusively be deemed to have automatically, unconditionally and irrevocably voted for, or consented to, such Amendment, all in accordance with this Article 13;

(c) a Sold Unit Owner: the Amendment shall be prepared and duly signed, acknowledged and recorded in the Register's Office by:

(c-1) a Sold Unit Owner, at the such Owner's Sole Costs and Expense; or (at the exclusive option of the Condominium Board)

(c-2) the Condominium Board for the account and at the Sole Cost and Expense of such Sold Unit Owner.

If the applicable Unsold Unit Owner or Sold Unit Owner recording the Amendment is a corporation, partnership, limited liability partnership or company, trust, estate or other Entity, an officer, partner, member, trustee, executor, administrator or other appropriate Person authorized by, or having authority to act in behalf of, such Owner shall sign the Amendment.

Section 13.6 Floor Plans. The Party authorized to sign, acknowledge and record an Amendment to the Declaration in Section 13.5 is also authorized to cause to be properly certified and approved by the Tax Map Unit and filed in the New York City Land Records Division (and/or other Governmental Authority having jurisdiction) and in said Register's Office an appropriate Amendment to the Floor Plans whenever required in connection with such Amendment to the Declaration (such as in the case of an Amendment to the Declaration to reflect a Unit Division or a Unit Combination or a Unit Reconfiguration).

Section 13.7 Limited Power of Attorney. The Sponsor (as the initial Owner of all Units) does hereby irrevocably grant, and each and every Owner of a Unit at the time in question (by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit, whether by gift, descent, inheritance, distribution, transfer, merger, consolidation, liquidation, dissolution, bankruptcy, insolvency, reorganization or otherwise) shall automatically and conclusively be deemed to have irrevocably granted, a limited power of attorney to each of the respective Persons listed in Section 13.2, separately, as its agent and attorney-in-fact, "coupled with an interest" and for valuable consideration, to act on its behalf and in its name, place and stead, with respect only to the execution, acknowledgment and recording and/or filing in the Register's Office of said Amendments to the Declaration and these By-Laws, and (when applicable) Amendments to the Floor Plans, in accordance with this Article 13. This limited power of attorney shall be durable and shall not be revoked in the event of the disability or incompetence of Sponsor or a succeeding Owner of a Unit, as applicable.

Section 13.8 Filing with Condominium Association. The Party recording an Amendment to the Declaration, these By-Laws and (if applicable) the Floor Plans shall promptly thereafter file a conformed copy thereof with the Secretary or an Assistant Secretary of the Condominium Association or the Condominium's Managing Agent (if any), which shall be made available by the Condominium Board at the Property or the office of the Managing Agent (if any) for inspection (without charge) and copying (at a reasonable charge) by each of the following: (a) a Unit Owner; (b) a Unit mortgage

lender; (c) a Registered Tenant of a Unit who is so expressly authorized in writing by the Owner of such Unit; and (d) a prospective purchaser, mortgage lender or Tenant of a Unit who is expressly authorized in writing by the Owner of such Unit.

Section 13.9 **Filing with Secretary of State**. With reasonable promptness following the recording of an Amendment to the Declaration or these By-Laws, the Condominium Board, for the account and at the expense of the Party recording such Amendment, shall file a copy of the recorded Amendment with the Department of State of the State of New York, if and as required by the Condominium Act (including Section 339-s thereof) and the rules, regulations or requirements of the said Department of State; except if Sponsor or an Unsold Unit Owner is recording the Amendment, then Sponsor or such Unsold Unit Owner (as applicable), at its Sole Cost and Expense, shall file the Amendment with the Department of State. If the Board is promulgating the Amendment, then such Cost and Expense shall be included in the Common Expenses and charged to each Unit Owner Pro Rata to its Common Interest.

ARTICLE 14

GENERAL OPERATING MATTERS

Section 14.1 **Compliance with Laws**.

Section 14.1.1 Duty of Responsible Party. The Owner, as the Responsible Party to Maintain, Repair and Restore the Owner's Unit Property under Section 5.1, and the Condominium Board, as the Responsible Party to Maintain, Repair and Restore the Common Elements, the Association's Assets and Sidewalk under Sections 5.2, shall have the Duty to comply with all Laws applicable thereto, including the Duty to remedy or correct all conditions that are the subject of a Governmental Violation. All Work to comply with Laws shall be performed in accordance with the applicable Work Requirements and with reasonable diligence and continuity to completion or (in the case of an Emergency or a Governmental Violation that has or, with reasonable likelihood, would demonstrably have a material adverse effect on any other Party) commercially prompt diligence and continuity to completion, and to thereafter endeavor in good faith to cause same to be removed of record.

Section 14.1.2 Costs and Expenses. The Costs and Expenses of such compliance with Laws by: (a) a Unit Owner shall be borne entirely by such Owner; or (b) the Condominium Board shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 14.1.3 Default. If the Responsible Party defaults in its Duty under Section 14.1, Sponsor (until the issuance of the Final Certificate of Occupancy of the Building) shall the right (but not the obligation), paramount and superior to the right of the Board and Unit Owners, to commence appropriate suit to enjoin the continuance of the condition that is the subject of the Governmental Violation; provided, however, if the Sponsor fails to act in a commercially reasonable period, and subject to Section 14.1.4:

(a) the Condominium Board (if the Owner or a Tenant of a Unit is the offending Party);

or

(b) an aggrieved Owner (if the Condominium Board is the offending Party),

shall have the right (but not the obligation) to commence appropriate suit to enjoin the continuance of said Violation of Law, including the continuance of a condition that is the subject of a Governmental Violation.

Section 14.1.4 Exception. In the case of:

(a) an Emergency, the Condominium Board shall have the right to remedy or correct the condition causing the Emergency if Sponsor fails to do so with commercially prompt diligence;

or

(b) a Governmental Violation that has or, with reasonable likelihood, would demonstrably have a material adverse effect on any other Party, such aggrieved Party shall have the right to remedy or correct the condition causing the Emergency if Sponsor or the Condominium Board (as applicable) fails to do so with commercially prompt diligence.

Section 14.1.5 Contest by Sponsor. Until issuance of the Final Certificate of Occupancy of the Building, Sponsor shall have the exclusive right, on behalf of all Unit Owners, paramount and superior to the right of the Condominium Board and Unit Owners, to contest any requirement of applicable Laws (including correction of Governmental Violations) as to which a Unit Owner or the Condominium Board has the Duty to comply with under Section 14.1.1. During such contest, Sponsor shall have the right to defer compliance with such requirements of applicable Laws, provided, however:

(a) Sponsor prosecutes such contest in good faith with reasonable diligence and continuity by appropriate proceedings and shall have furnished such security, if any, as may be required in the proceedings, unless compliance with such requirement shall have been excused or exempted by a valid nonconforming use permit, waiver, extension or forbearance exempting Sponsor from such requirement; and

(b) such contest or noncompliance does not involve any threat or danger of:

(b-1) foreclosure, forfeiture or loss of any part of the Property; or

(b-2) civil or criminal Liability, fine or penalty being imposed on the Condominium Board or any officer or member of the Board, any Unit Owner or any mortgagee or Tenant of a Unit; or

(b-3) the creation of any lien, encumbrance or other charge against any part of the Property; or

(b-4) impairment of any insurance under Article 6.

Section 14.1.6 Contest by Board. After issuance of the Final Certificate of Occupancy of the Building or if Sponsor sooner waives in writing its paramount and superior right under

Section 14.1.5, the Condominium Board shall have the right, on behalf of all Unit Owners, to contest any requirement of applicable Laws (including correction of Governmental Violations) as to which the Board has the Duty to comply with under Section 14.1.1. During such contest, the Condominium Board shall have the right to defer compliance with such requirements of applicable Laws, provided and on condition:

(a) the Board diligently and in good faith complies with the same requirements applicable to Sponsor under Section 14.1.5(a); and

(b) such contest or noncompliance does not involve any threat or danger to any of the matters set forth in Section 14.1.5(b).

Section 14.1.7 Contest by Unsold Unit Owner. After issuance of the Final Certificate of Occupancy of the Building or if Sponsor sooner waives in writing its paramount and superior right under Section 14.1.5, an Owner of an Unsold Unit shall have the right to contest any requirement of applicable Laws (including correction of Governmental Violations) as to which such Unsold Unit Owner has the Duty to comply with under Section 14.1.1. During such contest, the failure of such Unsold Unit Owner to comply with such requirement shall not constitute a Violation hereunder or the Declaration, provided and on condition:

(a) said Unsold Unit Owner diligently and in good faith complies with the same requirements applicable to Sponsor under Section 14.1.5(a); and

(b) such contest or noncompliance does not involve any threat or danger to any of the matters set forth in Section 14.1.5(b).

Section 14.2 No Contest by Sold Unit Owner. A Sold Unit Owner shall have not have the right to contest any requirement of applicable Laws (including correction of Governmental Violations) as to which such Sold Unit Owner has the Duty to comply with under Section 14.1.1 unless such Sold Unit Owner obtains the Discretionary Consents of both the Condominium Board and (until issuance of the Final Certificate of Occupancy of the Building) Sponsor.

Section 14.3 Building Employees, Agents and Contractors.

Section 14.3.1 Authority of Board. Subject to Sponsor's veto control during only the Sponsor Veto Control Period as provided in Sections 2.5.8 and 8.6 above, the Condominium Board shall have the authority (without the approval or consent of Unit Owners): (a) to hire or engage such employees, agents and Construction Parties as may be necessary or appropriate, in the sole Business Judgment of the Board, to perform its obligations or in conjunction with the Board exercising and implementing its rights and remedies set forth in the Declaration or these By-Laws; and (b) to make all decisions concerning the employment, compensation and dismissal of employees, agents and Construction Parties to provide Building Services to the Owners and Tenants of Units and to perform Work on or to the Common Elements, the Association's Assets or the Sidewalk.

Section 14.3.2 Building Staff. At or prior to the First Unit Closing under the Plan, the Condominium Board shall hire the number and type of employees in accordance with the First Year's

Budget, and thereafter shall always maintain a sufficient number and type of Building staff (either as the direct employer and/or under a service contract), as and to the extent provided in the First Year's Budget, in order to provide to all Owners and Tenants of Units all Building Services required by Laws, the Plan, the Declaration or these By-Laws.

Section 14.3.3 Common Expense. The wages and related benefits and payroll costs of the Building employees shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 14.3.4 Agents and Construction Parties. For the First Budget Year, starting with the First Unit Closing under the Plan, the fees and reimbursable disbursements of the Managing Agent shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests in accordance with the First Year's Budget. The fees and amounts payable to other agents and to Construction Parties, if any, engaged by the Condominium Board in connection with the Common Elements, the Association's Assets or the Sidewalk shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 14.4 Refuse Disposal System. The compactor (including its components) and containers comprise the Building's "**Refuse Disposal System**", which shall be used for disposal of customary household garbage, trash and refuse (collectively, "**Refuse**") generated by the Owners and Tenants of Units; subject, however, to compliance with: (a) applicable Laws in effect from time to time requiring separation, or disposal or recycling, of paper, bottles, cans, plastics or other Refuse (collectively, "**Environmental Laws**"); and (b) the Rules and Regulations, and Amendments thereto, in effect or adopted or amended from time to time by the Condominium Board. The Condominium Board shall arrange for the disposal of Refuse generated within the Units. All Cost and Expenses to Maintain, Repair, Restore, Alter and otherwise Operate the Building's Refuse Disposal System and the room housing the compactor shall be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 14.5 Rules and Regulations. Certain requirements as to the management, function and administration of the Property and the Condominium Association are set forth in the "**Rules and Regulations**". The Condominium Board shall have the Power from time to time to amend the Rules and Regulations without recording an Amendment to the Declaration or these By-Laws, including details of the Operation and use of the Common Elements and Limited Common Elements, and certain activities or prohibitions against offensive conduct of Owners or Tenants of Units. The Rules and Regulations shall apply to Owners and Tenants of Units and may be amended by the Board from time to time without recording an Amendment to the Declaration or these By-Laws; provided, however, no change to the Rules and Regulations shall by binding upon, or enforceable against Sponsor or an Owner or Tenant of an Unsold Unit.

Section 14.5.1 Effective Date. Any changes to the Rules and Regulations shall become effective against, and binding upon, Owners and Tenants of Units on the tenth (10th) Day (or such later date as may be specified by the Board) after a copy of the complete text thereof shall be given

(excluding the Day given) to each and every Owner then of record at such Owner's address for Notices or (if none is specified) at the Building and delivered or sent in the same manner as provided in Article 17 for the giving of Notices. The Board shall not be responsible to give a Tenant a copy the changes to the Rules and Regulations, which shall be the Duty of the Owner of the Unit occupied by the Tenant.

Section 14.5.2 Violations. A Violation or failure to comply with the Rules and Regulations, as duly amended from time to time:

(a) shall constitute a Violation of these By-Laws; and

(b) shall entitle the Condominium Board to all of the same remedies against the offending Owner as are contained in Article 16.

Section 14.6 Interruption, Reduction or Failure in Building Services.

Section 14.6.1 Right to Interrupt or Reduce. The following Parties shall have the right to temporarily interrupt or reduce Building Services to one or more Units for the following purposes, on the terms set forth in Section 14.6.2:

(a) in the case of the Board, in order to deal with accidents, strikes, or to perform Work undertaken in, or to exercise and implement its Rights and Powers in accordance with, the Declaration or these By-Laws; or

(b) in the case of Sponsor, in order to perform Work undertaken in, or to exercise and implement its Rights and Powers in accordance with, the Declaration, these By-Laws or the Plan, including in particular (but not limited to) the construction, equipping and outfitting of the Building and the Units in accordance with Sponsor's Plans and Specifications and to fulfill Sponsor's Plan and Sale Obligations or Sponsor's Tenant Obligations (as applicable);

(c) in the case of an Unsold Unit Owner, in order to perform Work undertaken in, or to exercise and implement its Rights and Powers in accordance with, the Declaration, these By-Laws or the Plan, including the right to perform Unit Changes to such Owner's Unsold Unit in accordance with the terms contained in Section 12.2 of the Declaration, or to fulfill obligations to a Purchaser or Tenant of such Owner's Unsold Unit;

(d) in the case of a Sold Unit Owner, in order to perform Work undertaken in, or to exercise and implement its Rights and Powers in accordance with, the Declaration or these By-Laws, including the right to perform Unit Changes to such Owner's Sold Unit in accordance with the terms contained in Section 12.2 of the Declaration.

Section 14.6.2 Terms. The Party temporarily interrupting or reducing Building Services to one or more Unit Properties shall comply with the following terms:

(a) all Work to be undertaken by or on behalf of such Party shall comply with all applicable Work Requirements;

(b) if said Party is a Sold Unit Owner, such Party shall comply with terms of Section 5.7.2 (q) above;

(c) except in the case of an Emergency, within two Business Days after the Board is given Notice of the proposed temporary interruption or reduction in Building Services, the Board shall give all affected Owners and Registered Tenants Notice thereof, including the date, time and estimated duration;

(d) except in the case of an Emergency, the all affected Tenants and Registered Tenants shall be given not less than five Business Days advance Notice of the proposed temporary interruption or reduction in Building Services, which shall occur during only Business Days and Business Hours;

(e) in the event of an Emergency, the Party causing such temporary interruption or reduction in Building Services shall, to the extent commercially reasonable and economically practicable, endeavor in good faith to minimize such interruption or reduction in Building Services.

Section 14.6.3 No Liability. The Condominium Board and its Related Parties shall not be responsible or accountable to any Owner or Tenant of a Unit, and Sponsor and its Related Parties shall not be responsible or accountable to the Condominium Board or any Owner or Tenant of a Unit, for any Claims, Litigations, Liabilities or Losses incurred or suffered by any of them that are attributable to an interruption or reduction of Building Services, or a failure to furnish Building Services (including heat, hot and cold water, electricity, air conditioning, elevator and sewer service) caused by:

(a) a public utility or Governmental Authority supplying same;

(b) Work performed by or on behalf of the applicable Party pursuant to Section 14.6.1.

Section 14.6.4 No Abatement. Any permitted interruption or reduction or failure of Building Services pursuant to this Section 14.6 shall not entitle an Owner to any set-off or credit against, or abatement or diminution of, Condominium Charges.

Section 14.7 Records and Examination.

Section 14.7.1 Records Kept by Treasurer. The Treasurer of the Condominium, or the Managing Agent (if any) under the supervision of such Treasurer, shall keep full, detailed and accurate records and books of account with respect to the financial affairs and business of the Condominium Association and the Condominium Board, which records and books of account shall include: (a) a chronological listing of all receipts of, and expenditures by, the Condominium Board and the Managing Agent (if any), together with cancelled checks, check register, statements, bills and invoices; and (b) a separate listing for each Unit, setting forth, among other things, the amount of each assessment of Common Charges, real estate taxes, if applicable, Special Assessments levied against such Unit, the date when due, the amounts paid thereon and the balance, if any, remaining

unpaid, a copy of the lease with a Registered Tenant of such Unit (if any) and a copy of any Registered Mortgage encumbering such Unit (if any).

Section 14.7.2 Records Kept by Secretary. The Secretary of the Condominium, or the Managing Agent (if any) under the supervision of the Secretary, shall keep detailed records of the actions of the Condominium Board, committees of the Board, and relevant actions of Unit Owners at regular or special meetings of Unit Owners. Such records include: (a) minutes of meetings of the Condominium Board and any resolutions adopted thereat; (b) minutes of meetings of committees of the Board; and (c) minutes of meetings of Unit Owners and the outcome of any matters voted upon thereat.

Section 14.7.3 Examination. Each Unit Owner and a Permitted Mortgagee of the Owner's Unit, and their respective representatives, shall be permitted to examine (without charge) and to copy (at a reasonable charge):

(a) the minutes of meetings of Unit Owners;

(b) a list of Unit Owners and their addresses for Notices; and

(c) records or receipts and expenditures arising from Operation of the Common Elements and the Condominium Association, together with vouchers authorizing payments thereof; and

(d) such other information, documents and records as may be in the possession or under the control of the Condominium Board that the Board may determine, in its sole Business Judgment, to make available to Unit Owners and their representatives for inspection (without charge) and copying (at reasonable charge), other than the personal financial files of a Unit Owner, a prospective purchaser or a prospective Tenant of a Unit, or Building employee files.

All such examinations shall be conducted at the office of Managing Agent or other location reasonably convenient to the Property specified by the Board and in a manner that shall not unreasonably interfere with the Operation of the Condominium Association, the Condominium Board or the Managing Agent (if any). The examinations shall be permitted during Business Hours, on Business Days and upon reasonable advance Notice, but not more frequently than once a month (such examination shall not extend over more than three Business Days in any calendar month) as to each Unit Owner, the Owner's Permitted Mortgagees, and their respective representatives. The Board shall retain all books and records for at least three years.

Section 14.8 Tax Returns. The Condominium Board shall cause to be prepared and filed on a timely basis and before the imposition of interest, charges or penalties for late filing or late payment, all requisite federal, state and city income tax, franchise tax, unincorporated business tax and any other tax returns relating to the Condominium Association or the Common Charges or the Operation of the Common Elements or Association's Assets, or conducting the affairs and business of the Condominium Association. Any income or other taxes resulting from the Operation of the Common Elements or the Association's Assets, or conducting the affairs and business of the Condominium Association, shall be included in the Common Expenses and charged to all Unit

Owners Pro Rata to their respective Common Interests. The Costs and Expenses to prepare and file such tax returns and to attend or defend any audit or Litigation in connection therewith, shall similarly be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 14.9 **Annual Financial Statements**. Within four (4) months after the end of each fiscal year of the Condominium Association, the Condominium Board shall give to each Unit Owner and, if so requested by a Unit Owner, to a Permitted Mortgagee of such Owner's Unit, an annual report of assets and liabilities and the Operation of the Condominium Association, the Common Elements, the Sidewalk, the Association's Assets and the Property generally, including the receipts and expenditures of the Condominium Board with appropriate line items and notes detailing Common Expenses for such fiscal year. Each such annual report shall be prepared and certified by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied or (at the Board's exclusive option) AICPA standards consistently applied. The Costs and Expenses incurred by the Board in connection with the foregoing shall be included in the Common Expenses charged to all Unit Owners Pro Rata to their respective Common Interests.

Section 14.10 **Tenants Occupants of Units Entitled To Receive Building Services**.

Section 14.10.1 Provision of Service. The Condominium Board shall provide to each Tenant of a Unit, and such Tenant shall receive, without discrimination, all of the same Building Services and amenities as are required to be provided to the Owner of such Unit pursuant to the Declaration, these By-Laws or applicable Laws. Apart from regular Common Charges and Special Assessments levied on all Unit Owners, or Administrative Expenses for late payment of Common Charges or other Violations of the Condominium Documents pursuant to the Condominium Documents, no separate fee, charge, imposition, Cost or Expense for such Building Services and amenities shall be assessed by the Condominium Board against said Tenant, or the Owner of said Unit. The aforesaid Building Services and amenities include all Building Facilities and amenities comprising the Common Elements and the Building Services to be provided by the Building's staff.

