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**ELEVENTH AMENDMENT  
TO  
OFFERING PLAN OF  
CONDOMINIUM OWNERSHIP OF  
PREMISES KNOWN AS  
DIAMOND ON DUANE CONDOMINIUM**

**137-141 DUANE STREET  
A/K/A 62-66 THOMAS STREET  
NEW YORK, NEW YORK**

**DATED: \_\_\_\_\_, 2013**

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THIS AMENDMENT MODIFIES AND SUPPLEMENTS THE TERMS OF THE ORIGINAL OFFERING PLAN DATED MAY 18, 2006, AND SHOULD BE READ IN CONJUNCTION WITH SAID PLAN, AS PREVIOUSLY AMENDED.

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- A. SCHEDULE OF UNSOLD UNITS, PURCHASE PRICES AND RELATED INFORMATION
- B. 2013 BUDGET
- C. REVISED SECTION 13 (“PROCEDURE TO PURCHASE) OF PLAN.
- D. REVISED ESCROW AGREEMENT

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**ELEVENTH AMENDMENT  
TO  
CONDOMINIUM OFFERING PLAN  
DIAMOND ON DUANE CONDOMINIUM**

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This Amendment modifies and supplements the terms of the original Offering Plan dated May 18, 2006, as amended by the First Amendment thereto dated July 26, 2006, the Second Amendment thereto dated November 9, 2006, the Third Amendment thereto dated April 18, 2007, the Fourth Amendment thereto dated June 26, 2007, the Fifth Amendment thereto dated August 14, 2007, the Sixth Amendment thereto dated February 21, 2008, the Seventh Amendment thereto dated July 23, 2008, the Eighth Amendment thereto dated October 15, 2008, the Ninth Amendment dated December 8, 2009 and the Tenth Amendment dated July 26, 2012 (collectively, the "Plan"), and should be incorporated into and read in conjunction with the Plan.

The terms of this Amendment are as follows:

1. FINANCIAL DISCLOSURE OF SPONSOR.

(a) Ownership of Unsold Units. Annexed hereto as Exhibit B is a schedule of all Unsold Units owned by the Sponsor, together with a schedule of projected common charges and real estate taxes, and related information.

As of September 1, 2013, the aggregate monthly common charges payable by the Sponsor to the Condominium with respect to the Unsold Units total approximately \$10,970.

As of September 1, 2013, the aggregate monthly real estate taxes applicable to the Unsold Units totals approximately \$19,172. *NEEDS TO BE CORRECTED*

The aggregate monthly rental income received by the Condominium for the Unsold Units is approximately \$8,120. One Unit is currently vacant.

(b) Financial Obligations to the Condominium. All required contributions to the Condominium, including the Reserve Fund and Working Capital Fund, have been made. The Sponsor is not required to make any contributions to the Reserve Fund or the Working Capital Fund. The Sponsor is not in arrears in its payment of common charges to the Condominium. The Sponsor has no financial obligations to the Condominium due within the next twelve (12) month period other than the payment of customary common charges. The Sponsor will fund such obligations through rental income, sales proceeds and its own resources.

(c) No Lender. The Unsold Units are not subject to a mortgage.

(d) Other Properties. Neither the Sponsor nor the principals of the Sponsor own more than ten percent (10%) of the cooperative or condominium interests in any other buildings.

The Offering Plan for this Building is on file with the Department of Law, 120 Broadway, 23<sup>rd</sup> Floor, New York, New York 10271 and is available for public inspection.

2. CONTROL OF THE CONDOMINIUM BOARD. The Sponsor does not control the Condominium Board. Notwithstanding the foregoing, so long as the Sponsor or its designee owns two (2) or more Residential Units, the Sponsor or its designee will be entitled to designate one (1) of the four (4) residential members of the Board (assuming the Board consists of five (5) members). The Commercial Unit Owner will also have the right to designate one member of the Board of Managers.

The current members of the Board are as follows:

|                |                                |
|----------------|--------------------------------|
| Neil Bauman    | President                      |
| Samuel Hoffman | Vice President                 |
| David Zar      | Commercial Unit Owner designee |
| Jason Carroll  | Treasurer                      |
| Evan Seiden    | Sponsor designee               |

3. FINANCIAL STATEMENTS. The Board of Managers has not finalized the audited financial statements for calendar years 2010, 2011 or 2012, and accordingly, they are not included with this amendment.

