

## PART II

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## PURCHASE AGREEMENT

### 120 VIVABENE CONDOMINIUM AT 120 MAIN STREET, TUCKAHOE, NEW YORK

<b>Home No.:</b> ____		<b>Percentage of Common Interest:</b> _____
<b>Purchaser(s):</b>		<b>Tel. No.</b>
<b>Name</b>		<b>Fax No.</b>
<b>Address</b>		
<b>Purchaser(s):</b>		
<b>Name</b>		<b>Tel. No.</b>
<b>Address</b>		<b>Fax No.</b>
<b>Purchaser's Attorney:</b>		
<b>Name</b>		<b>Tel. No.</b>
<b>Address</b>		<b>Fax No.</b>
		<b>Email:</b>
<b>Purchase Price</b>	\$	
<b>Down Payment</b>	\$	(Payable to "SBJ - 120 VivaBene Condominium Special Account")
<b>Balance Due at Closing</b>	\$	

**Statement of Seller:**

DORAMI REALTY OF NEW YORK, INC., with an address at 146 Main Street, Tuckahoe, New York 10707, a New York corporation ("Seller"), has promulgated a Plan of Condominium Ownership ("Plan") for 120 VivaBene Condominium ("Condominium") pursuant to which the land, with appurtenances, and the homes ("Homes") being constructed thereon by Seller, located in the Town of Eastchester, Village of Tuckahoe, County of Westchester, will be declared to be a Condominium under the provisions of Article 9-B of the Real Property Law of the State of New York on the terms and conditions more particularly set forth in the Plan.

**Statement of Purchaser:**

Purchaser acknowledges as follows:

Purchaser has received and read a copy of the Plan and all filed amendments thereto. The Plan and amendments, which include the Declaration to be made by the Seller and to be recorded in the Office of the Westchester County Clerk, the schedules, By-Laws and Rules and Regulations attached thereto, are incorporated herein by reference and made part of this Agreement with the same force and effect as if fully set forth herein.

PURCHASER HAS HAD THE OPPORTUNITY TO REVIEW THE OFFERING PLAN AND ANY FILED AMENDMENTS FOR NOT LESS THAN THREE (3) BUSINESS DAYS.

Purchaser is desirous of purchasing the above-numbered Home, as designated in the Declaration and on the floor plans filed or to be filed in the aforesaid County Register's Office, together with an undivided interest in the Common Elements appurtenant thereto (the above-numbered Home and the undivided interest being hereinafter collectively called the "Home");

**Agreement Between Seller and Purchaser:**

For good and valuable consideration, receipt of which is hereby acknowledged, Seller and Purchaser mutually agree as follows:

1. **Payment for Home:** Seller hereby agrees to sell and Purchaser hereby agrees to purchase the Home for the Total Purchase Price stated above. The Down Payment stated above has been paid on the signing of this Agreement, receipt of which by check, subject to collection, is hereby acknowledged by Seller. The Balance Due at Closing shall be payable at the closing of title, as hereinafter provided in Paragraph 3, by unendorsed certified check of Purchaser, or teller's or cashier's check, drawn on a bank or trust company which is a member of the New York Clearing House Association, to the order of the Seller or as Seller may direct.

2. **Acceptance by Seller.** Within twenty (20) days after delivery to Seller or its Agent by Purchaser of this Purchase Agreement, executed by Purchaser, Seller will either:

(a) accept this Agreement and cause to be returned to Purchaser a fully executed counterpart thereof; or

(b) reject this Agreement offer and refund the down payment tendered by Purchaser. If Seller takes no action within the aforesaid twenty (20) day period the Purchase Agreement shall be deemed null and void and the down payment shall be returned.

3. **Closing of Title:** The closing of title shall take place on no less than thirty (30) days written notice to Purchaser at such place as Seller may designate, at an hour and on a date (hereinafter called the "**Closing Date**") to be specified by Seller. The closing of title may be adjourned to such later date as the parties may agree upon in writing, or otherwise as set forth in the following paragraph, and the adjourned date shall then be deemed the Closing Date hereunder. Purchaser shall be entitled to one reasonable adjournment of up to thirty (30) days, on five (5) days written notice by Purchaser to Seller, subject to the provisions of Paragraph 7. However, Purchaser may not seek an adjournment of any kind based upon any provision set forth in Paragraph 18 herein. **TIME WILL BE OF THE ESSENCE AS TO THE ADJOURNED CLOSING DATE.**

The Seller shall be entitled to reasonable adjournments in the closing of title in the event of delays by reason of weather conditions, strikes or material shortages, or delays in inspections and reports thereon, or other requirements. However, if Seller shall be unable to convey title to the Home within twelve (12) months after the projected date for the first Home closing under the Plan, except for (i) delays due to strikes, acts of God, wars, lockouts, military operations, national emergencies, installation of public utilities, governmental restrictions preventing Seller from obtaining necessary supplies or materials, or (ii) Purchaser's default, Seller or Purchaser shall have the right to cancel this Purchase Agreement upon written notice within fifteen (15) days subsequent to the end of such twelve (12) month period, and upon such cancellation, Purchaser shall be entitled to the return of any moneys paid by Purchaser to Seller under the terms of this Agreement, with interest, if any.

At the closing of title, Seller shall deliver to Purchaser a bargain and sale deed in the form contained in Part II of the Plan, with covenant against grantor's acts, conveying the Home to Purchaser, executed and acknowledged by Seller in form for recording.

Title to the Home will close only after, or concurrently with, the occurrence of the events set forth in "Conditions of Closing Title to Individual Units" in Section 14 of the Plan, entitled "Terms of Sale".

4. **Power of Attorney to Board of Managers and Seller:** At the closing of title and simultaneously with the delivery to Purchaser of the deed conveying the Home, Purchaser shall execute and acknowledge the power of attorney to the Board of Managers and the Seller in the form contained in Part II of the Plan. Purchaser agrees to deliver such power of attorney to Seller at the closing of title for recording and to pay the recording fee.

5. **Limited Financing Contingency:**

(a) If Purchaser is electing to obtain financing, the obligations of Purchaser hereunder are conditioned upon issuance on or before the 45<sup>th</sup> day after the date of this Agreement of a written commitment from certain lending institutions that are designated by the Sponsor

("Sponsor Designated Lender") on or before the date of this Purchase Agreement, subject to the following conditions and limitations:

(i) The financing contingency is only applicable to mortgage financing of no more than ninety percent (90%) of the purchase price (or such lesser amount as Purchaser shall apply for) at the Sponsor Designated Lender's prevailing rate of interest and for a customary loan term, secured by a first mortgage on the Home;

(ii) Purchaser shall apply to at least one (1) Sponsor Designated Lender for such first mortgage loan within ten (10) days after the date of this Agreement;

(iii) Purchaser shall furnish accurate and complete information to the Sponsor Designated Lender relating to Purchaser, as required;

(iv) Purchaser shall pay all fees, points and charges required in connection with such application and loan; and

(v) Purchaser shall pursue such application with diligence, and generally cooperate in good faith with such Sponsor Designated Lender to the end of securing such first mortgage. Purchaser shall notify the Sponsor promptly of the name and address of each Sponsor Designated Lender or other lender to which Purchaser has given an application. Purchaser shall furnish Seller with a copy of such commitment promptly after receipt thereof. If Purchaser fails to obtain such a commitment from a Sponsor Designated Lender on or before the 45<sup>th</sup> day after the date of this Agreement, Purchaser shall have the right to cancel this contract by giving notice to Seller by the 50<sup>th</sup> day after the date of this Agreement. Upon cancellation, the Down Payment and accrued interest shall be promptly refunded to Purchaser, and neither party shall have any further rights against, or obligations or liabilities to the other by reason of this Agreement. If Purchaser does not give such notice to Seller on or before the 50<sup>th</sup> day after the date of this Agreement or if the Purchaser has not applied to at least one (1) Sponsor Designated Lender, this Agreement shall not be terminated by virtue of this paragraph and the Agreement shall remain in full force and effect, except that Purchaser's right to cancel under this Paragraph shall be deemed waived. A mortgage commitment conditional upon the Purchaser's selling any property that Purchaser owns, the liquidation or reduction of any existing installment debt prior to closing, or the furnishing of documents and information reasonably available to Purchaser, shall be deemed a firm mortgage commitment which satisfies the limited financing contingency clause in this Agreement.

(b) If Purchaser obtains a financing commitment from a Sponsor Designated Lender and the commitment lapses or expires before the actual closing date through no fault of Purchaser, Purchaser shall make a good faith effort to extend the commitment, including payment of a reasonable and customary extension fee to the Lender and acceptance of changes in the interest rate to reflect prevailing market conditions. If the Lender is unwilling to extend the commitment on those terms, Purchaser shall have the right to cancel this Agreement by notice given to Sponsor within ten (10) days after receiving the Sponsor Designated Lender's notice of refusal to extend the commitment. In case of cancellation, the applicable provisions of subsection (a) shall apply.

(c) As used in this Agreement, "Lender" means any person or entity in the business of making loans to persons seeking to purchase residential homes. A mortgage broker who does not have independent lending capacity shall not be deemed to be a "Lender" under this Agreement.

(d) In the event that Purchaser uses a lender other than the Sponsor Designated Lenders, no financing contingency will apply to this Agreement. As a result, Purchaser will not have the right to cancel the Purchase Agreement if the Purchaser fails to obtain mortgage financing, or if the Purchaser's existing mortgage financing lapses or is canceled.

#### **6. Condition of Title:**

(a) Seller agrees to convey to Purchaser title in fee simple to the Home, free and clear of all liens and encumbrances other than those set forth in the Plan (specifically in Part I thereof in the section titled "Terms of Sale") and Exhibits submitted in connection therewith. Notwithstanding the above, the existence of unpaid taxes or liens of any kind at the time of title closing shall not constitute an objection to title, provided that a reputable title insurance company licensed to do business in the State of New York shall be willing to insure against collection of same from the Home herein described. The parties agree that the Seller may pay and discharge any liens and encumbrances upon the property, not provided for in the Plan or this Agreement, out of the monies to be paid by the Purchaser at the time of closing title.

(b) Purchaser agrees that all terms and provisions of this Agreement are and shall be subject and subordinate to the lien of any building loan mortgage or development loan mortgage and any advances heretofore or hereafter made thereon, and any payments or expenses which at any time were or may be incurred pursuant to the terms thereof, incidental thereto or to protect the security thereof, without the execution of any further legal documents by Purchaser. This subordination shall apply whether such advances are voluntary or involuntary and whether made in accordance with the building loan schedule of payments or accelerated thereunder by virtue of lender's right to make advances before they become due in accordance with the schedule of payments. However, at closing the Home will be conveyed free and clear of all mortgage liens.

#### **7. Expenses of Closing and Closing Adjustments:**

(a) Purchaser will pay the closing costs and expenses referred to in the Section of the Plan (as same may be amended to date) entitled "Home Closing Costs and Adjustments", including the following:

(i) fee title insurance;

(ii) deed, power of attorney and any mortgage agreements recording fee;

(iii) mortgage costs chargeable by the lender, mortgage title insurance, and mortgage taxes (including a reimbursement to the Seller for mortgage tax previously paid by the Seller as per subsection (d) below);

(iv) two months' common charges and real estate taxes for the working capital fund (unless the Sponsor has previously made such contribution, in which case payment shall be made to the Sponsor);

(v) attorneys' fees of Seller (as detailed in the Plan), Purchaser and Mortgage Lender (if any);

(vi) New York State real property transfer taxes attributable to the transfer of the Home, as described in the Plan;

(vii) Escrow for real estate taxes payable with respect to the Home for the next tax payment period following the Closing Date; and

Purchaser should refer to Section 14 of the Plan for a detailed description and calculation of the estimated closing costs and adjustments to be borne by Purchaser.

(b) If Purchaser adjourns the Closing, the Purchaser will be liable for all common charges and real estate taxes assessed against the Home from and after the scheduled closing date.

(c) Except as otherwise provided in this agreement, real estate taxes and Common charges and expenses shall be adjusted between Seller and Purchaser as of midnight preceding the Closing Date in accordance with the provisions of the Plan. Any such expenses or adjustments payable to Seller in excess of Two Hundred (\$200.00) Dollars will be paid by certified check or bank check.

(d) Prior to the Closing Date, the Seller will have paid a mortgage recording tax for a construction loan mortgage on the Property. Pursuant to Section 339-ee(2) of the New York Real Property Law, it is specifically understood that such credit shall inure to the benefit of Seller. Accordingly, at closing, each purchaser electing mortgage financing shall pay the full amount of the mortgage recording tax chargeable on the amount being financed, without regard to any credit to which the Sponsor is entitled under Section 339-ee(2), and the Sponsor will be reimbursed out of such payment at closing to the extent of any mortgage tax credit allowed.

#### **8. Default by Purchaser:**

(a) If Purchaser shall fail to pay any portion of the purchase price when due; fail to close title on the date, hour and place specified by Seller pursuant to Paragraph 3 hereof; fail to perform any of Purchaser's other obligations hereunder; or if any of Purchaser's representations in this Agreement shall be untrue in any respect, Purchaser shall be in default, and Seller may send a notice to Purchaser to cure the default within thirty (30) days. If within the thirty (30) day period Purchaser shall fail to cure the default, Seller, at its option, may cancel this Agreement by notice of cancellation to Purchaser. If Seller shall elect to cancel this Agreement, Seller shall certify to its counsel that title has not closed because of Purchaser's default and that Seller has elected to cancel this Agreement by reason thereof Counsel shall thereupon pay over to Seller as liquidated damages the Down Payment and the interest earned thereon, if any. Upon such payment being made each of the parties hereto shall be relieved of any further liabilities or obligations hereunder. If this



Agreement shall be canceled by Seller, Seller may sell the Home to any third party and shall be under no obligation to account to Purchaser for any part of the proceeds of such sale. Counsel may rely upon the truth and accuracy of the facts contained in Seller's certification and the authority of the person or persons executing the same and shall have no liability as a result of such reliance.

(b) TIME IS OF THE ESSENCE AS TO PAYING THE BALANCE DUE, AND AS TO CURING ALL DEFAULTS WITHIN ANY GRACE PERIODS GRANTED HEREUNDER. FAILURE TO MAKE A PAYMENT WITHIN THE GRACE PERIOD AFTER A PURCHASER IS CALLED UPON TO MAKE SUCH PAYMENT MAY RESULT IN LOSS OF THE DOWN PAYMENT AND CANCELLATION OF THE PURCHASE AGREEMENT. Purchaser should consult his or her own attorney prior to executing a Purchase Agreement.

(c) In the event of an uncured default by Purchaser in his or her obligations under the Purchase Agreement, no more than 10 percent (10%) of the purchase price, plus any interest earned thereon and the cost of any special work performed for the Purchaser, may be retained as liquidated damages. Seller agrees not to seek the remedy of specific performance in connection with Purchase Agreements as to which there has been a default by Purchaser. No down payment or other monies shall be released pursuant to an uncured default by Purchaser before the First Home Closing

9. **Agreement Subject to Plan Becoming Effective; Seller's Right to Cancel:** This Purchase Agreement is contingent upon the Plan being declared effective. The Plan may be abandoned by Seller at any time prior to its being declared effective and shall be abandoned and deemed abandoned if it has not been declared effective within the time prescribed by the Plan. If the Plan is abandoned or does not become effective this Purchase Agreement shall be deemed canceled, and the plan terminated and not later than forty-five (45) days thereafter, all monies paid by Purchaser hereunder shall be refunded in full, and upon such repayment no party shall have any claim against any other party, person or entity, and all parties shall be released from all obligations hereunder and under the Plan. Seller may cancel this agreement if any of the following occur: (a) any government bureau, department or subdivision thereto shall impose restrictions on the manufacture, sale, distribution, or use of materials necessary in the construction of residential housing and such restrictions shall prevent the Seller from obtaining such materials from its regular suppliers or from using same in the construction or completion of the dwellings; or (b) Seller is unable to obtain materials from its usual sources due to strikes, lockouts, war, military operations and requirements, national emergencies, acts of God or if the installation of public utilities is restricted or curtailed. If Seller elects at any time to cancel this agreement pursuant to any rights granted under the Plan, Seller's cancellation shall be effective by forwarding its check in the full amount paid by the Purchaser and interest earned, together with a notice in writing, addressed to the Purchaser at his address set forth on page 1.

10. **Agreement May Not Be Assigned:** Purchaser shall have no right to assign this Agreement without the prior consent in writing of Seller and any purported assignment of this Agreement in violation hereof shall be voidable at the option of Seller.

11. **Survival:** The closing of title to the Home and the delivery of the deed thereto shall be deemed full compliance by Seller with each and every term of this Purchase Agreement, except as to any item specifically listed and excepted therefrom.

12. **No Representations:** Except as specifically set forth herein or in the Plan, Purchaser acknowledges that he has not relied upon any architect's plans, sales plans, selling brochures, representations, warranties or statements of any nature, whether made by Seller, the Selling Agent, Seller's Counsel, or otherwise, including, but not limited to, any relating to the description or physical condition of the building or the Home, the size or the dimensions of the Home or the rooms therein contained or any other physical characteristics thereof, the building services, the estimated Common Charges and expenses allocable to the Home, the availability of any tax benefits, or the right to any income tax deduction on account of any real estate taxes or mortgage interest paid by Purchaser. Purchaser agrees that Seller shall have no liability or responsibility to Purchaser if the layout or dimensions of the Home or any part thereof or of the Common Elements as shown on the floor plans or on the architectural plans and specifications for the building are not accurate or correct provided such layout or dimensions conform substantially to the floor plans and the architectural plans and specifications for the building and the site as modified or supplemented in accordance with the Plan and that Purchaser will not be relieved from his obligations hereunder by reason of any minor inaccuracy or error.

13. **Recording of Deed and Power of Attorney:** At the closing of title, Purchaser will deliver the executed deed received from Seller and executed and acknowledged power of attorney to the representative of the title company, if any, or to Seller for recording in the Office of the City Register, County of Westchester. Such deed and power of attorney will be in the forms annexed hereto (and made a part hereof) as set forth in Part II of the Plan.

14. **Binding Effect:** This agreement shall not be effective or binding on Seller until a counterpart hereof is executed by Seller and delivered to Purchaser. Subject to the provisions hereof, this Purchase Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

15. **Monies to be Held in Trust, Payment of Purchase Price; Notice of Closing:** The required down payment pursuant to this Agreement will be 10 percent (10%) of the purchase price for the Home as set forth in the Plan, as amended. Smith, Buss & Jacobs, LLP is the escrow agent under this Agreement ("**Escrow Agent**"). All monies received by Seller through its agents or employees pursuant to this Agreement will be deposited with Hudson Valley Bank, 865 McLean Avenue, Yonkers, New York 10704, in an account or accounts entitled "**SBJ -120 VivaBene Condominium Escrow Account**" or similar name, which account or accounts shall be interest-bearing for the benefit of the Purchaser in accordance with Section 71-a(3) of the Lien Law. Such funds will be held in trust in accordance with the escrow and trust provisions of Sections 352(h) and 352-e(2)(b) of the New York General Business Law, and Regulations, if any, promulgated pursuant to said Section 352-e(2)(b). Such funds will be disbursed only upon the signature of Counsel for the Sponsor as follows: (i) to Seller if the Plan is declared effective and title closes hereunder or if Purchaser defaults hereunder; or (ii) to Purchaser if the plan is abandoned or withdrawn or title does not close because of Seller's default, or this Agreement is canceled (without default by either party) in accordance with its terms. Down payments, with any accumulated interest, shall remain the property of the Purchaser except as provided by law.

Down payments will be retained in the Escrow account as set forth above until: (i) Seller performs under the terms of the Purchase Agreement; (ii) Purchaser rescinds or defaults in performance, thereby excusing performance by Seller; (iii) release or discharge of Seller's liability to refund such down payment; (iv) upon transfer of title to the Home to the Purchaser; or (v) by mutual consent of Seller and Purchaser.

The parties acknowledge that the Escrow Agent for the down payment is also counsel for the Sponsor. Purchaser agrees that in case of any dispute relating to the disposition of the down payment, counsel for the Sponsor may continue to represent the Sponsor.

The provisions of Section 10 (11) and (12) (entitled "Procedure to Purchase") of the Plan are incorporated into this Agreement as if set forth in full herein.

16. **Equipment and Furnishings:** Seller will provide Purchaser only with fixtures, equipment, hardware, appliances and furnishings referred to in the Plan, which are included in the purchase price of the Home. Furnishings, equipment, appliances and decorations in any model Home or sales office that are not referred to in the Plan are excluded from this sale unless specifically included by a rider to this Purchase Agreement. The cost of any such special items will be an addition to the purchase price.

17. **Acceptance of Condition of Home; Risk of Loss:**

(a) Purchaser shall accept title without abatement in or credit against the purchase price, and without provision for escrow, notwithstanding that Seller may not have completed construction of (i) minor details of the Home or the Building; (ii) another Home; or (iii) portions of the Common Elements that do not materially affect Purchaser's access to and use of the Home.

(b) (i) The risk of loss from fire or other casualty, or condemnation, with respect to each Home shall remain with Seller until the closing of title, but without any obligation or liability by Seller to repair or restore any Home. In case of damage or destruction of a Home due to fire or other casualty prior to the closing, Seller will have the right to elect whether to repair or restore the Home, which election shall be in the Seller's sole discretion. If the Seller elects to restore the Home, the Purchase Agreement shall continue in full force and effect, and the Purchaser shall not have the right to reject title or receive a credit or abatement against the purchase price for the Home. In that event the Seller shall be entitled to a reasonable period of time within which to complete the repair or restoration, not to exceed twelve (12) months, and any insurance proceeds shall belong solely to the Seller. If the Seller elects not to restore the Home, or (if the damage occurs after the establishment of the Condominium but before closing of title to the Home) and the Board of Managers elects not to restore the common elements of the Condominium or if the period of repair will exceed twelve (12) months, the Purchase Agreement shall be deemed cancelled, the Seller shall return to Purchaser all sums deposited thereunder (together with interest), and the parties shall have no further liability to each other. Purchaser may nullify such cancellation (provided the damage relates solely to an individual Home and does not affect the common elements of the Condominium) by notice given within 10 days thereafter, agreeing to take title subject to the damage without abatement or reduction in the purchase price, but with an assignment of all insurance proceeds or condemnation awards allocable to the Home. In that case, at closing the

Seller shall assign to the Purchaser all insurance proceeds or condemnation awards allocable to the Home and the Seller shall have no further responsibility to repair the Home. The foregoing rights apply only if Purchaser is not in default. If Purchaser is in default under the Purchase Agreement at such time, the Purchaser may not nullify the Seller's option to cancel and the Seller may retain all sums paid as liquidated damages.

(ii) Notwithstanding part (i), if Purchaser enters into actual possession of a Home prior to the closing of title, the Purchaser shall bear the risk of loss or other casualty with respect to that Home, i.e., the Purchaser will be obligated to bear the cost of restoring the Home to the same extent as if the Purchaser had already taken title.

**18. Inspection, Condition of Units:** At least one (1) day before Closing, a representative of the Sponsor and Purchaser shall inspect the Home. At the conclusion of the inspection Purchaser will complete and sign an inspection statement in the form annexed as Exhibit B. Purchaser's signing of this Purchase Agreement and the inspection statement shall constitute its acceptance of the Home and the Building in the condition in which it shall be at the time of Closing, subject to the "Exceptions" noted on the inspection statement, including the existing kitchen, bathroom and other appliances, fixtures, equipment, air conditioning units and installations, if any, which are owned by the Sponsor. By closing title, Purchaser waives any claim regarding the condition of the Home except as set forth in the inspection statement. Purchaser shall be in default under this agreement if Purchaser fails to inspect the Home with a representative of the Sponsor on or before the day before the scheduled Closing Date. Except as expressly provided in this Agreement or the Plan, Sponsor shall have no obligation to repair or improve the Home, any portion of Property, or the appliances, equipment, or fixtures attached to or used in connection with the Home or the Property.

**19. Possession of Home Prior to Closing:** It is expressly understood and agreed that the Purchaser shall in no event take possession of the Home prior to the time of the delivery of the deed and full compliance by the Purchaser with the terms of this agreement, and should the Purchaser violate this provision, the Purchaser consents that the Seller shall have the right to remove him from the Home as a squatter and intruder by summary proceedings. Upon the Purchaser's unauthorized possession, the Purchaser shall be deemed in default hereunder at the option of the Seller, and if the Seller so elects, the Seller may cancel this Agreement and the amount deposited hereunder shall belong to the Seller as liquidated damages deemed earned hereunder. It is further understood and agreed that the Seller will not be responsible for damage or loss to any property belonging to Purchaser, whether same is delivered to the property before, on or after the closing of title herein.

**20. Limitation of Seller's Liability:** Except as may otherwise be required by law, the Seller's liability under this agreement for failure to complete any portion of the Home or Building, or deliver title for any reasons whatsoever shall be limited to the return of the money deposited hereunder (with interest, if any), and upon the return of said money, this Agreement shall be null and void and the parties hereto released from any and all liability hereunder. In any event, the Seller shall not be required to bring any action or proceeding or otherwise incur any expense to render the title to the Home marketable or to cure any objection to title.

21. **Definitions:** The term "Purchaser" shall be read as "Purchasers" if more than one person are Purchasers, in which case their obligations shall be deemed joint and several. The terms used herein shall have the same meanings as ascribed thereto in the Plan.

22. **Gender:** The use of the masculine gender in this Purchase Agreement shall be deemed to refer to the feminine gender or to an entity whenever the context so requires.

23. **Other Agreements:** This Purchase Agreement supercedes any and all understandings and agreements between the parties and constitutes the entire agreement between them and no oral representations or statements shall be considered a part hereof.

24. **Amendment of Purchase Agreement:** This Purchase Agreement may not be amended, altered or discharged except by agreement in writing signed by the party sought to be charged therewith or by his, her or its duly authorized agent.