Section 14.10.2 Removal of Violations. In accordance with Section 14.1, the Condominium Board, in good faith, with commercially reasonable diligence and continuity to completion, shall remove any Governmental Violation noted or issued with respect to the Common Elements, the Association's Assets or the Sidewalk. Any condition in or on the Common Elements, the Association's Assets or the Sidewalk constituting a Governmental Violation (even though not noted or issued) that the Condominium Board is required to correct pursuant to Laws or the Declaration or these By-Laws shall be corrected by the Board if failure to do so is grounds for a Tenant of a Unit to reduce or withhold the rent or would constitute a Violation of the Tenant's Lease. All Costs and Expenses paid or incurred by the Condominium Board in connection with the foregoing shall be charged to all Unit Owners Pro Rata to their respective Common Interests.

Each Owner shall be fully and solely responsible, at its Sole Cost and Expense, to remove, in good faith, with commercially reasonable diligence and continuity to completion, any Governmental

Violation noted or issued with respect to such Owner's Unit Property and to correct in good faith, with commercially reasonable diligence and continuity to completion, any condition constituting a Governmental Violation, even though not noted or issued.

Section 14.11 Real Property Law Section 339-kk. Pursuant to RPL §339-kk and the Plan, a Unit Owner who does not occupy his or her Unit ("**Non-Occupying Owner**") and the Condominium Board shall comply with the following:

(a) if a Non-Occupying Owner rents any Unit to a Tenant and then fails to make payments due for Common Charges, Special Assessments or other Additional Common Charges (including late fees) for such Unit within sixty (60) Days of the expiration of any grace period after they are due, upon Notice thereof to such Tenant, all rental payments from the Tenant shall be immediately and directly payable to the Condominium Board on behalf of the Condominium Association at the address listed on the Notice;

(b) where a majority of the Condominium Board 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 Board on behalf of the Condominium Association;

(c) at such time as payments for Common Charges, Special Assessments and other Additional Common Charges (including late fees) from the Non-Occupying Owner are once again current, Notice of such fact shall be given within three Business Days thereafter to said rental Tenant and Non-Occupying Owner, and thereafter, all rental payments shall be made payable to the Non-Occupying Owner or such Owner's designated agent;

(d) a Non-Occupying Owner who disputes the Condominium Board's claim to rental payments pursuant to said RPL §339-kk shall be entitled to present facts supporting such Owner's position at the next scheduled meeting of the Condominium Board, which must be held within thirty (30) Days of the date that such Board receives Notice that such Owner seeks to dispute such claim;

(e) nothing in said RPL §339-kk shall limit any rights of Unit Owners or of the Condominium Board existing under any other Laws or agreement; and

(f) payment by a rental Tenant to the Condominium Association made in connection with said RPL §339-kk 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 nonpayment proceeding commenced by such Non-Occupying Owner against such Tenant for such rent.

The Non-Occupying Owner shall continue to have the obligations to the Tenant under the Lease and applicable Laws.

Section 14.12 Smoking and E-Smoking Ban.

Section 14.12.1 Definitions. The following words shall have the meanings indicated:

"**E-Smoking**" means electronic cigarettes or e-smoking (i.e., a battery-operated device that heats a liquid, gel, herb or other substance and produces vapor for people to inhale).

"**Smoke**" means the byproduct of Smoking.

"**Smoking**" means exhaling, burning or carrying any lighted or heated cigar, cigarette, little cigar, pipe, water pipe or hookah, herbal cigarette, non-tobacco smoking product (e.g., marijuana or non-tobacco shisha), or any similar form of lighted object or device designed for people.

"**Permitted Users**" mean a Unit Occupant; a Unit User; an agent, employee or contractor engaged by the Owner or a Tenant of Owner's Unit, or any subcontractor, or worker of a contractor or subcontractor, Working in Owner's Unit; an agent, employee or contractor engaged by the Condominium Board, or any subcontractor, or worker of a contractor or subcontractor, Working in the Common Areas of the Building.

"**Vapors**" mean the byproduct of E-Smoking.

Section 14.12.2 Smoking and E-Smoking Ban. Smoking, E-Smoking, Smoke and Vapors are prohibited in every indoor and outdoor Common Area of the Building and on a Limited Common Elements (hereafter collectively, the "**Smoking and E-Smoking Ban**"). More specifically, Smoking, E-Smoking, Smoke and Vapors are prohibited in all indoor and outdoor Common Areas of the Building and the vaults, including hallways, lobby, Egress Stairs and landings, elevator and elevator landings, mail room, amenity areas, storage areas, refuse closets, all roof setbacks and roofs of the Building, all other Common Areas located in the interior or exterior of the Building (whether below, at or above grade level), and on all Balconies, Terraces and Yards. Ashtrays are prohibited in all Common Areas of the Building.

This Smoking and E-Smoking Ban shall apply to all Owners, their Permitted Users, and any other Person in the Building or elsewhere on the Property. It is the responsibility of each Unit Owner to ensure that such Owner's Permitted Users are informed of this Smoking Policy and comply to its terms.

The Smoking E-Smoking Ban does not apply to Smoking, E-Smoking, Smoke and Vapors in or on a Unit; provided, however, any Smoke or Vapors that emanates beyond the Unit must be abated immediately by the Unit's Owner at his or her own Sole Cost and Expense. Such abatement may include the sealing of openings, the purchase and installation of "smoke-enders" to be installed in each room of the Unit, and the purchase and installation of air purifiers. The effectiveness of such abatement must be satisfactory to the Condominium Board. The failure by an Unit Owner to effectively abate any such Smoke or Vapors to permeate into the Common Areas or other Units following Notice by the Condominium Board shall be a Violation of this Smoking and E-Smoking ban by such Unit Owner.

Owner shall not cause, nor permit or suffer (whether knowingly or unknowingly), and shall be responsible and accountable for, a Violation of this Smoking and E-Smoking Ban attributable to a Permitted User of Owner's Unit.

The Condominium Board shall not permit or suffer (whether knowingly or unknowingly), and shall be responsible and accountable for, a Violation of this Smoking and E-Smoking Ban attributable to a Permitted User of the Common Areas.

The Condominium Board shall post a copy of this Smoking and E-Smoking Ban in a prominent location in the Building or deliver this Smoking and E-Smoking Ban to all Unit Owners at least annually.

This Smoking and E-Smoking Ban shall be disclosed by an Owner to a Tenant of Owner's Unit and shall be incorporated in each Lease or agreement to sell the Owner's Unit.

Section 14.12.3 Remedies. A Violation of this Smoking and E-Smoking Ban by an Owner or a Permitted User of Owner's Unit shall entitle the Board, in addition to all rights and remedies available at law or in equity, to:

(a) all of the remedies set forth in Article 16;

(b) (in the case of a Violation by a Tenant of Owner's Unit or a Permitted User of a Tenant), implement all remedies available under the Tenant's Lease by reason of such Violation in the name and on behalf and at the expense of the Owner of the Unit leased to such Tenant, including to terminate the Lease and evict Tenant by summary proceedings or otherwise; and

(c) levy upon the Owner, as Administrative Expenses:

(c-1) a fine equal to the maximum lawful daily rate, but not to exceed $75.00 a day for each day such Violation occurs one or more times;

(c-2) a charge of $250 for each Notice of said Violation of this Smoking and E-Smoking Ban is given by counsel engaged by Board in order to reimburse the Board for the Legal Expenses incurred, which charge shall constitute liquidated or agreed upon damages incurred by the Board in connection with such Notice; and

(c-3) an amount equal to all Losses paid or incurred by the Board to remedy, and/or that are attributable to, such Violation as evidenced by invoices, statements or other documentary proof thereof.

The Payment and Collection provisions of Section 1.8 of the Declaration shall apply to all amounts owed the Board hereunder.

A Violation of this Smoking and E-Smoking Ban by the Condominium Board or a Permitted User of the Common Areas shall entitle an Owner to all of the remedies set forth in Article 16. All amounts payable by the Board due to such Violation shall be included in the Common Expenses and charged to all Owners Pro Rata to their respective Common Interests.

Section 14.12.4 Indemnity. Each Owner shall Indemnify all other Owners, the Board and Sponsor, on the terms set forth in Article 27 of the Declaration, from and against any and all Claims, Litigations, Liabilities and Losses attributable to a Violation of this Smoking and E-Smoking Ban by such Owner or a Permitted User of said Owner's Unit.

ARTICLE 15

UNIT CONVEYANCES, SALES, LEASES AND MORTGAGES

Section 15.1 General.

Section 15.1.1 Sale or Lease. The Owner of a Sold Unit must comply with the terms of Section 15.2 in order to:

(a) sell, transfer or convey the Owner's Sold Unit or (if such Owner is an Entity) to sell, transfer or assign all or part of a direct or indirect Controlling Interest in such Entity-Owner of a Sold Unit (collectively, a "**Sale**"); or

(b) to Lease such Owner's Sold Unit (a, "**Lease**").

The provisions of Section 15.2 do not apply to a Sale or Lease by Sponsor or other Owner of an Unsold Unit and certain transaction exempted under Section 15.5.

Any purported Sale or Lease consummated in Violation of Section 15.2 shall be voidable at the sole and absolute discretion of the Condominium Board for thirty (30) Days after the Board receives actual Notice thereof.

Section 15.1.2 Ejectment or Eviction. With the intention to constitute a limited, durable power of attorney, each Sold Unit Owner, by accepting or recording a deed to such Owner's Sold Unit or otherwise succeeding to title to a Sold Unit (whether by gift, will, inheritance, transfer, merger, consolidation, liquidation, dissolution, distribution, bankruptcy, insolvency, reorganization or otherwise), shall thereupon automatically have, and conclusively be deemed to have, irrevocably and unconditionally authorized and designated the individuals who shall from time to time constitute the Condominium Board, collectively in their capacity as Board Members, as agent and attorney-in-fact of such Sold Unit Owner, "coupled with an interest" and for valuable consideration, and with full power of substitution, to act on behalf and as agent, and for the account and at the expense, of such Sold Unit Owner and in the name, place and stead of such Sold Unit Owner in any way in which such Owner could do if personally present, to the full extent such Owner is permitted by Laws to act through an agent, having the Power with respect only to the following, upon determination of the Condominium Board:

(a) in the case of a Sale in Violation of Section 15.2: to institute and prosecute through completion a Litigation and all appeals therefrom to eject a purported successor Owner from the Sold Unit owned by such Sold Unit Owner; or

(b) in the case of a Lease in Violation of section 15.2: to evict or remove by summary dispossess proceedings or otherwise a Tenant of such Sold Unit.

This durable, limited power of attorney shall not be affected by the subsequent disability or incompetence of such Sold Unit Owner. The Condominium Board shall have the right and option (but not the obligation) to institute such Litigation, which is in addition to all other rights and remedies available to the Board at law or in equity. The exercise and enforcement of the provisions of this

Section 15.1.2 and all disputes and controversies which give rise to the exercise and enforcement hereof, at the exclusive option and absolute discretion of the Condominium Board, shall not be subject to arbitration under Article 18 below by the offending Sold Unit Owner, who shall have no right to submit the matter or the underlying dispute or controversy to arbitration.

Section 15.1.3 Reimbursement. In the event the Condominium Board elects to bring this or any other Claim or Litigation with respect to such Violation of Section 15.2, the Payment and Collection provisions of Section 1.8 of the Declaration shall apply to all amounts owed the Board by the applicable offending Sold Unit Owner hereunder. All such Costs and Expenses, Legal Expenses and Per Diem Interest shall be regarded as Additional Common Charges payable by such Sold Unit Owner.

Section 15.1.4 Sale Requirement. In the case of a Sale of a Sold Unit or an Unsold Unit, the following requirements must be met:

(a) a proposed Sale of a Unit or the Sale of the Controlling Interest in the Owner of a Unit shall not be consummated unless and until the Owner of such Unit is current in the payment of all Condominium Charges levied by the Condominium Board against the Unit;

(b) the deed conveying a Unit shall expressly state or provide, and notwithstanding the failure to so expressly state or provide, shall conclusively be deemed to irrevocably and unconditionally state and provide as follows with the same force and effect as though set forth at length in the deed:

> The Unit is subject to the Powers, Duties, easements, requirements, burdens, encroachments, limitations and restrictions contained in the Declaration establishing the 324 West 108 Condominium, located at 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York, and the By-Laws and the Rules and Regulations attached thereto, which are hereby incorporated herein with the same force and effect as though set forth at length. The acceptance of the deed by Grantee shall constitute an acceptance, ratification and assumption of all of the terms of the Condominium Documents. All capitalized terms used herein shall have the meanings given to them in said Declaration (including the Exhibits thereto).

(c) each conveyance of title to a Unit shall be for the entire Unit and its appurtenant Common Interest;

(d) any Sale of a Unit or the Sale or assignment or transfer of a Controlling Interest in the Owner thereof to an International Organization or whose managing members, directors, officers or principals (if and as applicable) are International Organizations shall be subject to the provisions of Article 19 of the Declaration and, if requested by the Condominium Board, at or before recording the deed of conveyance or the assignment and transfer of a Controlling Interest (as applicable), the International Organization shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the International Organization irrevocably and unconditionally confirms and agrees that the provisions of said Article

19 are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense; and

(e) at or prior to the date of Sale or conveyance of a Unit or an assignment or transfer of a Controlling Interest in an Owner thereof to a Foreign Person or whose managing members, directors, officers or principals (if and as applicable) are Foreign Persons, all such Foreign Persons shall comply with the terms of Article 20 of the Declaration and, if requested by the Condominium Board, at or before recording the deed of conveyance or the assignment and transfer of a Controlling Interest (as applicable), the Foreign Person shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the Foreign Person irrevocably and unconditionally confirms and agrees that the provisions of said Article 20 are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense.

The failure to comply with this Section 15.1.4 shall be grounds for the Condominium Board, among other rights and remedies available at law and in equity and those contained in these By-Laws, to withhold giving the Certificate of Waiver or Exemption set forth in Section 15.6.1 and the Estoppel Certificate set forth in Section 15.11.1 without any manner of recourse against the Board or other Unit Owners or their respective Related Parties by reason thereof.

Section 15.1.5 Lease Requirement. In the case of a Lease of a Sold Unit or (where expressly stated) an Unsold Unit, the following requirements must be met:

(a) the proposed Lease of a Sold Unit or an Unsold Unit shall not be consummated unless and until the Owner of such Unit is current in the payment of all Condominium Charges levied by the Condominium Board against the Unit;

(b) the Lease of a Sold Unit, but not the Lease of an Unsold Unit, shall expressly state and provide, and shall conclusively be deemed to irrevocably and unconditionally state and provide, as follows with the same force and effect as though set forth at length in the Lease, and the failure to so expressly state and include these provisions on the Lease shall not affect their validity or enforceability:

> This Lease is subject to the Declaration establishing the 324 West 108 Condominium, located at 324 West 108th Street (a/k/a 324-326 West 108th Street), New York, New York, and the Exhibits attached thereto (including the By-Laws, the Rules and Regulations and the Glossary), which are hereby incorporated herein with the same force and effect as though set forth at length. The meanings given to the terms contained in the Rules of Construction in Section 1.2 of the Declaration and defined in the Glossary shall apply when such terms are used herein. The acceptance of this Lease by Tenant shall constitute an acceptance, ratification and assumption of, and an agreement to comply with, all of the terms of the Condominium Documents.
>
> In the event of any inconsistency between the terms of this Lease and the terms of the Condominium Documents, the inconsistency shall be resolved in accordance with the terms of the Condominium Documents, which are paramount and shall govern and control.

This Lease cannot be amended or extended without obtaining the Discretionary Consent of the Condominium Board in each instance.

Tenant cannot transfer or assign Tenant's interest in this Lease or sublet the Unit demised hereunder or any part thereof without obtaining the Discretionary Consent of the Condominium Board in each instance.

The Unit demised under this Lease shall be used and occupied only as a private one-family dwelling and incidental home occupations permitted by Laws by Tenant and Tenant's Household and Unit Users, in accordance and on the terms set forth in Section 10.7 of the Declaration, and for no other purpose, and in compliance with the other requirements and restrictions set forth in the Declaration, including the General Requirements contained in Section 10.1 thereof, and the By-Laws.

Pursuant to RPL §339-kk and the Plan, upon Notice to Tenant from the Condominium Board that landlord-Owner has failed to make payments due the Condominium Board for Common Charges, Special Assessments or other Additional Common Charges (including late fees) for the Unit within sixty (60) Days of the expiration of any grace period after they are due, Tenant shall immediately and thereafter make all rental payments under this Lease directly to the order of the Condominium Board at the address listed in the Notice. At such time as Tenant receives Notice from the Condominium Board that landlord-Owner is once again current in payments of Common Charges, Special Assessments or other Additional Common Charges (including late fees), all rental payments shall be made payable to the order of landlord-Owner. Tenant's rental payments to the Condominium Board in accordance with the foregoing shall be an absolute defense in any action or nonpayment proceeding commenced by landlord-Owner against Tenant for such rent in accordance with RPL §339-kk. Landlord-Owner covenants and agrees not to undertake any action or proceeding in Violation hereof or RPL §339-kk.

The Condominium Board shall have the Power to terminate or cancel this Lease and to bring summary proceedings to evict or remove the Tenant hereunder in the name of the landlord-Owner in the event of: (i) a Violation by Tenant of any of the provisions of the Declaration, the By-Laws or the Rules and Regulations, as each may be amended from time to time, unless remedied within the applicable grace period (if any); (ii) a foreclosure by the Condominium Board of said landlord-Owner's Unit in which the demised premises forms a part pursuant to the lien granted to the Condominium Board by Section 339-z of the Condominium Act; or (c) the purchase or acquisition of said Unit by the Condominium Board or its nominee or designee, whether pursuant to Article 8 of the By-Laws or otherwise.

The foregoing provisions of this Lease are for the benefit of, and shall be enforceable by, the Condominium Board as a third-party beneficiary and cannot be amended without the Discretionary Consent of the Condominium Board and any purported change thereto shall be null and void *ab initio*.

(c) each Lease of a Sold Unit, but not a Lease of an Unsold Unit:

(c-1) shall be in the then current prevailing form of lease of a residential condominium unit for non-regulated multiple dwellings in The City of New York (or other printed form of lease approved in writing by the Condominium Board, in its sole and absolute

discretion), subject to such modifications as may be approved in writing by the Condominium Board (in its sole and absolute judgment);

(c-2) shall be for a term of not less than one year (unless the Condominium Board consents in writing to a shorter term or the Lease is to an Owner-Related Party);

(c-3) shall not be amended, renewed or extended without obtaining the Discretionary Consent of the Condominium Board in each instance; and

(c-4) Tenant shall not assign Tenant's interest in such Lease or a Controlling Interest in Tenant, or sublet the Unit demised thereunder or any part thereof, without obtaining the Discretionary Consent of the Condominium Board in each instance;

(d) each Lease of a Sold Unit or an Unsold Unit shall be for the entire Unit and not a portion thereof;

(e) at or prior to entering into a Lease with a Foreign Person, or assigning or transferring a Lease to a Foreign Person, of a Sold Unit or an Unsold Unit whose managing members, directors, officers or principals (if and as applicable) are Foreign Persons, all such Foreign Persons shall comply with the terms of Article 20 of the Declaration and, if requested by the Condominium Board, at or before executing the Lease or the assignment or transfer of the Lease, the Foreign Person shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the Foreign Person irrevocably and unconditionally confirms and agrees that the provisions of said Article 20 are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense; and

(f) any Lease or assignment or transfer of a Lease of a Unit to an International Organization or whose managing members, directors, officers or principals (if and as applicable) are International Organizations shall be subject to the provisions of Article 19 of the Declaration and, if requested by the Condominium Board, at or before executing the Lease or the assignment or transfer of the Lease, the International Organization shall duly sign, acknowledge (if required by the Board) and deliver to the Board an instrument (in form and substance acceptable to the Board) wherein the International Organization irrevocably and unconditionally confirms and agrees that the provisions of said Article 19 are valid, fully enforceable in accordance with its terms and legally binding upon it, without defense.

The failure to comply with any of this Section 15.1.5 shall be grounds for the Condominium Board, among other rights and remedies available at law and in equity and those contained in these By-Laws, to withhold giving the Certificate of Waiver or Exemption set forth in Section 15.6.1 and the Estoppel Certificate set forth in Section 15.11.1, without any manner of recourse against the Board or other Unit Owners or their respective Related Parties by reason thereof.

Section 15.2 Right of First Refusal.

Section 15.2.1 Exempt Transactions. The provisions of this Section 15.2 are subject to Sections 15.5 and do not apply to any of the transactions exempted under said Section 15.5 from the

Right of First Refusal in favor of the Condominium Board set forth in this Section 15.2 (each, an "**Exempt Transaction**").

Section 15.2.2 Definition. A contract to sell a Sold Unit together with its appurtenant Common Interest, or a contract to sell the Controlling Interest in an Entity-Owner of a Sold Unit, is hereafter collectively referred to as a "**Sale Agreement**". The agreement to Lease a Sold Unit is hereafter called a "**Lease Agreement**". A Sale Agreement or Lease Agreement of a Sold Unit is each hereafter included in the collective term "**Sale or Lease Agreement**".