4. BUDGET AND RESERVE FUND. The budget adopted by the Board of Managers for 2013 is attached as Exhibit B.

The current balance of the Condominium Reserve Fund is \$867,813.50.

5. REVISIONS TO ESCROW TRUST FUND REGULATIONS. The Department of Law has revised its regulations to eliminate the Attorney General's role in adjudicating disputes regarding the disposition of deposits, down payments, or advances ("Deposits") received by a Sponsor pursuant to New York General Business Law ("GBL") §§ 352-3(2-b) and 352-h. The changes only impact Purchasers who have not received a fully executed Purchase Agreement prior to the date of service of this Amendment. For all other Purchasers, the disclosures set forth in the "Procedure to Purchase" section of the Plan are modified as set forth in Section 16 below, and will apply to all purchasers of Units from the Holder of Unsold Units. The revisions to the Regulations are described in greater detail below:

(a) **Escrow Account.** All funds received from Purchasers on account of the down payment or for upgrades, extras, or custom work (the "Down Payment" or Deposit") shall be in the form of checks, drafts, money orders or wire transfers, and shall be made payable to the order of the designated escrow agent under the Plan (Escrow Agent") for Sponsor and Purchaser. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing. Escrow Agent will hold all monies received directly or through its agents or employees in trust until the closing of title to a particular Unit in a designated escrow account at a bank authorized to do business in the State of New York. The escrow account will be entitled "137 Duane Special Account" ("Escrow Account") or similar name and the account number shall be set forth in the Plan. The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured.

(c) **Maintenance of Funds.** Within five (5) business days after the fully executed Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Purchase Agreement and place the Deposit into the Escrow Account. Within ten (10) business days after placing the Deposit submitted with the Purchase Agreement in the Bank, the Escrow Agent shall notify the Purchaser and the Sponsor in writing that such funds have been deposited in the bank indicated in the Plan, and provide the account number and the initial interest rate. Any Deposits made for upgrades, extras or custom work shall initially be deposited into the Escrow Account, and released in accordance with the terms of a written agreement between Purchaser and Sponsor.

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the deposit, he or she may cancel the purchase and rescind by notice given within ninety (90) days after tender of the Purchase Agreement and the Deposit to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23<sup>rd</sup> floor, New York, NY 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser.

Before the Escrow Agent is changed, or funds are transferred to a new escrow account, the Plan will be amended to disclose the changes made. The Escrow Agent will maintain all records as to the escrow account for a period of seven years after release of the funds.

The Sponsor reserves the right to secure a bond from a New York insurance company or letter of credit from a New York bank in favor of each Purchaser of a Unit at the Condominium in an amount equal to the down payments received by Sponsor, directly or through its agents or employees, to guarantee the return of the down payments. In order to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds, the Sponsor must first apply and receive approval from the Attorney General. If Sponsor's application is granted, then the terms of such alternate security shall be disclosed in a promptly filed amendment to the Plan.

All funds received by Sponsor will be handled in accordance with the provisions of Section 352-h and 352-e(2)(b) of the General Business Law and Lien Law and shall be employed by Sponsor only in connection with the consummation of the transaction with the applicable Purchaser. Such funds shall not be commingled with any other money or pledged or hypothecated by the Sponsor. Sponsor represents that it shall comply with the escrow and trust fund requirements of these two statutes. Consummation of the Plan does not relieve the Sponsor of its obligations under New York State General Business Law Section 352-h. Such deposit together with any interest accumulated thereon shall remain the property of the Purchaser until consummation of the transaction with the applicable Purchaser. Funds from the escrow account shall not be part of the estate of the Sponsor or the Escrow Agent upon bankruptcy, incapacity or death. After the closing of title to the Unit, such funds will be payable to Sponsor.

All Deposits received by Sponsor for upgrades or extras must initially be placed in the Escrow Account, and released in accordance with the terms of a written agreement between Purchaser and Sponsor. However, Purchasers should note as a Special Risk that such funds may be released from the Escrow Account by the Escrow Agent as long as the Sponsor uses the funds for such upgrades or extras. As a result, in the event a Purchaser is entitled to rescission, the Purchaser will not receive a refund of any funds used for upgrades or extras.