25. **Brokerage:** Purchaser represents and warrants to Seller that Purchaser did not negotiate with any broker for the purchase of the Home other than Clare D. Leone ("Selling Agent"). Purchaser hereby agrees to indemnify, defend and hold harmless Seller, the Selling Agent, and their respective agents, counsel and employees, from any claims by any other broker that alleges that it has dealt with Purchaser in connection with the purchase of the Home.

26. **Governing Law:** This Purchase Agreement shall be governed by and construed in accordance with the law of the State of New York.

27. **Jury Waiver:** Purchaser hereby waives trial by jury in any action, proceeding, or counterclaim involving any matter whatsoever arising out of, or in any way connected with this Purchase Agreement, or the relationship of the parties as Purchaser and Seller, or the right of Purchaser to any statutory relief or remedy.

28. **Binding Effects of Declaration, By-Laws, Plan, Rules and Regulations:** Purchaser hereby agrees to be bound by the Declaration, By-Laws, the Rules and Regulations and the Plan.

29. **Notices:** Whenever, under the provisions of this Agreement, notice is required to be given by or to any party such notice shall be sufficient if in writing sent by mail or overnight carrier to the address follows: if to Purchaser, at the address set forth on page 1 or at such other address as Purchaser may hereafter designate in writing; and if to Seller, to: DORAMI REALTY OF NEW YORK, INC., 146 Main Street, Tuckahoe, New York 10707, and will be deemed received within 3 days of depositing same with such the post office or 2 days of depositing same with an overnight carrier.

30. **Conflict with Plan:** Any conflict between the Plan and this Purchase Agreement will be resolved in favor of the Plan.

31. **Captions:** The captions in this Purchase Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Purchase Agreement, or the intent of any provision hereof.

32. **No Recording:** This Purchase Agreement shall not be recorded. Recording of the Purchase Agreement is an event of default hereunder.

33. **Separability of Provisions:** Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

34. **Bona Fide Purchase:** Purchaser represents that:

(i) he or she is an individual over eighteen years of age;

(ii) he or she is a bona fide purchaser of the Home for occupancy or investment; and

(iii) he or she is not an employee, shareholder, member or limited partner of the Sponsor, Selling Agent, or any principal thereof, nor is he or she related by blood, marriage or adoption or as a business affiliate to the Sponsor or the Selling Agent.

In witness whereof, each party has signed this Agreement.

Dated:

Purchaser

Purchaser

**Accepted: DORAMI REALTY OF NEW YORK, INC.**

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

Dated: \_\_\_\_\_

**EXHIBIT A**

**LIMITED WARRANTY**

**SPONSOR:** Dorami Realty of New York, Inc.  
146 Main Street  
Tuckahoe, New York 10707

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

\_\_\_\_\_

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

\_\_\_\_\_

**ADDRESS OF HOME  
WARRANTED:** Home No. \_\_\_\_\_

120 VivaBene Condominium  
120 Main Street  
Tuckahoe, New York 10707

**COMMENCEMENT DATE:** The date that Purchaser takes title to the Home or the date that any person begins residential occupancy of the Home, whichever is earlier (“Warranty Date”).

This Limited Warranty excludes all consequential, incidental, special and indirect damages.

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

1. **This is a Limited Warranty.** This is a Limited Warranty which excludes any other promises or guarantees that Sponsor could make (also known as "express warranties" or "implied warranties") regarding the construction of your Home and its components, including any warranties of merchantability or fitness for a particular purpose, or the Housing Merchant Implied Warranty. There are no warranties which extend beyond the face of this document.

2. **Limit on Sponsor Liability.** Sponsor is not obligated to pay for any damage or injury not caused directly as a result of a defect covered by this Warranty. In other words, this Limited Warranty excludes "consequential", "incidental", "special" and "indirect" damages, except as required by state law. In addition, Sponsor's obligation to pay for the cost of repairing any damage to property is limited to 35% of the purchase price of your Home.

3. **Warranty Only to You.** This Limited Warranty is given only to you while you own your Home. It will end automatically if you transfer the Home to any other person at any time.

4. **By Whom Warranty Given.** This Warranty is made exclusively by the Sponsor whose name appears on page 1.

5. **Warranty Coverages and Periods.** The Warranty Period for all coverages begins on the date that you take title to the Home or any person begins residential occupancy of the Home, whichever date is earlier. It ends at the expiration of the applicable coverage period shown below. **TIME FOR THESE WARRANTY COVERAGE PERIODS IS OF THE ESSENCE AND WILL NOT BE EXTENDED.**

6. **Final Inspection of the Home.** Before you move into the Home or accept the deed, the Sponsor will set up an appointment for final inspection of the Home with you. The purpose of this final inspection is to discover any defects or flaws of a visible or obvious nature--such as marks, chips, dents, cracks, or scratches--that may have occurred during the final stages of finishing the home, or any unfinished work caused by back-orders beyond the Sponsor's control.

All defects or flaws found on final inspection of the Home will be itemized on a Final Inspection Sheet, which will be signed by you and the Sponsor before occupancy of the Home or transfer of the deed.

When you move into the Home or accept the deed, the Sponsor's responsibility is limited to:

(a) completion of items in accordance with the Final Inspection Sheet, and

(b) performance of warranty obligations under the provisions of this Limited Warranty, as listed below. The purpose of the Limited Warranty is to identify the Sponsor's responsibilities for construction defects of a latent or hidden kind that would not have been found or disclosed on final



inspection of the Home.

**7. What is Included in Warranty.**

(a) Sponsor makes the following warranties to you about the following parts of your Home:

(1) For one year from the Warranty Date, your Home will be free from defects caused by Sponsor's failure to construct your Home in a skillful manner.

(2) For two years from the Warranty Date, your Home will be free from defects in the plumbing, electrical, heating, cooling or ventilation systems of your Home (if any) caused by Sponsor's failure to have installed those systems in a skillful manner.

(3) For six years from the Warranty Date, your Home will be free from material defects in your Home.

(b) Sponsor will not be liable unless the damage or injury was caused by one of the following:

(1) defective workmanship by Sponsor or any agent or subcontractor of or person working for Sponsor;

(2) defective materials supplied by Sponsor or any agent or subcontractor of or persons working for Sponsor; or

(3) defective design provided by the architect, or subcontractor, engineer or other design professional or subcontractor engaged solely by the Sponsor.

(c) Definitions: As used in this Section 7, the following words and phrases have the following meanings:

(1) "Constructed [or installed] in a skillful manner": means meeting or exceeding the requirements of the Building Code of the City of New Rochelle, and the uniform fire prevention and building code standards enacted under state law. In the absence of specific code requirements, the above term means that the workmanship or materials meet locally accepted building practices.

(2) "Material defect": means actual physical damage to the following load-bearing parts of the Home which affects their load-bearing functions to the extent that the Home becomes unsafe, unsanitary or unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

(3) "Plumbing System": means gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal

system.

(4) "Electrical System": means all wiring, electrical boxes, switches, outlets and connections up to the public utility connection.

(5) "Heating, Cooling and Ventilation System": means all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

(d) Sponsor's Limited Warranty does not extend to any other type of defect.

**8. What is Excluded from Warranty Coverage.** The following items are excluded from Sponsor's Limited Warranty:

(a) Any defects in appliances sold by Sponsor with your Home, unless the defect was caused by Sponsor's failure to install the appliance in a skillful manner. However, Sponsor will transfer to you any manufacturer's warranties which it receives.

(b) Any defect which was obvious (or would have been obvious if you had inspected your Home) before purchase or occupancy, including defects shown on the Final Inspection Sheet.

(c) Any normal wear and tear or deterioration in your Home.

(d) Any normal settling or shifting of your Home, for example, expansion or contraction of the walls or floor with changes in the weather.

(e) Minor defects, for example, nails popping, lumber shrinkage, door sticking due to weather, door warping, bath tile grouting, normal plumbing or heating noises, floor discoloring, or leaks due to your failure to install storm doors or windows.

(f) Damage to real property.

(g) Any damage to the extent that it is caused or made worse by:

(1) negligence, improper maintenance, or improper operation by anyone other than Sponsor, its employees, agents, or subcontractors;

(2) failure by you or anyone other than Sponsor, its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers or suppliers of appliances, fixtures or items of equipment;

(3) your failure to give notice to Sponsor of any defects or damage within a reasonable time;

(4) changes in the grading of the ground by anyone other than Sponsor, its employees,

agents or subcontractors;

(5) changes, alterations or additions made to the Home by anyone after the Warranty Date referred to on the first page of this Limited Warranty; or

(6) dampness or condensation due to your failure to maintain adequate ventilation.

(h) Any condition which does not result in actual physical damage to the Home.

(i) Loss or damage caused by or resulting from accidents, riot and civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, Acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, and not reasonably foreseeable changes in the underground water table.

(j) Loss or damage caused by seepage of water unless such loss or damage is the direct result of a construction defect.

(k) Any damage caused by soil movement for which compensation is provided by legislation or which is covered by other insurance.

(l) Any damage which you have not taken timely action to minimize.

(m) Insect damage.

(n) Bodily injury or damage to personal property.

(o) Sponsor's failure to complete construction of the Home.

(p) Loss or damage which arises while the Home is being used primarily for nonresidential purposes.

(q) Loss or damage due to abnormal loading on floors by you which exceeds design loads as mandated by the Building Code or building standards.

(r) Costs of shelter, transportation, food, moving, storage or other incidental expenses related to relocation during repair.

(s) Consequential damages (except where required by state law).

(t) With respect to a claim for a Material Defect, damage to non-load bearing portions of the Home including (but not limited to) the following: roofing and sheathing; drywall and plasters, exterior siding; brick, stone and stucco veneer; floor covering material; wall tile and other wall coverings; non-load bearing walls and partitions; concrete floors in attached garages and basements that are built separately from foundation walls or other structural elements of the Home; electrical,

plumbing, heating, cooling and ventilation systems; appliances, fixtures and items of equipment; paint; doors and windows; trim; cabinets; hardware; and insulation.

(u) Loss or damage caused by defective workmanship performed by any person other than the Sponsor or an agent or subcontractor of the Sponsor working under the direction and supervision of the Sponsor.

(v) Loss or damage caused by defective materials supplied by any person other than the Sponsor.

(w) Loss or damage caused by defective design provided by any person other than a design professional retained exclusively by the Sponsor.

(x) If applicable, defects in outbuildings including but not limited to, detached garages and detached carports (except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the Home); site located swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping (including sodding, seeding, shrubs, trees and plantings); off-site improvements or any other improvements not a part of the Home itself.

(y) Any claim not filed in a manner set forth below in paragraph 10, "How to Make a Warranty Claim".

## 9. Warranty

(a) If a defect occurs in an item covered by this Limited Warranty, Sponsor will repair, replace or pay to you the reasonable cost of repairing or replacing the defective item within a reasonable time after Sponsor's inspection or testing discloses the problem. The choice among repair, replacement or payment is solely that of Sponsor.

(b) In no event will Sponsor's total liability for deficiencies under this Limited Warranty exceed the Sponsor's Limit of Total Liability, shown in Section 2 on page 1.

(c) Repair, replacement or payment of reasonable cost for any material defect is further limited to (1) the repair of damage to the load-bearing portions of the Home themselves which is necessary to restore their load-bearing function; and (2) the repair of those items of the Home damaged by the material defect which made the Home unsafe, unsanitary or otherwise unlivable.

(d) When Sponsor finishes repairing or replacing the defect or pays the reasonable cost of doing so, a full release of all legal obligations with respect to the defect must be signed and delivered to Sponsor.

## 10. How to Make a Warranty Claim.

(a) If you believe that you are covered under this Limited Warranty, you must send to Sponsor a Notice of Warranty Claim. The Notice of Warranty Claim is a letter, sent by certified mail, return receipt requested to the following address:

**DORAMI REALTY OF NEW YORK, INC.**  
**146 Main Street**  
**Tuckahoe, New York 10707**

The letter must identify the Home, give the Warranty Date, explain your claim, and include your name, address and work and home phone numbers.

(b) You must notify Sponsor of your claim within 30 days after the last day of the warranty period for the defective part, as described in Paragraph 5, or you will lose your right to have it repaired by Sponsor under this Limited Warranty.

(c) Within a reasonable time after Sponsor receives your complete letter, it will make an appointment to inspect the defective part of your Home with you. Sponsor is not obligated to make any repair if it is unable to get into your Home to inspect (or you did not keep an appointment) after reasonable efforts.

(d) Upon completion of inspection and testing, the Sponsor will determine whether to accept or reject the claim. If the Sponsor rejects the claim, the Sponsor will give written notice of that decision to you at the address shown on the Notice of Claim. If the Sponsor accepts the claim, the Sponsor will take corrective action within a reasonable time under the circumstances and, upon completion, will give written notice of completion to you at the address shown on the Notice of Claim Form.

(e) If Sponsor confirms that a repair must be made, it will start the repair within a reasonable time and continue working until the repair is completed.

(f) If you and Sponsor disagree about whether Sponsor is liable, you may elect to have the claim arbitrated following the rules of the American Arbitration Association. If you sue Sponsor, though, you may no longer demand that your claim be arbitrated unless Sponsor consents.

**IF YOU DO NOT FOLLOW ALL OF THE ABOVE PROCEDURES, YOU WILL BE BARRED FROM MAKING A WARRANTY CLAIM. SPONSOR WILL NOT EXTEND ANY TIME PERIODS FOR MAKING A CLAIM UNDER ANY CIRCUMSTANCES.**

**11. Additional Protections for Sponsor in Response to your Claim.**

(a) No steps taken by Sponsor, you or any other person to inspect, test or correct defects will extend any time period under this Limited Warranty. If Sponsor elects to respond to a complaint or request which is not made in the form of a proper and timely Notice of Warranty Claim, the fact that Sponsor has chosen to respond will not affect or reduce any of Sponsor's rights under this Limited

Warranty. Sponsor will continue to have all of its rights under this Warranty, including its right to receive a timely and properly completed Notice of Warranty Claim.

(b) In response to a Notice of Warranty Claim, or any other complaint or request by you, Sponsor will have the right to inspect and test the portion of the Home to which the claim relates. You must provide reasonable access to Sponsor and its agents during normal business hours to complete inspection, testing and repair or replacement.

(c) Sponsor will use good faith efforts to process and handle claims in a timely manner, but all time periods for repair or replacement of defects necessarily are subject to weather conditions, Acts of God, availability of materials, and other events beyond Sponsor's control.

**12. Legal Actions.** No claim under this Limited Warranty may be commenced or asserted in any suit, action, or other legal proceeding against Sponsor in any court or forum unless notice of the claim has been received by Sponsor in a timely and properly completed Notice of Warranty Claim Form as provided in paragraph 10 above.

**13. General Provisions.**

(a) This Limited Warranty is governed by the laws of New York State.

(b) If any part of this Limited Warranty is deemed unenforceable by a court, the remainder will remain enforceable.

(c) This Limited Warranty may not be changed in any way.

(d) As used in this Limited Warranty, "including" means "including but not limited to"; "or" means "and/or"; use of one gender includes the other gender; and the singular includes the plural and vice versa.

**EXHIBIT B**

**FINAL INSPECTION STATEMENT**

Date: \_\_\_\_\_

DORAMI REALTY OF NEW YORK, INC.  
146 Main Street  
Tuckahoe, New York 10707

Re: Home \_\_\_ at  
120 VivaBene Condominium  
120 Main Street  
Tuckahoe, New York

Ladies and Gentlemen:

This is to confirm that based on the undersigned's personal inspection of the above-referenced Home, I (we) have found the Home, its floors, walls, doors, fixtures, appliances, equipment, hardware and all other items listed below, to be in good and satisfactory condition, free of chips, mars, scratches, breaks or other defects, except for those matters(if any) expressly noted below under "exceptions" requiring repair, adjustment or correction:

	Exceptions (if any)	Purchaser's Initials
1. Walls		
2. Floors		
3. Ceilings		
4. Windows (glass, sash, pane, sills, etc.)		
5. Doors		
6. Electric Fixtures		
7. Painted Surfaces		
8. Kitchen Cabinets		
9. Appliances		
10. Kitchen Sink		

	Exceptions (if any)	Purchaser's Initials
11. Medicine Cabinet(s)		
12. Vanity(ies)		
13. Water Closet(s)		
14. Bathtub(s)		
15. Shower Door(s)		
16. Bathroom tile		
17. Hardware (doorbell, doorknobs, faucet(s), locks, etc.)		
18. Other		

We understand that to prevent pilferage certain items such as medicine cabinet doors, shower heads, toilet seats and towel bars will be installed just prior to the date we move in.

The undersigned will sign and deliver to Sponsor a separate statement signifying our satisfaction with each item excepted above (if any), immediately upon the completion of the repair, adjustment or correction of same.



The undersigned understands and agrees that Sponsor shall not be obligated to make any repairs, adjustments or corrections to the Home or any portion thereof or its fixtures, appliances, equipment, etc., contained therein, from or after the date of delivery of possession of the Home to the undersigned, except as to those items (if any) expressly excepted above (and Sponsor's obligation regarding any such excepted items shall cease upon the completion of the repair, adjustment or correction of same).

Very truly yours,

Purchaser's Signature

Purchaser's Signature

Acknowledged:  
DORAMI REALTY OF NEW YORK, INC.

By:  
Authorized Representative

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## POWER OF ATTORNEY

I (we) \_\_\_\_\_, residing at 120 Main Street, Tuckahoe, New York, the owner(s) of Condominium Home No. \_\_\_ in the Condominium known as 120 VivaBene Condominium ("**Condominium**") covering the property located in the Town of Eastchester, Village of Tuckahoe, County of Westchester, do hereby irrevocably nominate, constitute and appoint the members of the Board of Managers of 120 VivaBene Condominium ("**Condominium Board**") and their successors, jointly, true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution in my (our) name and on my (our) behalf pursuant to the plan of Condominium ownership evidenced by the Declaration and By-Laws filed with respect to the Condominium to (1)(a) vote on, exercise or waive any right of first refusal to purchase or lease a Home available to the Condominium under the By-Laws of the Condominium, subject to any other limitations contained in the By-Laws, or (b) acquire, in their own name or in the name of their designee by deed on behalf of all owners of Condominium Homes in said property, any Condominium Home whose owner desires to abandon the same or whose owner desires to sell the same or which shall be the subject of a foreclosure sale or in lieu of a foreclosure sale at such price and on such terms as my (our) said attorneys-in-fact shall, in their sole discretion deem proper; and thereafter to convey, sell, lease, sublease, mortgage, vote or otherwise deal in such Condominium Home so acquired at such terms as my (our) attorneys-in-fact may in their sole discretion determine granting to my (our) said attorneys-in-fact the power to do all things in the said premises which I (we) could do if I (we) were personally present; (2) execute, acknowledge and deliver (a) any declaration or other instrument affecting the Condominium that the Condominium Board deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution, or requirement of any governmental agency or public authority applicable to the maintenance, demolition, construction, alteration, repair or restoration of the Condominium, or (b) any consent, covenant, restriction, easement or declaration, or any amendment to the Declaration of Condominium or By-Laws affecting the Condominium or the Common Elements that the Condominium Board deems necessary or appropriate; (3) file applications and protests (or employ persons to do same) in my (our) name and stead with respect to the assessed valuation of my (our) Home, and to execute all documents and pay all costs in connection therewith; (4) borrow money on behalf of the Condominium when required in order to purchase a Unit at foreclosure, pursuant to the exercise of a right of first refusal, for Common Charges, and in connection with the operation, care, upkeep and maintenance of the Common Elements; provided however, that if required by law, the consent of at least 50.01 % of the total Unit Owner's Voting Interest obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum which is to be secured by an assignment of income under Section 339-jj of the Real Property Law; and (5) vote to supplement or amend any provision of the Declaration and By-Laws of the Condominium on my (our) behalf, as the Board may deem necessary or appropriate (except that nothing herein shall restrict me (us) from amending the Declaration or By-Laws pursuant to a vote of Home Owners in accordance with the provisions of such documents).

The acts of a majority of such persons constituting the Condominium Board shall constitute the acts of said attorneys-in-fact.

The undersigned (does) (do) hereby irrevocably nominate, constitute and appoint Dorami Realty of New York, Inc., its members, successors and assigns, severally ("**Sponsor**") as attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, to amend from time to time Declaration, By-Laws and the Rules and Regulations of said Condominium, or any of said documents, when such amendment (1) shall be required to reflect any changes in Homes held by the Sponsor ("**Unsold Homes**") or the reapportionment of the Common Interests of the affected Unsold Homes resulting therefrom made by the Sponsor in accordance with the Declaration; or (2) shall be required by (a) an institutional lender designated by Sponsor to make a mortgage loan secured by a mortgage on any Home, (b) any governmental agency having regulatory jurisdiction over the Condominium, or (c) a title insurance company selected by Sponsor to insure title to any Home, provided, however, that any amendment made pursuant to the terms of subdivision (1) or (2) of this paragraph shall not (i) change the Common Interest of the undersigned's Home, (ii) require a material, physical modification to the undersigned's Home, or (iii) adversely affect the priority or validity of the lien of any purchase money mortgage held by an institutional lender covering the undersigned's Home unless the undersigned (in the event described in subdivision (iii) of this paragraph) shall consent thereto by joining in the execution of such amendment. The terms, covenants and conditions contained in, and the powers granted pursuant to, this paragraph shall remain in full force and effect until such time as Sponsor shall cease to own any Home in 120 VivaBene Condominium.

In addition, the undersigned, for himself and on behalf of the Condominium, hereby appoints the Sponsor as its attorney in fact, coupled with an interest, to execute any documents on behalf of the Condominium as may be required in order to obtain any necessary licenses or permits to make or complete an alteration to any Home or to the Common Elements that the Sponsor may deem necessary or desirable in order to complete its obligations under the Plan or to complete construction of a Home.

The undersigned (does) (do) hereby irrevocably nominate, constitute and appoint the owners of the Garage Unit and Parking Unit, its members, successors and assigns, severally ("**Garage Unit Owner**" and "**Parking Unit Owner**" respectively) as attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, to (a) amend from time to time Declaration, By-Laws and the Rules and Regulations of said Condominium, or any of said documents, when such amendment shall be required to reflect any changes in the Garage Unit or Parking Unit or the reapportionment of the Common Interests of the affected Garage Unit or Parking Unit resulting therefrom made by the Garage Unit Owner or Parking Unit Owner in accordance with the Declaration; or (b) to execute any documents that may be required to be filed with any governmental authority in order to make an alteration to the Garage Unit or Parking Unit permitted under the Declaration and By-laws of the Condominium.

This power of attorney is coupled with an interest and is irrevocable.

IN WITNESS WHEREOF, I (we) have hereunto set my (our) hand(s) and seal this  
\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

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

**DEED**

**THIS INDENTURE** made the \_\_\_ day of \_\_\_\_\_, 200\_\_ between. DORAMI REALTY OF NEW YORK, INC. ("**Grantor**") a corporation existing under the laws of the State of New York having a place of business at 146 Main Street, Tuckahoe, New York 10707, and \_\_\_\_\_, 120 Main Street, Tuckahoe, New York 10707 ("**Grantee**").

**WITNESSETH:**

That the Grantor, in consideration of Ten Dollars (\$10.00), lawful money of the United States, and other good and valuable consideration, paid by Grantee, does hereby grant and release unto the Grantee, their heirs and successors and assigns of the Grantee forever,

The Condominium Home (the "Home") known as Home No. \_\_ in the Property known as 120 VivaBenne Condominium in the Declaration establishing a plan for Condominium Ownership of said premises under Article 9-B of the Real Property Law of the State of New York (the "New York Condominium Act") dated \_\_\_\_\_ recorded in the Office of the County Clerk of Westchester County ("County Clerk") on \_\_\_\_\_, as Control # \_\_\_\_\_, and also designated as Tax Lot \_\_\_ in Block \_\_\_ of the \_\_\_\_\_ on the Tax Map of the Assessor's Office and on the floor plans of said buildings certified by \_\_\_\_\_, Architect, and filed with the Assessor's Office of the \_\_\_\_\_ of \_\_\_\_\_, and also filed in the County Clerk's Office on \_\_\_\_\_ as 120 VivaBene Condominium, Map \_\_\_\_\_. The premises within which the Home is located (the "Property") is more particularly described in Schedule A attached hereto and made a part hereof.

TOGETHER with an undivided \_\_\_\_\_ % in the common elements of the Condominium to said premises. Together with the appurtenances and all the estate and rights of the Grantor therein, and

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

SUBJECT TO the provisions of the Declaration, By-Laws, and Floor Plans of the Condominium recorded or filed simultaneously with and as part of the Declaration, as the same may be amended from time to time by instruments recorded or filed in the Office of the County Clerk of the County of Westchester, which provisions, together with any amendments thereto shall bind any person having at any time any interest or estate in the Home, as though such provisions were recited at length herein.

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

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

AND the Grantor, in compliance with Section 13 of the Lien Law covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

By acceptance of this deed, Grantee ratifies the provisions of the Declaration and the By-Laws of the Condominium recorded simultaneously with and as part of the Declaration and agrees to comply with all the terms and provisions thereof, as the same may be amended from time to time by instruments recorded in the Office of the County Clerk, Westchester County, and to comply with the rules and regulations of the Condominium.

The use for which the Home is intended is that of residential occupancy, subject to the applicable governmental regulations and the restrictions contained in the Declaration.

The word "party" shall be construed as if it read "parties" whenever the sense of the indenture so requires.

IN WITNESS WHEREOF, the Grantor has duly executed this deed and the Grantee acknowledges this deed, on the day and year first above written.

Grantor: DORAMI REALTY OF NEW YORK, INC.

By: \_\_\_\_\_  
Philip Raffianni, Vice President

Grantee:

\_\_\_\_\_

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

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

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NOTARY PUBLIC

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

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

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NOTARY PUBLIC



SCHEDULE A  
PROPERTY DESCRIPTION

[TO BE INSERTED]

# DESCRIPTION OF PROPERTY AND SPECIFICATIONS

## 120 VivaBene Condominium

### A. Location and use of the property

1. Address -120 Main St., Tuckahoe, NY 10707
2. Block and Lot number - Block 2, Lots 15, 17 Block 7, Lots 1,2,3
3. Zoning - Business/Residential - The property and proposed use will comply with all Village zoning and use requirements.