Section 15.2.3 Mandatory Provision in Sale or Lease Agreement. Each Sale or Lease Agreement of a Sold Unit in a transaction that is subject to the Board's Right of First Refusal shall contain the following language:

> THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER ARE HEREBY MADE EXPRESSLY SUBJECT TO THE RIGHT OF FIRST REFUSAL IN FAVOR OF THE BOARD OF MANAGERS OF 324 WEST 108 CONDOMINIUM WITH RESPECT TO THE TRANSACTION EMBODIED HEREIN, PURSUANT TO THE TERMS OF SECTIONS 15.2 AND 15.3 OF THE BY-LAWS OF THE SAID CONDOMINIUM, AS THE SAME MAY HAVE BEEN AMENDED.

Section 15.2.4 Procedure. Promptly after any such Sale or Lease Agreement shall be fully executed, the Sold Unit Owner executing the same (hereafter referred to as the "**Offeror-Owner**") shall send Notice thereof (the "**Sale or Lease Notice**") to the Condominium Board by certified or registered mail, return receipt requested, which Sale or Lease Notice shall be accompanied by a fully executed, original counterpart of the Sale or Lease Agreement, as the case may be, containing all of the terms offered in good faith by the prospective purchaser or Tenant (hereinafter referred to as the "**Offeree**"). The Sold Unit owned by the Offeror-Owner is hereafter sometimes called "**Offeror's Unit**".

Section 15.2.5 Offer to Sell or Lease. The sending of the Sale or Lease Notice shall constitute an irrevocable offer by the Offeror-Owner to sell the Offeror's Unit, together with its appurtenant Common Interest, or the Controlling Interest in Offeror-Owner (if and as applicable), or to Lease the Offeror's Unit, as the case may be, to the Condominium Board or (at the exclusive option of the Board) to its nominee or designee, upon the same terms and conditions as are contained in such Sale or Lease Agreement, subject, however, to the modifications and variances therefrom provided in Section 15.3. All references in this Section 15.2 and in Section 15.3 to the Board's nominee or designee shall mean the Board's Affiliated Nominee or Designee or, at the exclusive option of the Board, non-Affiliated Nominee or Designee (unless otherwise indicated by the text), and the exercise of the Right of First Refusal by the Board or the Board's Affiliated Nominee or Designee shall be on behalf and as agent of all Unit Owners.

Section 15.2.6 Representations and Warranty. The giving of such Sale or Lease Notice shall further constitute a representation and warranty by the Offeror-Owner to the Condominium Board,

on behalf and as agent of all Unit Owners, that such Offeror-Owner believes the Sale or Lease Agreement to be bona fide in all respects.

Section 15.2.7 Submission of Documents. The Sale or Lease Notice shall be accompanied by such documents as the Board may determine from time to time to be part of the Board's "Standard Document Package" (defined below) in connection with the consideration of a Sale or Lease Agreement, together with such fees and charges as the Condominium Board may require from time to time in accordance with Section 15.10.1. The "**Standard Document Package**" are all documents not expressly prohibited by Laws that are required by the Board relating to the housing, credit, financial and employment history of the Offeree and (if the Offeree is an Entity) the members, partners, officers, directors, stockholders or principals of the Offeree, including (to the extent not expressly prohibited by Laws) a Building standard form of Sale or Lease application, income tax returns, credit reports, net worth statement, personal references, employer verification statement and (if applicable) current landlord good standing letter. The Offeror-Owner shall also submit to the Condominium Board or its Managing Agent (as directed), promptly following written request therefor, such additional documents and/or information as the Condominium Board may reasonably request with respect to the Offeree or the transaction.

Section 15.2.8 Right or Right of First Refusal. Except for an Exempt Transaction, the Condominium Board shall have the right to purchase an Offeror's Unit together with its appurtenant Common Interest, or the Controlling Interest in Offeror-Owner (if and as applicable), or to cause the same to be purchased by its nominee or designee, or to Lease an Offeror's Unit (or to cause the same to be Leased by its nominee or designee), as the case may be, upon the same terms and conditions as are contained in the Sale or Lease Agreement for Offeror's Unit and stated in the response(s) by the Offeror-Owner to any requests for additional documents and/or information pursuant to the terms of the preceding Section 15.2.7, subject (however) to such modifications and variances thereto as are required in the following Section 15.3 (herein called the "**Right of First Refusal**"). If the Board wishes to exercise the Right of First Refusal, the Board shall do so in a Notice (the "**Acceptance Notice**") given to the Offeror-Owner within twenty (20) Business Days after the Board or its Managing Agent receives the Sale or Lease Notice together with the Sale or Lease Agreement, the Standard Document Package and such further documents and/or information as may have been requested pursuant to the preceding Section 15.2.7 (the "**Option Period**").

Section 15.2.9 Required Unit Owners' Consent. Notwithstanding anything to the contrary contained herein, the Condominium Board shall not exercise its Right of First Refusal to purchase or Lease an Offeror's Unit set forth in this Section 15.2 without the obtaining the prior written consent of a majority in Common Interest of all Owners or the affirmative vote of a majority in Common Interest of all Owners at a duly constituted meeting of Unit Owners called for such purpose at which a quorum is present.

Section 15.2.10 Compliance with Civil Rights Laws. In determining whether to elect to purchase or Lease Offeror's Unit, the Condominium Board shall not discriminate against an Offeree on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability, marital status

or other grounds prohibited by Laws. This prohibition also applies to the Sale, Lease, sublease or other Disposition of Offeror's Unit by the Condominium Board or its Affiliated Nominee or Designee as the Owner or Tenant (as applicable) thereof.

Section 15.3 Acceptance of Offer.

Section 15.3.1 Sale or Lease Agreement with Board. In the event that the Condominium Board shall elect, within the Option Period and in the manner provided in Section 15.2.8, to purchase an Offeror's Unit together with its appurtenant Common Interest, or the Controlling Interest in Offeror-Owner (if and as applicable), or to cause the same to be purchased by its nominee or designee, or to Lease Offeror's Unit (or to cause the same to be Leased by its nominee or designee), as applicable, the Offeror-Owner shall send to the Condominium Board for execution, within ten (10) Days after the Acceptance Notice is given to the Offeror-Owner, the Sale or Lease Agreement, as modified: (a) to reflect the Board or its nominee or designee (as directed by the Board), as the purchaser or Tenant (as applicable); and (b) to conform to the requirements set forth in Section 15.3.2 or Section 15.3.3 below (as applicable).

Failure of Offeror-Owner to send said modified Sale or Lease Agreement (as applicable) within said ten (10)-Day period shall entitle the Condominium Board to all rights and remedies at law and in equity, including specific performance and to send to the Offeror-Owner a Notice stating to the effect that unless the modified Sale of Lease Agreement (as applicable) is received by the Board within the next ten(10) Days, the Board shall have the right, at any time thereafter and before the modified Sale or Lease Agreement (as applicable) is received, to send the Offeror-Owner Notice that it is canceling the Acceptance Notice effective on the date of such Notice or as otherwise provided therein, whereupon the Offeror-Owner shall conclusively be deemed to have irrevocably withdrawn the Sale or Lease Notice and terminated the Sale or Lease Agreement.

If the modified Sale or Lease Agreement is timely received by the Condominium Board, then within ten (10) Days thereafter, the Condominium Board or its nominee or designee (as applicable) shall execute and return to the Offeror-Owner the modified Sale or Lease Agreement (as applicable), together with a check for the requisite contract deposit (in the case of a Sale Agreement).

Section 15.3.2 Modified Terms of Sale Agreement. In the event such Offeror's Unit is to be sold to the Condominium Board or its nominee or designee (as applicable), the Sale Agreement shall be modified to provide and conform to the following to the extent any provision of the original Sale Agreement is contrary, inconsistent or silent with respect thereto (except as otherwise provided in clauses (d) and (e) below):

(a) the contract deposit shall equal the lower of 10% of the purchase price of the Offeror's Unit or the contract deposit stated in the original Sale Agreement;

(b) such contract deposit shall be held in escrow and disposed of in accordance with the terms of the Sale Agreement (as modified by this Section 15.3) by the attorney for the Offeror-Owner, or if the Offeror-Owner does not have an attorney, by an attorney selected by the Condominium Board;

(c) the time and location of title closing shall be set by the Condominium Board and the date of title closing shall be determined by mutual agreement of the Condominium Board and Offeror-Owner or (if they are unable to agree) in no event later than the sixtieth-Business Day after the Condominium Board gives the Offeror-Owner (excluding the Day given) its Acceptance Notice electing to purchase Offeror's Unit;

(d) (in the case of a Sale of the Sold Unit) the Offeror-Owner shall convey Offeror's Unit and its appurtenant Common Interest to the Condominium Board or its nominee or designee (as applicable) by bargain and sale deed with covenant against grantor's acts and in the form required by Section 339-o of the Condominium Act, and (unless otherwise expressly provided in the original Sale Agreement) with all documentary stamps affixed at the expense of the Offeror-Owner, who shall also pay all other City and State transfer taxes arising out of the Sale that at the time are imposed by Laws on a seller, but not the portion of such transfer taxes (such as the current New York State real property transfer tax, known as the "mansion tax"), which are imposed by Laws on a purchaser;

(e) (in the case of a Sale of a Controlling Interest of the Offeror-Owner) the Owner shall assign and transfer the Controlling Interest in the Offeror-Owner to the Condominium Board or its nominee or designee (as applicable) by a duly executed and acknowledged assignment and assumption agreement in form customary for such transaction, and (unless otherwise expressly provided in the original Sale Agreement) the Offeror-Owner shall also pay all City and State transfer taxes arising out of the Sale that at the time are imposed by Laws on a seller, but not the portion of such transfer taxes (such as the current New York State real property transfer tax, known as the "mansion tax"), which are imposed by Laws on a purchaser;

(f) (unless otherwise expressly provided in the original Sales Agreement) the Offeror-Owner and Condominium Board or its nominee or designee as applicable) shall apportion as of 11:59 p.m. of the Day preceding the closing of title based on the actual number of Days in the month of closing:

(f-1) real estate taxes (if Offeror's Unit is not separately assessed at closing, the apportionment shall be based on the amount of real estate taxes for the Property which is attributable to Offeror's Unit as determined in accordance with Section 9.1 above);

(f-2) Common Charges, including the then current installment of any Condominium Special Assessment for the month or period in which title closes (such Special Assessment shall be apportioned based on the actual number of Days in such month or other period);

(f-3) mortgage interest (if applicable);

(f-4) electricity (if separately metered or submetered); and

(f-5) rent paid or payable under any existing Lease or tenancy; and

(g) in the event of a default by the Board or its nominee or designee (as applicable) under the Sale Agreement which is not remedied within any applicable cure period stated in the Sale Agreement after giving Notice thereof, but not less than thirty (30) Days after giving such Notice

(excluding the Day given), the Offeror-Owner shall have no recourse of any kind against the Board or (if applicable) its nominee or designee, or the Related Parties of the Board or (if applicable) its nominee or designee, or Unit Owners, and the sole right and remedy of the Offeror-Owner shall be limited to canceling the Sale Agreement in a Notice to the Board or its nominee or designee (as applicable) and receiving the contract deposit and any interest earned thereon as and for liquidated damages and in full settlement, satisfaction, release and discharge of all Claims of the Offeror-Owner for any Loss (including consequential, indirect, incidental and special damages) incurred or suffered by such Owner.

Section 15.3.3 Modified Terms of Lease Agreement. In the event Offeror's Unit is to be Leased to the Condominium Board or its nominee or designee, the Lease Agreement shall be modified to provide and conform to the following to the extent any term in the original Lease Agreement is contrary, inconsistent or silent with respect thereto:

(a) the Lease Agreement will be on the then current prevailing printed form of lease of a condominium unit for non-regulated multiple dwellings in The City of New York (with such rider provisions, not materially inconsistent with such form lease) as those included in the proposed Lease Agreement with the Offeree, unless waived by the Condominium Board, in its sole and absolute discretion;

(b) the provisions of such prevailing form lease will govern any conflict with the provisions of the proposed printed form original Lease Agreement with the Offeree, unless waived by the Condominium Board, in its sole and absolute discretion;

(c) notwithstanding any prohibition or restriction against subletting in such prevailing form lease or in the proposed Lease Agreement with the Offeree, the Condominium Board (or its nominee or designee, if and as applicable) shall have the Unfettered right and discretion to sublease the Unit one or more times, without the Offeror-Owner participating in, or sharing, the rent under such sublease or collecting any manner of fee, charge, payment or consideration in connection therewith;

(d) the terms of the Lease Agreement (and the obligation to pay rent) shall begin on a date mutually agreeable to the Condominium Board and Offeror-Owner, or (if they are unable or fail to agree) on the later of: (d-1) the date of commencement of the term stated on the original Lease; or (d-2) the date that falls on the sixtieth (60th) Business Day after the Condominium Board gives the Offeror-Owner (excluding the Day given) its Acceptance Notice electing to Lease Offeror's Unit;

(e) the security under the Lease shall be limited to the lower of the amount stated in the original Lease Agreement or one month's rent;

(f) in the event of a default by the Board or its nominee or designee (if and as applicable) in the payment, performance or observance of any provision of the Lease, which is not remedied within any applicable cure period stated in the Lease Agreement after giving Notice thereof, but in no event less than thirty (30) Days after giving such Notice (excluding the Day given), the Offeror-Owner shall have no recourse against the Board or (if applicable) its nominee or designee, or the

Related Parties of the Board or (if applicable) its nominee or designee, or Unit Owners, and the sole right and remedy of the Offeror-Owner shall be limited to canceling the Lease Agreement and retaining any rent security deposited thereunder, together with any interest earned thereon, as and for liquidated damages and in full settlement, satisfaction, release and discharge of all Claims of the Offeror-Owner for any Loss (including consequential, indirect, incidental and special damages)incurred or suffered by such Owner.

Section 15.3.4 Common Expenses. All payments made by the Condominium Board or its Affiliated Nominee or Designee to purchase, own, Lease, Maintain, Repair, Restore, Alter and otherwise Operate and make any other Disposition of Offeror's Unit purchased or Leased by the Condominium Board or its Affiliated Nominee or Designee in accordance with this Article 15 will be included in the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests, other than the Offeror-Owner in the case of a Sale Agreement.

Section 15.3.5 Revenues. Similarly, any revenues derived from owning, selling, leasing, subleasing, mortgaging, Operating or making any other Disposition of Offeror's Unit owned or Leased by the Condominium Board or its Affiliated Nominee or Designee shall be applied to defray the Common Expenses or for such other purposes as the Board shall determine, in its sole judgment, to be appropriate.

Section 15.3.6 Source of Funds to Purchase. In connection with a purchase of Offeror's Unit (including all related acquisition and closing expenses), the Condominium Board may levy a Special Assessment against all Unit Owners (other than the Offeror-Owner) in accordance with the terms of Section 8.2(b) hereof and/or the Condominium Board may, in its discretion, finance the acquisition of Offeror's Unit; provided and on condition that:

(a) any such financing shall not be secured by an encumbrance on, or a hypothecation of, any portion of the Property other than the Offeror's Unit together with its appurtenant Common Interest or as authorized by Section 399-jj of the Condominium Act;

(b) if the proposed borrowing (regardless of amount) is to occur during only the Sponsor Veto Control Period, the affirmative Discretionary Consent of Sponsor must first be obtained as provided in Sections 2.4.2(d) and (i), 2.5.8 and 8.3 above; and

(c) the loan documents shall expressly provide that the Unit Owners shall have Non-Recourse, Limited and Several Liability for the loan in accordance with Section 4.12 above.

Section 15.3.7 Existing Mortgage. In addition, if (in the case of a sale) the Offeree was to assume or to take title to Offeror's Unit subject to the Offeror-Owner's existing mortgage or mortgages, the Condominium Board or its Affiliated Nominee or Designee (if and as applicable) may purchase Offeror's Unit and assume or take title thereto subject to such mortgage or mortgages, as the case may be, provided and on condition that:

(a) the requisite Discretionary Consent of Sponsor is first obtained pursuant to said Sections 2.4.2(d) and (i), 2.5.8 and 8.3 above; and

(b) such mortgage or mortgages shall expressly provide for non-recourse Liability of the mortgagor or include substantially equivalent provisions to the effect that Unit Owners shall have Non-Recourse, Limited and Several Liability in accordance with said Section 4.12 above.

Section 15.3.8 Waiver of Partition, Use and Occupancy. In the event that any Unit shall be acquired or Leased by the Condominium Board, or its Affiliated Nominee or Designee, on behalf of Unit Owners, such Unit shall be part of the Association's Assets and the ownership or Lease of such Unit (as applicable) shall be deemed held on behalf of all Unit Owners, as tenants-in-common, and all Owners shall conclusively be deemed to have irrevocably and unconditionally waived all rights of partition, use and occupancy with respect to such Unit. All Costs and Expenses incurred in connection with the acquisition and ownership, or the lease and any sublease, of such Unit, as well as the Maintenance, Repair, Restoration, Alteration and Operation and Disposition of such Unit, shall be part of the Common Expenses and charged to all Unit Owners Pro Rata to their respective Common Interests. Similarly, all revenues derived from the rental, Operation, sale, permitted mortgaging or other Disposition of such Unit shall be used to defray the Common Expenses or for such other purposes as the Board shall determine to be appropriate in its sole Business Judgment.

Section 15.3.9 Board Decisions. The Condominium Board shall make all decisions concerning an Offeror's Unit, including whether or not to exercise the Right of First Refusal pursuant to Section 15.2 above and this Section 15.3 and all decisions relating to the Disposition of Offeror's Unit while owned or Leased by the Condominium Board or its Affiliated Nominee or Designee (if and as applicable), except the Board or its Affiliated Nominee or Designee (if and as applicable) shall not have the right to cast the votes appurtenant to such Unit. These decisions include:

(a) the use of an Offeror's Unit (provided such use shall be in accordance with the Declaration and these By-Laws);

(b) the occupancy of an Offeror's Unit (provided such occupancy shall be in accordance and compliance with the occupancy requirements set forth in Section 10.7 of the Declaration); and

(c) the sale, Lease, Repair, Restoration, Alteration, Operation, mortgage (subject to obtaining the requisite Discretionary Consent of Sponsor pursuant to Sections 2.4.2(d) and (i), 2.5.8 and 8.3 above) or other Disposition of an Offeror's Unit (if owned by the Condominium Board or its Affiliated Nominee or Designee) or the Operation and sublease of an Offeror's Unit (if Leased by the Condominium Board or its Affiliated Nominee or Designee).

Section 15.4 Failure to Accept Offer.

Section 15.4.1 90 Days to Consummate. In the event that the Condominium Board shall decline or fail to accept an offer made pursuant to the terms of Section 15.2 hereof within the twenty (20)-Business Day Option Period set forth in Section 15.2.8 above, the Offeror-Owner shall be free to consummate the transaction embodied in the Sale or Lease Agreement and stated in any responses to requests by the Board for additional documents and/or information, within a deadline of ninety (90) Days ("TIME BEING OF THE ESSENCE") after: (a) Notice of declination is sent to the Offeror-Owner by the Condominium Board; or (b) (if no such declination Notice is sent during the

Option Period) the expiration of the Option Period within which the Condominium Board or its nominee or designee might have accepted such offer, as the case may be. If the Offeror-Owner shall fail to consummate the transaction embodied in the Sale or Lease Agreement and stated in any said responses within such ninety (90)-Day deadline period ("TIME BEING OF THE ESSENCE"), then for thirty (30) Days after the Board receives actual Notice of such consummation of the Sale or Lease Agreement, the transaction shall be voidable at the sole option of the Condominium Board and (if the Board elects to void same) the Board will again have the Right of First Refusal to purchase or Lease (as applicable) the Offeror's Unit and the Offeror-Owner shall be required again to comply with all of the terms and provisions of Sections 15.2, 15.3 and 15.4 hereof with respect to the original or any subsequent Offeree.

Section 15.5 Transactions Exempt from Match Offer Right.

Section 15.5.1 Exempt Transactions. Each of the following sales, transfers, conveyances and Leases is an Exempt Transaction and not subject to the Condominium Board's Right of First Refusal under Section 15.2 hereof:

(a) (if Offeror-Owner is an individual) a sale, transfer, conveyance or Lease of such Offeror's Unit from its Owner to: (a-1) an adult member of such Owner's Immediate Family; or (a-2) a trust for the benefit of such Owner or a member of such Owner's Immediate Family; (a-3) a corporation, partnership, limited liability company or other Entity in which such Offeror-Owner owns the Controlling Interest;

(b) (if Offeror-Owner is an Entity) a sale, transfer, conveyance or Lease of Offeror's Unit from its Owner to: (b-1) any Entity in which such Owner owns the Controlling Interest; or (b-2) one or more individuals and/or Entities who collectively own the Controlling Interest in such Offeror-Owner;

(c) a transfer, conveyance or Lease of any Unit from its Owner to any Person who acquires title to, or a Lease of, such Owner's Unit as a gift or as an heir, legatee or distributee under the Owner's will or by intestacy;

(d) (if an Offeror-Owner is an individual who is judicially declared incompetent) a transfer, conveyance or Lease from such Owner to such Owner's legal guardian or representative;

(e) a sale, transfer or conveyance of any Unsold Unit, or a Lease or sublease of any Unsold Unit, by Sponsor or other Unsold Unit Owner to any Person;

(f) a sale, transfer or conveyance of any Unit, or a Lease of any Unit, to Sponsor or other Unsold Unit Owner;

(g) a sale, transfer, conveyance, Lease or sublease of any Unit to the Condominium Board (or its nominee or designee) or from the Condominium Board (or its Affiliated Nominee or Designee) to any Person;

(h) a sale, transfer or conveyance of any Unit from a court-appointed referee or other officer or other Person conducting a lien foreclosure sale of a mortgage, or the lien of the

Condominium Board under Section 339-z of the Condominium Act and Section 8.9 above, or other lien foreclosure sale, to any Person;

(i) a transfer or conveyance of any Unit by deed in lieu of foreclosure from a Unit Owner to a Permitted Mortgagee or its nominee, or to the Condominium Board, or its nominee or designee; and

(j) a sale, transfer, conveyance or Lease of any Unit acquired by a Permitted Mortgagee or its nominee, or by the Condominium Board or its Affiliated Nominee or Designee, to any Person.