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

(c) **Interest on Down Payment.** Interest will accrue for the benefit of a Purchaser on the Down Payment made by such Purchaser to acquire a Unit at the bank's prevailing rate for security deposit accounts (currently approximately 0.01%), until the closing or termination of the Purchase Agreement. Interest shall begin to accrue upon placing the Deposit into the Escrow Account. All interest earned thereon shall be paid to or credited to the Purchaser at closing. No fees of any kind may be deducted from the Escrow Account, and the Sponsor shall bear all costs associated with the maintenance of the Escrow Account.

(d) **Procedures for Release of Funds under Escrow Agreement.** The release of escrow funds shall be governed by the following:

(i) Under no circumstances shall the Sponsor apply for release of escrowed funds of a defaulting Purchaser until after the first Unit closing under the Plan, as evidenced by acceptance of an effectiveness amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL Section 352-h.

(ii) The Escrow Agent shall release the Deposit if so directed:

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

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

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

(iii) If the Escrow Agent is not directed to release the Deposit pursuant to clauses (1) through (3) above, and the Escrow Agent receives a request by either party to release the Deposit, then the Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If the Escrow Agent has not received notice of objection to the release of the Deposit prior to the expiration of the thirty (30) day period, the Deposit shall be released and the Escrow Agent shall provide further written notice to both parties informing them of said release. If the Escrow Agent receives a written notice from either party objecting to the release of the Deposit within said thirty (30) day period, the Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to clauses (1) through (3) above. Notwithstanding the foregoing, the Escrow Agent shall have the right at any time to deposit the Deposit contained in the Escrow Account with the clerk of the county where the [unit/building] is located and shall give written notice to both parties of such deposit, upon which the Escrow Agent shall be relieved of all further liability with respect to the Deposit

(iv) The Sponsor shall not object to the release of the escrowed funds to (i) a Purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an amendment to the Plan or (ii) all Purchasers after an amendment abandoning the Plan is accepted for filing by the Department of Law.

(v) 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.

For the specific application of the revised Escrow and Trust Fund Regulations to Purchasers of Unsold Units from the Holder of Unsold Units, see Part B of the revised "Procedure to Purchase" section of the Plan reproduced as Exhibit C to this Amendment.

## 6. REVISIONS TO "PROCEDURE TO PURCHASE" SECTION OF THE OFFERING PLAN.

(a) Section 13 of the Plan ("Procedure to Purchase") is deleted in its entirety and the revised Procedure to Purchase section attached as Exhibit C to this Amendment is substituted in its place. Part A describes the general procedures to purchase. Part B details the revised Escrow and Trust Fund provisions of the Plan.

(b) Exhibit J of Part II of the Plan, titled "Application to the Attorney General for a Determination on the Disposition of Downpayments" is deleted in its entirety.

7. REVISED ESCROW AGREEMENT. The Escrow Agreement attached as Exhibit K in the Plan is deleted and the form of Escrow Agreement attached as Exhibit D to this Amendment is substituted in its place. The Escrow Agreement is required to be executed by the Seller, Purchaser and Escrow Agent upon execution and delivery of the Purchase Agreement to Seller.

8. INCORPORATION OF PLAN. The Plan, as modified and supplemented herein, is incorporated herein by reference with the same effect as if set forth at length.

9. NO OTHER MATERIAL CHANGES. Except as set forth in this Amendment, there have been no other material changes in the Plan.

10. DEFINITIONS. All capitalized terms not expressly defined in this Amendment will have the meanings given to them in the Plan.

11. EFFECTIVE PERIOD FOR USING THE PLAN IS EXTENDED. The Plan, as modified and supplemented, is hereby extended for twelve (12) months following the Filing Date of the Amendment set forth below, unless the Plan is otherwise extended or amended.