### B. Status of construction

1. Year built – New construction began in 2003 and completed May 1, 2005.
2. Class of Construction - Non-Combustible construction under the Building Code of the State of New York (for the parking structure) and Residential Code of the State of New York (for the townhouses). Construction Class Type IIB (townhouses) and Type IB (parking structure).
3. Owner will obtain a Certificate of Occupancy at construction completion and prior to the closing for each residential unit.
4. Building Permit 2639 has been secured and building plans have been approved by the Tuckahoe Department of Buildings.

### C. Site

1. Size - The lot is rectangular, measuring 100' x 200'. 200' along the north-south line and 100' along the east-west line, and is approximately 20,000 square feet.
2. Number of buildings and use - There is to be one three story residential structure consisting of 10 attached single family residential units built upon this site above an underground parking garage.
3. No streets are owned or maintained by the project.
4. Driveways, sidewalks and ramps - The sidewalk and curbing will be replaced to meet all governmental requirements. Catch basins are all existing on Village owned property and will not be impacted by this project. New street lighting fixtures will be installed. All driveways are paved black asphalt, all sidewalks are poured concrete, all street side curbs are granite or concrete and all internal curbs are concrete. There is an inlaid red brick border along the north curb on Main street aprox.14" from the curb line.

### D. Utilities

1. Electricity - Consolidated Edison, a public utility, will provide electricity. Each residential unit's usage will be metered individually, and the usage costs borne by each respective residential unit. Common area usage will be metered separately, with the cost of this meter apportioned on a pro rata basis based on a residential

unit owner's share of the common interest.

2. Gas - Consolidated Edison, a public utility, will provide gas. Each residential unit's usage for heat, hot water, cooking will be metered individually and the usage borne by each respective unit. Common area usage will be metered separately, with the cost of this meter apportioned on a pro rata basis based on a residential unit owner's share of the common interest. Gas is supplied to each of the residential units via black steel pipe with threaded connections running from the utility meters at a central location to each of the gas appliances in each of the residential units. Pipe is sized according to required demand. All piping is as per local code and utility company requirements.
3. Water and Sewer - United Water of New Rochelle will provide water service. Each residential unit's usage of water will be metered individually and the usage borne by each respective unit. Common area usage will be metered separately, with the cost of this meter apportioned on a pro rata basis based on a unit owner's share of the common interest.
4. Telephone - Telephone service will be provided by Verizon and/or another service provider. Each residential unit owner will be required to pay the service provider their associated telephone charges and initial charges for activating individual outlets in the unit. The cost of telephone service in the service corridor for the fire alarm system will be apportioned on a pro rata basis based on a unit owner's share of the common interest.
5. Cable & Satellite TV - Cablevision will provide cable TV, internet and telephone service to the building. Satellite TV will provide satellite TV to the Building. Each residential unit owner will make separate applications for service and will be separately billed for the cost of such service.

#### **E. Sub-soil conditions**

1. All subsoil conditions have been verified for the required load bearing capacity by the Architect or Engineer, based on the boring reports prepared by Carlin Simpson & Associates, C.E. The entire site was excavated to a depth of 12 feet below average street level and all material removed. Fill consisting of recycled concrete and aggregate in a medium to very dense state of compaction is found between 12 and 26 feet across the site. Below the fill is sandy silt which is found in a number of locations the silt and fill is a gravelly sand of medium to dense compaction. Below the gravelly sand is gneiss bedrock which is found from 17 to 33 feet below grade. Groundwater is present at between 18 and 23 feet below grade.
2. There is no danger of flooding due to water table or area overflows.
3. The site is located off a relatively flat, paved city street. There is no potential for mudslides or erosion.

#### **F. Landscaping**

1. The total area of the site is 20,000 square feet. 95% of the site is paved, concrete or building structure. The remaining 5% consists of 3 small planting beds on the east and west sides of the building and a larger bed on the south side of the building along with 6 tree pits in the Village right of way. The total bed area consists

of approximately 1,000 sq feet.

2. Plantings - Consist of aprox. 45 small scrubs and plants such as junipers, fire thorns, taxus, hicks yew, gem boxwood, euonymus winter creeper.
3. Trees - On the south side property line there are 10 trees about 5 inches in diameter original to the site they are aprox. 10 years old and healthy. On the north side there are 4 new tree pits with dwarf pear trees aprox. 2 inches in diameter. On the West side of the property there are 2 cherry trees aprox. 2 inches in diameter.
4. Fencing - There is a galvanized chain link fence aprox. 50 feet long and 4 feet high on top of the retaining wall along the south side of the property for safety purposes.
5. Gates – None.
6. Retaining Walls - There is a retaining wall built in 1998 that existed on the site prior to construction. It is on the southern property line and runs for a distance of 80 feet. The wall is made of steel reinforced concrete and is 14 inches thick. On the southern face of the wall it runs from an exposed height of aprox. 14 feet at the east to 2 feet at the west end.

#### **G. Building size**

1. Total height - Building height is approximately 32.17 feet.
2. There are no Crawl spaces.
3. Sub-cellars and cellar - The building does not contain a cellar or basement. The building has a subsurface garage and 3 maintenance storage rooms and a utility service corridor.
4. Number of floors - Three.
5. Equipment rooms - The building contains 3 maintenance storage rooms and a utility service corridor.
6. Parapet - None.

#### **H. Structural systems**

1. The parking garage structural system will be steel column and beam framing supporting metal deck and concrete slab. The superstructure structural system will be load bearing reinforced masonry with metal joist floor and roof framing. The foundation will be cast-in-place reinforced concrete walls bearing on reinforced concrete footings.
2. Exterior of Buildings
  - I. Walls - Part of the street facades will be a cavity wall system comprised of 4" thick veneer masonry, air space, 6" reinforced concrete masonry units, 1-½" metal stud framing with R-8 insulation and 5/8" gypsum wallboard on the inside. The balance of the street wall facades and the rear and side yard facades will be a wall system comprised of 1" to 3" thick acrylic stucco system, two layers 5/8" exterior sheathing, 6" metal studs with batt insulation, two layers 5/8" gypsum wallboard on the inside.
  - II. Windows will be manufactured by the Eagle Window & Door Co. The windows

will be aluminum clad, wood framed, thermally broken, fixed, casement, awning or double hung windows with factory weather-stripping and double-pane glass with low "E" coating. Tempered glass will be provided where required by NYS Building Code. Windows will comply with minimum requirements of the NYS Energy Code. Continuous sealant with backer rod between windows and masonry will be provided. A wood sill and gypsum board head and jamb returns will be provided on the interior. Eagle products meet or exceed the performance requirements set forth by the Window and Door Manufacturers Association. All Eagle products are energy-efficient and require only a minimal amount of maintenance, Eagle offers a generous 20/10-year non-prorated, limited warranty.

- III. Landmark status is not applicable to this building.
  - IV. Parapets and copings – There are no parapets. Copings, where installed, will be lead coated copper.
  - V. Chimneys and caps - All chimneys to be double wall steel Class "B" gas vents (NFPA 211-1988).
  - VI. Balconies and terraces - No balconies will be provided.
3. Exterior entrances
- I. Exterior doors and frames; front door will be insulated metal with wood frame; rear door will be insulated metal with metal frame. All entrance doors will be weather-stripped.
  - II. Exterior stairs - ere provided, entrance porch will be constructed of brick masonry with bluestone slab treads and porch surface.
  - III. Railings at the entrance porches will be constructed of painted steel.
  - IV. Mail boxes will be post office approved exterior type recessed into wall one per unit.
  - V. Lighting for the exterior entrances will consist of one wall sconce located to the side of each entrance door and one down like over the entrance.
4. Service entrances - None.
5. Roof and roof structures
- I. The roofing system will be an adhered rubber membrane roofing system on tapered insulation with a 15-year warranty. The roof will have a minimum insulating value of R19.
  - II. Drains: all roofs will be internally drained to the building's storm water system.
  - III. Skylights: vented skylights will be provided over each interior stair.
  - IV. Metalwork at roof levels; Railings will be provided where required to maintain height above roof of 3'-6".
6. Fire escapes - There are no fire escapes on the building exterior.
7. Yards and courts - None.
8. Interior stairs - Each residential unit will be served by an interior, wood stair. The stair will have wood handrails mounted on wood balusters or metal brackets.

9. Interior doors and frames - Interior doors: Within the residential units the doors will be pre-hung painted solid core MDF with painted wood frames.
10. Elevators - There will be a **residential-type passenger elevator** in units C, D, F, G and I. These elevators will have a 950 lb capacity and 40 fpm speed. The elevator will have (3) stops, one at each floor from 1<sup>st</sup> floor, to 3<sup>rd</sup> floor. The elevators are self enclosed with all equipment within the elevator shaft at the top level. There is no machine room associated with these elevators: The elevators are manufactured by Thyssen Krupp Access; the model is LEV RESIDENTIAL ELEVATOR. The elevator cab will have a melamine finish, two recessed lights, and a continuous handrail. The elevator door will be an accordion-type gate. The elevator cab floor will be stone tile.
11. Insulation - The roof has closed cell rigid foam tapered insulation. The walls have Owens Corning fiberglass batt type insulation. Some walls and all of the first floor floors have Icynene sprayed on insulation. All insulation meets or exceeds all New York State Building and Energy codes.
12. Exterior Wall Finishes - Exterior walls consist of stone, brick, synthetic stucco, pre-cast concrete, lead coated copper, hardy plank and aluminum trim.
13. Handicapped Access - The residential units are private residences and do not require any handicapped access features per the law. In one of the full baths in each residential unit we provide grab bars for entering and exiting the bathtub. We provide pedestal sinks for wheelchair access in the ½ baths of all residential units. In five of the residential unit's wheelchair accessible elevators are provided. No handicapped accessible parking is required or provided.

#### I. Auxiliary facilities

1. Laundry Rooms - None.
2. Refuse disposal - There will be a refuse area in the southwest corner of the parking lot. Pick-up schedule will be determined by Village of Tuckahoe Department of Sanitation.
3. Tenant Storage - None.
4. Recreation Space - None.

#### J. Plumbing and drainage

1. Water Supply - Each residential unit and the underground garage will be supplied water individually by the United Water. All water supply pipes within the building shall be copper type L with soldered joints.
2. Fire Protection System - Sprinkler system shall be provided per applicable code requirements. All pipes shall be black steel standard schedule 10. Sprinkler heads shall be recessed pendant or sidewall type as deemed appropriate. The garage unit has a dry system which is suspended from the ceiling and has aprox.180 sprinkler heads installed as per code. Each residential unit has a wet system which has heads mounted throughout the unit as required by code. Each residential unit has aprox. 10 heads on the 2<sup>nd</sup> and 3<sup>rd</sup> floors and 5 heads on the 1<sup>st</sup> floor. Numbers of heads may vary based on layout but all residential units have sprinklers per

applicable code. Sprinkler heads in closets and wash areas are exposed, heads in ceilings are flush mount with concealing plates, and heads in walls are surface mounted. The entire sprinkler system is monitored for flow and tamper. A Siamese connection is provided to the sprinkler system on the north east corner of the building.

3. Water Storage Tanks - None.
4. Water Pressure - Water pressure is as provided by the local utility.
5. Sanitary Sewage System - All sanitary sewage will outlet through a building plumbed system approved by the local utility. All sanitary pipes shall be PVC or cast iron with mechanical and/or no-hub joints, and connect to the local sewerage system.
6. Permits required - Approval has been obtained from the local utilities for one (1) 6 inch sanitary sewer, one (1) 1 inch domestic water service for each residential unit and one (1) water service for the building and one (1) 6 inch fire service.
7. Storm Drainage - All storm drainage, including roof run-off, will outlet into a storm water retention system approved by the local agencies. This system will connect to the local storm drainage system. All piping is cast iron within the building structure. All sub-surface piping is corrugated plastic drainage pipe or schedule 40 PVC. The water retention system consists of (2) 90 feet long 48 inch diameter corrugated metal pipe systems with manhole access for service and cleaning. The system is buried below the parking unit on the south side of the property. The system is manufactured by Lane Enterprises and includes a 6 feet square metering chamber designed by Precast Concrete Sales to meter the water from the retention system to the Village of Tuckahoe storm water system. The system was designed by John Meyer Consulting Engineers and approved by the Village of Tuckahoe Engineer.

#### **K. Heating and hot water**

1. Residential heating will be provided by gas-fired forced air heating units centrally located in each dwelling. Each heating unit will have individual thermostatic controls, manual or automatic, to control heating and cooling. The air conditioning unit will provide cooling by way of an Arcoaire condenser coil model# EXD60L24C in the air handler and a condenser on the roof. The heating air handler is Arcoaire model #9MPD125L20B rated at 125,000 BTU. The condenser is an Arcoaire model# NAC260 rated at 56,000 BTU. Both heating and cooling have been sized to be adequate by Simon Rodkin PC to meet requirements of the New York State Energy Code.
2. Hot water service for the residential unit will be from gas-fired water heaters located in each unit. The heater shall be 75 gallons and manufactured by American Water Heater Co model# G62-75T75-4NV. The heater is vented to the roof via a double walled metal B vent. The storage capacity of the residential water heater shall be in accordance with the requirements of the New York State Energy Code.

- L. **Gas supply** - Natural gas supplied by Con Edison as described above. Gas is supplied to each of the residential units via black steel pipe with threaded connections running from the utility meters at a central location to each of the gas appliances in each of the

units. Pipe is sized according to required demand. All piping is as per local code and utility company requirements.

M. **Air conditioning** - Residential cooling will be provided by split-system units located in each residential unit. The air handler component will be located in a first floor mechanical room and the condenser component will be located on the building roof.

N. **Ventilation** - All residential unit bathrooms and kitchens are ventilated via dedicated vertical sheet metal risers with roof-mounted fans made by JencoFan Model# RED810S+ Direct Drive. All dryers are vented to the roof via dedicated vertical sheet metal risers. Connection to the dryer is via flexible metal vent hose.

O. **Electrical system** - The total building incoming service shall be 120/208 volt, 3 phase, 4 wire, 800 amp. All electrical work will comply with the National Electrical Code. Residential units will each have a 150 amp, 120/208 volt, and 3 wire service. All residential services will be single phase. Each unit shall have at least four (4) appliance circuits, two (2) lighting circuits and an individual air conditioning circuit for each unit. All circuits shall be provided with circuit breakers. GFI type receptacles will be provided per code in the kitchens and bathrooms.

P. **Additional residential systems**

1. Security – Each residential unit is equipped with a security system that includes motion detection and door contacts. (Monitoring & service by unit owner).
2. Tel/Data – Each residential unit is equipped throughout with CAT5 cabling terminated in each room.
3. Cable/Satellite – Each residential unit is wired to support cable and satellite TV (service & equipment by unit owner).
4. Central Vacuum – Each residential unit is equipped with a central vacuum system. Piping to each outlet is via concealed thin wall 2 ¼ inch PVC pipe terminated in a centrally located point. There are a total of three outlets in each residential unit one on each floor. The vacuum motor is located on the first floor in the utility closet and is a Vacuflo True Cyclonic model 466Q or equal. The system exhaust is vented to the exterior. Each residential unit is provided with a standard set of utensils along with a 30ft vacuum hose.
5. Intercom and/or door signal system - Each residential unit includes a low voltage intercom station at the entry doors and at each floor.

Q. **Public area lighting** - Lighting & power circuits shall be provided and separately metered for lighting exterior and interior common areas. The cost of electricity and maintenance of the system shall be a common cost allocated to each unit owner based on their share of the common interest.



## R. Safety and warning devices

1. Each unit will contain a smoke detector located in each bedroom, and on each floor. The detector will be wired to a 120-volt local power supply and will be self-contained with its own sounding device. At least 2 of the units will also be carbon dioxide detectors.
2. Common areas - will be provided with a sprinkler-smoke alarm which will include area smoke detectors in mechanical and electrical rooms, monitoring of sprinkler water flow and tamper switches, air handling system control and duct detector monitoring.
3. Closed Circuit Security-CTTV - None.

## S. Parking areas

1. Residential unit parking includes 2 dedicated parking spaces as follows: the parking spaces for units B through I are carports; Units A and J have one carport and one exterior parking space each. The carport parking spaces are dedicated limited common elements are below the second floor of each residential unit in the rear of the building at the parking level accessed from the Jefferson Street driveway entrance. They are open to the air and paved with asphalt with each carport being divided by a vertical concrete column and each carport parking space is clearly designated. Lighting is provided as a common element via a single 50 watt metal halide ceiling mounted fixture in the center of each carport. The exterior parking space for unit A and J are dedicated limited common elements and are thirty feet away from their respective carports and are to the right and left of the parking unit. The carports are accessed via an asphalt driveway with an entrance on Jefferson Street (west side). Drainage is provided via 5 drains positioned throughout the driveway area and they are tied into the storm water retention system. No handicapped access is provided or required.
2. The Parking Unit consists of 16 parking spaces 9 feet by 20 feet at total of 2,880 square feet, located in the rear of the building at the parking level accessed from the Jefferson Street driveway entrance(west side) and is a condominium unit (**not offered for sale in this Public Offering**). The parking unit is open to the air and paved with asphalt and each parking space is clearly designated. The parking unit is designated as dedicated parking for the merchants of the stores located at 110 Main Street. **The parking unit is tied to the commercial operation of 110 Main Street and may not be used for any other purpose as per the conditions of site plan approval.** The parking units are accessed via an asphalt driveway with an entrance on Jefferson Street. Drainage is provided via 5 drains positioned throughout the driveway area and they are tied into the storm water retention system. Lighting is provided by four pole mounted 150 watt metal halide fixtures and two surface mount 50 watt metal halide fixtures attached to the stair tower at the driveway entrance. No handicapped access is provided or required. **Residents of 120 Main street will not have any access or use of this unit.**
3. The Garage Unit consists of thirty-two underground open air parking spaces and is a condominium unit (**not offered for sale in this Public Offering**). The garage unit is approximately 11,720 square feet constructed of steel and re-enforced poured concrete walls and ceiling with concrete floors. The ceiling deck is 12 inches of re-enforced concrete over corrugated steel decking protected by a rubberized waterproof membrane and then a 4 inch layer of asphalt(see finishing schedule

below). The Unit is accessed via a secure driveway from Washington Street (east side). Drainage is provided via 5 drains positioned throughout the garage area and they are tied into the storm water retention system. Lighting is provided by 30 surface mount eight foot fluorescent fixtures with emergency lighting and exit signage as required by code. **All parking spaces within the garage unit are clearly marked and reserved for the residents of 110 Main Street only and are not a common element of the Condominium.** Pedestrian access to the garage unit is provided as follows: handicapped access is provided via a ramp and door on Washington street and an additional entrance and exit is provided via a stair tower at the Jefferson Street side of the property. Vehicles pass through a rollup chain garage door to enter and exit the garage unit. Access is restricted via a card security system and is limited. Residents of 120 Main Street will not have any access or use of the Garage Unit. One handicapped parking space is provided as per code. The Garage Unit has a fire sprinkler and detection system, carbon monoxide detection system and integrated exhaust fans to ventilate the space as required.

T. Swimming pools - None.

U. Tennis courts - None.

V. Permits and certificates - Sponsor is responsible for plan approval only. Contractors to apply for and obtain required work permits prior to starting work. All street improvements and obstruction (paving, curbs and sidewalks) must be approved by the local authorities.

W. Violations – None.

X. Unit information - Residential units: 10, Parking Unit: 1, Garage Unit: 1

Room	Floors	Walls	Ceilings	Doors	Miscellaneous
Family Rooms	Slate tile	Gypsum board w/ 2 coats of flat latex paint	Gypsum board w/ 2 coats of flat latex paint	N/A	Entrance doors: painted welded steel frames w/ 3'-0" x 6'-8" painted hollow metal doors.
Living & Dining Rooms	2 ¼" oak strip flooring with stain or sealer and urethane finish	Gypsum board w/ 2 coats of flat latex paint	Gypsum board w/ 2 coats of flat latex paint	N/A	
Kitchens	Slate tile	Gypsum board w/ 2 coats of flat latex paint	Gypsum board w/ 2 coats of flat latex paint	N/A	Granite counter tops & tile backsplash
Powder rooms	slate tile	Water resistant gypsum board w/ 2 coats of semi-gloss latex paint or ceramic tile	Water resistant gypsum board w/ 2 coats of latex paint.	Painted, pre-hung 2'-6" x 6'-8" x 1 ¾" solid core MDF paint grade in painted wood frames	
Bathrooms	Ceramic tile	Water resistant gypsum board w/ 2 coats of semi-gloss latex paint or ceramic tile	Water resistant gypsum board w/ 2 coats of latex paint.	Painted, pre-hung 2'-6" x 6'-8" x 1 ¾" solid core MDF paint grade in painted wood frames	Stone counter tops in Master Bathrooms
Bedrooms	2 ¼" oak strip flooring with stain and semi-gloss poly-urethane finish	Gypsum board w/ 2 coats of flat latex paint	Gypsum board w/ 2 coats of flat latex paint	Painted, pre-hung 2'-8" x 6'-8" x 1 ¾" solid core MDF paint grade in painted wood	

## Plumbing fixtures

### Master Bathroom:

<b>Item</b>	<b>Make / model</b>	<b>Description</b>	<b>Finish</b>
Lavatory	Silestone countertop	Integral sink	
Lavatory faucet	Delta/520-WFMPU	Lever handle	Polished chrome
Toilet	Kohler/Wellworth	One-piece	White
Bath tub	Kohler/Villager	5'-0" long	White
Bath & Shower faucet	Delta/1343		Polished chrome
Tub enclosure	Shower rod with curtain		(Curtain by unit owner).

### Bathroom:

Lavatory	Silestone countertop	Integral sink	
Lavatory faucet	Delta/520-WFMPU	Lever handle	Polished chrome
Toilet	Kohler/Wellworth	One-piece	White
Bath tub	Kohler/Villager	5'-0" long	White
Bath & Shower faucet	Delta/1343		Polished chrome
Tub enclosure	Shower rod with curtain		(Curtain by unit owner).

### Powder room:

Lavatory	Kohler Chablis	Pedestal	White
Lavatory faucet	Delta/520-WFMPU	lever handle	Polished chrome
Toilet	Kohler/Wellworth	One-piece	White

### Kitchen:

Sink	Elkay/Lustertone LR-2522	Single basin	Stainless steel
Sink faucet	Delta/451	Lever & spray	Polished chrome

Lighting schedule

Item	Make / model	Description	Finish
Recessed down light	Lightolier / Lytecaster	Located in residential units halls and living room	White
Ceiling surface mount	Kitchler / 8881NI 8882NI	Located in residential unit dining room, kitchen, bedrooms, baths and hallways	White globe brushed nickel finish
Wall mount	Kitchler / 9022BK 9022NI	Common element Wall mount exterior fixture at front and rear entrance	Black and brushed nickel
Wall mount	Standard porcelain	Common element located in utility room	White
Wall mount fluorescent	Progress 25" white	Located in residential units over medicine cabinets in bathrooms	White
Surface mount fluorescent	Generic 8' surface mount two bulb with electronic all weather ballast	Located in Garage Unit, Service corridor, and store rooms	White
Surface mount 50 watt Metal halide fixture	RAB / VAN3H50	Used in limited common element carports	White
Pole Mounted 150 watt metal halide fixture	RAB / VAN5HH175	Used to light Parking Unit	Bronze

## Appliances

Subject to Sponsor's right to make substitutions of equal or better quality as set forth in the Offering Plan, the residential units will be equipped with the following appliances and fixtures:

<b>Item</b>	<b>Make / model</b>	<b>Description</b>	<b>Finish</b>
Refrigerator	Maytag MTB2156GES	Top freezer w/ icemaker	Stainless steel
Stove (Free-standing Slide in)	Amana ACF3325AS	Slide-in gas range, self cleaning	Stainless steel
Dishwasher	Maytag MDB7600AWS		Stainless steel
Microwave	Amana AC01860AS	Over the range	Stainless steel
Washer	<i>GE DWSR2080DWW</i>		White
Dryer	<i>GE DWSR405GBWW</i>		White

## Finish schedule of spaces in the parking and garage unit

<b>Room</b>	<b>Floors</b>	<b>Walls</b>	<b>Ceilings</b>	<b>Doors</b>	<b>Misc.</b>
Garage	Concrete	Exposed concrete and concrete block	Exposed steel and metal deck	Painted metal	
Utility corridor & Storage	Concrete	Exposed concrete or concrete block	Exposed steel and metal deck	Painted metal	
Access stairs in garage	Concrete	Exposed concrete or concrete block	Painted exterior gypsum sheathing.	Painted metal	
Refuse area	Asphalt paving	Exposed concrete block	None	Painted steel gate	

**Y. Additional information required**

1. Site plan - See attached.
2. Area map - See attached.
3. Floor plan for each type of unit - See attached.
4. Floor to ceiling heights of units - From 7'-2" to 8'-9" within each unit.
5. Approximate total area of units.

Residential units A & J:	2,222 SF each
Residential units B, E & H:	2,243 SF each
Residential units C & G:	2,342 SF each
Residential units D & I:	2,308 SF each
Residential unit F:	2,350 SF
Parking unit:	3,000 SF
Garage unit:	11,720 SF

**Z. Type of measurement used for floor plans in the offering plan**

1. The number of rooms in each residential unit is calculated in accordance with the "Recommended Method of Residential Room Count", effective January 1, 1964, from the Real Estate Board of New York. All kitchen areas are deemed to be independent rooms, whether or not separated from the living room or dining room by a demising wall.
2. The total square footage shown on Schedule A is measured horizontally from the exterior face of exterior walls to the midpoint of the opposite interior walls, and from the midpoint of demising walls between units to the midpoint of the opposite wall. Any floor plan or sketch shown to a prospective Purchaser is only an approximation of the dimensions and layout of a typical unit. Each unit should be inspected prior to purchase so that any prospective Purchaser will be able to inspect the interior dimensions, layout and physical condition.