Section 15.5.2 Application to Succeeding Owner. Each succeeding Owner of a Unit shall be bound by, and such Owner's Unit shall continue to be subject to, all of the terms and conditions of this Article 15.

Section 15.5.3 Proceeds of Sale or Rental. Apart from the charges and fees applicable in certain transactions as provided in Section 15.10 below, all proceeds realized on the sale or Lease of a Unit shall be retained by the Owner of such Unit, without participation by the Condominium Board or other Unit Owners.

Section 15.6 Certificate of Waiver or Exemption as to Right of First Refusal.

Section 15.6.1 Requirement to Give Certificate. Subject to Sections 15.1.4(f) and 15.1.5(g), in the event the Condominium Board declines or fails to exercise or waives its Right of First Refusal or the proposed sale, transfer, conveyance or Lease is an Exempt Transaction pursuant to Section 15.5 above, the Condominium Board shall furnish, or cause the Managing Agent to furnish, to the applicable Offeror-Owner or the Owner whose Unit is exempt from the Right of First Refusal pursuant to Section 15.5.1 above ("**Exempt Unit Owner**"), as applicable, and such Unit Owner shall receive, a written certification to such effect ("**Certificate**" or "**Certificate of Waiver or Exemption**") within the following ten (10)-Day period: (a) in the case of an Offeror-Owner: within ten (10) Days after expiration of the twenty (20)-Business Day Option Period set forth in Section 15.2.8 above; or (b) in the case of an Exempt Unit Owner: within ten (10) Days after a reasonably detailed written request for such Certificate (setting forth the grounds for the Exempt Transaction) is given to the Condominium Board or its Managing Agent.

Section 15.6.2 Execution and Contents of Certificate. The Certificate shall be executed and acknowledged by the following: (a) in the case of a Sold Unit: any Board Member or any officer elected by the Condominium Board, or the Managing Agent; or (b) in the case of an Unsold Unit: any Sponsor Board Member or Independent Board Member, or any officer elected by a Sponsor Board Member or the Independent Board Members, or the Managing Agent.

The Certificate of the Condominium Board shall state in effect that: (a) the provisions of Section 15.2 hereof have been met by the Offeror-Owner and that the Right of First Refusal provided for therein has been duly released or waived by the Condominium Board or that the transaction is exempt from the provisions of Section 15.2 pursuant to Section 15.5 hereof (as applicable); and (b) as

a result thereof, the rights of the Condominium Board under such Section 15.2 have terminated or are not applicable (as the case may be).

Section 15.6.3 Effect of Certificate. Such Certificate shall be conclusive upon the Condominium Board and all Unit Owners in favor of all Persons who rely upon such Certificate in good faith. After the due issuance of such Certificate, the Offeror's Unit to which the same relates, together with its appurtenant Common Interest, may be conveyed or Leased (as applicable) free and clear of the terms and conditions contained in Section 15.2 hereof.

Section 15.6.4 Pre-requisite for Giving Certificate. The Condominium Board shall have the right (without Liability for any Loss (including consequential, indirect, incidental and special damages) or other recourse of the Offeror-Owner or the Exempt Unit Owner or the Offeree) to refuse to issue such Certificate if:

(a) the Offeror-Owner or Exempt Unit Owner (as applicable) is in default in the payment of Common Charges or Additional Common Charges (including Special Assessments), if any, or in the payment or performance of a substantial or material obligation under the Condominium Documents;

(b) the Offeror Unit or the Unit owned by an Exempt Unit Owner (as applicable) is subject to an unpaid lien (other than a Permitted Mortgage);

(c) the Offeror-Owner or Exempt Unit Owner (as applicable) is an International Organization and fails to comply with the requirements of, or Violates, Article 19 of the Declaration;

(d) the Offeror-Owner or Exempt Unit Owner (as applicable) is a Foreign Person and fails to comply with, or Violates, the requirements of Article 20 of the Declaration; or

(e) the Offeror-Owner or Exempt Unit Owner (as applicable) fails to first give the Board the following:

(e-1) the name and address for Notices of the proposed grantee on the conveyance of the Unit or the proposed purchaser of the Controlling Interest in the Entity-Owner or the proposed Tenant under the Lease (as applicable);

(e-2) (if the proposed grantee or Controlling Interest-purchaser or Tenant is an Entity) a representation that its managing members, directors, officers and principals (if and as applicable) are not an International Organization or a Foreign Person, other than those thereof who have complied with clause (e-3) or (e-4) below;

(e-3) (if the grantee or Controlling Interest-purchaser or Tenant is an International Organization) proof of compliance with the requirements of Section 15.1.4(d) above and proof of designation of an agent for service of process in the City and State of New York as required by Section 19.2 of the Declaration;

(e-4) (if the grantee or Controlling Interest-purchaser or Tenant is a Foreign Person) proof of compliance with the requirements of Section 15.1.4(e) above and proof from the New

York Department of State that such Foreign Person has irrevocably appointed the Secretary of State of the State of New York as its agent for service of process in accordance and compliance with Section 20.1 of the Declaration; and

(e-5) (in the case only of a Lease) a true and complete copy of the fully executed Lease, including any riders thereto, or other documentary proof acceptable to the Board that the use and occupancy of the Unit is in accordance with the permitted use and occupancy set forth in the Declaration.

Upon the curing of such default or the satisfaction (or appropriate provision acceptable to the Board is made for the satisfaction) of such unpaid lien (as applicable), or the curing of the default or Violation by said International Organization or Foreign Person (as applicable), or compliance with clause (e) above (as applicable), the Condominium Board shall issue and give the appropriate Certificate to the proper Party with commercially reasonable promptness.

Section 15.6.5 Failure of Board to Exercise or Consummate. The Right of First Refusal described in Section 15.2 hereof shall be deemed terminated, released or waived by the Condominium Board (as opposed to satisfied pursuant to the express terms of Sections 15.2 and 15.4 hereof) even though the Condominium Board shall fail to furnish or cause the Managing Agent to furnish said Certificate of Waiver or Exemption within ten (10) Days after the expiration of the twenty (20)-Business Day Option Period set forth in Section 15.2.8 above within which the Condominium Board is to make its election; provided, however, that: (a) the Condominium Board shall fail to timely and properly exercise the Right of First Refusal or (if exercised) shall fail to consummate the Sale or Lease Agreement as provided in Section 15.4.1 above; and (b) the Offeror-Owner shall have strictly and faithfully complied with the provisions of this Article 15.

Section 15.6.6 Validity Unaffected. An Exempt Transaction pursuant to Section 15.5 hereof or a non-Exempt Transaction that meets the requirements of the preceding Section 15.6.5 may be consummated without a Certificate and the failure to issue a Certificate for such transaction shall not affect the validity or enforceability of said transaction; provided, however, the Offeror-Owner shall have strictly and faithfully complied with the provisions of this Article 15.

Section 15.7 No Severance of Ownership. A Unit Owner shall not execute any deed, mortgage or other instrument conveying or securitizing title to the Owner's Unit without including therein its appurtenant Common Interest, it being the intention to prevent any severance of such combined ownership. Any deed, mortgage or other instrument purporting to affect one such interest shall automatically be taken to include the interest omitted, even though the latter shall not be expressly mentioned or described therein, and vice versa. No part of the Common Interest appurtenant to any Unit may be sold, conveyed, transferred, mortgaged or otherwise securitized, except as part of a sale, conveyance, transfer, mortgage or securitization of the Unit to which such Common Interest is appurtenant. Nothing contained in this Section 15.7 however, shall prohibit the Lease of any Unit without the simultaneous Lease of its appurtenant Common Interest.

Section 15.8 **Payment of Common Charges**. A Unit Owner shall not be permitted to convey or Lease such Owner's Unit, or assign or transfer a Controlling Interest in the Owner of such Unit, unless such Owner shall have paid in full to the Condominium Board all unpaid Common Charges and Additional Common Charges theretofore assessed against such Unit, including past due installments of Special Assessments (but not installments not yet due and payable), and shall have satisfied all unpaid liens, other than that of Permitted Mortgages, on such Unit. A letter from the Condominium Board or its Managing Agent stating the amount of Common Charges and Additional Common Charges (including Special Assessments), if any, with respect to such Unit shall be conclusive evidence of such fact upon the Condominium Board and all Unit Owners in favor of all Persons who rely thereupon in good faith.

Section 15.9 **Gifts, Devises and Intestacy**. In accordance with Section 15.5.1(c) above, any Unit Owner shall be free to convey or transfer the Owner's Unit, together with its appurtenant Common Interest, by gift, or to devise the same by will or to have the same pass by intestacy, without restriction and without compliance with Section 15.2 hereof; provided, however, that each succeeding Unit Owner shall be bound by, and such Owner's Unit shall be subject to, the provisions of this Article 15.

Section 15.10 **Charges Imposed on Sale or Lease Transactions of Sold Units**.

Section 15.10.1 Charges. The Condominium Board shall have the Power to fix by resolution (without recording an Amendment to the Declaration or By-Laws) and collect, before the consummation of any sale, transfer, conveyance, Lease or sublease of a Sold Unit:

(a) a reasonable charge to cover the reasonable fees and expenses of the Condominium Board and/or the Managing Agent and/or any attorney retained by the Condominium Board in connection therewith;

(b) a reasonable charge to cover said reasonable fees and expenses in connection with a mortgage financing or mortgage refinancing of a Sold Unit if any Board action is requested in connection therewith; and

(c) a refundable security deposit in an amount fixed by the Board for potential damage to the Common Elements on moving into or out of a Sold Unit in connection with a sale, conveyance, Lease or sublease of such Sold Unit.

The proposed fees payable by such Sold Unit Owner to the Managing Agent, and said proposed refundable security deposit, set forth in the Plan shall conclusively be deemed to be reasonable. If such charge is adopted, it shall constitute Additional Common Charges payable by the Offeror-Owner. Any security deposit collected by the Board shall be refunded to the party making the deposit with reasonable promptness following the move, after deducting therefrom the Costs and Expenses to Repair any damage to the Common Elements caused by the move and to Restore to as near as commercially reasonable and economically practicable the affected Common Elements to the condition existing immediately prior to the move. The security deposit shall not limit the amount

recoverable in the event it is insufficient to fully pay the Costs and Expenses to Repair and Restore the affected Common Elements.

Section 15.10.2 No Charges on Sale or Lease Transactions of Unsold Units. In no event shall any charge, fee, security deposit, cost, expense or other imposition be fixed or collected for any sale, transfer, conveyance or Lease (or sublease) of an Unsold Unit.

Section 15.10.3 No Transfer Fee or Flip Tax. The Condominium Board shall in no event impose on any Unit Owner or purchaser of a Unit a so-called "transfer fee", "exit fee", "flip tax", or "entrance fee" on the sale, transfer or conveyance of any Unit.

Section 15.11 Estoppel Certificate.

Section 15.11.1 Estoppel Certificate. Subject to Sections 15.1.4(f) and 15.1.5(g), if requested in writing by, or an authorized representative on behalf of, a Unit Owner, or a Permitted Mortgagee of a Unit, or a prospective purchaser or tenant or mortgagee of a Unit (each of the foregoing is the "**Requesting Party**"), the Condominium Board shall deliver to the Requesting Party from time to time, but not more often than twice in any twelve (12) months period, within ten (10) Days after the Board receives the request, a written statement (the "**Estoppel Certificate**") certifying as to the following with respect to said Unit or its Owner:

(a) the date to which Condominium Charges levied by the Board have been paid and the amount(s) thereof and of any other unpaid indebtedness owed by such Owner under the Condominium Documents;

(b) whether, to the best of the actual, conscious knowledge of the current Board Members, such Owner is in Violation (beyond all pertinent notice, grace and cure periods, if and as applicable) in any respect under the Condominium Documents, as same may then be amended, and if so setting forth in reasonable detail the specific nature and basis of such Violation; and

(c) any other matters reasonably requested by the Requesting Party, including (in the case of a Permitted Mortgagee) confirmation that a mortgagee of said Owner's Unit is a Permitted Mortgagee having the rights of a Permitted Mortgagee set forth in the Condominium Documents, as duly amended from time to time.

Any Estoppel Certificate required to be given hereunder shall be addressed to the Requesting Party.

Section 15.11.2 Execution. The Estoppel Certificate shall be executed and delivered by the following:

(a) in the case of a Sold Unit: any Board Member or any officer elected by the Board, or the Managing Agent, may execute and deliver such Estoppel Certificate; or

(b) in the case of an Unsold Unit: any Sponsor Board Member or Independent Board Member, or any officer elected exclusively by the Sponsor or any officer elected by the Independent Board Members, or the Managing Agent, may execute and deliver such Estoppel Certificate.

Section 15.11.3 Reasonable Fees and Charges. The Condominium Board shall have the right to impose and collect from the Owner of the Unit which is the subject of said Estoppel Certificate, a sum equal to the reasonable fees and charges of its Managing Agent and/or attorney (if any) in connection with any services each may render with respect to such proposed conveyance, Lease or mortgage financing or mortgage refinancing of a Unit or the transfer of an equity interest in the Owner of the Unit (as applicable), and the preparation, review, negotiation and consultation with respect to said Estoppel Certificate.

Section 15.11.4 Effect of Estoppel Certificate. Such Estoppel Certificate may be included in a Certificate of Waiver or Exemption and shall be conclusive upon the Condominium Board and all Unit Owners in favor any prospective purchaser, mortgagee or Tenant of Owner's Unit, or a Permitted Mortgagee of Owner's Unit who relies thereon in good faith. Subject to Sections 15.1.4 and 15.1.5, the failure of such Unit Owner to receive such Estoppel Certificate within said ten (10)-Day period shall be conclusive upon the Condominium Board and all Unit Owners that:

(a) the Unit Owner is current in the payment of Common Charges and any Additional Common Charges (including Special Assessments); and

(b) there is no unpaid indebtedness owed to the Condominium Board, nor any uncured Violations on the part of such Unit Owner, under the Condominium Documents, as same may be amended.

Section 15.12 Registration of Mortgages. A Unit Owner who mortgages the Owner's Unit or the holder of such mortgage, shall register with the Condominium Board such mortgage ("**Registered Mortgage**") by Notice to the Condominium Board setting forth the name and address of such holder of the mortgage ("**Registered Mortgagee**") accompanied by a conformed copy of the complete mortgage and the note secured thereby. Promptly after the receipt thereof, the Board shall deliver to such Unit Owner a written acknowledgment of having received same in accordance with this Section 15.12. The failure of a Unit Owner to comply with the foregoing shall not affect the validity or enforceability of the mortgage or the priority of its lien as to other lien holders, which nevertheless shall be subject to all unpaid Condominium Charges theretofore assessed against such Unit as provided in Section 15.4 below. Any mortgage on an Unsold Unit at the date of First Unit Closing under the Plan that is not satisfied at such First Closing shall conclusively be considered a Registered Mortgage regardless of compliance with the foregoing. A Unit Owner who satisfies a mortgage covering the Owner's Unit shall so notify the Condominium Board in writing and shall also file a conformed copy of the satisfaction of the mortgage with the Condominium Board. The Secretary of the Condominium shall maintain all such mortgage information and documents in a book entitled Mortgages of Units.

Section 15.13 Prohibition and Restriction on Mortgaging.

Section 15.13.1 Prohibition. No Sold Unit Owner shall be permitted to mortgage, pledge or hypothecate such Owner's Sold Unit unless and until such Owner shall have paid in full to the Condominium Board all unpaid Common Charges and any unpaid Additional Common Charges

(including unpaid Special Assessments) theretofore assessed against such Sold Unit and shall have satisfied or bonded all unpaid liens against such Unit, except the liens of mortgages made in compliance with these By-Laws. A Registered Mortgage made in compliance with the foregoing prohibition is a "**Permitted Mortgage**" and the holder thereof is a "**Permitted Mortgagee**". Any mortgage on an Unsold Unit at the date of First Unit Closing under the Plan shall conclusively be considered a Permitted Mortgage. Notwithstanding the foregoing, any mortgage, pledge or hypothecation of a Sold Unit without complying with this prohibition shall not affect the validity or enforceability of such mortgage, pledge or hypothecation, but the priority of its lien shall be subject to all then existing unpaid Common Charges and any Additional Common Charges (including Special Assessments) theretofore assessed against such Unit, and the holder thereof shall not be entitled to the benefits contained in Section 15.14.

Section 15.13.2 Restriction. No Unit Owner shall execute any mortgage or other document mortgaging, pledging or hypothecating title to such Owner's Unit without including therein its appurtenant Common Interest, it being the intention to prevent any severance of such combined ownership. Any mortgage or other instrument purporting to affect one of such interests without including both of such interests shall automatically be deemed and taken to include the interest so omitted, even though the latter shall not be expressly mentioned or described therein.

Section 15.14 Permitted Mortgagee Benefits.

Section 15.14.1 Benefit. Subject to Section 15.14.2, a Permitted Mortgagee shall have the following benefits:

(a) when so requested in writing by a Permitted Mortgagee (but not more often three times in any twelve (12)-month period), the Condominium Board shall give Notice to such Permitted Mortgagee, within thirty (30) Days after receipt thereof, of the current status of its mortgagor-Unit Owner's payment of Common Charges and Additional Common Charges (including Special Assessments), and performance, observance and fulfillment of such Owner's obligations under the Condominium Documents, of which, the Condominium Board has actual knowledge then exists;

(b) when the Board gives Notice to such mortgagor-Unit Owner of a Violation of the Condominium Documents, the Board shall contemporaneously send a copy of such Notice to such Owner's Permitted Mortgagee;

(c) if such Owner is delinquent in the payment of Common Charges or Additional Common Charges (including Special Assessments) for more than sixty (60) Days, the Board shall give Notice thereof to such Owner's Permitted Mortgagee;

(d) in the event of condemnation or a casualty loss affecting such Owner's Unit, the Board shall give the Permitted Mortgagee of such Unit Notice thereof within a commercially reasonable period after the occurrence of such condemnation or casualty, as applicable; and

(e) a Permitted Mortgagee shall have the right (but shall not be obligated) make any payment and any perform any act not timely paid or performed by its mortgagor-Unit Owner pursuant

to the terms of the Condominium Documents and the Condominium Board shall accept such Permitted Mortgagee's payment and performance with the same force and effect as if the same were paid and performed by such mortgagor-Unit Owner.

Section 15.14.2 Immunity. In no event, however, shall the Condominium Board, the Board's Related Parties or Unit Owners be responsible or accountable for any Claim, Litigation, Liability or Loss (including consequential, indirect, incidental and special damages) for any delay or failure, through oversight or negligence, in notifying a Permitted Mortgagee of any of the matters contained in the preceding clauses (a) through (d) of Section 15.14.1. Nonetheless, with reasonable promptness after discovering such delay or failure, the Condominium Board shall advise such Permitted Mortgagee of such delay or failure and (in the case of clauses (b) and (c) of Section 15.14.1) if at that time the Condominium Board shall have already foreclosed its lien on such Owner's Unit, the Condominium Board shall pay to such Permitted Mortgagee the extent of any undistributed net proceeds realized on said foreclosure sale (after deducting all Costs and Expenses, including Legal Expenses, incurred in connections therewith) then held by the Board (subject to and in accordance with the lien priority set forth in Article 8 above), but not more than the sum as shall be due and owing to such Permitted Mortgagee.

Section 15.14.3 Examination of Minutes. Each Permitted Mortgagee and its authorized representative shall be permitted to examine the minutes of meetings of Unit Owners during Business Hours, on Business Days, and on reasonable advance Notice, but not more frequently than once a month, all as provided more particularly in Section 14.7.3 above.

Section 15.15 Mortgagee Benefits; Designation of Mortgage Representatives.

Section 15.15.1 Mortgagee Benefits. In accordance with, and as more fully provided in, Section 13.3 above, an Amendment to the Declaration or these By-Laws that would with reasonable likelihood adversely affect the priority, validity or enforceability of the lien of a purchase money mortgage or a mortgage held by an Institutional Lender on a Unit or is of a materially adverse nature to mortgagees shall not be enforceable against the holder of such mortgage or Institutional Lenders holding Federally Financed Permitted First Mortgages comprising at least 51% of the Common Interests of Units subject to mortgages without the Discretionary Consent of such mortgage holder or said Institutional Lenders, duly executed, acknowledged and recorded in the Register's Office with such Amendment.

Nothing contained herein shall be deemed to limit or affect the rights of any mortgagee against the mortgagor-Unit Owner under the mortgage held by such mortgagee.