SPONSOR:   
137 Duane Street Condo, LLC

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**EXHIBIT A**  
**SCHEDULE OF UNSOLD UNITS**

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## EXHIBIT C

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### REVISED SECTION 13 ("PROCEDURE TO PURCHASE") OF PLAN

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#### **A. General Provisions.**

A person desiring to purchase a Unit will be required to execute four (4) copies of a Purchase Agreement in the form set forth in Part II of this Plan, and to return it to the Sponsor at its office located at 3 Columbus Circle, Suite 1430, New York, New York 10019, together with a check for the required down payment drawn on a New York City bank to the order of "SBJ-137 Duane Special Account". The down payment will be 10% of the Purchase Price of the Unit. When accepted in writing by the Sponsor, the Purchase Agreement will be binding upon the Sponsor. The Sponsor shall have twenty (20) days within which to accept or reject any Purchase Agreement, at which time the Sponsor will return to Purchaser either a fully executed counterpart of the Purchase Agreement or a refund of the down payment previously tendered, without interest. Failure by the Sponsor to act within this twenty (20) day period shall be deemed a rejection of the Purchase Agreement.

Purchasers will be afforded not less than three (3) business days to review the Plan and all filed amendments before executing a Purchase Agreement unless fewer than three (3) business days remain in the statutory time period to declare the plan effective.

Although a Purchaser may obtain financing from a lending institution, or other source, Purchase Agreements are not conditioned on the Purchaser obtaining financing.

Any notice or other communication required or permitted to be given under the Purchase Agreement shall be in writing and shall be deemed to have been given if delivered personally or sent by certified or registered mail, return receipt required. All such notices and communications shall be deemed to have been received on the date of personal delivery or on the fifth (5th) day after mailing.

Upon the closing of title, the Purchaser will be required to (i) pay the balance of the purchase price of the Unit, (ii) execute a Power of Attorney in the form contained in Part II of this plan and (iii) if a mortgage loan is being obtained by Purchaser, execute the mortgage note or bond and mortgage and any other documents required by the mortgagee in connection with the loan. The Purchaser will then receive a Deed in the form set forth in Part II of the Plan. At closing, or at such earlier time as Purchaser enters into possession of the Unit pursuant to a written agreement with the Sponsor, the risk of loss from fire or other casualty will pass from Sponsor to the Purchaser. The Sponsor is under no obligation to allow a Purchaser to take possession of a Unit prior to closing and a Purchaser has no right to do so, absent Sponsor's agreement.

If a Purchaser (i) does not pay the balance of the Purchase Price when due or execute the Power of Attorney in the Form contained in Part II of this Plan or (ii) fails to perform any other obligation under the Purchase Agreement, and if Purchaser does not remedy such default within thirty (30) days after written notice to the Purchaser, the Sponsor may (but is not obligated to) elect to cancel the Purchase Agreement. In such event, the down payment, as described above, if

any, with interest if earned, shall be paid over to the Sponsor as and for liquidated damages and thereafter the Purchase Agreement shall become null and void. Notwithstanding the foregoing, the Sponsor may not retain as liquidated damages a sum in excess of ten (10%) percent of the Purchase Price plus interest, if any, that has been earned thereon, plus the cost of optional extras and custom work ordered and any installation costs connected therewith, if any, as incurred.

The Purchase Agreement provides that the Purchaser is purchasing the Unit without relying upon any warranties or representations as to financial data or estimated income tax deductions, except as specifically represented in this Plan and the Exhibits hereto.

The Purchase Agreement for Residential Units provides that if after the effective date of this Plan, title to a Unit has not been conveyed to a Purchaser within one (1) year after the closing date set forth in the Purchase Agreement (except where such failure is due to the default of Purchaser) or any adjourned date which has been agreed upon by both Sponsor and Purchaser (except where such failure is due to the default of Purchaser), then the Purchaser shall have the right, for a period of thirty (30) days from the expiration of such one (1) year period, to cancel the Purchase Agreement. A Purchaser desiring to so cancel must tender a written notice to the Sponsor during that thirty (30) day period and the Purchase Agreement will be deemed canceled at the end of the notice period, which shall be at least thirty (30) days from the sending of such notice (unless the Sponsor is ready, willing and able to close title within such thirty (30) day period). Upon such cancellation, the Sponsor shall return any monies paid under the terms of the Purchase Agreement, with interest if earned (See the Section of this Plan entitled "Escrow Funds").