**AA. Master plan showing unit boundaries** - Plan of units indicate boundaries and appropriate unit designations.

**BB. Housing merchant implied warranty disclosure** - Pursuant to applicable law, residential unit owners are entitled to the benefit of the Housing Merchant Implied Warranty. The full warranty provides the following coverage:

1. For one (1) year, the residential unit must be free from defects caused by workmanship or materials that do not meet the standards of the applicable building code; for items not covered by code, the construction must be in accordance with locally accepted building practices.
2. For two (2) years, the plumbing, electrical, heating cooling and ventilation systems (if any) must be free from defects caused by unskillful installation.
3. For six (6) years, the residential unit must be free from physical defects in the structural elements (foundation, floors, walls, roof framing) which make it unsafe or unlivable.
4. Defects not caused by defective workmanship, materials or design, and patent defects which were obvious (or would have been obvious upon inspection) are excluded. There are no warranties for appliances sold with the Unit, which are covered by other warranties from the manufacturers of those goods.

5. The Housing Merchant Implied Warranty can be limited. In this Plan, the Warranty is limited or made more specific in several ways, including the following: (i) a purchaser cannot make a claim for incidental, consequential, special or indirect damages; (ii) a purchaser's recovery for property damage is limited to thirty-five percent (35%) of the purchase price of the Unit; and (iii) the Warranty is for the benefit of the first owner of a Unit and excludes all subsequent owners.

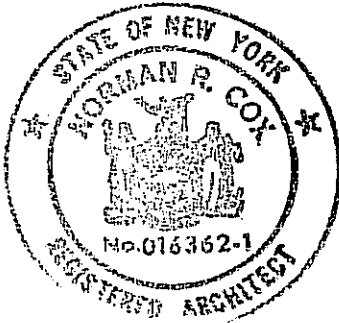
CC. Visual examination of certain conditions in the building(s)

1. All new construction.
2. Further development - N/A. All new construction.
3. Asbestos - N/A. All new construction. Asbestos material will not be used.
4. Lead-based paint - N/A. All new construction. Lead-based paint will not be used.

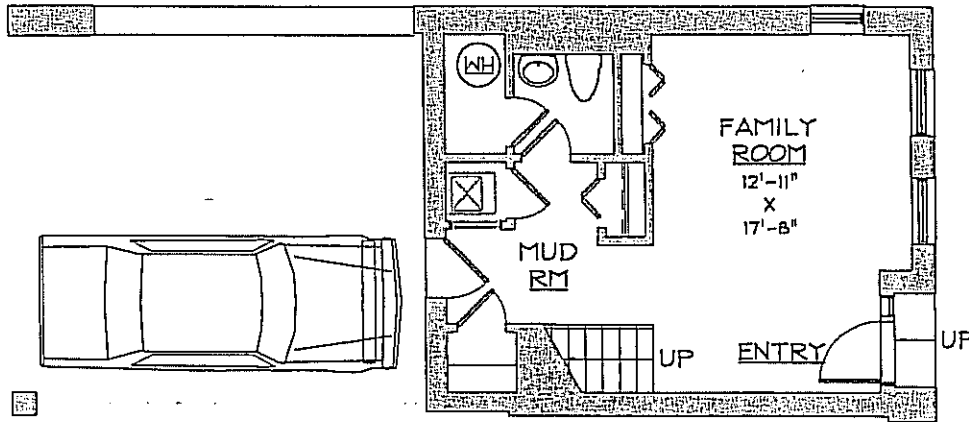
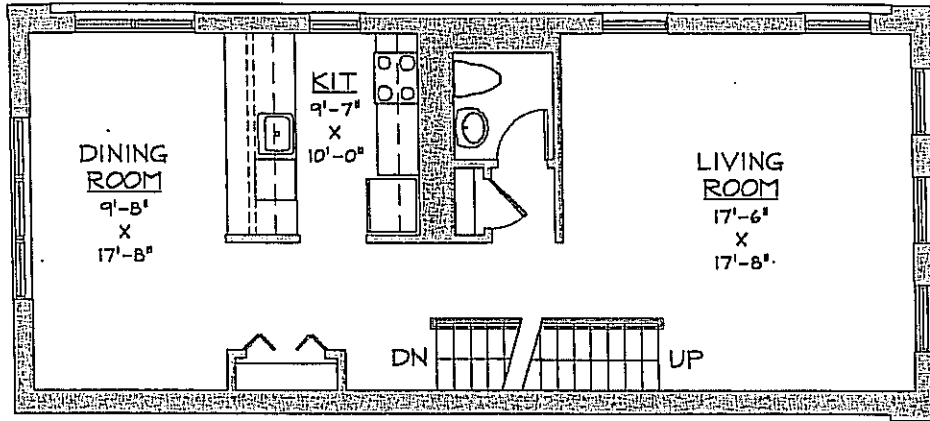
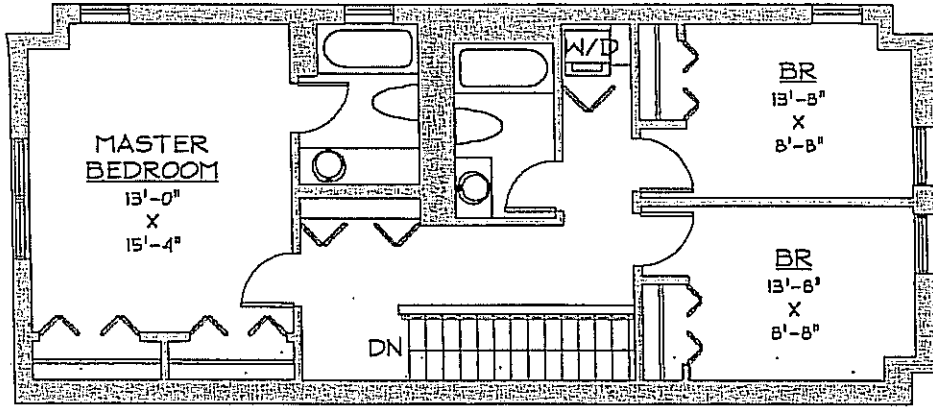
Dated: 4/15/2005

By: *Norman R. Cox*

Seal



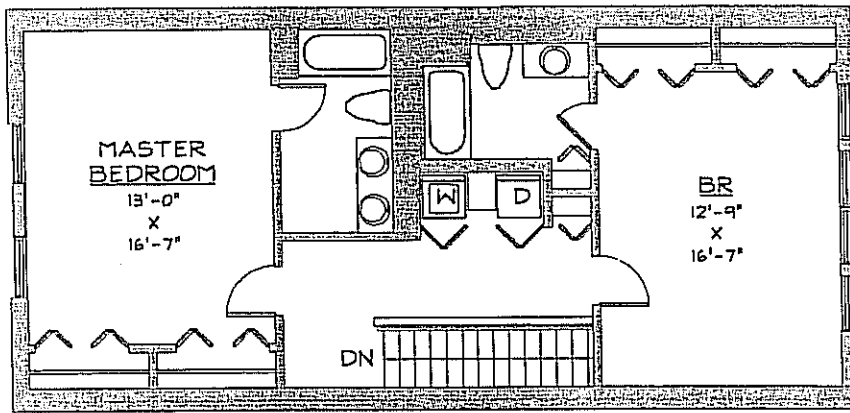




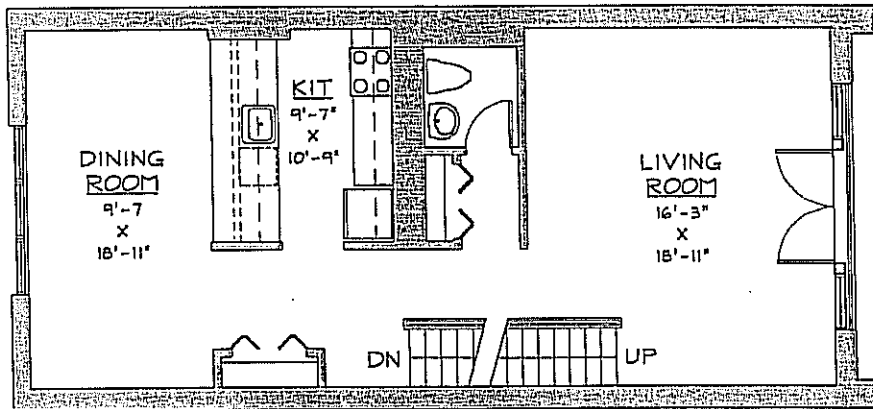
UNITS #1 & 10  
(120-A & 120-J)

120 VIVA BENE CONDOMINIUMS  
120 MAIN ST. TUCKAHOE, NY 10707

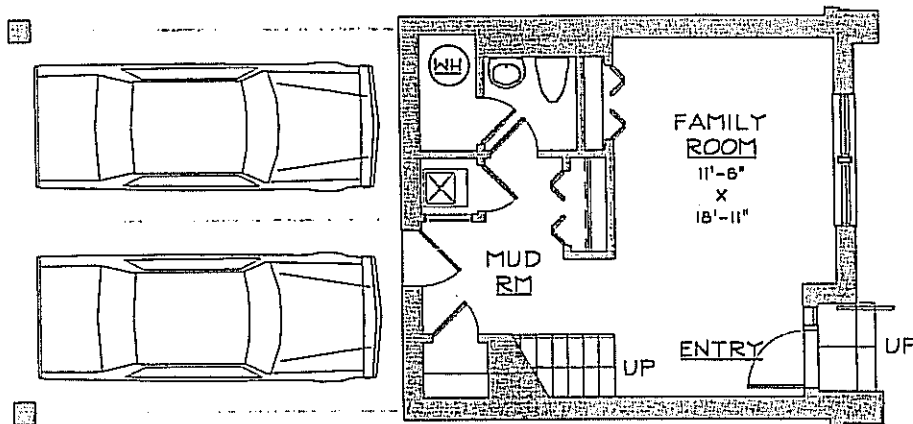
TYPE I



3RD FL



2ND FL



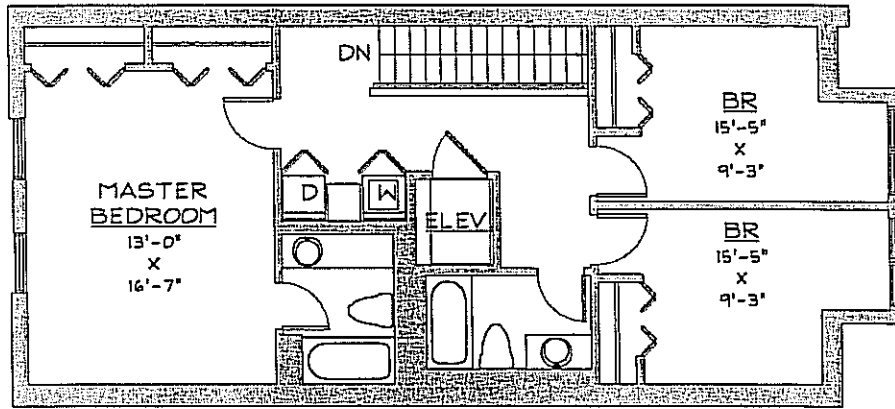
1ST FL

UNITS #2, 5 & 8  
(120-B, 120-E, 120-H).

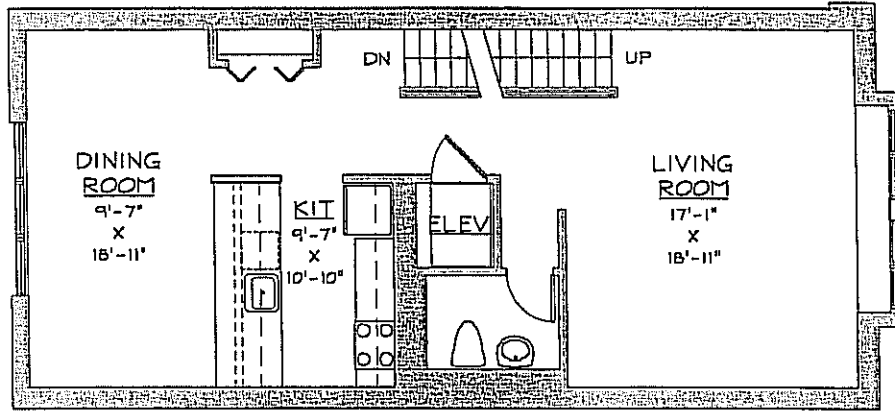
120 VIVA BENE CONDOMINIUMS

TYPE II

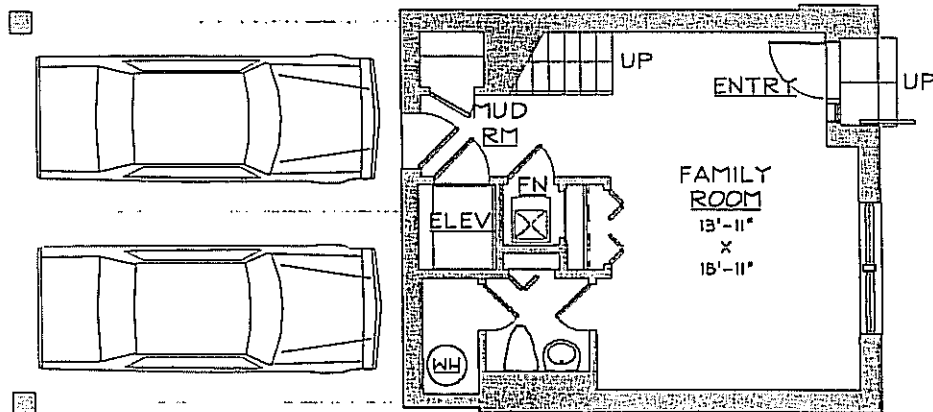
120 MAIN ST. TUCKAHOE, NY 10707



3RD FL



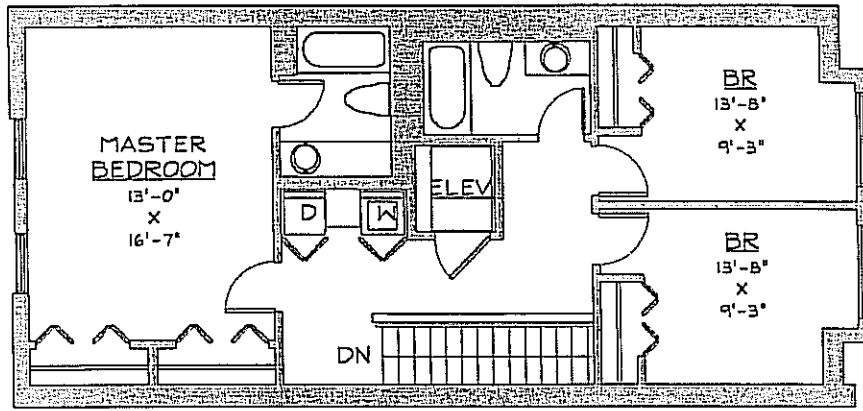
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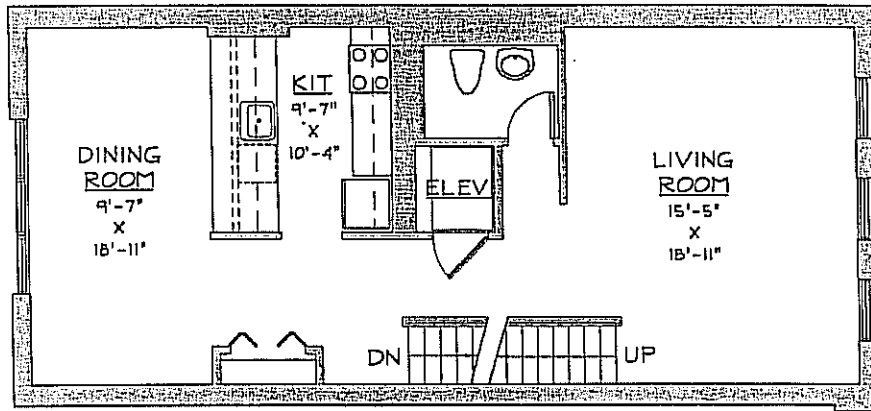
1ST FL

UNITS #3 & 7  
(120-C & 120-G)

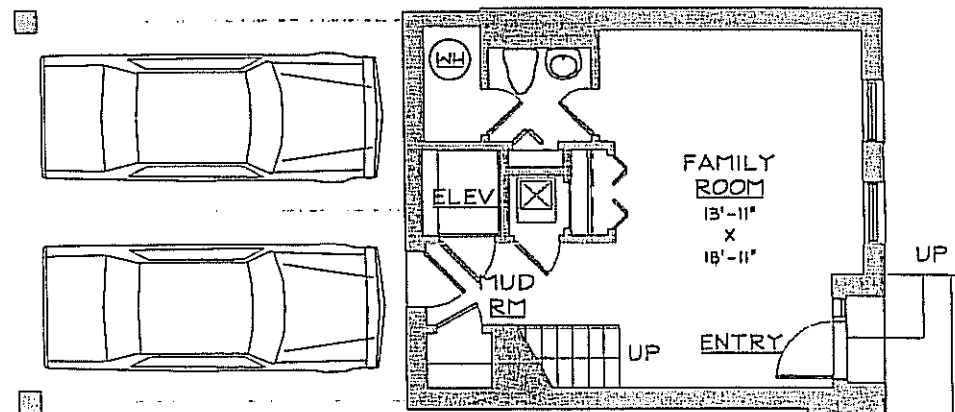
120 VIVA BENE CONDOMINIUMS TYPE III  
120 MAIN ST. TUCKAHOE, NY 10707



3RD FL



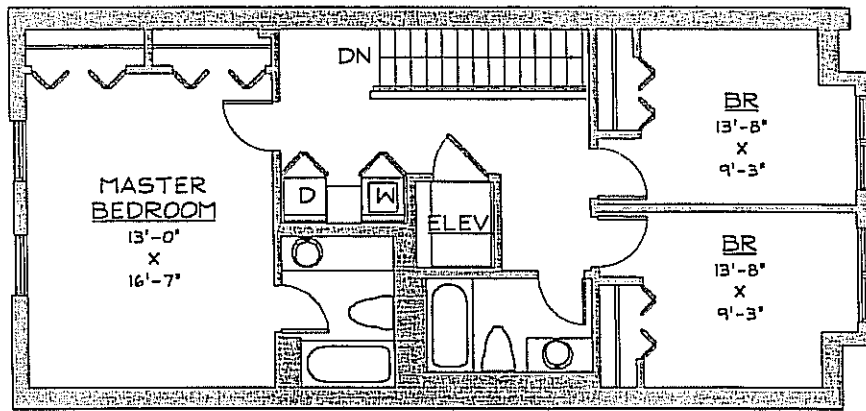
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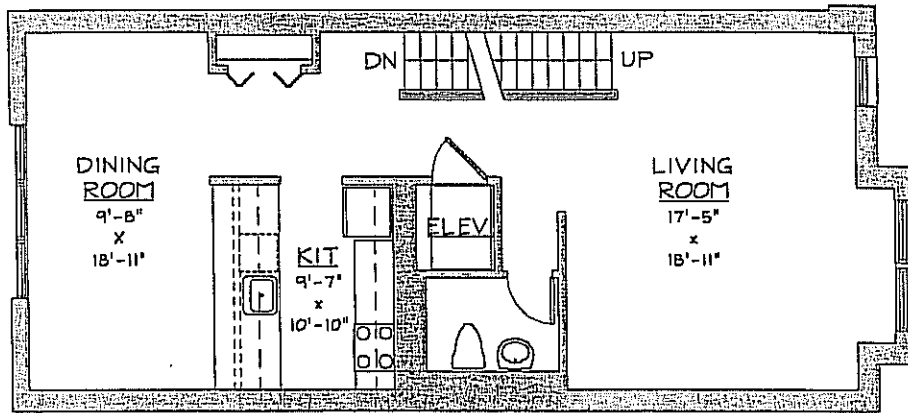
1ST FL

UNITS #4 & 9  
(120-D & 120-1)

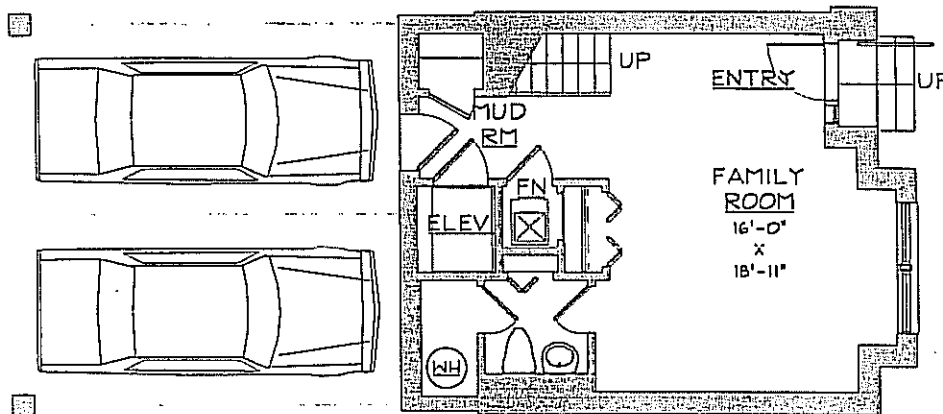
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120 MAIN ST. TUCKAHOE, NY 10707



3RD FL



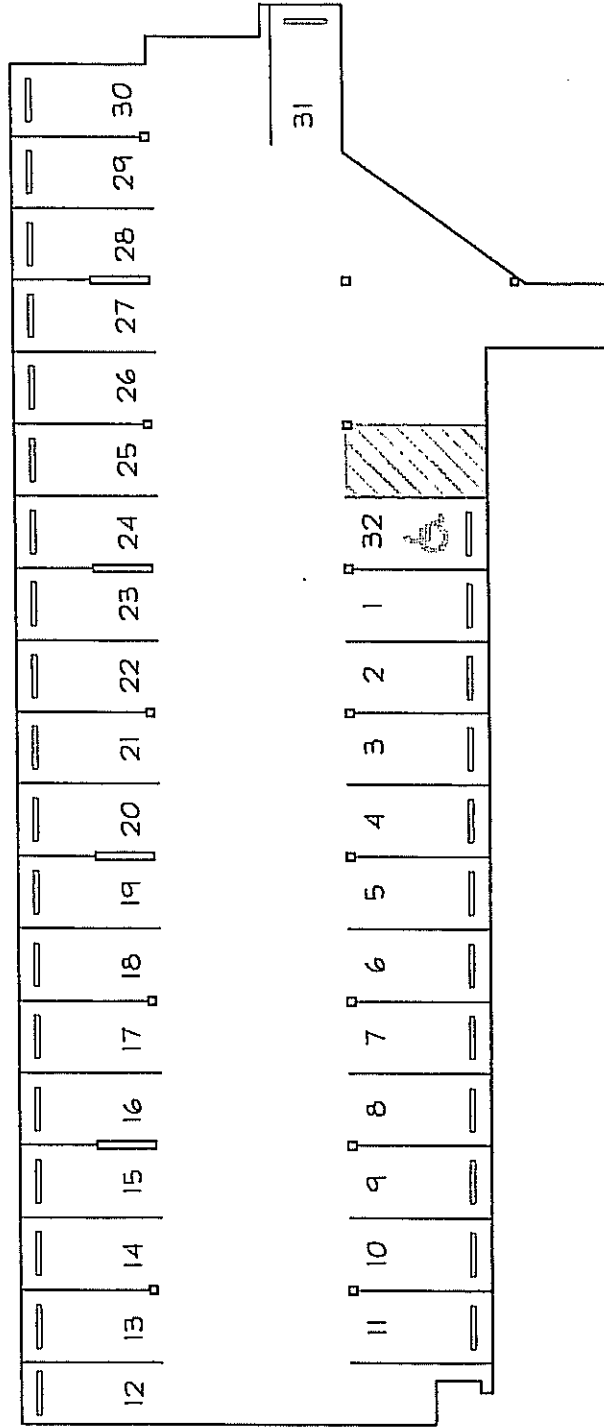
2ND FL



1ST FL

UNITS #6  
(120-F)

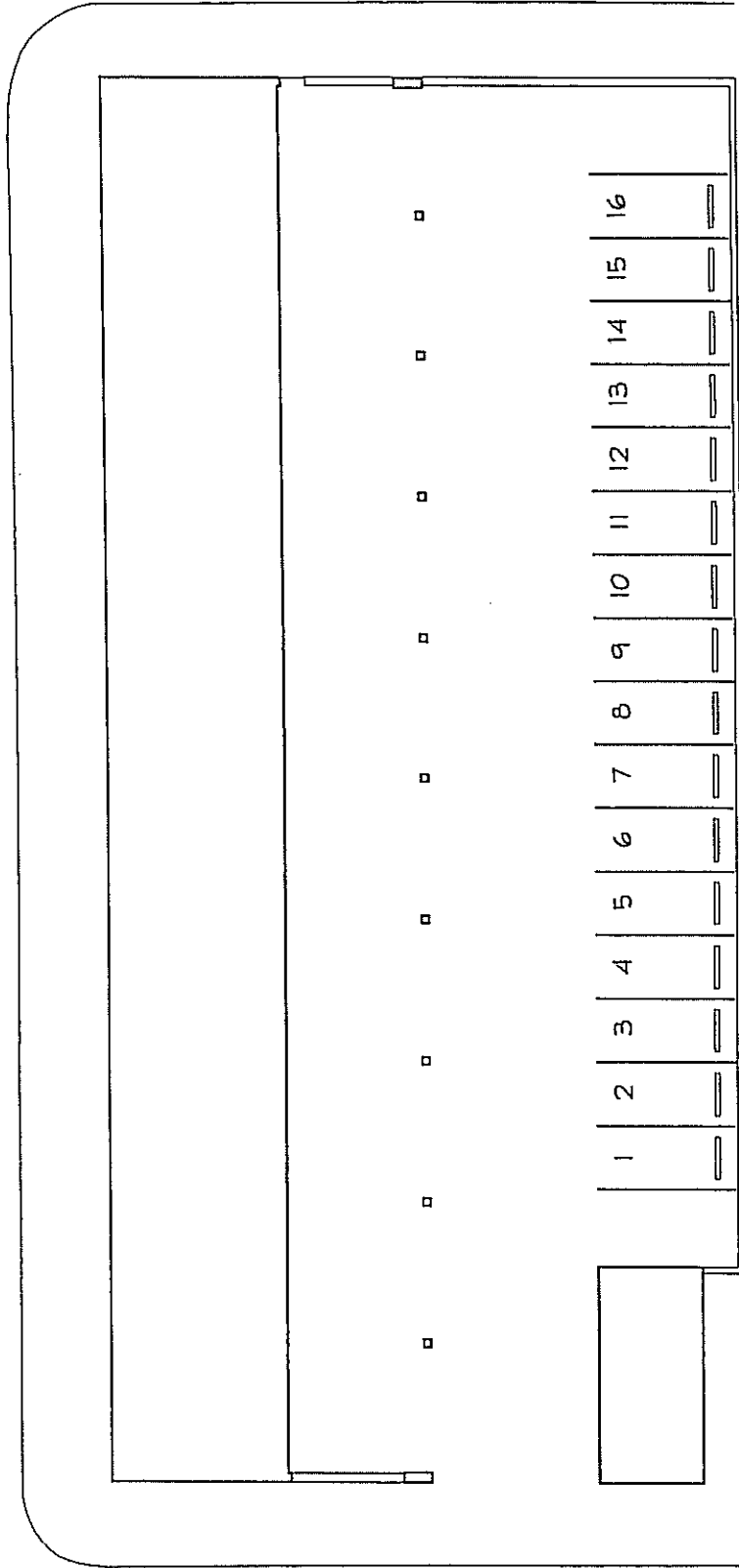
120 VIVA BENE CONDOMINIUMS      TYPE V  
120 MAIN ST. TUCKAHOE, NY 10707



GARAGE UNIT

120 Viva Bene Condominiums  
 120 MAIN ST. TUCKAHOE, NY 10707

MAIN ST.