In the event that any approval or consent of any mortgagee shall be expressly required pursuant to the terms of the Declaration or these By Laws, the decision of a majority of the "Mortgage Representatives" (as defined in, and if any are designated pursuant to the terms of, the following Section 15.15.2) shall be deemed binding upon the holders of all mortgages encumbering Units, except any action to terminate the legal status of the Property as a condominium under the Condominium Act after a Substantial Casualty or condemnation or for other reasons is to be agreed

upon in writing by Institutional Lenders holding Fannie Mae, FHA or other federally insured, guaranteed or financed Permitted First Mortgages comprising at least 51% of the Common Interests of Units subject to mortgages, as provided in Section 15.1 of the Declaration. The rights of such Institutional Lenders are subject to any superior rights of a governmental condemning authority under applicable Laws.

Section 15.15.2 Mortgage Representative(s). The holder or holders of the mortgage lien or liens on one or more Sponsor Units shall constitute the initial representatives (the "**Mortgage Representatives**") of all holders of mortgage liens on the respective Units for so long as said lien or liens encumber the Sponsor Unit(s). Thereafter, the holders of Institutional Mortgages constituting a majority in principal amount of all Institutional Mortgages may, if they so elect, designate not more than three representatives to comprise the Mortgage Representatives by giving Notice thereof to the Condominium Board, which Mortgage Representatives shall thereby be empowered to act as the representatives of the holders of all mortgages encumbering Units with respect to any matter requiring the approval or consent of mortgagees under the Declaration or these By-Laws, except any action to terminate the legal status of the Property as a condominium under the Condominium Act after a Substantial Casualty or condemnation or for other reasons, which is to be agreed upon in writing by Institutional Lenders holding Fannie Mae, FHA or other federally insured, guaranteed or financed Permitted First Mortgages comprising at least 51% of the Common Interests of Units subject to mortgages, as provided in Section 15.15.1 above and Section 15.1 of the Declaration. Any designation of one or more Mortgage Representatives pursuant to the terms of this Section 15.15.2 shall be effective until any successor Mortgage Representatives is (are) designated pursuant to the terms hereof and Notice thereof is given to the Condominium Board or a Mortgage Representative shall no longer hold a mortgage lien on a Unit (as applicable). Unless otherwise required by Laws, no holders of mortgages encumbering Units, other than Permitted Mortgagees who hold Institutional Mortgages shall be entitled to participate in the designation of Mortgage Representatives, but all holders of mortgages encumbering Units shall be subject to all determinations made by the Mortgage Representatives pursuant to the terms of the Declaration or these By-Laws.

Section 15.16 Subordination. The lien of any mortgage of a Unit recorded after the date of recording the Declaration in the Register's Office shall automatically be subordinate to the terms and provisions of the Condominium Documents, and any such mortgage that fails to provide for such subordination shall nonetheless conclusively be deemed to irrevocably and unconditionally provide for such subordination. Each mortgagee of a Unit, by accepting and recording such mortgage, shall conclusively be deemed to have automatically, irrevocably and unconditionally agreed to such subordination.

Although no further instrument shall be required to effectuate such subordination, each mortgagee of a Unit, by accepting such mortgage, agrees to execute and deliver any instruments and documents required to be executed and delivered by the Condominium Board in connection with the confirmation of such subordination. In the event such mortgagee fails to execute and deliver any such instruments or documents, its acceptance of such mortgage shall automatically and conclusively be

deemed to constitute its irrevocable and unconditional appointment of the Condominium Board as its true and lawful attorney-in-fact in its name, place and stead to execute and deliver any such instruments and documents, such power being "coupled with an interest" and for valuable consideration, and with full power of substitution.

Section 15.17 Registration of Tenants. A Tenant who enters into a Lease for a Unit in compliance with these By-Laws and whose true, correct and complete copy of the fully executed Lease, including any riders thereto (which must comply with the requirements contained in Section 15.1.5 above) has been given to the Condominium Board is a "**Registered Tenant**". A Tenant of an Unsold Unit shall automatically be deemed to be a Registered Tenant.

Section 15.18 Registered Tenant Benefits.

Section 15.18.1 Benefits. Subject to Section 15.18.2, the Condominium Board shall afford the following benefits to a Registered Tenant if so authorized in writing to the Condominium Board by the Owner of the Unit leased to such Registered Tenant:

(a) when so requested in writing by a Registered Tenant (but not more often three times in any twelve (12)-month period), the Condominium Board shall give Notice to such Registered Tenant, within thirty (30) Days after receipt thereof, of the current status of its landlord-Unit Owner's payment of Common Charges and Additional Common Charges (including Special Assessments), and performance, observance and fulfillment of such Owner's obligations under the Condominium Documents, of which, the Condominium Board has actual knowledge then exists;

(b) when the Board gives Notice to such landlord-Unit Owner of a Violation of the Condominium Documents, the Board shall contemporaneously send a copy of such Notice to such Owner's Registered Tenant; and

(c) a Registered Tenant shall have the right (but shall not be obligated) make any payment and any perform any act not timely paid or performed by its landlord-Unit Owner pursuant to the terms of the Condominium Documents and the Condominium Board shall accept such Registered Tenant's payment and performance with the same force and effect as if the same were paid and performed by such landlord-Unit Owner.

Section 15.18.2 Immunity. In no event, however, shall the Condominium Board, the Board's Related Parties or Unit Owners be responsible or accountable for any Claim, Litigation, Liability or Loss (including consequential, indirect, incidental and special damages) for any delay or failure, through oversight or negligence, in notifying a Registered Tenant of any of the matters contained in the preceding clauses (a) and (b) of Section 15.18.1. Nonetheless, with reasonable promptness after discovering such delay or failure, the Condominium Board shall advise such Registered Tenant thereof.

ARTICLE 16

CERTAIN REMEDIES

Section 16.1 Self-Help.

Section 16.1.1 Notice of Violation. If a Unit Owner or a Tenant of said Owner's Unit, or the respective Unit Users or Construction Parties of said Owner or Tenant (as applicable), shall Violate any of the provisions of the Condominium Documents on such Owner's part to be performed, observed or fulfilled (it being intended and agreed that each Owner shall be responsible and accountable for the Acts or Omissions of such Owner or for whom the Owner is accountable pursuant to Section 1.7.2 of the Declaration or Section 5.7.1 hereof), such Unit Owner shall cure or cause to be cured such Violation within thirty (30) Days after being given Notice of the same by or on behalf of Sponsor (until there is no Unsold Unit and the Final Certificate of Occupancy is issued) or the Condominium Board, or with respect to any Violation not reasonably susceptible to cure within such period, shall diligently to commence such cure and, thereafter, to prosecute such cure with due diligence and continuity to completion (but in no event longer than ninety (90) Days from the giving of such Notice). If such Unit Owner shall fail to cure such Violation within said thirty (30)-Day or ninety (90)-Day period (as applicable), the Sponsor or (if Sponsor fails to act with commercially prompt diligence) the Condominium Board shall have the right (the "**Right of Self-Help**") to enter such Owner's Unit and, at expense and for the account of the offending Unit Owner, to summarily abate, remove or cure such Violation without thereby being deemed guilty or Liable in any manner of trespass or otherwise, and without any manner of recourse against the Sponsor (or its Related Parties and Construction Parties) or the Board (or the Board's Related Parties and Construction Parties), as applicable, by reason thereof. Before implementing the Right of Self-Help, the offending Unit Owner shall first be given written notice (the "**Self-Help Notice**") stating at or near the top of the first page, in bold, upper case letters of at least 12 point font, as follows:

SELF-HELP NOTICE

ENCLOSED HEREWITH IS A COPY OF THE VIOLATION NOTICE PREVIOUSLY SENT TO YOU. YOU HAVE FAILED TO CURE THE VIOLATION WITHIN THE TIME PERIOD SET FORTH THEREIN. UNLESS YOU DILIGENTLY COMMENCE SUCH CURE WITHIN TEN (10) DAYS FROM THE DATE OF THIS SELF-HELP NOTICE AND, THEREAFTER, PROSECUTE SUCH CURE WITH DUE DILIGENCE AND CONTINUITY TO COMPLETION (BUT IN NO EVENT LONGER THAN THIRTY (30) DAYS FROM THIS DATE), THE UNDERSIGNED SHALL HAVE THE RIGHT (BUT NOT THE OBLIGATION) TO ENTER YOUR UNIT WITHOUT FURTHER NOTICE AND SUMMARILY ABATE, REMOVE OR CURE SUCH VIOLATION, AT YOUR EXPENSE AND FOR YOUR ACCOUNT, WITHOUT THEREBY BEING DEEMED GUILTY OR LIABLE IN ANY MANNER OF TRESPASS OR OTHERWISE, AND WITHOUT ANY MANNER OF RECOURSE

AGAINST THE UNDERSIGNED OR ITS RELATED PARTIES AND CONSTRUCTION PARTIES BY REASON THEREOF.

The offending Unit Owner shall reimburse the Sponsor or Condominium Board (as applicable) for all Costs and Expenses incurred to remedy said Violation in accordance with the Payment and Collection provisions of Section 1.8 of the Declaration. All Cost and Expense billed by the Condominium Board pursuant to the foregoing shall be regarded as Additional Common Charges assessed to, and payable by, such offending Unit Owner.

Section 16.1.2 No Violation Notice in Emergency. In the event that Sponsor (until there is no Unsold Unit and the Final Certificate of Occupancy is issued) or (if Sponsor fails to act with commercially prompt diligence) the Condominium Board shall determine that the abatement, removal or cure of any such Violation is immediately necessary in the case of an Emergency, the Sponsor or the Condominium Board (as applicable) may take such action immediately, without prior Notice and without allowing the said offending Unit Owner any period of time within which to cure or to commence to cure such Violation, without thereby being deemed guilty or Liable in any manner of trespass or otherwise, and without any manner of recourse against the Sponsor (or its Related Parties and Construction Parties) or the Board (or the Board's Related Parties and Construction Parties), as applicable, by reason thereof.

Section 16.1.3 Board Violation. If the Condominium Board shall Violate any of Sponsor's Rights or Violates its Duties under the Condominium Documents, including its obligation to Maintain, Repair and Restore the Common Elements, the Association's Assets and the Sidewalk (as provided in Section 5.2) or to the Restore the Common Elements after a casualty loss or a Taking by eminent domain or condemnation (as defined and provided respectively in Articles 7 and 12 hereof), then:

(a) the Condominium Board shall Indemnify Sponsor and Unsold Unit Owners (if any) from and against all resulting Claims, Litigations, Liabilities and Losses on the terms contained in Article 27 of the Declaration; and

(b) Sponsor and (if Sponsor fails to act with commercially prompt diligence) other Unsold Unit Owners shall each have the Right of Self-Help (but not the obligation), to correct such Violation or perform such defaulted obligation in the name, and at the expense and for the account, of the Condominium Board, which shall be allocated and apportioned to all Unit Owners Pro Rata to their respective Common Interests.

The Payment and Collection provisions of Section 1.8 of the Declaration shall apply to all amounts owed Sponsor or an Unsold Unit Owner (as applicable) under this Section 16.1.3.

This Indemnity and Right of Self-Help will apply only if: (a) the Board's Violation occurs while the Independent Board Members constitute a majority of all Board Members; and (b) (in the case of a Governmental Violation issued or noted against the Building) Sponsor is not obligated to correct the violation under the Plan.

Section 16.1.4 Board Cure Period. In addition, before Sponsor or an Unsold Unit Owner (as applicable) undertakes any Work to be paid or reimbursed by the Condominium Board:

(a) Sponsor or an Unsold Unit Owner (as applicable) shall first send to any Independent Board Member a Self-Help Notice of the election of Sponsor or such Unsold Unit Owner (as applicable) to do the Work at the expense and for the account of the Condominium Board; and

(b) the Condominium Board shall be given the following period to commence the Work: (b-1) thirty (30) Days from giving the Self-Help Notice if, in the Business Judgment of Sponsor, the Work will cost in the aggregate under $100,000; (b-2) sixty (60) Days from giving the Self-Help Notice if, in the Business Judgment of Sponsor the Work will cost in the aggregate $100,000 or more; or (b-3) ninety (90) Days from receipt of any proceeds of insurance (in the case of a casualty) or of any award (in the case of a Taking by eminent domain or condemnation); and

(c) the Condominium Board shall be allowed a commercially reasonable period to complete the Work with commercially reasonable diligence and continuity to completion.

In the event the Condominium Board does not begin the Work within the applicable time period or the Condominium Board does not complete the Work within a commercially reasonable period, Sponsor or said Unsold Unit Owner (as applicable) may (but is not obligated to) proceed to do the Work in the name, and at the expense and for the account, of the Condominium Board, as provided in Section 16.1.3 above.

Section 16.1.5 Reimbursement of Sponsor or Unsold Unit Owner. In the event Sponsor or said Unsold Unit Owner (as applicable) elects to do the Work, the Condominium Board shall reimburse Sponsor or said Unsold Unit Owner (as applicable) in accordance with the Payment and Collection provisions of Section 1.8 of the Declaration. All amounts to be so reimbursed by the Condominium Board shall be borne by all Unit Owners Pro Rata to their respective Common Interests.

Section 16.1.6 Indemnity. If the Condominium Board or Sponsor or an Unsold Unit Owner exercises the Right of Self-Help pursuant to this Section 16.1, such aggrieved Party shall indemnify the offending Party, on the terms set forth in Article 27 of the Declaration, from and against all Claims, Litigations, Liabilities or Losses incurred by the offending Party Parties caused by its or its Construction Parties negligence or intentional wrongdoing.

Section 16.1.7 Duty to Protect. An aggrieved Party exercising the Right of Self-Help shall make all reasonable efforts to protect the life, health, safety and security of Owners, Tenants and Occupants of Units, and to protect from damage any property located in the portion of the Property to which Work is being performed pursuant thereto, and shall not unreasonably interfere with the Use and Enjoyment in such portion of the Property for its intended purposes.

Section 16.2 All Remedies at Law and in Equity.

Section 16.2.1 Unit Owner Violation. In the event that any Unit Owner shall Violate any of the provisions of the Condominium Documents on such Owner's part to be observed, fulfilled or

performed, Sponsor (until there is no Unsold Unit and the Final Certificate of Occupancy is issued) or (if Sponsor fails to act with commercially prompt diligence) the Condominium Board shall have all rights and remedies available at law and in equity, including the right to enjoin, abate or otherwise remedy the continuance or repetition of any such Violation, and to compel specific performance, by appropriate Litigation.

Section 16.2.2 Violation of Sponsor's Rights. The Violation of any of the terms of the Condominium Documents or the Plan with respect to any of Sponsor's Rights thereunder shall give to Sponsor the right to enjoin, abate or remedy the continuation or repetition of any such Violation by appropriate Litigation.

Section 16.2.3 Aggrieved Owner's Rights. If the Condominium Board or Sponsor, or their respective Construction Parties, fail to timely meet, observe or fulfill, or otherwise Violates, any of the Work Requirements applicable to the Board or Sponsor that demonstrably has a material adverse effect on the use and Enjoyment of a Unit, the aggrieved Owner of such Unit shall have the right to enjoin, abate or remedy the continuation or repetition of any such Violation by appropriate Litigation.

Section 16.2.4 Reimbursement. The offending Party under Section 16.2.1, Section 16.2.2 or Section 16.2.3 shall be obligated to reimburse the aggrieved Party in accordance with the Payment and Collection provisions of Section 1.8 of the Declaration.

Section 16.2.5 Additional Common Charges. All sums payable by a Unit Owner to the Condominium Board pursuant to the terms of this Article 16 shall, for all purposes hereunder, constitute Additional Common Charges payable by such Unit Owner within ten (10) Days following written demand or with the next regular monthly payment of Common Charges (as directed by the Board).

Section 16.3 Remedies Cumulative. The remedies specifically granted to an aggrieved Party in this Article 16 or elsewhere in the Condominium Documents shall be cumulative, shall be in addition to all other remedies available at law or in equity and may be exercised at one time or at different times, concurrently or in any order, in the sole discretion of such aggrieved Party. Further, the exercise of any remedy shall not operate as a waiver, or preclude the exercise, of any other remedy.

Section 16.4 No Arbitration. Notwithstanding any other provision of the Condominium Documents to the contrary, the exercise and enforcement of the provisions of this Article 16 and all disputes and controversies underlying a Violation which give rise to the exercise and enforcement hereof, at the exclusive option and absolute discretion of the aggrieved Party exercising and seeking to enforce these provisions, shall not be subject to arbitration under Article 18 below. An offending Party against whom the provisions of this Article 16 are being enforced shall not, and shall not have the right to, submit said underlying dispute or controversy to arbitration while the provisions of this Article 16 are being exercised and enforced by an aggrieved Party. This Section 16.4 is paramount and shall govern any conflict or inconsistency with any other provision of the Condominium Documents.

ARTICLE 17

NOTICES

Section 17.1 General.

Section 17.1.1 How and Where Given. Except as otherwise expressly provided in these By-Laws or the Declaration, each and every request, demand, election, approval, consent or other communications (a "**Notice**") required or desired to be given hereunder or the Declaration, shall be in writing and sent by messenger for hand delivery the same Day, or overnight courier for next Business Day delivery by a recognized national courier (with receipt of delivery), or registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) (in the case of a Notice to the Condominium Board) to:

The Board of Managers of
324 West 108 Condominium
324 West 108th Street
New York, New York 10025
Attention: President

with a copy sent simultaneously and in like or speedier manner to the Sponsor at its address given below (until there is no Unsold Unit and the Final Certificate of Occupancy is issued) and to the then Managing Agent of the Building (if any);

(b) (in the case of a Notice to a Unit Owner other than Sponsor) to the Unit Owner at the address of the Building or at such other address as such Unit Owner may have designated in a Notice to the Condominium Board; or

(c) (in the case of a Notice to Sponsor) to:

W 108 Development LLC
119 West 72nd Street, #401
New York, NY 10023
Attention: Orly Gilat

Section 17.1.2 Changes in Address. Each Party may substitute a different address or add an address by sending Notice of the change to the other Parties (i.e., the Condominium Board, Unit Owners, Permitted Mortgagees and Registered Tenants, as appropriate).

Section 17.1.3 Date Deemed Given and Received. Unless otherwise expressly provided elsewhere in the Declaration or these By-Laws, each Notice shall be deemed given and received as follows:

(a) on the Day hand delivered by messenger, unless it is not a Business Day or is actually received after Business Hours, in which case the Notice shall be deemed given and received on the next Business Day; or

(b) the next Business Day after being sent by overnight courier for next Business Day delivery; or

(c) the third Business Day after being deposited in a post office or mail depository maintained by the United States Postal Service.

A Notice mailed from outside the United States or a Notice of a change of address or an additional address shall not be considered effective until actually received.

Section 17.1.4 Refusal or Failure to Accept. A refusal or failure to accept a Notice shall be deemed receipt of the Notice and will not affect the effectiveness, validity or enforceability of the Notice, nor excuse or justify delaying the performance of any Duties.

Section 17.2 Waiver of Service of Notice. Whenever any Notice is required to be given by Laws or pursuant to the terms of the Condominium Documents, 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 18

ARBITRATION

Section 18.1 Submission to Arbitration.

Section 18.1.1 Requirement to Arbitrate. This Article 18 shall constitute a written agreement of the Parties to submit to expedited arbitration (referred to herein and in the Declaration as "**Baseball Arbitration**"), and not court action or proceedings, conducted in The City of New York in accordance with the terms of this Article 18 any dispute arising out of, or concerning, the Declaration or these By Laws for which arbitration is expressly required, provided that: (a) the only Parties to the dispute are Unit Owners or one or more Unit Owners and the Condominium Board; and (b) if the terms of this Article 18 differ from or conflict with the "Commercial Arbitration Rules" (as defined in Section 18.3.1), the arbitration shall be chosen and the arbitration shall be governed in accordance with and pursuant to the terms of this Article 18.

Section 18.1.2 Exclusive Dispute Resolution Method. Baseball Arbitration in accordance with this Article 18 shall be the exclusive resolution method for any dispute for which arbitration is expressly required under the Declaration or these By-Laws, unless all Parties to the dispute unanimously agree to vary any of the terms of this Article 18 or unanimously agree to resolve their dispute in any other manner (including the manner set forth in Section 3031 of the New York Civil Practice Law and Rules and known as "New York Simplified Procedure for Court Determination of Disputes" or an equivalent statute). Unless a dispute is expressly required to be submitted to Baseball Arbitration, such dispute shall not be submitted to Baseball Arbitration or other arbitration, mediation or forum for dispute resolution unless each and every Party to the dispute, in its sole and absolute discretion, consents in writing to arbitrate under the provisions of this Article 18 or other forum for dispute resolution.

Section 18.2 **Notice of Arbitration**. The Party desiring to arbitrate a dispute required to be submitted to Baseball Arbitration shall give Notice ("**Arbitration Notice**") of its intention to submit such dispute to Baseball Arbitration. Such Arbitration Notice shall set forth with particularity the dispute sought to be arbitrated and shall, in addition, comply with any applicable requirements of the Commercial Arbitration Rules, which requirements supplement, without conflicting with, the foregoing requirements in this sentence regarding such Notice.

Section 18.3 **Selection of Arbitrators**.

Section 18.3.1 Definitions. The following terms used in this Article 18 shall have the meanings indicated:

The term "**Appointing Authority**" shall mean the American Arbitration Association or, if not in existence, the entity at the time most commonly utilized in the New York City metropolitan area for the arbitration of commercial disputes; provided, however, the Appointing Authority shall not be affiliated with or subject to the control of, any Party to the arbitration.