The Sponsor reserves the right to lease Units that are not subject to a Purchase Agreement without limitation as to the term or rental. If the Sponsor rents a Unit prior to the sale and conveyance of such Unit, the Sponsor will notify Purchaser that the Unit has been previously occupied. Residential Units will be delivered at the closing of title free and clear of all leases, tenants and rights of occupancy.

The Sponsor has reserved the right for itself and its designee, without prior notice or amendment to the Plan, to use any unsold Residential Units as sales offices and model units. If the Sponsor or its designee thereafter elects to sell any such unsold Residential Unit, the Sponsor, or its designee, may require the Purchaser thereof to purchase all or any of the furnishings, equipment or decorations therein and pay, in addition to the Purchase Price for such Unit, such amounts for the furnishings, equipment or decorations as Sponsor or its designee may determine, which shall be more fully set forth in a Rider to the Purchase Agreement. The presence of any furniture, furnishings, equipment or decorations in any model Unit does not and will not imply or represent that any Residential Unit will contain such furniture, furnishings, equipment or decorations, unless the Purchaser agrees to pay Sponsor the amount determined by Sponsor, or its designee in addition to the Purchase Price for such Unit.

Any inconsistency between the Purchase Agreement and this Plan will be resolved in favor of this Plan.

Neither the Plan nor the Purchase Agreement shall contain or be modified to contain any provision waiving Purchaser's rights, other than the ability of Purchaser to waive his or her right to thirty (30) days written notice prior to closing of title to the Unit, or abrogating the Sponsor's

obligations under the Offering Plan or under Article 23-A of the New York General Business Law.

Purchasers are prohibited from assigning Purchase Agreements without the prior written consent of the Sponsor, which may be given or withheld in the Sponsor's sole discretion.

All Purchase Agreements will be subject to the provisions of the Section of this Plan entitled "Escrow Funds" which provides for, among other things, Sponsor's compliance with the escrow and trust fund provisions of the General Business Law and the Attorney General's regulations.

**B. Escrow and Trust Fund Provisions.**

1. **Interest on Down Payment.** Interest will accrue on the down payment at the bank's prevailing rate for security deposit accounts (currently approximately 0.01%) for the benefit of the Purchaser until the closing or termination of the Purchase Agreement. Interest shall begin to accrue upon placing the Deposit into the Escrow Account. All interest earned thereon shall be paid to or credited to the Purchaser at closing. No fees of any kind may be deducted from the Escrow Account, and the Sponsor shall bear all costs associated with the maintenance of the Escrow Account.

2. **Disbursement of Funds.** All funds received from Purchasers on account of the down payment or for upgrades, extras, or custom work (the "Down Payment" or Deposit") shall be in the form of checks, drafts, money orders or wire transfers, and shall be made payable to the order of "Smith, Buss & Jacobs, LLP, as Escrow Agent". The law firm of SMITH, BUSS & JACOBS, LLP, having an address at 733 Yonkers Avenue, Suite 200, Yonkers, New York 10704, telephone number (914) 476-0600, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated the following attorneys to serve as signatories: Thomas W. Smith; Kenneth Jacobs; Domenick Tammaro; and Anthony Simari. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing. Escrow Agent will hold all monies received directly or through its agents or employees in trust until the closing of title to a particular Unit in the escrow account at The Westchester Bank located at 2001 Central Park Avenue, Yonkers, NY 10710 in the State of New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled "SBJ - 137 Duane Special Account" ("Escrow Account"). The account number is \_\_\_\_\_. The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured.

Within five (5) business days after the fully executed Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Purchase Agreement and place the Deposit into the Escrow Account. Within ten (10) business days after placing the Deposit submitted with the Purchase Agreement in the Bank, the Escrow Agent shall notify the Purchaser and the Sponsor in writing that such funds have been deposited in the bank indicated in the Plan, and provide the account number and the initial interest rate. Any Deposits made for upgrades, extras or custom work shall initially be deposited into the Escrow Account,

and released in accordance with the terms of a written agreement between Purchaser and Sponsor.

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the deposit, he or she may cancel the purchase and rescind by notice given within ninety (90) days after tender of the Purchase Agreement and the Deposit to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23<sup>rd</sup> floor, New York, NY 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser.