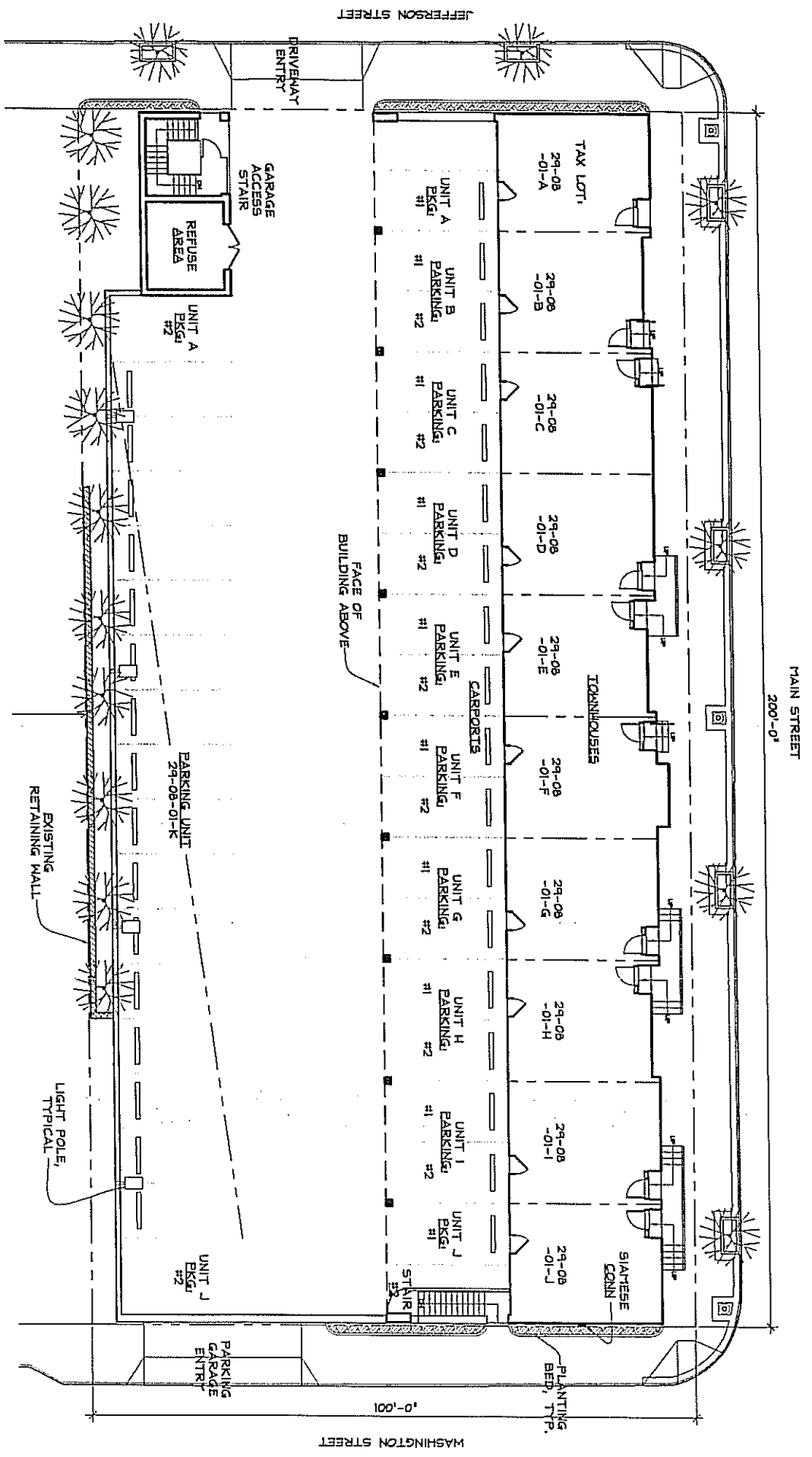
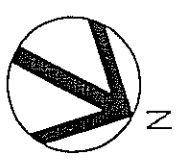
JEFFERSON ST.

PARKING UNIT  
(SPACES 1 THRU 16 ONLY)

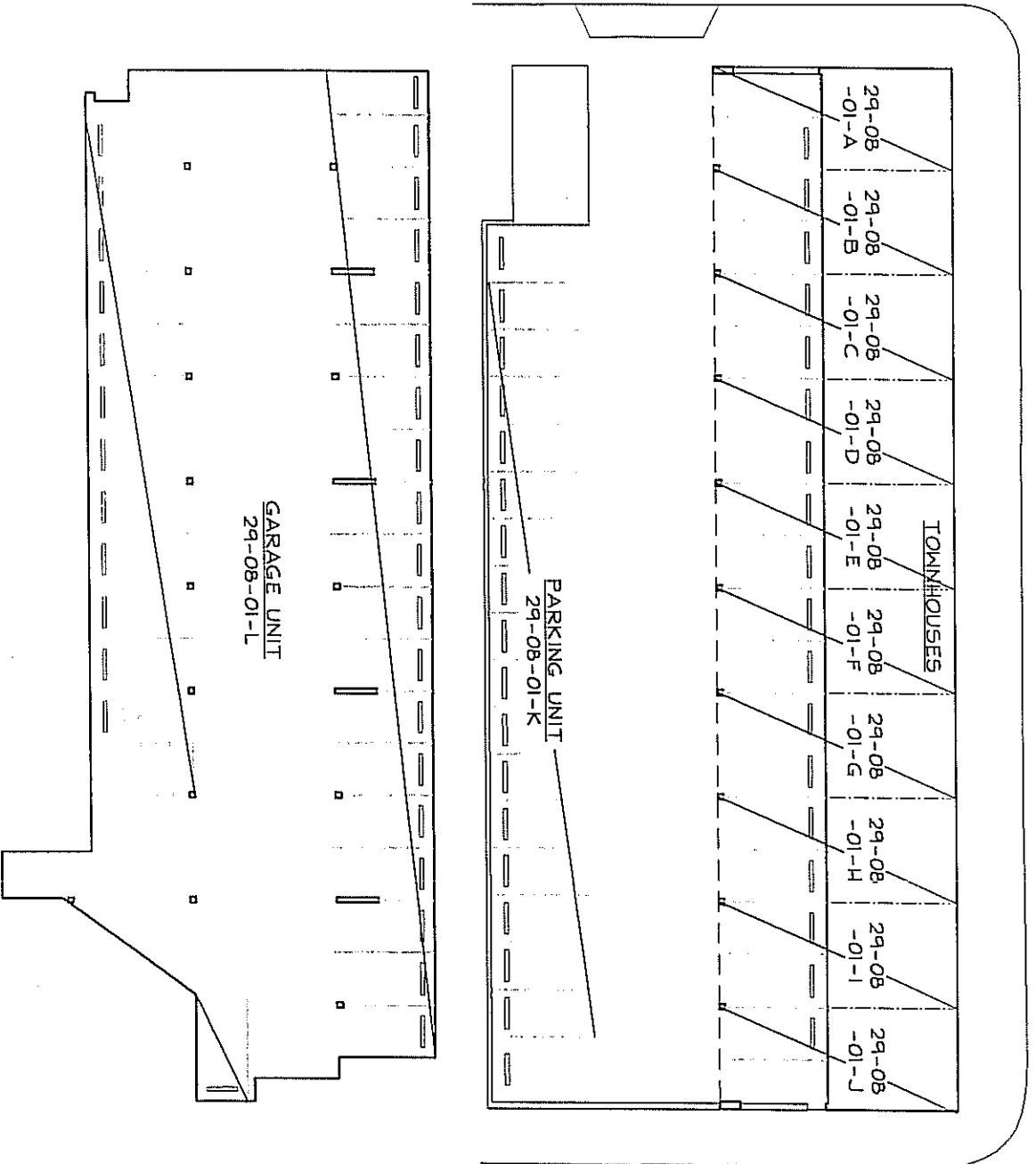
120 Viva Bene Condominiums  
120 MAIN ST. TUCKAHOE, NY 10707

120 VivaBene Condominiums  
 120 MAIN ST. TUCKAHOE, NY 10707

SITE PLAN







120 Viva Bene Condominiums  
 120 MAIN ST. TUCKAHOE, NY 10707

TAX LOTS

# **DECLARATION OF CONDOMINIUM**

**ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP OF  
PREMISES LOCATED AT 120 MAIN STREET TUCKAHOE, NEW YORK  
PURSUANT TO ARTICLE 9-B OF THE REAL PROPERTY LAW  
OF THE STATE OF NEW YORK**

**NAME: 120 VIVABENE CONDOMINIUM**

**SPONSOR:  
DORAMI REALTY OF NEW YORK, INC.  
146 Main Street  
Tuckahoe, New York 10707**

**DATE OF DECLARATION:**

\_\_\_\_\_ 1, 200 \_\_\_\_\_

**SMITH, BUSS & JACOBS, LLP  
Attorneys for Sponsor  
733 Yonkers Avenue  
Yonkers, NY 10704**

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE FIRST: Submission of Property .....	1
ARTICLE SECOND: Description of Property .....	1
ARTICLE THIRD: Definition .....	1
ARTICLE FOURTH: Community .....	3
ARTICLE FIFTH: Common Elements .....	3
ARTICLE SIXTH: Rights of Sponsor and Parking Unit Owners.....	8
ARTICLE SEVENTH: Service of Process .....	9
ARTICLE EIGHTH: Common Interest .....	9
ARTICLE NINTH: Administration .....	10
ARTICLE TENTH: Amendment and Withdrawal .....	10
ARTICLE ELEVENTH: Subject to Declaration, By-Laws, Etc.....	12
ARTICLE TWELFTH: Common Charges .....	12
ARTICLE THIRTEENTH: Units Acquired by the Board .....	13
ARTICLE FOURTEENTH: Power of Attorney .....	13
ARTICLE FIFTEENTH: Easements.....	13
ARTICLE SIXTEENTH: Encroachments .....	16
ARTICLE SEVENTEENTH: Unit Ownership .....	16
ARTICLE EIGHTEENTH: Conveyance of a Unit .....	16

ARTICLE NINETEENTH: Covenants and Restrictions and  
Statement of Permitted Uses ..... 16

ARTICLE TWENTIETH: Invalidity ..... 18

ARTICLE TWENTY-FIRST: Allocation of Tax Benefits..... 18

SCHEDULES: ..... 20

EXHIBITS: .....

PLOT PLAN: Filed Simultaneously Herewith.....

**PLAN OF CONDOMINIUM OWNERSHIP**

**DECLARATION OF THE 120 VIVABENE CONDOMINIUM  
PURSUANT TO ARTICLE 9-B OF THE REAL PROPERTY LAW OF  
THE STATE OF NEW YORK**

In the Village of Tuckahoe, County of Westchester and State of New York on this 1<sup>st</sup> day of \_\_\_\_\_, 200\_\_\_\_, Dorami Realty of New York, Inc., a corporation organized and existing under the laws of the State of New York, whose principal office is situated 146 Main Street, Tuckahoe, NY 10707, County of Westchester, State of New York, hereinafter referred to as the "Sponsor", does hereby state:

**FIRST: Submission of Property.** By this Declaration the Sponsor submits the property described in this Declaration, including the land and the Building and all other improvements erected and to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, to the provisions of Article 9-B of the Real Property Law of the State of New York.

**SECOND: Description of Property.** The Sponsor owns all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Tuckahoe, County of Westchester, and State of New York, and more particularly described on Schedule B annexed hereto.

**THIRD: Definitions.** The following words have the following meanings when used in this Declaration:

(a) **"Building"** consists of the exterior walls and roof of a Unit or a number of Units all of which are constructed under a continuous roof or the entire interior and exterior of any building or structure which shall form a portion of the Condominium but which does not contain any Units.

(b) **"Board"** means the Board of Managers elected by the Unit Owners to manage the property and business of the Condominium.

(c) **"Common Charges"** means the Common Expense assessed as a single sum against all Units and prorated against each of said Units according to its respective Common Interest.

(d) **"Common Expense"** means the cost of the common expenses of the Condominium as determined by the Board in the Condominium budget which shall be assessed against all Units.

(e) **"Common Elements"** means all parts of the Building and Property other than the Units and the easements, rights and appurtenances belonging thereto.

(f) **"Common Interest"** means the percentage interest in the Common Elements for each Unit as set forth in this Declaration.

(g) **"Condominium"** means the **120 VivaBene Condominium** which is composed of the Unit Owners.

(h) **"General Common Elements"** means a Common Element that is not a Limited Common Element and which is further described in this Declaration.

(i) **"Garage Unit"** means the garage space in the sublevel located below the ground floor of the Building and any subsequent subdivision or combination of thereof. The Garage Unit shall be used exclusively by the invitees of the Sponsor and not by the individual Residential Unit Owners.

(j) **"Limited Common Element"** means those Common Elements which serve or benefit less than all Unit Owners and which is further described in this Declaration.

(k) **"Party Walls"** as hereinafter referred to shall be defined as a wall which is common to and separates two Units.

(l) **"Parking Unit"** means the exterior parking area described by the metes and bounds description set forth in Schedule B attached hereto and any subsequent subdivision or combination thereof. The Parking Unit shall be used exclusively by the invitees of the Sponsor and not by the individual Residential Unit Owners.

(m) **"Repair"** means "repair, maintain or replace."

(n) **"Sponsor"** as used herein refers to (i) Dorami Realty of New York, Inc., the Sponsor of an offering plan (the **"Plan"**) for the conversion of the Property to condominium ownership; (ii) any person deemed a sponsor under the applicable definition under 13 NYCRR Part 20; or (iii) any person or entity designated by Sponsor to acquire title to a Unit and which is specifically designated by Sponsor at the time of acquisition of such a Unit to succeed to the rights and obligations of Sponsor in place of the former Sponsor under this Declaration with regard to any such Unit, and any successor in interest to such a Sponsor-designee who is specifically designated by the then current Sponsor to succeed to the rights and obligations of Sponsor under this Declaration with respect to a Unit. With regard to a Unit owned by it, a Sponsor-designee shall have all rights and obligations as are set forth in this Declaration and the Plan for Sponsor.

(o) **"Unit Owner"** means the owner of each Unit. Every Unit Owner shall be treated for all purposes as a single owner, irrespective whether such ownership is joint, in common, or tenancy in the entirety. Where such ownership is joint, in common or tenancy by the entirety, majority vote of such owners shall be necessary to cast the Unit Owner's vote referred to in paragraph TENTH of this Declaration.

(p) **"Residential Units"** consists of individually and collectively 10 townhouses in the

Building.

(q) **"Rules"** consists of rules made by the Board regarding the Common Elements and the Units.

(r) (i) **"Unit"** shall include, individually and collectively, the Residential Units, the Garage Unit, and the Parking Unit. Any Parking Unit resulting from the subdivision or combination of the Garage Unit or Parking Unit shall also be a Garage Unit or Parking Unit. The Residential and Garage Units are defined as consisting of the area measured (1), horizontally, as follows: from the unexposed inside surface of the exterior walls, the Unit side of any window glass, and the unfinished inside surface of any exterior wall door or window frame, to the centerlines of any partition demising one Unit from another Unit, corridors, stairs, elevators and other mechanical equipment, or other Common Elements, or the unfinished inside surface of any opposite exterior wall; and (2) vertically by the underside of the Unit's finished flooring up to the unexposed side of the Unit's drywall or plaster ceiling, or, where applicable, from the lower surface of the concrete slab forming the floor or basement of the Unit up to the exposed painted face of a concrete ceiling. Certain doors, windows, and interior walls are part of the Residential or Garage Unit, as specified more particularly in the definition of the Common Elements set forth herein. The Parking Unit consists horizontally of the area located within the metes and bounds description set forth on Exhibit C attached hereto, and vertically from upper surface of the concrete slab forming the ceiling of the Garage Unit up to a plane running parallel to the lower boundary of the Parking Unit at a height of ten (10) feet six (6) inches above such lower boundary. The description of the Units set forth herein pertains to the location of the walls, floors and roof and boundaries of the Units as they are finally set forth in the Floor Plans to be filed simultaneously with the recording of this Declaration.

(ii) Each Unit includes, and each Unit Owner shall be responsible for any doors to or within such Unit (other than the front entrance door), smoke detectors, for cleaning purposes the exterior glass surfaces of all windows, all plumbing, gas and heating fixtures and equipment such as refrigerators, dishwashers, heating, ventilating and air conditioning equipment (if any), including any fans inside such units, heating equipment, ranges and other appliances, as may be affixed, attached or appurtenant to such Unit and serving such Unit exclusively. Plumbing, gas and heating fixtures and equipment as used in the preceding sentence shall include exposed gas and water pipes from branch or fixture shut-off valves attached to fixtures, appliances and equipment and the fixtures, appliances and equipment to which they are attached, and any special pipes or equipment which a Unit Owner may install within a wall or ceiling, or under the floor, but (subject to the following sentence) shall not include gas, water or other pipes, conduits, wiring or ductwork within the walls, ceilings or floors. Each Unit shall also include (1) all lighting and electrical fixtures and appliances located within the Unit and serving exclusively that Unit, (2) any special equipment or fixtures affixed, attached or appurtenant to the Unit and exclusively serving the Unit, and (3) any wiring for such appliances or fixtures to the extent that such wiring runs from a panel or junction box serving or benefiting only that Unit. The front entrance doors to Residential Units shall be deemed Limited Common Elements (as described further in this Declaration), but a Unit Owner will nevertheless be responsible for repairing and maintaining the interior surface of the front entrance door to the unit, and any locks, bells or peepholes within the front entrance door. Notwithstanding anything contained in this Article to

the contrary, each Unit Owner will have the right, exercisable at any time, to install, at such Unit Owner's sole cost and expense, decorations, fixtures and coverings (including, without limitation, painting, finishing, wallpaper, carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the walls, ceilings and floors that face the interior of such Unit Owner's Unit and to a depth of one inch behind such surfaces for the purposes of installing nails, screws, bolts and the like, provided that no such installation shall impair the structural integrity and mechanical and electrical systems of such Unit of the Building. The Ramp exiting from the Garage Unit shall be deemed a Limited Common Element which the Garage Unit Owner shall be solely responsible to maintain.

(s) The term "Unit" and "Unit Owner" as used herein shall be construed to mean Unit and Unit Owner as defined in Section 339-e of Article 9-B of the Real Property Law of the State of New York.

(t) "Unit Owner's Voting Interest" means the number of votes available to each Unit Owner which shall be the product of multiplying each Unit Owner's Common Interest by 10,000.

(u) "Property" means the land and Building and improvements erected thereon located at 120 Main Street, Tuckahoe, NY and as further described in this Declaration.

**FOURTH: Community.** The Sponsor is constructing the Building on the parcel of land described above and establishing a condominium community known as **120 VivaBene Condominium** according to the plans filed simultaneously with the recording of this Declaration in the office of the County Clerk of the County of Westchester, which plans set forth a description of the building stating the number of stories and the number of Units.

The Community will consist of a total of ten (10) Residential Units, one (1) Garage Unit, and one (1) Parking Unit to be located in or adjacent to the Building with a 3-story height, and the Common Elements appurtenant thereto, as set forth on the Plot Plan filed simultaneously herewith. Under the provisions of the New York State Building and Fire Prevention Code the building shall be classified as Class R3 IIB structure (townhouses) and Class S2 IB (Parking Unit and Garage Unit). Construction of the Condominium will be completed over a period of approximately 2 months. A more detailed description of the Property comprising the Condominium is annexed hereto and made part hereof as Schedule B. For the purposes of describing the location, approximate area, type and number of rooms of each Unit, and the Common Elements to which each Unit has immediate access, each Unit is numerically designated as set forth on Schedule "A" annexed hereto. Each Unit will be sold to one or more Owners, each Owner obtaining fee ownership in, and exclusive right of occupancy and possession of the Unit, together with an undivided interest in the Common Elements of the Community, as listed hereinafter in this Declaration, all of the above in accordance with Article 9B of the Real Property Law of the State of New York. The designation of the number of rooms, interior partitions and kitchen and bathroom facilities may be changed by mutual consent of the Owner and the Unit Owner at the time of construction of the Unit.

**FIFTH: Common Elements.**



(a) The Common Elements of the Condominium consist of the entire Property, including the land and all parts of the Building and improvements thereon other than the Units. The Common Elements include, but are not limited to, those rooms, areas, corridors, spaces and other parts of the Building and all facilities therein for the common use of the Units and the Unit Owners or which are necessary or convenient for the existence, maintenance or safety of the Property. The Limited Common Elements of the Condominium consist of those Common Elements which serve or benefit fewer than all Unit Owners.

(b) (i) The General Common Elements include the following:

(1) The land on which the Building stands and all other land within the boundaries of the property, together with all easements, rights and privileges appurtenant thereto (except as otherwise expressly provided in this Article);

(2) All foundations, columns, beams, supports, bearing walls; those portions of the exterior walls and insulation beyond the unexposed face of the dry wall at the exterior face of the Building or, where applicable, those portions of the exterior walls beyond the interior face of the exterior wall; those portions of the walls and partitions dividing the Units from corridors, lobby and stairs located beyond the unexposed face of the dry walls enclosing the Unit; the subfloor and framing joists, including any framing attached to such joists from which the dry wall ceiling of the Unit below is attached; storage and utility areas located beyond the unexposed face of the dry walls enclosing a Unit and not otherwise designated as Limited Common Elements; all basements and cellars which are not included within a particular Unit and are used for the benefit of all Unit Owners; the entrances to and exits from the Building; and mailboxes. Notwithstanding the above, the foregoing excludes all windows and window frames of the Units which are considered Limited Common Elements and any doors, windows and window frames of the Garage Unit which are considered part of the Garage Unit.

(3) All central and appurtenant installations for services such as power, light, intercom, telephone, television, gas, hot and cold water, heat (including all pipes, ducts, wires, shoots, cables and conduits used in connection therewith) and all other mechanical equipment spaces, except that installations relating to such utilities and other services that have been or will be made by the owners or tenants of the Garage or Parking Units to exclusively benefit the Garage Unit or Parking Unit shall be Limited Common Elements appurtenant to such Units;

(4) Water service pipes and sewer pipes;

(5) Any house tank providing water to the Units and the pipes used in connection therewith;

(6) To the extent that the Building is served by steam heat or hot water, portions of any steam riser and connections originating in the boiler room, together with any distribution piping;

(7) Ventilation supply system consisting of motors, duct work, fans and controls serving General Common Elements and steam and condensate return piping serving General Common Elements;

(8) All passages and corridors, mechanical and other rooms, meter room, areas and indoor or outdoor spaces located at the Property serving or benefiting one or more Units and which are not part of a Unit;

(9) Copings, flashings, leaders, gutters and parapets appurtenant to the roof of the Building;

(10) Any portion of the Building's roof and all bulkheads that are reserved for common use;

(11) The driveway between the Parking Unit and the Residential Units.

(12) Compactor rooms, laundry room, and boiler room (if any);

(13) Trash room(s) and access doors and all facilities used in connection therewith;

(14) Window glass and window frames located on the perimeter of (but not exclusively serving) a particular Unit, and all other window frames and window glass in the Building. The window glass and window frame serving a particular Unit are Limited Common Elements for that particular Unit as per subsection (c) below;

(15) Corridor supply risers and ducts, kitchen and toilet exhaust risers and ducts, kitchen and toilet water vents, gas risers, electric risers and shafts serving Units;

(16) Gas piping serving the Units up to the exit points from the walls;

(17) All other facilities of the Property (including, but not limited to, vaults, shafts, pipes, wires, ducts, vents, cables, conduits and lines) which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the Units; and

(18) All other Common Elements other than Limited Common Elements.

(ii) The expense for the repair and maintenance of General Common Elements shall be part of the Common Expenses, and shall be apportioned among Unit Owners as provided by this Declaration.

(c) Limited Common Elements.