The term "**Commercial Arbitration Rules**" shall mean the then applicable commercial arbitration rules for Expedited Procedures for Commercial or Real Estate Disputes of the American Arbitration Association (or any successor Appointing Authority with similar function), as applicable, given the nature of the dispute.

The term "**Qualified Arbitrator**" as used herein shall mean a disinterested individual having not less than ten (10) years' experience relating to Class A buildings in Manhattan with residential uses similar to the Building and similar in size and to the then existing amenities of the Building and relating to the specific matter in dispute.

Section 18.3.2 Number of Arbitrators. All disputes shall be submitted for resolution by three arbitrators selected in accordance with Section 18.3.3, unless otherwise mutually agreed to by all Parties involved in the arbitration.

Section 18.3.3 Procedure. The Party desiring arbitration shall appoint a Qualified Arbitrator on its behalf, and give Notice thereof to the other Party or Parties to the arbitration, who shall, within fifteen (15) Days thereafter, collectively (if more than one other Party) appoint a second Qualified Arbitrator on its or their behalf and give Notice thereof to the first Party. The arbitrators thus appointed shall, within fifteen (15) Days following the appointment of the second arbitrator, appoint a third Qualified Arbitrator and said three arbitrators shall, as promptly as possible (but in any event within thirty (30) Days following the appointment of the third arbitrator), determine the matter which is the subject of the arbitration, and whether any Losses, Costs or Expenses are to be awarded in connection therewith.

Section 18.3.4 Selection by Appointing Authority. If a Party to the arbitration having the right pursuant to Section 18.3.3 to appoint an arbitrator fails or neglects to do so within the requisite fifteen (15)-Day period, or if the two arbitrators appointed by the Parties to the arbitration shall fail to appoint a third arbitrator within the requisite fifteen (15)-Day period following the appointment of

the second arbitrator, then any of the Parties to the arbitration may apply to the Appointing Authority for the appointment of such arbitrator.

Section 18.3.5 Successor. In the event any of the three arbitrators selected pursuant to Section 18.3.3 or Section 18.3.4 shall fail, refuse or be unable to act, his or her successor shall be appointed within ten (10) Days by the Party or Parties to the arbitration who originally appointed him or her. In the event such Party or Parties shall fail to so appoint such successor, or in the case of the third arbitrator, his or her successor shall be appointed as provided in Section 18.3.4. None of the Parties to the arbitration shall raise any challenge or objection as to the full Power and jurisdiction of the Appointing Authority to entertain such application and make such appointment.

Section 18.4 Baseball Arbitration. The following provisions shall apply to any dispute that is expressly stated to be arbitrated under the Declaration or these By-Laws (whether or not expressly stated to be resolved in accordance with these Baseball Arbitration provisions):

(a) no later than ten (10) Business Days after the appointment of the arbitrators (hereafter, the "**Arbitration Panel**") in accordance with Section 18.3 (the "**10-Business Day Submission Period**"), each Party to the dispute (individually, a "**Disputant**" and collectively, the "**Disputants**") shall send to each arbitrator on the Arbitration Panel and to all other Disputants such Party's written position on the question at issue (each, a "**Position Memorandum**"), together with such affidavits, appraisals, reports, briefs, memorandum of law, case citations, exhibits and other documentation relating thereto (together, "**Supporting Documentation**") as such Party deems appropriate;

(b) each Disputant shall have a one-time right to rebut in writing a Position Memorandum of another Disputant (the "**Rebuttal Memorandum**") by sending said Rebuttal Memorandum, together with such Supporting Documentation as the rebutting Disputant deems appropriate, to each arbitrator on the Arbitration Panel and to all other Disputants within a deadline of ten (10) Business Days (the "**10-Business Day Rebuttal Period**") after a rebutting Disputant receives such Position Memorandum from another Disputant ("TIME BEING OF THE ESSENCE"); provided, however, in no event shall such Disputant be entitled to revise its Claim for money due or owed or any other position on the issue to be resolved;

(c) each Disputant shall hereby conclusively be deemed to have irrevocably waived any rights of discovery with respect to a Position Memorandum or Rebuttal Memorandum or any Supporting Documentation during the arbitration;

(d) after submitting a Position Memorandum or Rebuttal Memorandum (as applicable) to the other Disputants and the Arbitration Panel, the submitting Disputant may not make any additions to, or deletions from, or otherwise change, such Position Memorandum or Rebuttal Memorandum (as applicable) or any Supporting Documentation accompanying same;

(e) if a Disputant fails to send its Position Memorandum to all other Disputants and the Arbitration Panel within said 10- Business Day Submission Period, and such failure is not cured within a deadline of five Business Days after another Disputant or an arbitrator on the Arbitration Panel shall have given Notice to such Disputant of its failure to deliver its Position Memorandum

("TIME BEING OF THE ESSENCE"), such Disputant shall conclusively be deemed to have irrevocably waived its right to send a Position Memorandum and the Arbitration Panel shall accept the Position Memorandum timely delivered by all other Disputants;

(f) if a Disputant fails to send its Rebuttal Memorandum to all other Disputants and the Arbitration Panel within said 10-Business Day Rebuttal Period and such failure is not cured within a deadline of five Business Days after another Disputant or an arbitrator on the Arbitration Panel shall have given Notice to such Disputant of its failure to deliver its Rebuttal Memorandum ("TIME BEING OF THE ESSENCE"), such Disputant shall conclusively be deemed to have irrevocably waived its right to send a Rebuttal Memorandum or any Additional Supporting Documentation;

(g) the Arbitration Panel shall not hold any hearings; and

(h) the Arbitration Panel shall be instructed, and shall be empowered, to render its decision and award based on: (h-1) only the one Position Memorandum and any Rebuttal Memorandum submitted in support thereof that the Arbitration Panel believes is the most accurate or correct position on the question at issue (together, the "**Winning Position Memorandum**"), without adding to, subtracting from or otherwise modifying the Winning Position Memorandum; and (h-2) the limitation contained in Section 18.7.

Section 18.5 Decision of Arbitrators; Binding Effect.

Section 18.5.1 Majority Requirement. The decision of a majority of the arbitrators shall be delivered to all Disputants by the arbitrators when made and shall be controlling for all purposes under the Declaration and these By-Laws immediately upon receipt by said Disputants of a copy of the decision.

Section 18.5.2 Immediately Effective. The effectiveness and implementation of such decision for such purposes shall not be delayed or postponed pending confirmation of the arbitration decision or award or entry of judgment upon the decision or award, notwithstanding any challenge or contest by any of said Disputants with respect to the decision or award, and notwithstanding any application or other request by any Disputant that the arbitrators or any court or other body stay, set aside, nullify or otherwise change the decision or award. The Disputants shall make no request or other application to the arbitrators or any court or other body for any injunction, stay or other relief that would be contrary to the provisions of the preceding sentence, and agree that the, any court and any other body shall have no jurisdiction or other authority to consider any request or other application for, or to grant, any injunction, stay or other relief that would Violate any provision of this Article 18.

Section 18.5.3 Subsequent Change. If any decision of a majority of the arbitrators shall be set aside, nullified, modified or otherwise changed after the Disputants receive a copy of the original decision or award, the Disputants shall thereupon comply with the action setting aside, nullifying, modifying or otherwise changing the original decision or award, with such changes and adjustments by the Disputants in actions taken pursuant to the original decision as may be necessary for such purpose.

Section 18.5.4 Binding and Conclusive. In any such arbitration, the determination of such dispute by such arbitration shall constitute the final determination thereof and shall be binding and conclusive upon the Disputants and shall constitute an "award" by the arbitrator within the meaning of the American Arbitration Association rules, and judgment may be entered thereon in any court of competent jurisdiction.

Section 18.5.5 Immunity and Indemnity of Arbitrators. No arbitrator, including an arbitrator selected by any Disputant, shall have any Liability to any Disputant by reason of the arbitrator's participation in any determination made under this Article 18, and each of the Disputants shall Indemnify the arbitrators from and against any and all Claims, Litigations, Liabilities and Losses (including Legal Expenses) asserted against any arbitrator by reason of such arbitrator's participation in any such determination.

Section 18.6 Expenses of Arbitration. The losing Disputant or Disputants (together, the "**Losing Disputant**") in any arbitration shall pay all Costs and Expenses of such arbitration, together with Legal Expenses and Per Diem Interest thereon (collectively, the "**Arbitration Costs**") of the Disputant who submitted the Winning Position Memorandum ("**Prevailing Disputant**"), but not the Legal Expenses of any other Disputants. The Payment and Collection provisions of Section 1.8 of the Declaration shall govern and apply to the amount owed hereunder. If the Board is a Disputant and is the Prevailing Disputant, then such Arbitration Costs owed by the Losing Disputant shall constitute Additional Common Charges.

Section 18.7 Limitation on Power of Arbitrators. The arbitrators shall apply the Laws of the State of New York without regard to principles of conflict of laws and the final determination of the Arbitration Panel shall be consistent with the provisions of the Declaration and these By-Laws, it being intended and agreed that the Arbitration Panel shall not have the Power to vary or modify any of the provisions of the Declaration or these By-Laws. The Powers and jurisdiction of the Arbitration Panel are hereby limited accordingly.

Section 18.8 Payment of Undisputed Sums. To the extent any dispute concerns Liability for or payment of the Common Expenses or Specially Allocated Expenses assessed to a Disputant or its Unit, such disputant shall pay any portion of such Common Expenses or Specially Allocated Expenses (as applicable) that is not in dispute when due and before the ten (10)-Day grace period expires for imposition of the interest and late charge set forth in Section 8.9.2.

ARTICLE 19

COOPERATION AND FURTHER ASSURANCES

Section 19.1 Provisions of Declaration Apply and Govern. The provisions of Article 21 of the Declaration are applicable to, and govern, the terms, restrictions and requirements to be followed by the Condominium Board, each Unit Owner and all Persons who, or whose interests in the Property or a Unit, are subject to the Declaration, in connection with the cooperation by the aforementioned with each other in order to effectuate the purposes and provisions of the

Condominium Documents, including the giving of Assurances, instruments and documents, and the limited power of attorney set forth respectively in Sections 21.4, 21.5 and 21.7 of the Declaration.

ARTICLE 20

GENERAL

Section 20.1 Inspection of Documents. Copies of the Declaration, these By-Laws, the Rules and Regulations and the Floor Plans, as each of the same may be amended from time to time, shall be maintained at the office of the Condominium Board or its Managing Agent (if any) and shall be available for inspection by Unit Owners and their authorized representatives and agents in accordance with the provisions of Section 14.7.3 above.

Section 20.2 Changes and Waiver. The provisions of Article 25 of the Declaration, as hereby modified to change all references therein to "this Declaration" (or similar words) to read instead "these By-Laws or the Rules and Regulations" or similar words, shall apply and govern with respect to changes and waivers of provisions of these By-Laws or the Rules and Regulations.

Section 20.3 Conflicts. These By-Laws are intended to be consistent with, and to complement and supplement, the Declaration, and are also intended to be consistent with the Plan for the Property and all Amendments thereto filed prior to the First Unit Closing, as well as the Condominium Act and all other applicable Laws. In the event that any provision of these By-Laws shall be construed to be inconsistent with any provision of the Declaration, the Plan or any said Amendment thereto, the Condominium Act or other applicable Laws, the provision contained in the Declaration, the Plan and said Amendments thereto, the Condominium Act or other applicable Laws, as the case may be, shall control, subject to the right of Sponsor and the Condominium Board to contest and defer compliance with Law as provided in Sections 14.1.5 and 14.1.6, respectively, which shall govern and control.

Section 20.4 Severability. If any provision of these By-Laws is invalid or unenforceable as against any Person or under certain circumstances, the remainder of these By-Laws and the applicability of such provision to other Persons or circumstances shall not be affected thereby. Each provision of these By-Laws shall be valid and enforced to the fullest extent permitted by Laws, except as otherwise provided herein.

Section 20.5 Successors and Assigns.

Section 20.5.1 General. The powers and/or Duties of, and limitations imposed on, a Unit Owner as set forth in these By-Laws and the Declaration, shall inure to the benefit of, and shall be binding upon, such Owner's heirs, legatees, distributees, executors, administrators, legal representatives, successors and assigns.

Section 20.5.2 Permitted First Mortgage Exception. Notwithstanding the foregoing, any Permitted First Mortgagee of a Unit or a purchaser at a foreclosure sale of a Permitted First Mortgage who succeeds to the interest of a Unit Owner, shall be responsible for only those Duties of such Unit

Owner accruing from and after the effective date of succession to title to such Unit and shall not be Liable for any unpaid or past due Common Charges or Additional Common Charges (including Special Assessments) accruing prior to the effective date that such successor succeeds to title.

Section 20.5.3 Sponsor's Rights. The Sponsor's Rights under the Condominium Documents, the Plan, and the limitations, restrictions and requirements thereunder in connection therewith or otherwise applicable thereto, shall inure to and be binding upon a "Sponsor Designee" and a Designee of an Unsold Unit Owner as more particularly provided in Section 17.1 of the Declaration.

Section 20.6 Table of Contents and Headings. The Table of Contents, and the Article and Section headings, of these By-Laws are for convenience and reference only and do not, and shall not be construed to, affect the scope, meaning or interpretation of any provision of these By-Laws.

Section 20.7 Incorporation of Declaration. All provisions of the Declaration referred to in these By-Laws are hereby incorporated herein with the same force and effect as though set forth at length, except the Declaration shall govern any conflict between the provisions of the Declaration and these By-Laws, as provided in Section 20.3.

END OF BY-LAWS

EXHIBIT E
Rules and Regulations of 324 West 108 Condominium

(attached)

EXHIBIT E TO DECLARATION OF CONDOMINIUM

RULES AND REGULATIONS OF 324 WEST 108 CONDOMINIUM

The Rules and Regulations apply to only Sold Units and their respective Owners and Tenants, and are intended to be consistent with, and to complement and supplement, the Declaration and the By-Laws and are also intended to be consistent with the Plan for the Property and all Amendments thereto filed prior to the First Unit Closing, as well as the Condominium Act and all other applicable Laws. In the event that any provision of these Rules and Regulations shall be construed to be inconsistent with any provision of the Declaration, the By-Laws, the Plan or any said Amendment thereto, the Condominium Act or other applicable Laws, the provision contained in the Declaration, the By-Laws, the Plan and said Amendments thereto, the Condominium Act or other applicable Laws, as the case may be, shall control. All Rules and Regulations, as they may be amended from time to time, that require the acceptance, approval or consent of Sponsor shall mean only until there is no Unsold Unit and the final Certificate of Occupancy is issued.

1. No Sold Unit Owner shall allow or suffer anything whatever to fall from the Windows of its Unit or sweep or throw from the Unit or its appurtenant Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) any dirt or other substance on or into any of the Common Elements (except for the use of waste lines in the manner for which intended and not prohibited under the Declaration and the By-Laws) or on to any yard, court or alley adjacent to the Building or the Sidewalk.

2. No Sold Unit Owner shall place a load upon any floor of its Unit (including its Balcony, Terrace or Juliette Terrace, if and as applicable) exceeding the floor load per square foot area that it was designed to carry and that is allowed by applicable Laws. All Equipment (including treadmills, clothes washers and objects that generate noise or vibration) shall be placed and maintained by each Sold Unit Owner, at its Sole Cost and Expense, in settings sufficient to absorb and prevent vibration and unreasonable noise and annoyance.

3. No Sold Unit Owner shall Alter, damage, impair, destroy or otherwise adversely and materially affect the Common Elements or the Limited Common Elements appurtenant another Unit without obtaining the express Discretionary Consents of (in case of the Common Elements) Sponsor and the Condominium Board or (in the case of the Limited Common Elements) the Owner of such other Unit, except as expressly permitted herein or in the Declaration or the By-Laws. A Sold Unit Owner shall give the Condominium Board or another Unit Owner prompt Notice of any Repairs that are needed in or to the Common Elements or the Limited Common Elements appurtenant such other Owner's Unit, respectively, after such Unit Owner has actual Notice thereof.

4. Water closets, sinks and other plumbing apparatus in the Building shall not be used for any purpose other than those for which they were designed or constructed, and no sweepings, rubbish, rags or any other article shall be thrown into the same. Any damage resulting from misuse

of any water closets, sinks or other apparatus in a Sold Unit shall be promptly Repaired and paid for by the Owner of such Sold Unit.

5. Each Sold Unit Owner shall submit for inspection by the Condominium Board any business permits or licenses required for the lawful conduct of any home occupation permitted to be carried on in such Owner's Sold Unit.

6. Any amounts assessed as an Additional Common Charge against a Sold Unit, in addition to the regular monthly Common Charges due and payable as provided in the By-Laws, shall be paid to the Condominium Board within ten (10) Days following written demand or (at the exclusive option of the Board) with the next monthly payment of Common Charges due and payable.

7. No agent or employee of the Condominium Board shall be sent out of the Building by any Sold Unit Owner at any time for any purpose.

8. Complaints by a Sold Unit Owner regarding Building Services or Operation of the Building shall be made in writing to the Condominium Board or its Managing Agent (if any).

9. The fiscal year of the Condominium Association shall be a calendar year beginning on the first Day of January or such other fiscal year as the Condominium Board may establish from time to time.

10. No vehicle belonging to an Owner or a Tenant of a Sold Unit, or to their respective Agents, Employees or Construction Parties, shall be parked in such manner as to impede or prevent ready access to or from any entrance to the Building.

11. A Sold Unit Owner may apply to the Condominium Board for a temporary waiver of one or more of the Rules and Regulations. Such temporary waiver may be granted by the Board in its sole discretion.

12. At the discretion of the Condominium Board, any consent given under these Rules and Regulations may be made conditional and may also be amended at any time. However, if expressly provided herein or elsewhere in the Condominium Documents that the Reasonable Consent is required, then such consent may not be unreasonably conditioned, delayed, withheld or denied.

13. Subject to Sponsor's Rights, the Sidewalk, the public or common areas of the Common Elements (including the 324 West 108th Street Public Areas, elevator, passageways, halls, vestibules, corridors and Egress Stairs) shall not be obstructed or encumbered by refuse or otherwise used for any purpose other than in connection with temporary loading or unloading of cartons, furniture, Equipment, materials, supplies and other items, but in a manner that shall not prevent for ordinary ingress to and egress from the Units.

14. No rider or motorized propelled velocipedes, bicycles, scooters, baby carriages or similar vehicles shall be allowed to stand or placed in the 324 West 108th Street Public Areas, elevator, public halls, vestibules, passageways, Egress Stairs or other public areas of the Building.

15. All service and delivery persons going to or from Units will be required to use the entrance of the Building designated by the Condominium Board for such purposes.

16. Furniture, furnishings, cartons, trunks, heavy baggage and other heavy or bulky personal property of Owners or Tenants of Units shall be taken in or out of the Building only through the entrance and exit as designated by the Condominium Board or the Managing Agent for such purpose. The Board shall determine the Days and hours for such deliveries or removal through the 324 West 108th Street Public Areas and elevator, subject to the rights of Sponsor to make all such determinations with respect to the Tenants of its Unsold Units.

17. No article (including garbage cans, bottles or mats) shall be placed or stored by a Unit Owner in any of the public vestibules, halls or on any of the Egress Stairs, or their landings, of the Building, nor shall any Egress Stairs be obstructed in any manner.

18. Any storage space in the Common Elements shall be used only for the storage of such Equipment, supplies, material and other articles, and for such other purposes allowed by Laws as the Condominium Board, in its sole discretion, may determine. No Sold Unit Owner shall be allowed to use the storage room or other rooms comprising the Common Elements without obtaining the Discretionary Consent of the Condominium Board, in each instance. If use thereof is permitted: (a) the supervision, management and control of the moving in, storing and removal of, an Owner's property from such storage space in the Common Elements is vested in the Condominium Board; (b) the use of storage space in said Common Elements shall be at the sole risk of the respective Owners or other Person using the same; and (c) the Condominium Board, its employees and agents (including the Managing Agent) shall not be Liable for any injury to Person, Loss by theft or otherwise, or damage to property, whether due to the negligence of the Condominium Board, its agents, the Managing Agent, or otherwise.

19. Each Sold Unit Owner shall comply with, and shall cause a Sold Unit User of Owner or a Tenant of Owner to comply with, all applicable Environmental Laws regarding the disposal of Refuse from Owner's Sold Unit. In furtherance thereof, each Sold Unit Owner shall comply with, and shall cause a Unit User of Owner or a Tenant of Owner to comply, with all Environmental Laws requiring Refuse to be separated into "recyclable" and "non-recyclable" materials. The Condominium Board may designate from time to time types of materials which must be separated for recycling, the types of containers or binding to be used by an Owner or a Tenant of a Sold Unit for disposal of designated recyclable or non-recyclable materials and the locations where recyclable or non-recyclable materials shall be deposited. Each Owner and Tenant of a Sold Unit shall comply with all other rules and regulations the Condominium Board may establish from time to time for disposal and recycling of Refuse. Any Costs and Expenses incurred by the Condominium Board as a result of a Sold Unit Owner's or Tenant's Violation of this rule or the enforcement of this rule against such Sold Unit Owner or Tenant (including, Legal Expenses to pursue, enforce, uphold, protect and defend the Board's rights hereunder and to collect the amounts owed, and any fines and penalties imposed on the Condominium Board by any Governmental Authority having jurisdiction) shall be payable by said Sold Unit Owner as Additional Common

Charges within ten (10) Days after written demand or (at the exclusive option of the Board) with the next monthly payment of Common Charges due and payable. Notwithstanding the foregoing, Sponsor or other Unsold Unit Owner shall not be obligated to reimburse the Condominium Board for any Costs and Expenses incurred by the Board as a result of a Violation of this rule by a Tenant of an Unsold Unit or the enforcement of this rule against Sponsor or other Unsold Unit Owners by reason of said Violation.