Before the Escrow Agent is changed, or funds are transferred to a new escrow account, the Plan will be amended to disclose the changes made. The Escrow Agent will maintain all records as to the escrow account for a period of seven years after release of the funds.

The Sponsor reserves the right to secure a bond from a New York insurance company or letter of credit from a New York bank in favor of each Purchaser of a Unit at the Condominium in an amount equal to the down payments received by Sponsor, directly or through its agents or employees, to guarantee the return of the down payments. In order to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds, the Sponsor must first apply and receive approval from the Attorney General. If Sponsor's application is granted, then the terms of such alternate security shall be disclosed in a promptly filed amendment to the Plan.

All funds received by Sponsor will be handled in accordance with the provisions of Section 352-h and 352-e(2)(b) of the General Business Law and Lien Law and shall be employed by Sponsor only in connection with the consummation of the transaction with the applicable Purchaser. Such funds shall not be commingled with any other money or pledged or hypothecated by the Sponsor. Sponsor represents that it shall comply with the escrow and trust fund requirements of these two statutes. Consummation of the Plan does not relieve the Sponsor of its obligations under New York State General Business Law Section 352-h. Such deposit together with any interest accumulated thereon shall remain the property of the Purchaser until consummation of the transaction with the applicable Purchaser. Funds from the escrow account shall not be part of the estate of the Sponsor or the Escrow Agent upon bankruptcy, incapacity or death. After the closing of title to the Unit, such funds will be payable to Sponsor.

All Deposits received by Sponsor for upgrades or extras must initially be placed in the Escrow Account, and released in accordance with the terms of a written agreement between Purchaser and Sponsor.. However, Purchasers should note as a Special Risk that such funds may be released from the Escrow Account by the Sponsor's Counsel as long as the Sponsor uses the funds for such upgrades or extras. As a result, in the event a Purchaser is entitled to rescission, the Purchaser will not receive a refund of any funds used for upgrades or extras.

The following provisions of Section 71-a(3) of the Lien Law are included in the Plan for explanatory purposes only, and not to supersede any other rights granted to Purchaser in this Section 12. Section 71-a (3) of the Lien Law requires, at the Purchaser's option, that the deposit be placed in escrow in an interest-bearing escrow account in a bank, trust company, savings bank, state or federal savings and loan association located in New York. Said monies must be deposited within five (5) business days after entering into the contract. The Sponsor must advise the Purchaser, in writing, within ten (10) business days after the deposit has been made. Such deposit, together with the interest accumulated thereon, shall remain the property of the Purchaser until consummation of the transaction or until such time as either party is entitled to said funds pursuant to the terms of the Purchase Agreement and the Offering Plan. All interest shall be the property of the Purchaser unless the Purchaser defaults under the Purchase Agreement.

If insufficient funds are raised through the offering or otherwise to effectuate the contemplated transaction, or if Sponsor is unable for any reason to perform in accordance with the terms of the Purchase Agreement, and if the Purchase Agreement has been subsequently terminated as set forth above, such monies will be fully returned to him with interest, if any.

The form of Escrow Agreement governing the disbursement of funds from the Escrow Account and the resolution of disputes relating thereto is contained in Exhibit D to the Tenth Amendment to the Plan (originally Exhibit K in Part II of the Plan.) For further information regarding the terms of the Escrow Agreement, see Subsection (C) below.

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

**3. Procedures for Release of Funds under Escrow Agreement between Sponsor and Escrow Agent.** In addition to the provisions in the Disbursement of Funds subsection above, the release of escrow funds shall be governed by the following:

(a) Under no circumstances shall the Sponsor apply for release of escrowed funds of a defaulting Purchaser until after the first Unit closing under the Plan, as evidenced by acceptance of an effectiveness amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL Section 352-h.

(b) The Escrow Agent shall release the Deposit if so directed:

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

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

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

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

(c) The Sponsor shall not object to the release of the escrowed funds to (i) a Purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an amendment to the Plan or (ii) all Purchasers after an amendment abandoning the Plan is accepted for filing by the Department of Law.

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

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**EXHIBIT D**

**REVISED ESCROW AGREEMENT**

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