(i) Limited Common Elements are certain portions of the Common Elements are limited and further restricted in use to the owners of Units to which the Common Elements are

appurtenant. The Limited Common Elements remain subject to the right of the Board of Managers to enter upon any such Limited Common Element to make repairs and replacements to such Limited Element or any Common Element contained therein, and subject to the By-Laws and Rules and Regulations of the Condominium.

(ii) The Limited Common Elements include, but are not limited to, the following:

(1) Windows and window frames located on the boundary of a Unit and serving exclusively that Unit.

(2) All landings and stairs leading to the individual Residential Units, located on the outside of the Building (except as set forth elsewhere in this Plan);

(3) Carports and parking spaces dedicated to the individual Residential Units;

(4) Ramp exiting the Garage Unit;

(5) Stair tower to Garage Unit;

(6) Stairs to Garage Unit.

(iii) The Limited Common Elements (as defined in the Declaration) shall be maintained, repaired and replaced by, and at the expense of, the following persons under the following circumstances: (i) the Board of Managers at the expense of the Unit Owner, if it is a Limited Common Element and the Repair involves structural or extraordinary maintenance, repairs or replacements (including, but not limited to, the repair of leaks); or (ii) by the Unit Owner having direct and exclusive access to a Limited Common Element at his sole cost and expense, if involving nonstructural or ordinary Repairs. The Board will have the right to establish Rules regarding the approval of contractors, nature and standard of Repair for any Limited Common Element. All Repairs to any portion of the Unit or Common elements shall be carried out in such a manner so as to conform to existing materials, style and color.

(d) The Common Elements shall remain undivided and no Unit Owner shall bring any action for partition or division unless otherwise provided by law.

(e) The Common Interest shall not be changed except with the consent of all of the Unit Owners affected expressed in a duly recorded amendment of this Declaration.

(f) The Common Interest shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

**SIXTH: Special Rights of Sponsor, Garage Unit Owner and Parking Unit Owner.**

(a) The Sponsor, its successors, assigns and purchasers, in their capacity as a successor

Sponsor, reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the common elements of the Condominium for the purpose of completing construction of the Building and facilities in the Condominium and sale of a Unit and towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, over and across the common elements of the Condominium for the installation, maintenance and inspection of water, gas, electric, heating, telephone lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities; the right to alter, reconstruct, remove, and relocate any common elements of the Condominium in order to complete construction of the Building; the right of access to bring onto the Condominium and the right to install any other materials or services necessary for the completion of the work. For further easements in favor of the Condominium and Unit Owners, see Article FIFTEENTH.

(b) The Sponsor, its successors, assigns, and purchasers, also reserve the right to alter, relocate, install and connect with and make use of all utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads in any portions of the common elements in order to complete construction of the Building or any Units or operate the Garage Unit or Parking Unit .

(c) The Sponsor, its successors, assigns and purchasers , reserves the right to continue to use the Common Elements and any facilities, sales offices, model units, and signs located on the common elements, in its efforts to market Units.

(d) The Sponsor shall have the right, without the vote or consent of the Board of Managers, other Unit Owners or holders of Unit mortgages, to (i) make alterations, additions or improvements, structural and nonstructural, ordinary and extraordinary, interior and exterior, in, to and upon any Unit owned by it ; (ii) change the layout or number of rooms in the Unit; (iii) change the size or number of such Units by subdividing a Unit, combining separate Units (including those resulting from such subdivision or otherwise) into one or more Units, altering the boundary walls between Units, or otherwise; and (iv) reapportion among the Units affected by such change their appurtenant interests in the Common Elements, provided that in each instance Sponsor shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold the Board of Managers and all other Unit Owners harmless from any liability arising therefrom. The Board of Managers shall sign any application or other document required to be filed with any governmental authority having or asserting jurisdiction in connection with any such structural change made by Sponsor to any Unit, provided that neither the Board of Managers nor the Unit Owners shall be subjected to any expense or liability by virtue of the signing of the application or such other document. If the Board of Managers shall not execute any such application promptly upon presentation, the Sponsor shall have the right to execute any such application as the agent and attorney in fact for the Board of Managers of the Condominium. With respect to any such change, Sponsor shall have the right to require the Board of Managers to execute and record any appropriate amendment to this Declaration, and Sponsor shall also have the right to execute and record such Amendment as the attorney in fact for the Condominium upon its own execution of such Amendment. A copy of any such application or other documents required by Sponsor will be furnished to the Board of Managers.

(e) The provisions of subsections (a) through (e) may not be added to, amended or deleted without the consent of Sponsor. For further easements in favor of the Sponsor, see Article FIFTEENTH.

(f) The owner of a Garage Unit or Parking Unit shall have the right, without the consent of the Board of Managers or other Unit Owners or holders of Unit mortgages to (i) make non-structural alterations, additions or improvements, , interior and exterior, ordinary and extraordinary in to and upon the Garage Unit or Parking Unit ; (ii) subdivide the Garage Unit or Parking Unit into separate Units and combine Units resulting from any subdivision of one or more Garage Unit or Parking Unit s into single Units; (iii) change the layout of his Unit and any boundary walls between one or more of the subdivided or combined Garage Unit or Parking Units; (iv) alter or improve any Limited Common Elements appurtenant to such Units; and (v) apportion among the subdivided or combined Garage Unit or Parking Unit their appurtenant interests in the Common Elements, provided that in each instance the Garage Unit Owner or Parking Unit Owner shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold the Board of Managers and all other Unit Owners harmless from any liability arising therefrom. The Board of Managers shall sign any application or other document required to be filed with any governmental authority having or asserting jurisdiction in connection with any such structural change made by a Garage Unit Owner or Parking Unit Owner, provided, however, that neither the Board of Managers or the Unit Owners shall be subjected to any expense or liability by virtue of the signing of the application or such other document. With respect to any such change, the owner of the appropriate Garage Unit or Parking Unit shall have the right to require the Board of Managers to execute and record any appropriate amendment to this Declaration, or such Garage Unit Owner or Parking Unit Owner shall also have the right o execute and record such amendment upon his own execution of such amendment. A copy of any such applications or other documents required by a Garage Unit Owner or Parking Unit Owner will be furnished to the Board of Managers. The provisions of this subsection (f) may not be amended, added to or deleted without the consent of all of the owners of the Garage Unit or Parking Unit. For further easements in favor of the Garage Unit Owner and Parking Unit Owner, see Article FIFTEENTH.

**SEVENTH: Service of Process.** Service of process on the Unit Owners in any action with relation to the Common Elements shall be made upon the Secretary of State of the State of New York as the Agent for the Board of Managers of the Condominium. The Condominium Board shall file with the Secretary of State the name and post office address of the Condominium for purposes of receiving copies of any process served against the Condominium Board. Copies shall also be mailed to: the President of the Board of Managers of 120 VivaBene Condominium at 120 Main Street, Tuckahoe, New York 10707. The Condominium's address for service of process may be changed by recording a Notice of Change of Address for service of process.

**EIGHTH: Common Interest; Payment of Common Expenses.**

Each Unit Owner shall have such Common Interest as is set forth on Schedule A attached hereto and shall bear such percentage of the common expenses of the Condominium in the amount of the applicable Common Charge. The Common Interest is based on floor space, location and uniqueness as of the date of recording this Declaration.

**NINTH: Administration.** The administration of the Condominium, the Community and Property shall be in accordance with the provisions of this Declaration and with the provisions of the By-Laws which are made a part of this Declaration and are attached hereto.

**TENTH: Amendment and Withdrawal.**

(a) The dedication of the Property to Condominium ownership herein shall not be revoked or the Property withdrawn from Condominium ownership unless 80% of the Unit Owners in number and in Unit Owner's Voting Interest and the first mortgagees, if any, of each of the Units agree to such revocation or removal of the property from the condominium plan by duly recorded instruments.

(b) Subject to the rights of the Sponsor or Garage Unit Owner and Parking Unit Owner as set forth in this Declaration, the provisions of this Declaration may be modified or amended by an instrument executed by the Board of Managers upon a vote of 66-2/3% of the Unit Owners in number and Unit Owner's Voting Interest held at a duly called meeting of the Unit Owners, provided however, that:

(i) No amendment shall change any condominium parcel, nor a Unit Owner's Common Interest, nor the Unit Owner's Voting Interest, unless all Unit Owners affected in number and Unit Owner's Voting Interest thereof and the first mortgagees, if any, of each of those same Units agree to such revocation by recorded instrument.

(ii) No amendment shall be passed which shall impair or prejudice the rights and priorities of mortgagees or the rights and privileges granted or reserved to the Sponsor hereunder.

(c) There shall be a presumption for a period of 60 days subsequent to the recording of the amendment that the vote of the Unit Owners was made at a duly called meeting and that the requisite voting percentage was obtained. After the 60 day period such presumption will be deemed conclusive.

(d) No amendment to this Declaration shall take effect until it is recorded in the Office of the County Clerk of Westchester County, New York.

(e) Irrespective of any other provision of this Declaration, no action for partition or division of the Common Elements shall be brought nor shall this plan of condominium ownership be terminated where such partition, division or termination will result in a violation of the then existing local zoning and building laws and codes.

(f) The Sponsor and any Garage Unit Owner or Parking Unit Owner shall have the right, without vote or consent of other Unit Owners, the Board of Managers or the holders of Unit mortgages, to execute or (on Sponsor's request) to require the Board of Managers to execute and record in the Office of the County Clerk of the County of Westchester, and elsewhere if required by law, an amendment or amendments to this Declaration (together with such other documents, plans and maps as may be required to effectuate the same) to reflect any changes in Units and the

reapportionment of the Common Interest resulting therefrom, made by Sponsor or a Garage Unit Owner or Parking Unit Owner in accordance with this Declaration. All expenses in connection with the preparation, recording and filing of any such amendment shall be paid by Sponsor or the Garage Unit Owner or Parking Unit Owner making such filing, as the case may be.

(g) Pursuant to Section 339-i(2) of the Real Property Law of the State of New York, where an Owner of a Unit changes the number of rooms (provided that in no case such division results in a greater percentage of Common Interest for the total of the new Units than existed for the original Unit before division), an appropriate amendment to the Declaration may be filed by a new Unit Owner under the same file number and under the procedure set forth in Section 339-p of the Real Property Law of the State of New York, and the local tax authorities shall provide and certify upon the proposed amendment a conforming tax lot number upon completion of new Units. Nothing in this subsection shall give any Residential Unit Owner the right to change the number of rooms without the consent of the Board of Managers in accordance with the By-laws of the Condominium.

(h) Except as provided in this Article with regard to the right of Sponsor or its designee(s) to amend this Declaration, the following shall apply:

(i) Without the prior written consent of the affected Garage Unit Owner or Parking Unit Owner, no amendment, modification, addition or deletion of or to the By-laws, the Declaration or the Rules modifying the permitted uses of any Garage Unit or Parking Unit or affecting the rights, privileges, easements, licenses or exemptions granted to any Garage Unit Owner or Parking Unit Owner, shall be effective in any way against that Unit Owner. The Board will not adopt any Rules or amend the Declaration or By-laws in a manner which may affect the operation of the Garage Unit or Parking Unit or the rights of the Unit Owners thereof.

(ii) Without the prior written consent of the Sponsor, no amendment, modification, addition or deletion of or to these By-laws, the Declaration or the Rules modifying the rights of the Sponsor or affecting the rights, privileges, easements, licenses or exemptions granted to the Sponsor shall be effective in any way against the Sponsor. The Board will not adopt any Rules or amend the Declaration or By-laws in a manner which may affect the rights of the Sponsor pursuant to the Declaration or the By-laws..

**ELEVENTH: Subject to Declaration, By-Laws, Etc.** All present or future Unit Owners, tenants, future tenants, or any other person that might use the facilities of the Community in any manner, are subject to the provisions of this Declaration, the By-Laws and Rules and Regulations of the Condominium and the mere acquisition or rental of any of the Units of the Community or the mere act of occupancy of or entrance upon the Property or any of said Units shall signify that the provisions of this Declaration and the By-Laws and Rules and Regulations of the Condominium are accepted and ratified and all of such provisions shall be deemed and taken to be covenants running with land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

**TWELFTH: Common Charges.** All sums assessed as common charges by the Board of

Managers of the Condominium but unpaid together with the maximum interest permitted in New York thereon, chargeable to any Unit Owner shall constitute a lien on his Unit prior to all other liens except: (a) tax or assessment liens on the Unit by the taxing subdivision of any governmental authority, including but not limited to State, County and City taxing agencies; and (b) all sums unpaid on any first mortgage of record encumbering any Unit in excess of six months of unpaid common charges and attorneys fees incurred by the Condominium in collecting such charges. Such lien may be foreclosed when past due in accordance with the laws of the State of New York, by the Condominium, in like manner as a mortgage on real property, and the Condominium shall also have the right to recover all costs incurred including reasonable attorneys' fees but such right shall not be a lien against the Unit. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid common charges, the unpaid balance shall be charged to all Unit Owners as a common expense. However, where the holder of an institutional first mortgage obtains title to the Unit as a result of foreclosure, or the institutional mortgage holder purchasing for its own account obtains title by conveyance in lieu of foreclosure, such acquirer of title, his successors or assigns, shall not be liable and the Unit shall not be subject to a lien for the payment of common charges chargeable to such Unit which were assessed and became due prior to the acquisition of title to such Unit by such mortgagee. In such event, the unpaid balance of common charges shall be charged to all other Unit Owners as a common expense. The term "institutional mortgage" herein used shall mean a first mortgage granted by a bank, savings and loan association, life insurance company, pension fund, trust company or other institutional lender or a mortgage granted by the Sponsor to a purchaser of a Unit or in which the Sponsor participates with one of the above. Every Unit Owner shall pay the common charges assessed against him when due and no Unit Owner may exempt himself from liability for the payment of the common charges assessed against him by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Unit. In addition, every non-occupying Unit Owner shall be subject to the provisions of Section 339-kk of the Real Property Law. However, no Unit Owner shall be liable for the payment of any common charges accruing subsequent to a sale, transfer or other conveyance by him of such Unit made in accordance with Section 339-x of the Real Property Law or in accordance with the provisions of this Declaration and the By-Laws. The By-laws of the Condominium contain additional provisions regarding the right of the Board of Managers of the Condominium to collect Common Charges owed by a Unit Owner, which shall be deemed incorporated into this Declaration.

**THIRTEENTH: Units Acquired by the Board.** If any Unit Owner shall surrender, convey or lease his Unit to the Board of Managers or its designee in accordance with Section 339-x of the Real Property Law, or if the Board of Managers shall purchase any Unit at a foreclosure sale in accordance with the By-Laws, title to such Unit or the rights to the lease of such Unit together with the Unit Owner's Common Interest, shall be held by the Board or its designee on behalf of all of the other Unit Owners in proportion to their Common Interest..

**FOURTEENTH: Power of Attorney.** Except as otherwise provided in this Article, in order to carry out the provisions of Article 13 and to facilitate the proper operation of the Condominium, each Unit Owner shall, upon becoming such, grant an irrevocable power of attorney, coupled with an interest, to the Board of Managers and their successors to exercise or waive the right of first refusal under the Condominium By-laws, acquire title or lease any such Unit under whatever terms the Board may in its sole discretion deem proper, to finance such



acquisition, and to sell, lease, sublease, mortgage, vote, execute documents with respect to, or otherwise deal with such Unit under such terms as the Board in its sole discretion shall deem proper; to protest the Condominium's real estate tax valuations with the municipality or governmental district in which the Condominium is located, and amend the Declaration and By-Laws of the Condominium; to borrow money for the repair of the General Common Elements; and to amend the Declaration and By-laws of the Condominium, provided that any such action is consistent with applicable law. Notwithstanding the above, the Board of Managers may not exercise any such power granted to it under the power of attorney so as to (i) adversely affect any rights or privileges of the Sponsor or Garage Unit Owner and Parking Unit Owners, or (ii) increase the financial obligations of fewer than all Unit Owners or, if the change affects only the Residential Units, fewer than all Residential Unit Owners or change the Common Interest allocated to any Unit. In addition, the Power of Attorney shall provide that each Unit Owner shall designate the Sponsor, the Garage Unit Owner and Parking Unit Owner as his attorney in fact to exercise any rights granted to the Sponsor, Garage Unit Owner or Parking Unit Owner as the case may be under the Declaration or By-laws.

**FIFTEENTH: Easement for Pipes, Ducts, Cable, Wires, Conduits, Public Utility Lines and Other Common Elements Located Inside of Units; Special Rights of Sponsor, Garage Unit Owner and Parking Unit Owner.**

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

(b) In addition to the above, the Board of Managers, its agents, contractors and employees shall have an easement providing for a right of access to the Units and to the Common Elements to inspect, maintain or repair or make repairs to the Units to prevent damage to the Common Elements or to any other Units, to make repairs to the Common Elements, to any wires, pipes, conduits or cable television systems servicing any of the Units or to make repairs to any other Units, or to perform such inspection, maintenance or repair work as would be necessary for the purpose of removing violations or curing defaults by Unit Owners or for the purpose of complying with any laws, orders, rules or regulations of any governmental body having jurisdiction thereof, provided such right of access shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business of the owner, tenant or other occupant of a Garage Unit or Parking Unit or with the use of the Residential Units for their permitted purposes. Such entry shall be permitted on not less than one day's notice, except that notice will not be necessary in the case of an emergency condition that requires repair or replacement immediately necessary for the preservation or safety of the Building or for the safety of the occupants of the Building or other persons, or as required to avoid the suspension of any necessary service in the Building. The right of access to the Board of Managers will be subject

to other provisions of the By-laws.

(c) Notwithstanding any other provisions of this Declaration, each Unit owner shall have, in common with all other Unit Owners, an easement for ingress and egress through any Unit or the Common Elements to the extent necessitated by an emergency.

(d) Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(e) The Board of Managers of the Condominium, its agents, contractors and employees, shall have an easement of access through the Garage Unit in order to enter the service corridor containing utility equipment servicing the Residential Units.

(f) The Sponsor, its designees, and their invitees, licensees, contractors and employees shall have an easement to erect, maintain, repair and replace from time to time one or more signs in or on the Property for the purposes of advertising the sale of the Units and the leasing of space in any Unit, as well as an easement in and access to Units and Common Elements consistent with the purposes of the Plan, as same may be amended, and Sponsor's rights and obligations thereunder, including, without limitation, the right to develop, renovate, maintain, repair, refurbish, offer, sell and lease Units.

(g) Sponsor and its agents shall have an easement to maintain general and sales and leasing offices and personnel on the premises of the Property, to erect, repair, maintain, replace and post signs on the Property and to conduct other activities connected with promotion, sales or leasing, such as allowing inspections by invitees of Sponsor and the display of vacant Units or leased Units owned by Sponsor, as well as Common Elements.

(h) Sponsor shall have the right to renovate and/or decorate and perform any construction work within or to any Unit owned by it or in connection with the subdivision or combination of any Units owned by Sponsor. In accordance with this right, Sponsor shall have a right of access and all necessary easements to perform any such work, including, but not limited to, access to the Building, corridors, hallways, elevators and all other Common Elements. Sponsor and its designee shall also have the right to store construction and renovation materials in any Unit owned by it. Sponsor's rights in accordance with the foregoing paragraph are subject to the obligation of Sponsor to comply with all appropriate laws and regulations of governmental agencies and the obligation not to prevent or unreasonably interfere with the normal conduct of business of the tenants and occupants of any Garage Unit or Parking Unit or with the use of the Residential Units for their permitted purposes.

(i) Sponsor shall have for itself, its invitees, contractors, agents, employees and tenants, any and all easements and rights of access, in and to Units and the Common Elements as are consistent with the purposes of the Plan and Sponsor's rights and obligations thereunder.

(j) The Sponsor reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the common elements of the Condominium for the purpose of completing construction of the Building and facilities in the Condominium. Towards this end,

reserves the right of access to any portion of the Condominium with labor and materials to install, construct, alter and decorate any portion of the Condominium, and to grant and reserve easements and rights-of-way in, through, under, over and across the common elements of the Condominium for the installation, maintenance and inspection of water, gas, electric, heating, telephone lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities; the right to alter, reconstruct, remove, and relocate any common elements of the Condominium in order to complete construction of the Building; and the right of access to any portion of the Condominium to install any other materials or services necessary for the completion of the work

(k) Sponsor and the Board of Managers shall have the right to grant such additional electric, gas, steam or other utility easements or relocate any existing utility easements in any portion of the Property as Sponsor or its designee, or the Board of Managers, as the case may be, shall deem necessary or desirable for the proper operation and maintenance of the Building or any portion thereof, or for the general health or welfare of the owners, tenants and occupants of the appropriate Units, provided that such additional utilities or the relocation of existing utilities not prevent or unreasonably interfere with the normal conduct of business of the tenants and occupants of a Garage Unit or Parking Unit or with the use of the Residential Units for their permitted purposes. Any utility company and its employees and agents shall have the right of access to any Units or the Common Elements in furtherance of any such easement, provided such right of access shall be exercised in such a manner as shall not unreasonably interfere with the normal conduct of business of the tenants and occupants of the Garage Unit or Parking Units or with the use of the Residential Units for their permitted purposes.

(l) The owner of a Garage Unit or Parking Unit will have the right to grant such additional electric, gas, steam or other utility easements or relocate any existing utility easements in any portion of a Garage Unit or Parking Unit or a Limited Common Element appurtenant thereto, or in any portion of the Common Elements in connection with the subdivision or combination of Garage Unit or Parking Unit, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the normal conduct of business of the tenants and occupants of other Garage Unit or Parking Unit or with the use of the Residential Units for their permitted purposes.

(m) A utility company and its employees and agents shall have the right of access to any Units or the Common Elements in furtherance of such easement, provided such right of access shall be exercised in such a manner as shall not unreasonably interfere with the normal conduct of business of the tenants and occupants of Garage Unit or Parking Unit or with the use of the Residential Units for their permitted purposes.

(n) Any owner of Garage Unit or Parking Unit shall have an easement for any installation, maintenance, repair or replacement work performed in accordance with the combination or subdivision of any Garage Unit or Parking Unit, and any such owner shall have the right to install, maintain, repair and replace separate mechanical systems, such as heating systems and all necessary pipes, lines, conduits, ducts, water lines, flues, etc. in connection with the subdivision, combination or operation of Garage Unit or Parking Unit, and such easements shall run through the Building, its walls and common areas.

(o) Each Garage Unit Owner and Parking Unit Owner shall, to the extent permitted by law, have an easement to erect, maintain, repair and replace, from time to time, one or more signs on the Property for the purposes of advertising the sale or lease of all or any portion of his Garage Unit or Parking Unit and the operation of any business of a tenant or occupant of all or any portion of the Garage Unit or Parking Unit. Each Garage Unit Owner and Parking Unit Owner shall have an easement to install, create, alter, repair, replace and maintain such signs and displays as may be permitted by law on or in the exterior wall of the building to the height and width of the Garage Unit or Parking Unit bounded on the interior side of such wall.

(p) The beneficiary or user of any easement granted pursuant to this Article of the Declaration shall have the obligation of repairing any damage resulting from the use of such easement.

**SIXTEENTH: Encroachments.** The Unit Owners agree that if any portion of a Unit encroaches upon another Unit or the Common Elements, or if any portion of the Common Elements or shall hereinafter encroach upon a Unit as a result of original construction or settling of the Building, or by reason of the Repair by the Board, any Unit or the Common Elements, or by reason of the Repair by the owner of a Garage Unit or Parking Unit or any Unit resulting from the subdivision or combination of a Garage Unit or Parking Unit of signs, flues, vents, air conditioning, heating, ventilating and water lines and other mechanical fixtures and equipment, a valid easement for the encroachment and the maintenance of the same, so long as it stands, shall and does exist. In the event the Building is partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and are rebuilt, the Unit Owners agree that encroachments of any portion of the Unit or the Common Elements due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the Building or reconstructed Buildings shall stand.

**SEVENTEENTH: Unit Ownership.** Upon the closing of title to a Unit, a purchaser shall automatically become a Unit Owner in the Condominium and shall remain such until such time as he ceases to own the Unit for any reason.

**EIGHTEENTH: Conveyance of a Unit.** In any conveyance of a Unit, either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Unit shall be jointly and severally liable with the Grantor for any unpaid Common Charges against the latter assessed and due up to the time of the grant or conveyance without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. Any such Grantee shall be entitled to a statement from the Board setting forth the amount of the unpaid Common Charge against the Grantor and such Grantee shall not be liable for any unpaid Common Charge against the Grantor in excess of the amount set forth in such statement. Grantee as used herein shall not include either the holder of an institutional mortgage of record or other purchaser of a Unit at a foreclosure sale of an institutional mortgage.

**NINETEENTH: Covenants and Restrictions and Statement of Permitted Uses.** The use of the Unit by the Unit Owner or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-laws and Rules and the following covenants and

restrictions:

(a) The Unit and area restricted to the Unit Owner's use shall be maintained in good repair and good overall appearance.

(b) No alterations to the exterior of the Unit or any part of the Common Elements, alterations to the inside of a Unit which would affect the structure or affect the utility systems of the Building appliances may be installed (other than electrical appliances) without the prior written consent of the Board. Consent may be requested in writing sent by certified mail or overnight carrier to the Management Agent, if any, or to the President of the Board, if no Management Agent is employed. The Board shall have the obligation to answer within sixty days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. The provisions of this paragraph shall not apply to the Sponsor or the Owner of the Garage Unit or Parking Unit provided that any such alterations do not materially adversely affect the structure or utility systems of the Building.

(c) Any Unit Owner who mortgages his Unit shall notify the Board prior to the date of the mortgage providing the name and address of his mortgagee. No mortgage will be permitted unless all common charges have been paid to the date of the mortgage.

(d) At the request of the mortgagee of the Unit, the Board shall report any unpaid Common Charges due from the Unit Owner of such Unit, at a charge to the Unit Owner reasonably set by the Board for each such request.

(e) Unit Owners, their families, guests, employees, agents and tenants shall not permit anything to be done on the Property that will interfere with the rights, comfort and convenience of the other Unit Owners.