20. There shall be no playing or lounging in the 324 West 108th Street Public Areas, elevator, egress stairs or other public spaces, except in areas (if any) designated as such in the Declaration or by the Condominium Board, and then only in accordance and compliance with the requirements established by the Condominium Board.

21. The Condominium Board or the Managing Agent may, from time to time, curtail or relocate portions of the Common Elements, if any, devoted to storage, recreation or service purposes in the Building.

22. Nothing shall be done or kept in or on any Sold Unit or its Storage Locker, Balcony, Terrace, Juliette Terrace or Yard (if and as applicable), or in or on the Common Elements, that increases or would with reasonable likelihood increase the rate of insurance of the Building, or the contents thereof, without obtaining the Discretionary Consent of the Condominium Board, unless the Owner of such Sold Unit pays the increase in premium caused by such rate increase. No Sold Unit Owner shall permit or suffer anything to be done or kept in or on such Owner's Sold Unit or its Storage Locker, Balcony, Terrace, Juliette Terrace or Yard (if and as applicable), or in or on the Common Elements, that: (a) would with reasonable likelihood result in the cancellation, or results in a Notice of cancellation, of insurance on the Building, or the contents thereof; (b) would be in violation of any Laws. No Owner or Tenant of a Sold Unit, or such Owner's or Tenant's members, agents, employees, contractors, guests, visitors or invitees, shall, at any time, bring into or keep in such Owner's or Tenant's Sold Unit or Storage Locker, or on its Balcony, Terrace, Juliette Terrace or Yard (if and as applicable), any inflammable, combustible, or explosive fluid, material, chemical, or substance, except cleaning, heating and lubricating products in general use in first-class, high quality residential buildings located in the vicinity of the Building and similar to the Building's amenities; (provided, however, such products are properly used and stored in accordance with applicable Laws).

23. There shall be no barbecuing in or on the Sold Units or a Sold Unit's Balcony, Terrace, or Yard (if and as applicable), or the Common Elements, unless allowed by Laws. No barbecuing shall be allowed on a Juliette Terrace.

24. Any plants, trees, flowers, hedges, shrubs or other gardening item permitted to be installed on a Sold Unit's Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) shall be contained in free standing, removable boxes of wood, lined with metal or other materials impervious to dampness and standing on supports at least two inches from the surface, and if adjoining a Boundary Wall, at least three inches from such element. The wood boxes shall have

suitable weep holes to draw off water and only light weight soil shall be used. In special locations, such as a corner abutting a Boundary Wall or the like, plants may be contained in masonry or hollow tile walls which will be at least three inches from such Boundary Wall, with a floor of drainage tiles and suitable weep holes at the sides to draw off water. No trees taller than six (6) feet will be allowed on a Balcony or Terrace, including its container and supports. The Owner of such Sold Unit shall have the Duty, at such Owner's Sole Cost and Expense, to properly Maintain the containers, the drainage tiles and weep holes in operating condition in accordance with the Building Standard, and all gardening items properly pruned so that the height of tree shall not be taller than the footage indicated above and all gardening items shall not hang over the railings, parapets or other structures, or otherwise outside the borders of the Unit's Balcony, Terrace, Juliette Terrace or Yard (if and as applicable).

25. A Sold Unit Owner shall be Liable for any Loss or Damage to the Boundary Walls and other portions of the Building caused by any Outdoor Objects or (with respect to Sold Units, but not Unsold Units) any Violation of the foregoing requirements and obligations with respect to such Owner's Balcony, Terrace, Juliette Terrace or Yard (if and as applicable).

26. The Condominium Board shall have the Power, upon giving Notice and an opportunity to cure, or without Notice under certain circumstances, to enter upon a Sold Unit in order to access its Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) and to summarily abate, remove and cure the Violation (including removal of any Outdoor Objects not in compliance with these Rules and Regulations, as amended from time to time) at the Cost and Expense of the Owner of such Sold Unit, as provided in Article 16 of the By-Laws. All Legal Expenses incurred by the Board to pursue, enforce, uphold, protect and defend the Board's rights hereunder and to collect the amounts owed shall constitute Additional Common Charges of such Sold Unit.

27. The Condominium Board and its agents (including the Managing Agent) and employees (including the superintendent) shall have the right, upon reasonable Notice and at reasonable times, to inspect a Sold Unit's Storage Locker, Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) to assure compliance with the Declaration, the By-Laws and these Rules and Regulations and to access to said Sold Unit and its Storage Locker, Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) to enforce compliance with the foregoing.

28. At least eighty percent (80%) of the Sold Unit's indoor floor areas other than the kitchen, pantry (if any), bathrooms, powder room (if any) and closets) shall be carpeted or otherwise covered with an equally effective noise reducing material Reasonably Acceptable in writing by the Condominium Board, unless the Board waives this requirement in writing, in its sole and absolute judgment.

29. No Sold Unit Owner shall make, cause, or permit or suffer any unusual, disturbing, or objectionable noises or odors to be produced upon or to emanate from such Owner's Sold Unit (including its Storage Locker, Terrace, Juliette Terrace, Balcony or Yard, if and as applicable) or permit or suffer anything to be done therein or thereon that will unreasonably interfere with the

rights, comforts, or conveniences of the Owners and Tenants of other Units. No Owner or Tenant of a Sold Unit shall play, permit or suffer to be played any musical instrument, or shall operate, permit or suffer to be operated a phonograph, sound system, radio, television set, or other loudspeaker device in such Owner's Sold Unit (including on its Terrace, Juliette Terrace, Balcony or Yard, if and as applicable) between midnight and the following 8:00 a.m., if the same shall disturb or annoy other Occupants of the Building, and in no event shall any Owner or Tenant of a Sold Unit practice, permit or suffer to be practiced, either vocal or instrumental music between the hours of 10:00 p.m. and the following 9:00 a.m. No Work or other Installation involving noise shall be conducted in any Sold Unit or on its Balcony, Terrace, Juliette Terrace or Yard (if and as applicable), <u>except</u> on Business Days and only between the hours of 8:00 a.m. and 5:00 p.m., unless such Work is necessitated by an Emergency.

30. No bird, reptile or other animal shall be permitted, raised, bred, kept, or harbored in Sold Units, other than domestic dogs and domestic cats (not to exceed four (4) in the aggregate), unless, in each instance, the same shall have been expressly permitted in writing by the Condominium Board or the Managing Agent. Any such consent, if given, shall be revocable at any time by the Condominium Board or the Managing Agent, in its sole discretion. No Sold Unit shall be used for the breeding of animals or pets for commercial purposes. No dangerous or poisonous reptiles, insects or other animals shall be kept in any Sold Unit. No pigeons or other birds or animals shall be fed by Owners or Tenants of Sold Units from a Sold Unit's Windows, Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) or from public portions of the Building, or on any yards, courts, alleys, sidewalk or street adjacent to the Building. This paragraph is not applicable to Unsold Units.

31. Any permitted pet whose behavior is a nuisance to occupants of other Units or is the cause of an unsanitary condition or an offensive odor affecting occupants of other Units or the Common Elements shall be removed unless such behavior or condition is corrected within fifteen (15) Days after written Notice thereof is given and is not repeated more often than twice in any twelve (12)-month period.

32. No group tour or exhibition of any Sold Unit or its contents shall be conducted, nor shall any auction sale be held in any Sold Unit, without obtaining the Discretionary Consent of the Condominium Board or the Managing Agent in each instance. This paragraph is not applicable to Unsold Units.

33. No clients or other invitees of Sold Units shall be permitted to wait in the 324 West 108th Street Public Areas or a public hallway or vestibule of the Building.

34. Each Unit Owner shall notify the Condominium Board or the Managing Agent, if any, in writing when a child under the age of eleven (11) years lives or resides (even temporarily) in the Unit. Such Unit Owner shall be obligated to Install, at said Unit Owner's Sole Cost and Expense, window guards (or safety "stops" lieu of window guards, designed specifically to prevent a child from falling out of the window) in all Windows of the Unit in accordance with applicable

Laws. The design and composition of the window guards to be Installed on Windows of Sold Units shall conform to the architectural features of the Building as determined solely by the Condominium Board and Sponsor. Each Unit Owner shall Maintain all window guards (or stops) Installed in, on or to the Unit and shall not remove them until permitted by applicable Laws. The installation and removal of the window guards (or stops) shall be performed in accordance with all applicable Work Requirements, which (among others) require a Sold Unit Owner (but not an Unsold Unit Owner, who is exempt from this requirement): (a) signing the Building's standard alteration agreement with such modifications as the Board may determine to be appropriate (in its sole Business Judgment); and (b) obtaining the prior written Reasonable Consents of the Condominium Board and Sponsor. In the event of any disagreement between the Board and Sponsor (whenever its consent is required), the decision of Sponsor shall be paramount and control.

35. The glass surfaces of a Unit's Window or a door leading to a Terrace, Juliette Terrace, Balcony or Yard shall not be painted, colored or otherwise covered without obtaining the prior written consents of both the Condominium Board and (while there is any Unsold Unit) Sponsor.

36. No ventilator or air conditioning device shall be installed in any Sold Unit without obtaining the Reasonable Consents of the Condominium Board and Sponsor, other than ventilating and air conditioning Equipment to be installed pursuant to Sponsor's Plans and Specifications or approved or consented to by Sponsor under the Purchase and Sale Agreement for the Unit or an addendum thereto.

37. No Sold Unit Owner shall Install any radio or television aerial, antenna or satellite dish in, on or to, or project from the exterior of, such Owner's Sold Unit, or the Sold Unit's Windows, Balcony, Terrace, Juliette Terrace or Yard (if and as applicable), or the Building Walls or other area visible from the street. The foregoing restriction is subject to applicable Laws (if any) expressly prohibiting such restriction. No clothes, sheets, rugs, blankets, laundry, or other articles of any kind shall be hung on or out of, or shaken from, a Unit or its appurtenant Balcony, Terrace, Juliette Terrace or Yard (if and as applicable).

38. No Sign, Notice, advertisement, or illumination (including "For Sale", "For Lease", or "For Rent" Signs) shall be inscribed or exposed on or at any Window or its appurtenant Balcony, Terrace, Juliette Terrace or Yard (if and as applicable), or other part of the Building exposed to public view, by a Sold Unit Owner except such as are permitted (if any) pursuant to the terms of the Declaration and/or the By-Laws or as to which the Discretionary Consents of Sponsor and the Condominium Board have been given. Nothing shall be projected from any Window or Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) of a Sold Unit without obtaining the Discretionary Consents of the Condominium Board and Sponsor.

39. All radio, television, or other electrical or electronic equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements, or recommendations of the New York Board of Fire Underwriters and the Governmental Authorities

having jurisdiction, and the Unit Owner alone shall be Liable for any damage to property or bodily injury caused by any radio, television, or other electrical equipment.

40. Each Unit Owner shall keep the Owner's Unit and its appurtenant Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) in a good state of preservation, condition, Repair and cleanliness in accordance and compliance with the Building Standard and the terms of the Declaration and By-Laws.

41. The employees and agents of the Condominium Board or the Managing Agent, and any contractor or worker authorized by the Condominium Board or the Managing Agent, may enter any room or area of the Common Elements or Unit or a Unit's Balcony, Terrace, Juliette Terrace or Yard (if and as applicable) at any reasonable hour of the Day, on at least two Business Days' prior oral or Notice to the Unit Owner, for the purpose of inspecting such Unit, or its Balcony, Terrace, Juliette Terrace or Yard (if and as applicable), for the presence of any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects or other pests; however, such entry, inspection and extermination shall be done in a reasonable manner so as not to unreasonably interfere with the Use and Enjoyment of such Unit for its permitted purposes.

42. The Condominium Board or the Building's superintendent or the Managing Agent, upon request, shall be given a pass-key to the elevator entrance to each Sold Unit and to any additional entrance door erected by an Owner to the Owner's Sold Unit Owner. If any lock to the entrance door to a Sold Unit is Altered or a new lock is Installed, the Condominium Board or the Building's superintendent or the Managing Agent shall be provided with a key thereto immediately upon such Alteration or Installation. If the Sold Unit Owner is not personally present to open and permit an entry to such Owner's Unit at any time when an entry therein is necessary or permissible under these Rules and Regulations or under the By-Laws, and such Unit Owner has not furnished a key to the Condominium Board or the Building's superintendent or the Managing Agent, then the Condominium Board or the Building's superintendent or Managing Agent or their respective agents or employees (but, except in an Emergency, only when specifically authorized by an officer of the Condominium or an officer of the Managing Agent), upon giving reasonable advance oral or Notice to such Unit Owner (except no advance Notice shall be required in the case of an Emergency) may forcibly enter such Unit without Liability for damages or guilty or Liable for trespass by reason thereof (if, during such entry, reasonable care is given to such Unit Owner's property).

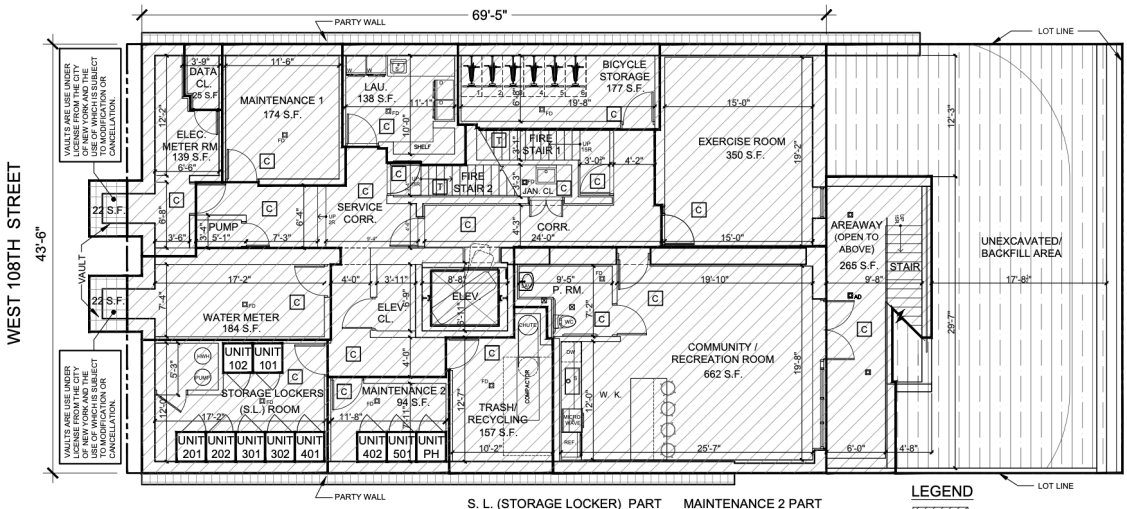
43. If any key or keys of an Owner or a Tenant of a Unit, or any family member thereof, or any agent, servant, employee, licensee or visitor of such Owner or Tenant, are entrusted by such Person to an employee of the Condominium Association or to the Building's superintendent or to the Managing Agent, whether for such Person's Unit, vehicle, trunk or other item of personal property, the acceptance of the key shall be at the sole risk of such Unit Owner or Tenant (as applicable), and neither the Condominium Board (or its agents and employees, including the Managing Agent and its employees) nor other Unit Owners (or their respective Related Parties)

shall be Liable for injury, Loss or Damage of any nature whatsoever, directly or indirectly resulting therefrom.

44. Owners and Tenants of Sold Units, and their respective family members, guests, contractors, employees, agents, guests, visitors and invitees, shall not at any time or for any reason whatsoever enter upon, or attempt to enter upon, the Roofs of the Building, other than Unit's Terrace (if any) or the community Terrace on the Main Roof.

END OF RULES AND REGULATIONS

EXHIBIT F
Diagrams of Units and Common Element
(attached)



CELLAR FLOOR

324-326 W. 108TH ST.

0' 5' 10' 20'

08.10.22

NORTH

S. L. (STORAGE LOCKER) PART OF FOLLOWING UNITS:

UNIT 101	TAX LOT # XXXX	9 S.F.
UNIT 102	TAX LOT # XXXX	9 S.F.
UNIT 201	TAX LOT # XXXX	9 S.F.
UNIT 202	TAX LOT # XXXX	9 S.F.
UNIT 301	TAX LOT # XXXX	9 S.F.
UNIT 302	TAX LOT # XXXX	9 S.F.
UNIT 401	TAX LOT # XXXX	9 S.F.

MAINTENANCE 2 PART OF FOLLOWING UNITS:

UNIT 402	TAX LOT # XXXX	9 S.F.
UNIT 501	TAX LOT # XXXX	9 S.F.
UNIT PH	TAX LOT # XXXX	9 S.F.

LEGEND

- COMMON ELEMENTS
- BEYOND LOT LINE
- UNEXCAVATED/BACKFILL GENERAL COMMON ELEMENT

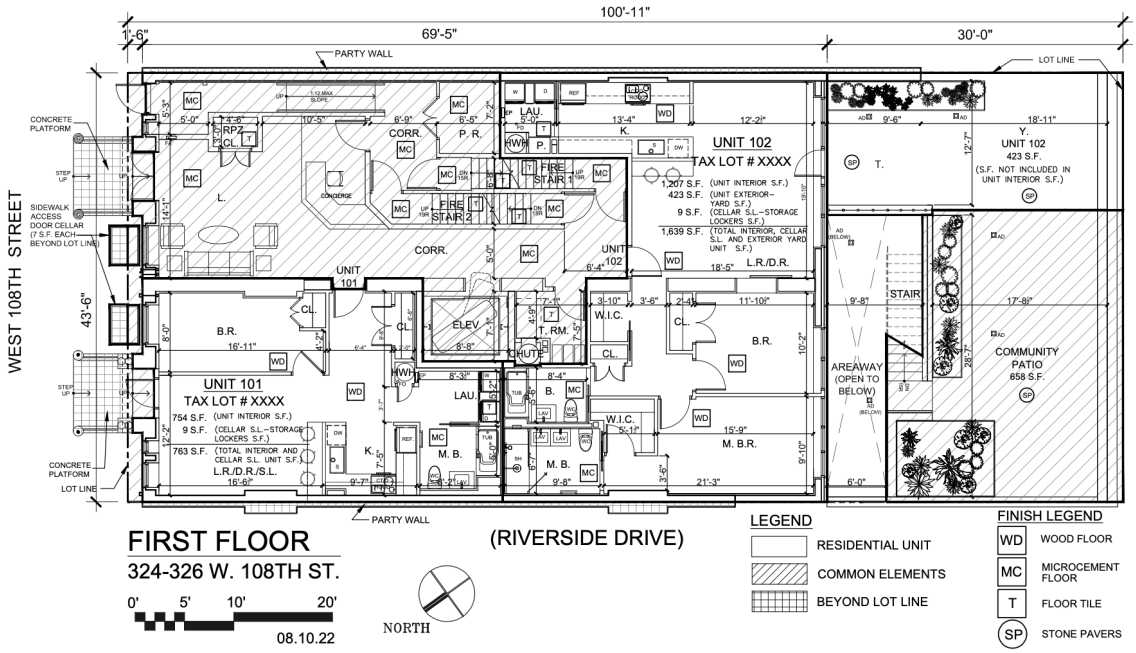
FINISH LEGEND

- C — CONCRETE FLOOR
- T — TILE FLOOR

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



FIRST FLOOR

324-326 W. 108TH ST.

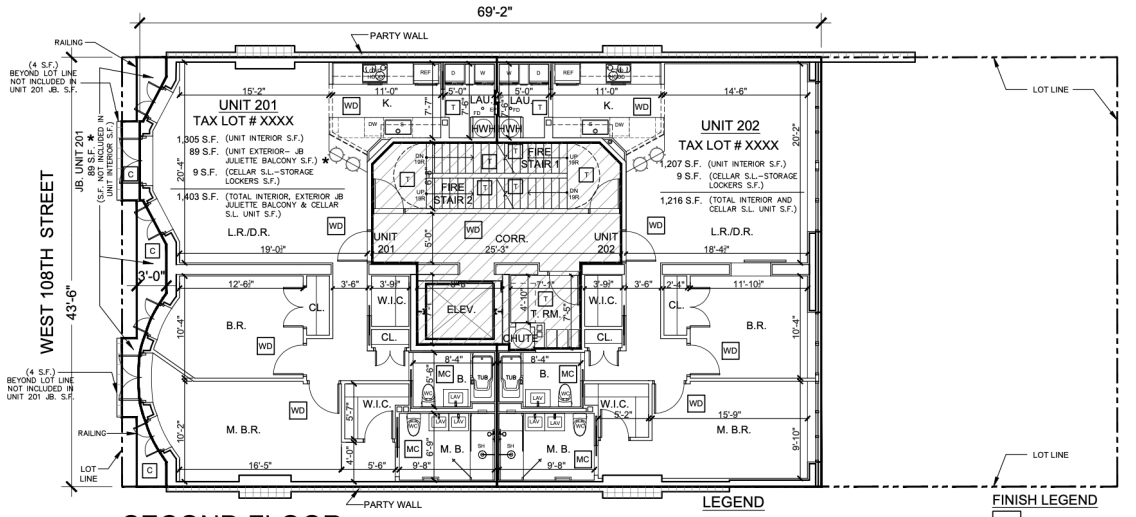
0' 5' 10' 20'

08.10.22

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



SECOND FLOOR

324-326 W. 108TH ST.