(f) No unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(g) Rules promulgated by the Board of Managers concerning the use of the Property shall be observed by the Unit Owner provided, however, that copies of such Rules are furnished to each Unit Owner prior to the time the said regulations become effective.

(h) The Common Charges shall be paid when due.

(i) Occupancy of the Residential Units shall be restricted to residential occupancy, home occupation and professional use in accordance with the applicable zoning regulations of the municipality having jurisdiction over the Community.

(j) The Garage Unit or Parking Unit and any Units resulting from the subdivision or combination thereof may be used for lawful purposes permitted under applicable zoning requirements. The use of any Garage Unit or Parking Unit must conform to all applicable governmental and municipal regulations.

**TWENTIETH: Estoppel Certificate.** Within five (5) days after request by the Sponsor, Garage Unit Owner or Parking Unit Owner, the Condominium will deliver to such person or their designee an estoppel certificate which shall certify (i) the amount of the unpaid Common Charges, if any, accrued by such Unit Owner against the Units owned by such Owner, (ii) that the condominium documents have not been modified or amended (or, if modified or amended, describing such modifications or amendments), (iii) that all payments due and payable by the applicable Unit Owner to the Condominium have been paid in full, and (iv) that the Owner is not in default under the condominium documents. If the Board does not deliver such certificate within such period, the Unit Owner will have the right to execute such certificate as the attorney-in-fact for the Condominium without liability therefor.

**TWENTY-FIRST: Invalidity.** Invalidation of any of the covenants, limitations or provisions of the Declaration by judgment or court order shall in no way affect any of the remaining part or parts hereof, and the same shall continue in full force and effect.

**Declarant: DORAMI REALTY OF NEW YORK, INC.**

By: \_\_\_\_\_  
Philip Raffiani, Vice President

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE A  
TO THE DECLARATION OF  
120 VIVABENE CONDOMINIUM**

<u>Unit Numbers</u>	<u>Tax Lot</u>	<u>Percentage of Common Interest</u>	<u>Approximate Area in Square Feet</u>	<u>Number of Rooms</u>	<u>Common Elements to Which Unit Has Access</u>



**SCHEDULE B  
TO THE DECLARATION OF  
120 VIVABENE CONDOMINIUM**

Legal Description of Condominium

[to be inserted]

**SCHEDULE C  
TO THE DECLARATION OF  
120 VIVABENE CONDOMINIUM**

Legal Description of Parking Unit

[to be inserted]

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## BY-LAWS

### OF

## 120 VIVABENE CONDOMINIUM

### ARTICLE I. PLAN OF UNIT OWNERSHIP

Section 1. Purpose. These By-Laws govern the operation of the 120 VivaBene Condominium ("Condominium").

Section 2. Property Applicability. The Condominium property located at 120 Main Street, Tuckahoe, New York was submitted by the Declaration to the provisions of Article 9B of the Real Property Law of the State of New York, a copy of which is attached hereto as Exhibit A ("Property"). The Property includes the land, building and improvements thereon, including the Residential Units, Garage Unit and Parking Unit, as defined in these By-Laws, all easements, rights and appurtenances belonging thereto and all Common Elements as defined in these By-Laws. The building consists of the exterior walls and roof of a Unit or number of Units all of which are constructed under a continuous roof or the entire interior and exterior of any building or structure which shall form a portion of the Condominium but which does not contain any Units ("Building"). The garage unit consists of garage space in the sublevel located below the ground floor of the Building ("Garage Unit"). The parking unit consists of exterior parking area described by the metes and bounds description set forth on Schedule B attached hereto ("Parking Unit"). The residential units consist of ten townhouses in the Building ("Residential Units") (The Garage Unit, Parking Unit and Residential Unit collectively referred to as "Unit" or "Units"). Any Unit resulting from the subdivision or combination of the Garage Unit or Parking Unit shall also be a Garage Unit or Parking Unit. The Parking Unit and the Garage Unit shall be used exclusively by the invitees of the Sponsor and not by the individual Residential Unit Owners. Construction of the Condominium will be completed in approximately two (2) months. The Common Elements consist of all parts of the Building and Property other than the Units and the easements, rights and appurtenances belonging thereto ("Common Elements"). Dorami Realty of New York, Inc. and any successor thereto is referred to in these By-Laws as the "Sponsor".

Section 3. Personal Applicability. All present or future Unit owners, mortgagees and lessees, or their employees, guests or any other person that might use the facilities of the Condominium in any manner are subject to these By-Laws, the Declaration and any rules and regulations established by the Board of Managers ("Rules"). The mere acquisition or rental of any of the Units or the mere act of occupancy of or entrance upon any of said Property and Units will signify that these By-Laws, the Declaration and Rules are accepted, ratified, and will be complied with.

### ARTICLE II. CONDOMINIUM, VOTING, QUORUM, PROXIES AND WAIVERS

Section 1. Condominium. The Condominium shall be limited to the record owners of the Units (individually "Unit Owner" and collectively "Unit Owners").

Section 2. Voting. Each Unit Owner, including any Unit Owner that is the Sponsor shall be entitled to vote at Unit Owners' meetings. Except as otherwise provided in this Section, the number of votes available to each Unit Owner shall be the product of multiplying each Unit Owner's designated percentage interest in the common elements as designated in the Declaration ("Common Interest") by 10,000 ("Unit Owner's Voting Interest"). For example, a Unit Owner with a percentage of common interest of 10% would be entitled to 1,000 votes. For voting purposes, Units held jointly shall be deemed to be owned by a single Unit Owner. The total number of all Unit Owner's Voting Interest shall be 10,000. As used in these By-Laws, the Unit Owner's Voting Interest shall be deemed to include that which is present in person or by Proxy.

Section 3. Quorum. 50.01% of the total of all Unit Owner's Voting Interest at the meetings shall constitute a quorum at all meetings of the Unit Owners for the transaction of business, except as otherwise provided by statute, the Declaration, or these By-Laws. In the event that such quorum shall not be present or represented at any meeting of the Unit Owners, the meeting shall be deemed adjourned.

Section 4. Vote Required to Transact Business. When a quorum is present at any meeting, the vote of a majority of the Unit Owner's Voting Interest shall decide any question brought before such meeting and such vote shall be binding upon all Unit Owners, unless otherwise provided by statute, the Declaration or these By-Laws, in which event the conflict shall be resolved as follows, the statute shall control over the Declaration and By-Laws, and the Declaration shall control over the By-Laws.

Section 5. Voting, Proxies and Consent. At any meeting of Unit Owners, each Unit Owner shall be entitled to vote in person or by Proxy. Such Proxy shall only be valid for such meeting or subsequent adjourned meetings thereof. All Proxies shall be in writing and shall be filed with the Secretary prior to the meeting at which the same are to be used ("Proxy"). A notation of any Proxies shall be made in the minutes of the meeting. The meeting and vote of Unit Owners may be dispensed with if all Unit Owners entitled to vote shall consent in writing to such action being taken.

Section 6. Place of Meetings. Meetings shall be held at such suitable place convenient to the Unit Owners as may be designated by the Board of Managers.

Section 7. Annual and Special Meetings. Within one year after the recording of the Declaration, the Sponsor shall call the first annual Unit Owners meeting ("Annual Meeting"). At the Annual Meeting the Unit Owners will elect a Board of Managers ("Board"). Each Annual Meeting following the first Annual Meeting shall be held on or about the anniversary of such meeting. The Unit Owners may also transact such other business of the Condominium as may properly come before them. It shall be the duty of the President to call a special meeting of the Unit Owners as directed by the Board or upon a petition signed by a majority of the Unit Owner's Voting Interest having been presented to the Secretary ("Special Meeting").

Section 8. Notice of Meetings. It shall be the duty of the Secretary to provide notice, in accordance with these By-Laws, of each Annual or Special Meeting, stating the purpose, time

and place thereof to each Unit Owner, at least 10 but not more than 50 days prior to such meeting, unless such notice shall be deemed impracticable due to the nature of the special meeting in which case the President shall determine the amount of notice reasonable possible.

Section 9. Order of Business. The order of business at all meetings shall be as follows:

- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Report of officers
- (e) Report of Board
- (f) Report of committees
- (g) Election of inspectors of election (in the event there is an election)
- (h) Election of managers (in the event there is an election)
- (i) Unfinished business
- (j) New business

### **ARTICLE III. BOARD OF MANAGERS**

Section 1. Number and Term. The Board shall consist of not less than 3 or more than 5 members. The first Board shall be appointed by the Sponsor and need not be Unit Owners. Except as otherwise provided herein, all subsequent Managers shall be elected at the Annual Meeting and must be Unit Owners or representatives of Sponsor, the Parking Unit Owner or Garage Unit Owner. Each Manager shall serve for a term of 1 year and until their successors are chosen and qualify in their stead. Notwithstanding the foregoing, the Sponsor will have the right to designate a majority of the Board until the earlier to occur of the following events: sale of Units representing 90% of the Residential Units' Common Interest or 5 years from the first Unit closing ("Triggering Event"). The Sponsor will relinquish control at the first Annual Meeting following the Triggering Event. After the Triggering Event, the Sponsor shall have the right to designate one member of the Board so long as the Sponsor continues to own at least one Residential Unit. In addition, the Garage Unit Owner shall have the right to designate one member of the Board at all times.

Section 2. Vacancy and Replacement. Except as otherwise provided herein, in the event that the office of any Manager becomes vacant by reasons of death, resignation, retirements, disqualification, removal from office or otherwise, a majority of the remaining managers, though less than a quorum, at a Special Meeting, shall choose a successor or successors, who shall hold office for the respective unexpired term; provided however that in the event that a vacancy occurs after the Triggering Event then Sponsor and the Garage Unit Owner respectively shall be entitled to select a successor for a Manager selected by them.

Section 3. Removal. Except for a member of the Board designated by Sponsor or the Garage Unit Owner, a member of the Board may be removed from office with or without cause by 50% vote of the total of all Unit Owners' Voting Interest. A member of the Board designated by the Sponsor or Garage Unit Owner may only be removed for cause or by the Sponsor or Garage Unit Owner respectively, and in either event, only the Sponsor or Garage Unit Owner, as

applicable, shall have the right to designate a replacement. Any member of the Board whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting at which his proposed removal is to be acted upon. If a member of the Board ceases to be a Unit Owner or mortgagee or a representative thereof he shall be deemed to have resigned effective as of the date such interest ceased.

Section 4. First Board. The first Board shall consist of Philip Raffiani, Laura Raffiani and Jeanne Raffiani.

Section 5. Powers.

(a) The Board shall have the power to do all things necessary to manage the property and business of the Condominium and do all such lawful acts and things as are not required to be exercised or done by the Unit Owner personally, including without limitation the power to:

1. Establish the budget representing the sums necessary and adequate for the continued operation of the Condominium ("Budget") at least annually and provide a copy thereof to the Unit Owners and their mortgagees upon request.
2. Determine and levy monthly assessments, payable in advance, to cover the cost of common expenses of the Condominium as determined in the Budget ("Common Expense"). The Common Expense shall be assessed as a single sum against all Units and prorated against each of said Units according to its respective Common Interest ("Common Charges"). This proration of assessments shall remain constant regardless of the percentage of the building square footage included in each Unit or the Common Elements restricted to the use of the Unit Owner of said Unit. The Board may increase the Common Charges or vote a special assessment in excess of that amount, if required to meet any additional necessary expenses, but said increases can only be assessed among the Units pro rata according to each Unit's respective Common Interests ("Special Assessments").
3. Collect, use and expend the Common Charges;
4. Repair, restore or alter any Units or the Common Elements after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings within the limitations of these By-Laws;
5. Enter into and upon the Units when reasonably necessary in connection with the maintenance, care and preservation of the Property;
6. Open and maintain bank accounts, including at least one operating account, on behalf of the Condominium and designate the signatories to such bank accounts;
7. Insure the Common Elements and Units in accordance with these By-Laws, and settle claims;
8. Make, amend or rescind rules regarding the Common Elements and the Units

("Rules") provide copies of the Rules to each Unit Owner not less than 5 days prior to the effective date;

9. Take all steps necessary, including litigation, to enforce the Rules, collect Common Charges and Special Assessments and any other sums due to the Condominium including interest, costs, fines, litigation expenses, reasonable legal fees, liens and foreclosure;

10. Employ and terminate the employment of employees and independent contractors to perform any duties consistent with the execution of the Board's responsibilities set forth in these By-Laws, and purchase supplies and equipment, enter into contracts, designate representatives for the purpose of executing contracts and generally to have the powers of a manager in connection with the matters herein set forth;

11. Exercise or waive a right of first refusal to purchase Units, to acquire Units in foreclosure by exercise of a right of first refusal on behalf of all Unit Owners or as a result of abandonment, and to take any and all steps necessary to repair or renovate any Unit so acquired and to vote as Unit Owner, offer such Unit for sale or lease or take any other steps regarding such Unit as shall be deemed proper by the Board;

12. Employ a Management Agent to perform the duties of the Board, provided that if such a contract is entered into with the Sponsor, the contract may not be for a period in excess of 3 years and must contain a provision for termination by either party upon 60 days written notice after the second year;

13. Make additions, alterations, or improvements to the Common Elements of the Condominium, and to present to the Unit Owners the assignment of Common Charges or the placement of a lien on the Common Elements, when such presentation is required by law;

14. Borrow money on behalf of the Condominium when required in order to purchase a Unit at foreclosure, pursuant to the exercise of a right of first refusal, for Common Charges, and in connection with the operation, care, upkeep and maintenance of the Common Elements; provided however, that if required by law, the consent of at least 50.01 % of the total Unit Owner's Voting Interest obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum (except sums required to comply with applicable law or a work order of an insurance carrier) which is to be secured by an assignment of income under Section 339-jj of the Real Property Law. Except as required by law, the consent of the Unit Owners shall not be required to make any unsecured borrowing for the benefit of the Condominium, or to borrow funds by a lien on the Common Charge payments.

15. Request a reduction in the taxable assessed valuation of the Condominium on behalf of all Unit Owners;

16. Designate one or more committees, each of such committees to consist of at least one Manager (but the committee may also have non-manager Unit Owners on it) to advise the Board in the management of the Condominium as required by the Board ("Committees").



Committees shall keep regular minutes of their proceedings and shall report the same to the Board as required.

17. Consent to the making of capital repairs to the Common Elements or assessment of any Common Charge for expenses required to comply with applicable law, or a work order of an insurance carrier; provided further that prior to the Trigger Event or any other time during which the Sponsor controls the Board, the Board may not withhold such consent.

Section 7. Compensation. Managers and officers as such, shall receive no compensation for their services.

Section 8. Meetings and Consent. Each Board shall meet as soon as possible following adjournment of the meeting at which they were elected. The Board shall hold an annual meeting at the same place and immediately following the annual meeting if possible. The Board shall establish annually in advance the dates, places and times of regularly scheduled meetings of the Board ("Regular Meetings"). Regular Meetings may be held without notice at the Board's discretion. Special meetings of the Board may be called by the President or upon the written request of 2 Managers to the President or Secretary. The meeting and vote of the Board may be dispensed with if all Managers entitled to vote shall consent in writing to such action being taken.

Section 9. Quorum. At all meetings of the Board, a majority of the Managers shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of the majority of the Managers present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statute or the Declaration or these By-Laws. If a quorum shall not be present at any meeting of Managers, the meeting will be deemed adjourned.

Section 10. Notice of Meetings. It shall be the duty of the Secretary to provide notice, in accordance with these By-laws, of each meeting stating the purpose, time and place thereof to each Manager at least 10 but not more than 50 days prior to such meeting, unless such notice shall be deemed impracticable due to the nature of the special meeting in which case the President shall determine the amount of notice reasonable possible.

Section 11. Annual Statement. The Board shall cause full and clear financial statements, including a balance sheet and profit and loss statement for the Condominium, to be prepared and verified by an independent public accountant as well as a statement regarding any taxable income attributable to the Unit Owners ("Financial Statements"). The Financial Statements shall be prepared annually or upon demand of a majority of Unit Owners at a Special Meeting and delivered to the Unit Owners, their mortgagees and the New York Department of Law if required by law no later than 4 months following the Condominium's fiscal year end or the date of the Special Meeting.

Section 12. Liability of the Board and Unit Owners. Any contract, agreement or commitment made by the Board shall state that it is made by the Board as agent for the Unit Owners as a group only and that no member of the Board nor individual Unit Owner shall be personally liable for such contract, agreement or commitment except as set forth herein. The Unit

Owners shall be liable as a group under such contract, agreement or commitment but the liability of each Unit Owner shall be limited to the product of the total liability multiplied by their individual Common Interest. The Board shall have no liability to the Unit Owners in the management of the Condominium except for gross negligence, wilful misconduct or bad faith and the Unit Owners shall jointly and severally indemnify all members of the Board against any liabilities or claims arising from acts taken by a member of the Board in accordance with his duties as such member except acts of gross negligence or wilful misconduct or acts of bad faith; provided however that such liability of the Unit Owners shall be limited to the product of the total liability multiplied by their individual Common Interest.

Section 13. Consent to Amendment. This provision of Article III of these By-Laws may not be amended without the prior written consent of the Sponsor or Garage Unit Owner regarding their respective rights contained herein.

#### **ARTICLE IV. OFFICERS**

Section 1. Election of Officers. The officers of the Condominium shall be chosen by the Board at its first meeting and at any meeting of the Board thereafter at the Board's discretion. The officers of the condominium shall be a President, Secretary and Treasurer. The President must be a member of the Board and either a Unit Owner or the spouse of a Unit Owner or a representative of a Unit Owner. The Board may also choose such other officers as in their judgment may be necessary. The President and Treasurer may not be the same person.

Section 2. Term. The officers shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed with or without cause, at any time, by the affirmative vote of a majority of the whole Board. Office vacancies shall be filled by the Board.

Section 3. Officer's Duties. The President shall be the chief executive officer of the Condominium and have all such powers and duties usually vested in the office of the President of a stock corporation under the Business Corporation Law of the State of New York. The Secretary shall attend all sessions of the Board and all Unit Owners meetings and record and maintain all votes and the minutes of all proceedings, provide notice of all meetings as provided in these By-laws and perform all other duties as required by the Board and the President. The Treasurer shall perform all tasks as directed by the Board and properly handle and account for all financial transactions of the Condominium including maintaining detailed financial records and books of account of the Condominium and a separate account for each Unit which, among other things, shall contain the amount of each assessment of Common Charges against such Unit, the date when due, the amounts paid thereon and the balance remaining unpaid.

**ARTICLE V. NOTICES AND WAIVER.** Whenever, under the provisions of the Declaration or these By-Laws, notice is required to be given by or to the Board, any Manager or Unit Owner such notice shall be sufficient if in writing sent by mail or overnight carrier to the address as appears on the most recent records of the Condominium and will be deemed received within 3 days of depositing same with such the post office or 2 days of depositing same with an overnight carrier. Notice required under these By-laws will be deemed waived when done so in writing or

by attendance at any meeting for which the notice was required.

## ARTICLE VI. OPERATION OF THE PROPERTY

Section 1. Payment of Common Charges and Special Assessments. Unit Owner shall promptly pay their respective Common Charges and Special Assessments when due. The Unit Owner shall not be entitled to any notice beyond the assessment notice. In the event that any Common Charges or Special Assessments shall not be paid when due, the Board may: (a) impose administrative fees, late charges, and interest on unpaid Common Charges to the maximum amount permitted by law; (b) place a lien on a Unit or foreclose such lien in the event that any Common Charges or Special Assessment is not paid within 15 days of its due date; and (c) provide notice to any Tenant of the Unit to make all rental payments to the Board until all unpaid amounts are satisfied. In addition, every non-occupying Unit Owner shall be subject to the provisions of Section 339-kk of the Real Property Law.

No Unit Owner shall be liable for any Common Charges or Special Assessment which accrue against his Unit subsequent to a sale, transfer or other conveyance by him of his Unit in accordance with these By-Laws and the Declaration. A purchaser of a Unit other than a first mortgagee purchasing for its own account pursuant to a foreclosure sale, which bid has not been assigned, and subject to applicable provisions of the Declaration shall be liable for the payment of all Common Charges and Special Assessments assessed against the Unit and unpaid at the time of the purchase.

Section 2. Statement of Common Charges. Upon the written request of any Unit Owner or his mortgagee, the Board shall promptly furnish such Unit Owner or his mortgagee with a written statement of the unpaid Common Charges due from such Unit Owner.

Section 3. Liability for Utilities. All utilities consumed in the Units shall be the expense of the individual Unit Owner.

### Section 4. Repairs to Units, Common Elements and Access.

(a) Repairs to Units. Except as otherwise provided in these By-laws, all maintenance, repairs and replacements ("Repairs") to any Unit, ordinary or extraordinary, and to the doors (except painting the exterior side of a Unit entrance door), windows (except painting exterior side of windows), electrical, plumbing, heating fixtures and air conditioning units within the Unit or belonging to the Unit Owner shall be made at the Unit Owner's effort and expense.

(b) Repairs to Common Elements. All Repairs to the General Common Elements, as identified in Schedule C attached hereto ("General Common Elements"), and the painting and decorating of the exterior side of Unit entrance doors and windows shall be made by the Board and be charged to all the Unit Owners as a Common Expense, except if the Repairs are necessitated by the willful action or negligence of a Unit Owner, in which case the expense shall be charged to such Unit Owner. Repairs in or to the Limited Common Elements, as identified in Schedule C attached hereto ("Limited Common Elements"), will be performed as follows: (i) by the Board as a Common Expense, if the Repair involves structural or extraordinary maintenance,

repairs or replacements including, but not limited to, the replacement of exterior windows or the repair of leaks; or (ii) by, the Unit Owner having direct and exclusive access to a Limited Common Element at his sole cost and expense, if involving nonstructural or ordinary Repairs. The Board will have the right to establish rules and regulations regarding the approval of contractors, nature and standard of repair for any Limited Common Element.

(c) All Repairs to any portion of the Unit or Common Elements shall be carried out in such a manner so as to conform to the existing materials, style and color.

(d) Access for Repairs. The Board and its agents, employees and contractors shall have a right of access to any Unit and to all portions of the Common Elements for the purpose of carrying out any of its obligations under these By-Laws or the Declaration. Requests for entry shall be made in advance at a time reasonably convenient to the Unit Owner unless in the sole discretion of the Board immediate action is necessary for the preservation or safety of the Condominium and its occupants. Such right shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business by the occupants of the Garage Unit or Parking Unit or with the use of the Residential Units for residential purposes. The Board will also have the right, but not the obligation, to require a Unit Owner to make and pay for a Repair to a Limited Common Element in the discretion of the Board. The Garage Unit Owner and Parking Unit Owner will have the right to Repair any Limited Common Element upon reasonable prior notice to the Board except in an emergency, in which case such Repair may be made as needed. Charges assessed by the Board to a Unit Owner for Repairs to his Unit or for Repairs to any Limited Common Element shall be deemed to be Common Charges.

(d) Notwithstanding the other provisions of this Article VI , each Unit Owner shall be responsible for all damage to any and all other Units or to the Common Elements by reason of their willful or negligent actions.

#### Section 5. General Restrictions on Use and Occupancy of Units.

(a) Each of the Residential Units shall be used as a: (i) residence; (ii) home office or professional office if permitted by applicable law; and (iii) sales office or sales model by Sponsor.

(b) The use of any Unit must conform to the terms and conditions of the then existing Certificate of Occupancy for such Unit, any and all applicable governmental and municipal regulations, including any applicable zoning variance ("Laws") . Any violations of Laws shall be complied with by and at the sole expense of the Unit Owners or the Board whichever shall have the obligation by law.

(c) Subsections (a), (b) and (c) of this Section 5 may not be amended, modified or deleted, except by unanimous vote of Unit Owners Voting Interest and the Board.

(d) Any Rule may be made, amended or rescinded by vote of 66-2/3% of the Unit Owners Voting Interest at a Special or Annual Meeting. The initial Rules are attached hereto as Exhibit D for the purpose of distribution but not for recording as part of the Declaration and By-Laws.

Section 6. Additions, Alterations or Improvements by Board. In the event that additions, alterations or improvements ("Improvements") require the placement of a lien on the Common Elements or an assignment of Common Charges payable by the Unit Owners, and if required by law the making of such Improvements shall be approved by more than 50% of the Unit Owner's Voting Interest. In the event that the Condominium Board erects a sidewalk bridge or other scaffolding at the Building, the Condominium Board shall give due regard to the use of the Garage Unit and Parking Unit and shall use best efforts to (i) minimize any disruption to the use of such Garage Unit and Parking Unit and (ii) not restrict ingress or egress through the exterior doorways to the Garage Unit and Parking Unit. In furtherance thereof, the Condominium Board agrees to consult with the Garage Unit and Parking Unit Owner prior to the installation of such sidewalk bridge or other scaffolding and to permit the Garage Unit and Parking Unit Owner to install, at their cost and expense, signs upon the sidewalk bridge and scaffolding

Section 7. Improvements by Unit Owners.

(a) A Unit Owner may make a non-structural alteration to a Unit that does not affect the exterior of the Building, the utility systems of the Condominium, or the value of other Units without the consent of the Board. No Unit Owner, other than the Sponsor, Garage Unit or Parking Unit Owner, may make a structural alteration in a Unit, install any fixtures or appliances, other than electrical appliances, or make any alteration affecting the utility systems of the Building without the prior written approval of the Board, which will not be unreasonably withheld provided that the Unit Owner comply with all of the following regarding the Addition: (i) applicable Rules; (ii) conditions established by the Board regarding the quality of work, contractor selection, necessary insurance coverage and access; (iii) applicable laws; (iv) assume all ownership of all Improvements unless otherwise determined by the Board; and (v) pay all expenses associated with the Improvement and the Board's review of same.