(RIVERSIDE DRIVE)

0' 5' 10' 20'

08.10.22

NORTH

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE
- ★ EXCLUDES S.F. BEYOND LOT LINE

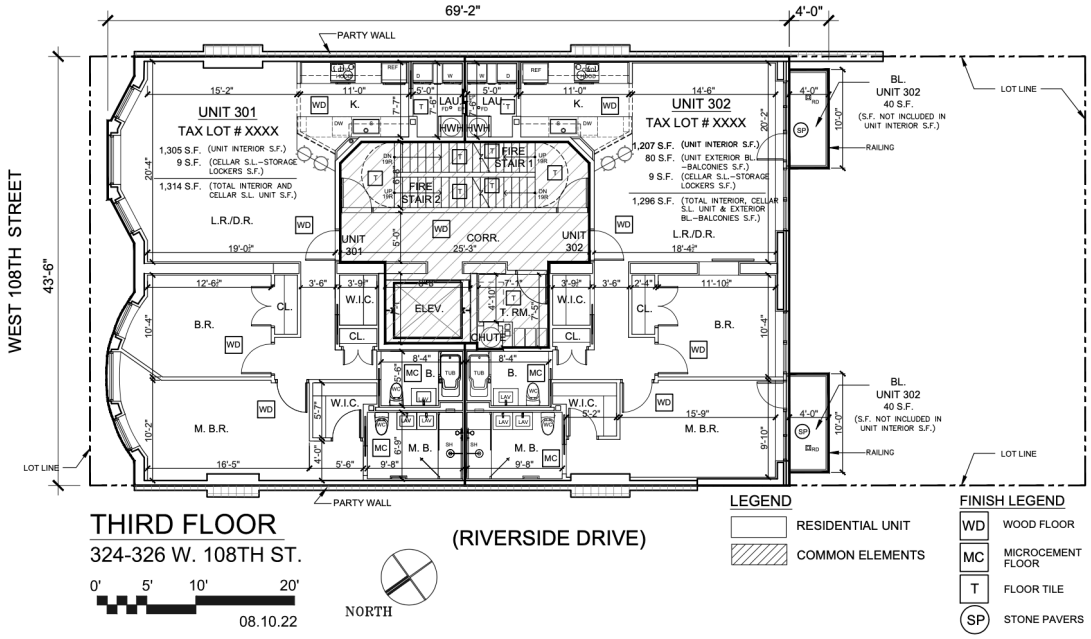
FINISH LEGEND

- WD WOOD FLOOR
- MC MICROCEMENT FLOOR
- T FLOOR TILE
- C CONCRETE FLOOR

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



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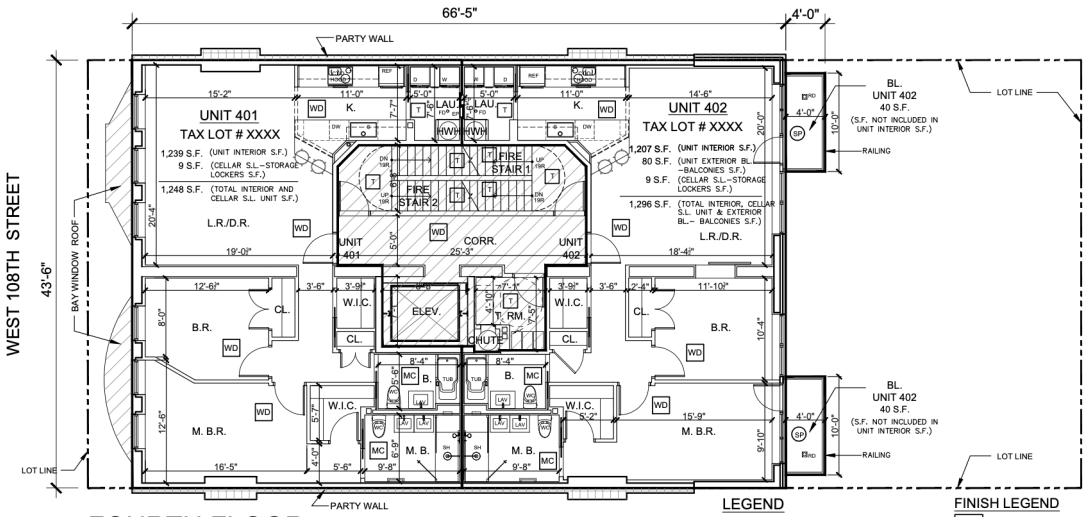
324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



FOURTH FLOOR

324-326 W. 108TH ST.

0' 5' 10' 20'

08.10.22

(RIVERSIDE DRIVE)

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS

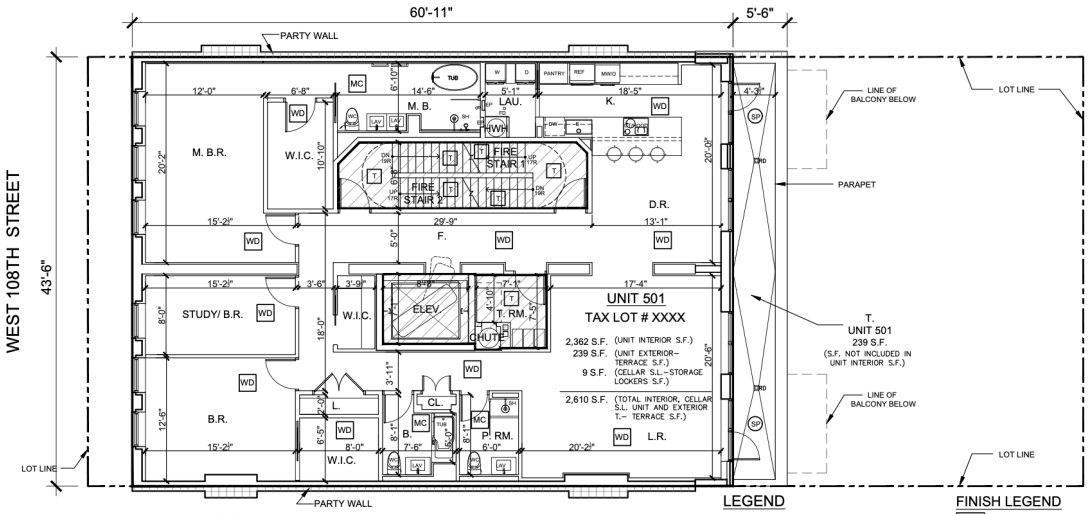
FINISH LEGEND

- WD — WOOD FLOOR
- MC — MICROCEMENT FLOOR
- T — FLOOR TILE
- SP — STONE PAVERS

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



FIFTH FLOOR

324-326 W. 108TH ST.

(RIVERSIDE DRIVE)

0' 5' 10' 20'

08.10.22

NORTH

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS

FINISH LEGEND

- WD — WOOD FLOOR
- MC — MICROCEMENT FLOOR
- T — FLOOR TILE
- SP — STONE PAVERS

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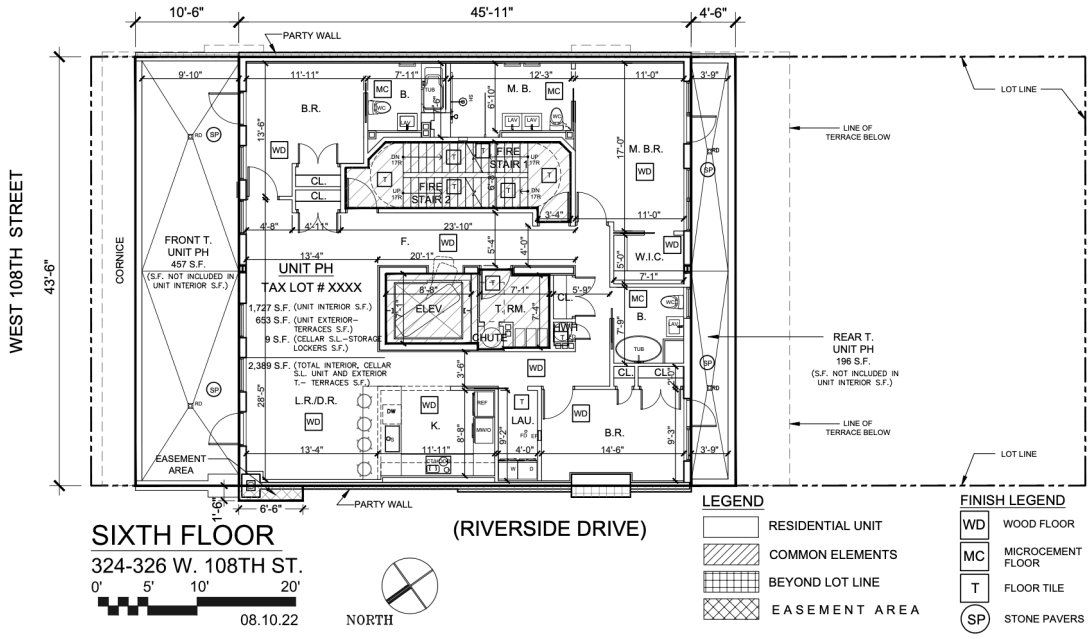
324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



SIXTH FLOOR

324-326 W. 108TH ST.

0' 5' 10' 20'

08.10.22

LEGEND

- RESIDENTIAL UNIT
- COMMON ELEMENTS
- BEYOND LOT LINE
- EASEMENT AREA

FINISH LEGEND

- WD — WOOD FLOOR
- MC — MICROCEMENT FLOOR
- T — FLOOR TILE
- SP — STONE PAVERS

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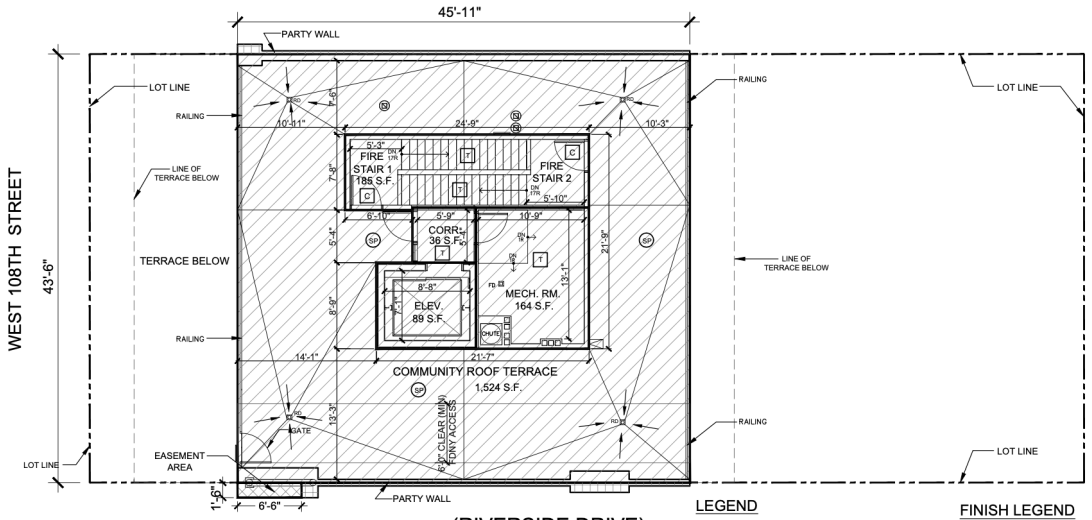
324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



ROOF FLOOR

324-326 W. 108TH ST.

0' 5' 10' 20'

08.10.22

NORTH

LEGEND

- COMMON ELEMENTS
- BEYOND LOT LINE
- EASEMENT AREA

FINISH LEGEND

- T — FLOOR TILE
- SP — STONE PAVERS
- C — CONCRETE FLOOR

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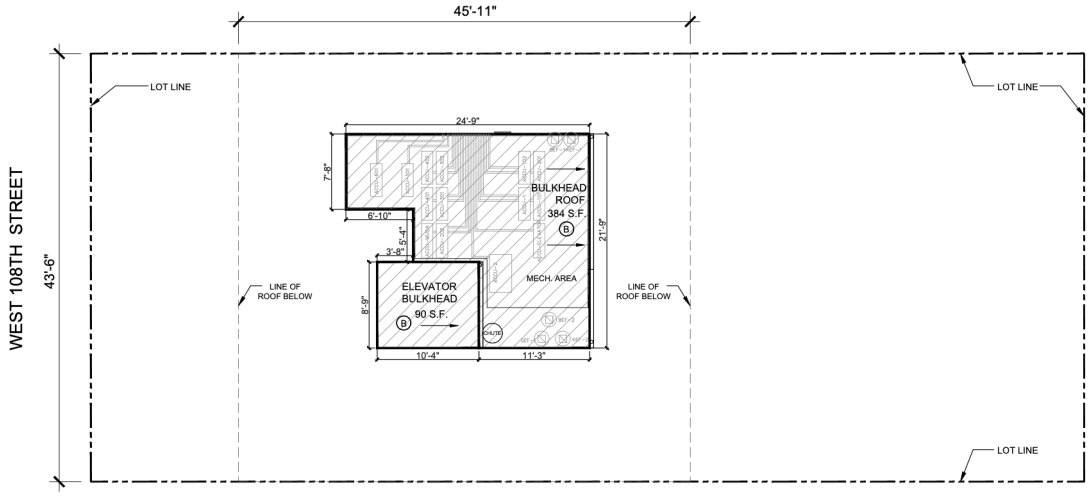
324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025



BULKHEAD ROOF FLOOR

(RIVERSIDE DRIVE)

324-326 W. 108TH ST.

0' 5' 10' 20'

08.10.22

NORTH

LEGEND

COMMON ELEMENTS

FINISH LEGEND

B BITUMEN ROOFING MEMBRANE

THE UNIT SQUARE FOOTAGE, LAYOUT AND ROOM OR AREA DIMENSIONS ON THESE FLOOR PLANS ARE APPROXIMATE, WITHIN REASONABLE TOLERANCES, AND BASED ON CONSTRUCTION DRAWINGS. THE UNIT WHEN BUILT WILL BE SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. THE SQUARE FOOTAGE INCLUDES THE ENCLOSING BOUNDARY WALLS AND WILL EXCEED THE USEABLE FLOOR AREA. COLUMNS, CHASE WALLS, CABINETS AND THE LIKE ARE NOT SUBTRACTED. ROOM AND AREA DIMENSIONS ARE MEASURED FROM THE EXPOSED SURFACES OF THE PREVAILING ENCLOSING WALLS. A MINOR OR IMMATERIAL INACCURACY IN THE ACTUAL SQUARE FOOTAGE OR THE ACTUAL SIZE OF INDIVIDUAL ROOMS OR AREAS OF A UNIT WHEN BUILT WILL NOT EXCUSE A PURCHASER FROM COMPLETING THE PURCHASE OF A UNIT WITHOUT ABATEMENT IN PRICE OR RECOURSE OF ANY KIND AGAINST SPONSOR. SPONSOR RESERVES THE RIGHT TO MAKE CHANGES TO A UNIT IN ACCORDANCE WITH THE OFFERING PLAN.

324 WEST 108 CONDOMINIUM

324-326 WEST 108TH STREET NEW YORK, NY 10025

DOCUMENT 8A

CERTIFICATION BY SPONSOR AND SPONSOR'S PRINCIPALS PURSUANT TO PART 20, SECTION 20.4(b) OF TITLE 13 NYCRR

TO: New York State Department of Law
Real Estate Finance Bureau

FROM **"Sponsor"**: W 108 Development LLC, having an office at 119 West 72nd Street #401, New York, New York 10023

and

"Principals": The undersigned individuals signing in their capacity as the principals of Sponsor

RE: **"Property"**: 324 West 108 Condominium
324 West 108th Street
(a/k/a 324-326 West 108th Street)
New York, New York 10025

DATE: February 3, 2022

We are the Sponsor and the Principals of the Sponsor of the condominium offering Plan (**"Offering Plan"**) for the captioned Property. We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Department of Law in Part 20 and such other laws and regulations as may be applicable.

We have read the entire Offering Plan. We have investigated the facts set forth in the Offering Plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the Offering Plan does, and that documents submitted hereafter by us which amend or supplement the Offering Plan will:

(i) set forth the detailed terms of the transaction and be complete, current and accurate;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

(iii) not omit any material fact;

(iv) not contain any untrue statement of a material fact;

(v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and

(vii) not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

SPONSOR:

W 108 Development LLC

By: _____
Orly Gilat, Member

Sworn or Affirmed to before me this 23rd day of February, 2022

_____
Notary Public

PRINCIPALS OF SPONSOR:

Signature: _____
Name: Orly Gilat

Sworn or Affirmed to before me this 23 day of February, 2022.

_____
Notary Public

Signature: _____
Name: Nimrod Ginsburg

Sworn or Affirmed to before me this 23 day of February, 2022.

_____
Notary Public

Signature: _____
Name: Hamutal Lieberman

Sworn or Affirmed to before me this 1st day of ~~February~~ March, 2022.

_____
Notary Public

JIMMY MA
Notary Public, State of New York
No. 01MA6116017
Qualified in New York County
Commission Expires Sept. 20, 2024

CERTIFICATION BY ARCHITECT
PURSUANT TO PART 20, SECTION 20.4(c)
OF TITLE 13 NYCRR

TO: New York State Department of Law
Real Estate Finance Bureau

FROM: Office of Marc Kemeny

RE: "Property": 324 West 108 Condominium
324-326 West 108th Street
New York, New York 10025

"Sponsor": W 108 Development LLC

"Offering Plan": The Condominium Offering Plan for the captioned Property

Date: November 21, 2022

The Sponsor of the Offering Plan to convert the captioned Property to condominium ownership retained our firm to prepare a report describing the renovation of the Property (the **"Report").** We visually inspected portions of the renovated Property on November 19, 2022, and reviewed plans delineating the prospective renovation of the Building by OCV Architects, dated December 5, 2017, and June 25, 2018, consisting of Building Department approved architectural, structural and mechanical plans (Joselow & Associates, LLC engineers as consultants). We prepared the Report dated November 21, 2022 a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

We are a registered architect in the State in which the Property is located.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to this Report.

We have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

We certify that the Report:

(i) sets forth in narrative form the description and/or physical condition of the entire Property as it will exist upon completion of the renovation, provided that renovation is in accordance with the plans and specifications that we examined;

(ii) in our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description and/or physical condition of the Property as it will exist upon completion of the renovation, provided that renovation is in accordance with the plans and specifications that we examined;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact; does not contain any fraud, deception, concealment or suppression;

(v) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and

(vi) does not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representations or statement made.

We further certify that we are not owned or controlled by and have no beneficial interest in the Sponsor and that our compensation for preparing this Report is not contingent on the 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.

Office of Marc Kemeny

By: _____
Marc Kemeny

Sworn to before me on November 21, 2022

_____
Notary Public

MONA LAGUERRE
NOTARY PUBLIC
State of Connecticut
My Commission Expires
November 30, 2025

DOCUMENT 8C

CERTIFICATION BY EXPERT ON ADEQUACY OF BUDGET PURSUANT TO PART 20, SECTION 20.4 (d) OF TITLE 13 NYCRR

TO:	New York State Department of Law Real Estate Finance Bureau	
FROM:	Daisy Management LLC	
RE:	**"Property":**	324 West 108 Condominium 324 West 108th Street (a/k/a 324-326 West 108th Street) New York, New York 10025
	"Sponsor":	W 108 Development LLC
	"Offering Plan":	The Condominium Offering Plan for the captioned Property
DATE:	February 3, 2022	

The Sponsor of the Condominium Offering Plan for the captioned Property retained us to review or prepare Schedules B and B-1 containing projections of income and expenses for the first year of condominium operation.

We are a licensed real estate broker and have been engaged in the business of managing residential properties in New York City for more than two years, and currently manage over 500 residential units with buildings in Manhattan in SoHo, the upper west side and the upper east side, and in Brooklyn, including condominiums and/or cooperatives.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to Schedules B and B-1.

We have reviewed the Schedules and investigated the facts set forth in the Schedules and the facts underlying them with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential buildings.

We certify that the projections in Schedules B and B-1 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:

(i) set forth in detail the projected income and expenses for the first year of condominium operation;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of condominium operation;

(iii) do not omit any material fact;

(iv) do not contain any untrue statement of a material fact;

(v) do not contain any fraud, deception, concealment or suppression;

(vi) do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and

(vii) do not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by the Sponsor. We understand that a copy of this certification is intended to be incorporated into the Offering Plan. This statement is not intended as a guarantee or warranty of the income and expenses for the first year of condominium operation. This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made.

We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Daisy Management LLC

By: Jonathan Houx
Signature: _____
Name: Jonathan Houx
Head of Operations

Sworn or Affirmed to before me this 9
day of February, 2022

_____
Notary Public

ERIK FERNANDEZ
Notary Public, State of New York
No. 01FE6410174
Qualified in Queens County
Commission Expires Oct. 19, 2024

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