(b) Any application to any governmental authority for a permit to make an Improvement in or to any Residential Unit may be executed only by the Board without, however, incurring any liability on the part of the Board or any member thereof to any contractor, subcontractor, materialman, architect or engineer on account of such installation, Improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

(c) The Sponsor, the Garage Unit and Parking Unit Owner shall have the right, without the consent of any person or entity, to make Improvements to their respective unsold Units or to the Garage Unit or Parking Unit, whether or not such alterations are structural or nonstructural, ordinary or extraordinary, so long as they do not materially adversely affect the structure or utility systems of the Building. The Condominium hereby appoints each of the Sponsor, the Garage Unit Owner and Parking Unit Owner as its attorney in fact, coupled with an interest, to execute such documents on behalf of the Condominium as may be required in order to obtain any necessary licenses or permits to make or complete an alteration, and grants to each of the Sponsor, Garage Unit Owner and Parking Unit Owner an easement of access, ingress and egress to make any such alterations. Each of the Garage Unit and Parking Unit Owner is appointed the agent and attorney in fact of the Condominium to apply for changes in the Certificate of Occupancy of the Garage Unit or Parking Unit respectively and to execute all

documents that may be necessary in order to procure such change; provided however that the Garage Unit and Parking Unit Owners shall not be authorized to execute any application in regard to a variance with the local zoning board without the consent of the Condominium. This Article VI, Section 7 (c) of these By-laws may not be amended without the prior written consent of the Sponsor, as long as he owns a Unit, or the Garage Unit or Parking Unit Owner.

(d) With regard to any work that may result in the subdivision or combination of Units, the Sponsor or the owner of the Garage Unit or Parking Unit , as the case may be, shall have the right, pursuant to Section 339-i (2) of the Real Property Law of the State of New York, to make and file an appropriate amendment to the Declaration under the same file number and procedure set forth in Section 339-p of the Real Property Law, and the local tax authority shall provide and certify upon the proposed amendment a conforming tax lot number upon completion of the Unit. In no event shall the subdivision of a Unit and its Common Interest appurtenant thereto result in a greater percentage of Common Interest for the total to the new Unit than existed for the original Unit.

(e) The Board shall execute any application or other document required to be filed with any governmental authority having or asserting jurisdiction in connection with any such installation or structural Improvement made by Sponsor to any Residential Unit; provided however that neither the Board nor the Unit Owners shall be subjected to any expense or liability by virtue of the execution of the application or such other document.

(f) No Residential Unit Owner may alter, improve or enclose any portion of the Common Elements without the consent of the Board.

(g) Any Limited Common Elements appurtenant to the Garage Unit or Parking Unit may be altered or improved by the owner of the Garage Unit or Parking Unit who has use of or benefits by the particular Limited Common Element; provided however that structural alterations or alterations which affect the utility systems of the Building require the consent of the Board which will not be unreasonably withheld or delayed.

## **ARTICLE VII. INSURANCE**

Section 1. Insurance to be Carried by the Board. The Board shall obtain and maintain if possible, the following insurance: fire insurance with extended coverage, water damage, vandalism and malicious mischief endorsements, insuring the Building, other than furniture, furnishings, fixtures, appliances and other personal property of Unit Owners (“Unit Owner’s Personalty”), together with all heating, air conditioning and other service machinery, contained therein to the point where they join with the Unit, covering the interest of the Condominium, the Board and all Unit Owners and their mortgagees as their interest may appear, in an amount equal to the full replacement value of the Building. Each of such policies shall contain a New York standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear; provided however that the policies shall provide that adjustment of loss shall be made by the Board.

All policies of physical damage insurance shall contain waivers of subrogation and of any reduction of pro rata liability of the insurer as a result of any insurance carried by Unit Owners or of the invalidity arising from any acts of the insured or any Unit Owners, and shall provide that such policies may not be canceled or substantially modified without at least 15 days prior written notice to all of the insureds, including all mortgagees of Units. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the Building, including all the Common Elements for the purpose of determining the amount of fire insurance required.

The Board shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board may from time to time determine, covering each member of the Board, the managing agent and each Unit Owner. Such public liability coverage shall also cover cross liability claims of one insured against another. Until the first meeting of the Board such public liability insurance shall be in a single limit of \$ 1,000,000 covering all claims for bodily injury and for property damage arising out of one occurrence. Such public liability insurance shall commence on the closing of title to the first Unit.

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

Section 2. Restoration or Reconstruction After Fire or Other Casualty. Except as otherwise provided in these By-laws, in the event of damage to or destruction of the Building as a result of fire or other casualty the Board shall arrange for the prompt repair and restoration of the Building, including any heating, air conditioning or other service machinery which is covered by insurance other than the Unit Owner Personalty and the Board or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a Common Expense and the Board may assess all Unit Owners for such deficit as part of the Common Charges.

In the event that 75% or more of the Units are destroyed or substantially damaged the Board may not proceed with the repairs without at least 75% of the Unit Owner's Voting Interest approval to proceed with same. In the event that such approval is not promptly obtained, the Property shall be subject to an action for partition at the suit of any Unit Owner or lien or, as if owned in common, in which event the net proceeds of sale together with the net proceeds of insurance policies or if there shall have been a repair or restoration, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration then the excess of such insurance proceeds shall be divided by the Board or the Insurance Trustee, as the case may be, among all Unit Owners in proportion to their respective Common Interests, after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

## ARTICLE VIII. AMENDMENTS

(a) Except as otherwise provided herein, these By-Laws may be altered, amended or added to at any duly called meeting of the Unit Owners provided: (1) that the notice of meeting shall contain a full statement of the proposed amendment; (2) that the amendment shall be approved by 66 2/3% percent of the Unit Owners in number and Unit Owner's Voting Interest and (3) said amendment shall be set forth in a duly recorded amendment to the Declaration. However, no amendment will affect or impair the validity or priority of a Unit Owners' interest and the interests of holders of a mortgage encumbering a Unit or Units.

(b) So long as the Sponsor continues to own a Unit, the provisions of these By-Laws, the Declaration or the Rules may not be amended to adversely affect the rights of the Sponsor, without the consent of the Sponsor.

(c) These By-Laws may not be amended, modified or supplemented without the prior written consent of the affected Garage Unit Owner or Parking Unit Owner to the extent that such amendment, modification, addition, or deletion of or to these By-Laws, the Declaration or the Rules modifies the permitted uses of any Garage Unit or Parking Unit or affects the rights, privileges, easements, licenses or exemptions granted to any Garage Unit or Parking Unit Owner. Sponsor and Garage Unit Owner and Parking Unit Owner shall have the right, without the vote or consent of other Unit Owners, the Board of Managers or the of Unit mortgages, to execute or require the Board to execute and record all amendments to these By-Laws in accordance with these By-laws or applicable law. All expenses in connection with the preparation, recordation and filing of any such amendment shall be a Common Expense.

(d) These By-laws may not be amended where specifically provided or to the extent limited pursuant to provisions of these By-laws.

(f) This Article VIII of these By-laws may not be amended without the prior written consent of the Sponsor, as long as he owns a Unit, or the Garage Unit or Parking Unit Owner in so far as such amendment may affect the rights of the Garage Unit and Parking Unit Owner.

## **ARTICLE IX. SALES, LEASES AND MORTGAGES OF UNITS**

Section 1. Sales and Leases. (a) Residential Unit Owner must comply with the provisions set forth in Article IX in order to sell his Residential Unit or any interest therein.

Any Residential Unit Owner who receives a bona fide offer which he intends to accept for the sale of his Unit together with: (i) the undivided interest in the Common Elements appurtenant thereto; (ii) the interest of such Unit Owner in any Units previously acquired by the Board or its designee, on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any, and (iii) the interest of such Unit Owner in any other assets of the Condominium ("Offer"), shall notify the Board thereof and the name and address of the proposed purchaser, the terms of the proposed transaction and such other information as the Board may reasonably require ("Offer Notice"). The Offer Notice shall constitute an offer of the Residential Unit Owner to sell to the Board or its designee, on behalf of all other Unit Owners, on the same terms and conditions as contained in such Offer. The Offer Notice shall constitute a warranty and representation by the Unit Owner to the Board and other Unit Owners that such Unit Owner



believes the Offer to be bona fide in all respects. The Board may request reasonable additional information relating to the Offer at any time after reviewing the Offer Notice and any additional information previously supplied by the Unit Owner, and may schedule a personal interview to obtain additional information regarding the proposed purchaser. Within 30 days after receipt of the Offer Notice and additional information requested by the Board, the Board may notify the Unit Owner that it wishes to: (a) have the Condominium purchase the Unit on behalf of all other Unit Owners, directly or to a designee on the same terms and conditions of the Offer; (b) assign the Board's right to purchaser to a purchaser who will purchase such Unit, on the same terms and conditions as the Offer; or (c) waive its right to purchase the Unit. If the Board shall elect to have the Condominium purchase or assign its right to purchase the Unit title shall close at the office of the Condominium in accordance with the terms of the Notice Offer but not less than 45 days after the giving of notice by the Board of its election to accept such Notice Offer. At the closing, the Unit Owner shall convey the Unit to the Condominium or to its assignee by deed in the form required by Section 339-o of the Real Property Law of the State of New York, with all transfer stamps affixed, and shall pay all other taxes arising out of such sale. Real estate taxes, mortgage interest and Common Charges and expenses shall be apportioned between the Unit Owner and the Board or its assignee, as of the closing date. If the Board or its assignee shall fail to accept the Notice Offer or to produce a purchaser within 30 days as aforesaid or fails to act within the 30 day period, the offering Unit Owner shall be free to contract to sell the Unit to the Purchaser, within 60 days after the expiration of the period in which the Board or its designee might have accepted the Notice Offer. Any such deed to the Offeror shall provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws and the Rules. If the offering Unit Owner shall not convey the Unit within such 60 day period to the Offeror on the terms and conditions contained in the Offer, then should the offering Unit Owner thereafter elect to sell the Unit to the same or another Purchaser on the same or other terms and conditions, the offering Unit Owner shall be required to again comply with all of the terms and provisions of this Article IX.

Any purported sale of a Residential Unit in violation of this Section shall be voidable at the election of the Board by notice given to the person claiming to be the Unit Owner and the Board's right of first refusal shall be deemed reinstated.

(b) Except as set forth in this Article IX, no Residential Unit Owner may lease his Unit except by complying with the following provisions:

(i) Any Residential Unit Owner who receives a bona fide offer for a lease of his Unit which he intends to accept ("Lease Offer") shall give notice to the Board of the Lease Offer and of such intention, the name and address of the proposed lessee, the terms of the proposed lease, references and such other information as the Board may reasonably require, and shall offer to lease such unit to the Board or its designee on the same terms ("Lease Offer Notice"). The Lease Offer Notice shall constitute a warranty and representation by the Unit Owner to the Board on behalf of the other Unit Owners that such Unit Owner believes the Lease Offer to be bona fide in all respects. The Board may request reasonable additional information relating to the Lease Offer at any time after reviewing the Lease Offer Notice and any additional information previously supplied by the Unit Owner, and may schedule a personal interview to obtain additional information regarding a prospective tenant. Within 30 days after receipt of the

Lease Offer Notice and all additional information that had been reasonably requested by the Board, the Board may elect by notice to such unit owner, either to: (a) lease the Unit on behalf of all other Unit Owners or its designee on the same terms and conditions as contained in the Lease Offer; (b) produce a tenant who will lease the Unit on the same terms and conditions as contained in the Lease Offer; or (c) waive its right to lease the Unit. If the Board does not elect to exercise the above rights within the 30 day period, the Unit Owner may accept the Lease Offer, but if the proposed tenant fails to take occupancy within 60 days after the consent of the Board has been given or the right of first refusal waived, the Lease Offer shall be deemed void and the Unit Owner will be required to repeat the above proceedings with respect to approval of the proposed lease. The waiver of the Board of its right to lease the Unit shall not in any way be construed to relieve the Unit Owner from offering the lease to the Board and a Unit Owner who subsequently desires to lease such Unit shall be required again to comply with all the terms and provisions of this Article X.

(ii) Any such lease shall be consistent with these By-Laws and shall provide that it may not be modified, amended, extended or assigned, without the prior consent in writing of the Board; that the tenant shall not sublet the demised premises, or any part thereof, without the prior consent in writing of the Board; that the Board shall have power to terminate such lease and to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of default by the tenant in the performance of such lease: that in case of default by the Unit Owner the Board shall have the right to require the tenant to pay its rent to and attorn to the Board on demand; that the unit owner or tenant will maintain liability insurance naming the Condominium as an additional insured party, if available, and that the Board of Managers shall have the right to terminate the lease on not less than 30 days prior written notice upon foreclosure of the lien granted by Section 339-z of the New York State Real Property Law.

(iii) Unit Owner shall execute an assignment of lease in favor of the Condominium as security for the payment of Common Charges, special assessments and all sums due from Unit Owner to the Condominium or the Board.

(iv) Any purported lease of a Residential Unit in violation of this Section shall be voidable at the election of the Board, and if the board shall so elect, the unit owner shall be deemed to have authorized and empowered the Board to institute legal proceedings to evict the purported tenant in the name of the said unit owner as the purported landlord at the expense of the unit owner.

(v) Except for a Unit owned by Sponsor or the Garage Unit or Parking Unit Owner, or a Unit owned by a mortgagee who took title in foreclosure or a deed in lieu of foreclosure, any lease for a Unit must be for a minimum period of one year with each such lease being to a specific named tenant and with no right to substitute any other tenant during the term of the lease.

Section 2. Consent of Unit Owners to Purchase or Lease of Units by Board. The Board may not cause the Condominium to purchase or lease any Unit without the approval of a majority of the Unit Owner's Voting Interest.

Section 3. No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein all appurtenant interests belonging thereto, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant interests belonging to any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the appurtenances of all Units. For purposes of this Article IX, the term "Unit" shall include all appurtenant interests belonging thereto.

Section 4. Release by Board of Right of First Refusal. The rights of first refusal contained in this Article IX may be released or waived by the Board in which event the Residential Unit, together with the Appurtenant Interests, may be leased, sold or conveyed, free and clear of the provisions of such Section.

Section 5. Certificate of Termination of Rights of First Refusal. A certificate, executed and acknowledged by the Secretary of the Condominium, stating that the provisions of this Article IX have been met by a Unit Owner, or have been duly waived by the Board, and that the rights of the Board thereunder have terminated, shall be conclusive upon the Board and the Unit Owners in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Unit Owner who has in fact complied with the provisions of this Article IX or in respect to whom the provisions of such Section have been waived, upon request.

Section 6. Financing of Purchase of Units by Board. Acquisition of the Residential Units by the Board on behalf of the Condominium, or its designee, on behalf of all Unit Owners, may be made from the working capital and Common Charges in the hands of the Board, or if such funds are insufficient, the Board may levy a Special Assessment against each Unit Owner in proportion to his Common Interest, as a Common Charge, which special assessment or the Board, in its discretion, may borrow money to finance the acquisition of such Unit, provided, however, that no financing, may be secured by an encumbrance or hypothecation of any property other than the Unit to be acquired by the Board.

Section 7. Payment of Common Charges and Special Assessments. No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until he shall have paid in full to the Board all unpaid Common Charges and Special Assessments and expenses theretofore assessed by the Board against his Unit and until he shall have satisfied all unpaid liens against such Unit, except permitted mortgages.

Section 8. Exceptions to Restrictions on Sales and Leases. The provisions of Section 1 of this Article IX shall not apply with respect to (a) any sale, conveyance or lease by a Unit Owner of his Unit and Appurtenant Interests to his spouse or to any of his children over the age of 18 years or to his parent or parents or to his brothers or sisters, or any one or more of them, or to a trust established for the benefit of any of them; (b) a sale or lease of a Unit and Appurtenant Interests owned by the Sponsor or any shareholder thereof as defined in the

Offering Plan pursuant to which the Condominium was established; or (c) the sale or lease of the Garage Unit or Parking Unit or any part thereof by the Sponsor or affiliates, the Garage Unit or Parking Unit Owner; (d) the acquisition, sale or lease of a Unit, together with the appurtenant interests, by a mortgagee who shall acquire title to such unit by foreclosure or by deed in lieu of foreclosure; or (e) a conveyance or transfer by gift during a Unit Owner's lifetime; or (f) the devise or a Unit by will or intestacy. However, the Board must be given written notice of every sale or lease of a Unit.

Section 9. Waiver of Partition Rights. The Unit Owners waive all of their voting rights concerning partition respecting any Unit acquired by the Board in accordance with this Article.

Section 10. Consent to Jurisdiction and Venue in Lease. By virtue of executing a lease, all Unit Owners, tenants and occupants irrevocably submit to personal jurisdiction in the State of New York and venue in the state courts of Westchester County, New York in any action commenced by the Board.

Section 11. Mortgages of Units. Each Unit Owner is free to mortgage his Unit. Prior to or simultaneously with the closing of any mortgage transaction, the Unit Owner must satisfy all arrearages for any unpaid Common Charges and Special Assessments owed by such Unit Owner and discharge any liens therefor. The Board may request to a Unit Mortgagee that it be notified by a Unit mortgagee of any default under a mortgage on a Unit.

## **ARTICLE X. CONDEMNATION**

If all or part of the Common Elements are taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Board as agent for the Unit Owners if the award is more than \$250,000 and to the Board if the award is \$250,000 or less, to be distributed in accordance with Article VII but in the following amounts;

(a) so much of the award as is applicable to General Common Elements, to the Unit Owners pro rata according to respective Common Interests.

(b) so much of the award as is applicable to Limited Common Elements to the Unit Owner having general use of such Common Element.

In such eminent domain or condemnation proceeding, the Board shall request that the award shall set forth the amount allocated to unrestricted Common Elements and to each irrevocably restricted Common Element. In the event the award does not set forth such allocation then the question of such allocation shall be submitted to arbitration in accordance with the New York Arbitration Statutes.

## **ARTICLE XI. MISCELLANEOUS**

Section 1. Insurance. Under no circumstances shall a Unit Owner permit or suffer anything to be done or left in his Unit which will increase the insurance rates on his Unit or any other Unit or on the Common Elements.

Section 2. Severability. Should any of the covenants, terms or provisions herein imposed be void or be or become unenforceable at law in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.

Section 3. Notice to Condominium. A Unit Owner who mortgages his Unit, shall notify the Condominium through the management agent, if any, or the President of the Board if there is no management agent, of the name and address of his mortgagee; and the Board shall maintain such information in a book entitled "Mortgages of Units".

Section 4. Notice of Unpaid Common Charges and Special Assessments. The Board shall at the request of a mortgagee of a Unit, report any unpaid Common Charges and Special Assessments due from such Unit.

Section 5. Examination of Books and Records. Every Unit Owner, his representative and mortgagee shall be entitled to examine the books and record of the Condominium on reasonable notice to the Board.

Section 6. Construction. Wherever the masculine singular form of the pronoun is used in the By-Laws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, wherever the context so requires.

Section 7. Compliance with Article 9-B. These By-Laws are set forth to comply with the requirements of Article 9-B of the Real Property Laws of the State of New York. In the event that any of these By-Laws conflict with the provisions of said statute or of the Declaration, the provisions of the statute or of the Declaration, whichever the case may be, shall control; provided however that in the further event of a conflict between the statute and the Declaration, the statute shall control.

EXHIBIT A  
LEGAL DESCRIPTION

[TO BE INSERTED]

SCHEDULE B  
PARKING UNIT DESCRIPTION

[TO BE INSERTED]

SCHEDULE C  
GENERAL COMMON ELEMENTS

(1) The land on which the Building stands and all other land within the boundaries of the property, together with all easements, rights and privileges appurtenant thereto (except as otherwise expressly provided in this Article);

(2) All foundations, columns, beams, supports, bearing walls; those portions of the exterior walls and insulation beyond the unexposed face of the dry wall at the exterior face of the Building or, where applicable, those portions of the exterior walls beyond the interior face of the exterior wall; those portions of the walls and partitions dividing the Units from corridors, lobby and stairs located beyond the unexposed face of the dry walls enclosing the Unit; the subfloor and framing joists, including any framing attached to such joists from which the dry wall ceiling of the Unit below is attached; storage and utility areas located beyond the unexposed face of the dry walls enclosing a Unit and not otherwise designated as Limited Common Elements; all basements and cellars which are not included within a particular Unit and are used for the benefit of all Unit Owners; the entrances to and exits from the Building; and mailboxes. Notwithstanding the above, the foregoing excludes all windows and window frames of the Units which are considered Limited Common Elements and any doors, windows and window frames of the Garage Unit which are considered part of the Garage Unit.

(3) All central and appurtenant installations for services such as power, light, intercom, telephone, television, gas, hot and cold water, heat (including all pipes, ducts, wires, shoots, cables and conduits used in connection therewith) and all other mechanical equipment spaces, except that installations relating to such utilities and other services that have been or will be made by the owners or tenants of the Garage or Parking Units to exclusively benefit the Garage Unit or Parking Unit shall be Limited Common Elements appurtenant to such Units;

(4) Water service pipes and sewer pipes;

(5) Any house tank providing water to the Units and the pipes used in connection therewith;

(6) To the extent that the Building is served by steam heat or hot water, portions of any steam riser and connections originating in the boiler room, together with any distribution piping;

(7) Ventilation supply system consisting of motors, duct work, fans and controls serving General Common Elements and steam and condensate return piping serving General Common Elements;

(8) All passages and corridors, mechanical and other rooms, meter room, areas and indoor or outdoor spaces located at the Property serving or benefiting one or more Units and which are not part of a Unit;



(9) Copings, flashings, leaders, gutters and parapets appurtenant to the roof of the Building;

(10) Any portion of the Building's roof and all bulkheads that are reserved for common use;

(11) The driveway between the Parking Unit and the Residential Units.

(12) Compactor rooms, laundry room, and boiler room (if any);

(13) Trash room(s) and access doors and all facilities used in connection therewith;

(14) Window glass and window frames located on the perimeter of (but not exclusively serving) a particular Unit, and all other window frames and window glass in the Building. The window glass and window frame serving a particular Unit are Limited Common Elements for that particular Unit as per subsection (c) below;

(15) Corridor supply risers and ducts, kitchen and toilet exhaust risers and ducts, kitchen and toilet water vents, gas risers, electric risers and shafts serving Units;

(16) Gas piping serving the Units up to the exit points from the walls;

(17) All other facilities of the Property (including, but not limited to, vaults, shafts, pipes, wires, ducts, vents, cables, conduits and lines) which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the Units; and

(18) All other Common Elements other than Limited Common Elements.

## SCHEDULE D

### RULES

#### 120 VIVABENE CONDOMINIUM

1. Except as permitted under the By-Laws, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, or otherwise, shall be conducted, maintained or permitted in any part of the Units or Common Elements, unless permitted under applicable zoning laws nor shall any "For Sale", "For Rent", or "For Lease" signs or other window displays or advertising be maintained or permitted in any Unit therein or adjoining Common Elements, nor shall any Unit be rented for transient, hotel or motel purposes. The right is reserved by the Sponsor, its designee and the Board, or its agent, to place "For Sale", "For Rent" or "For Lease" or similar signs on any unsold or unoccupied Units, and the right is hereby given to any mortgagee, who may become the owner of any Unit, to place such signs on any Unit owned by such mortgagee. Additionally, the right is reserved by Sponsor and its designee to maintain and staff one or more vacant and unsold Units in the Building as a sales office and/or model Unit. Sponsor and its designee shall have the right to place "For Sale", "For Rent", or "For Lease" signs or similar signs on or in the vicinity of the Building without regard to size.
2. No exterior of any Residential Unit or the windows or doors thereof or any other portions of the Common Elements shall be painted or decorated by any Owner or in any manner without prior written consent of the Board.
3. No furniture, equipment, or other personal articles shall be placed in entrances, hallways, stairways, or other Common Elements.
4. No Unit Owner shall make or permit any noise or objectionable odor that will disturb or annoy the occupants of any of the Units in the Building or do or permit anything to be done therein which will interfere with the rights, comfort, or convenience of other Unit Owners.
5. Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness and shall not sweep or throw any dirt or other substances from the doors or windows of a Unit, or permit to be swept or thrown therefrom.
6. No exterior shades, awnings, window guards, ventilators, fans or air-conditioning devices shall be used on or about the Building or Common Elements except such as shall have been approved by the Board.
7. Except for the Garage Unit or Parking Unit, no sign, notice, lettering, or advertisement shall be inscribed or exposed on or at any window, door, or other part of the Building, except such as shall have been approved in writing by the Board, nor shall anything project out of any window of the Building without the approval of the Board.
8. All garbage and refuse from the Building shall be deposited with care in plastic bags or other

suitable receptacles intended for such purpose only at such times and in such manner as the Board may direct.

9. Water closets and other water apparatus in the Building shall not be used for any purposes other than those for which they were constructed; nor shall any sweepings, rubbish, rags, papers, ashes, or any other article be thrown into the same. Any damage resulting from misuse of any water closet or other apparatus shall be paid for by the Unit Owner causing such damage.

10. No Unit Owner shall engage any employee of the Condominium to perform tasks outside their stated job description for any private business of the Unit Owner without prior written consent of the Board.

11. The Board may establish reasonable rules and regulations regarding the weight, number, and registration of pets. In no event shall dogs be permitted in any of the public portions of the Building unless carried or on a leash.

12. No radio or television antenna or satellite dish shall be attached to or hung from the exterior of the Building without written approval of the Board. The Board, upon the request of any Unit Owner, shall allow the installation of any hook-up necessary to provide cable television service to the Units.

13. The agents of the Board, and any contractor or workman authorized by them, may enter any Unit at reasonable hours, on reasonable notice, for any purpose permitted under the terms of the Declaration, By-Laws, or Rules and Regulations of the Condominium.

14. No Unit Owner shall alter any lock on any door leading into his Residential Unit unless the Residential Unit Owner shall also provide the Board with a key for their use.

15. No Unit Owner or any visitor, guest, patient, employee or any client of a Unit Owner shall be allowed in the heating, electrical or mechanical equipment areas without the express permission of the Board.

16. All damage to the Building or Common Elements caused by the moving or carrying of any article therein shall be paid by the Unit Owner responsible for the presence of such article.

17. No Unit Owner shall interfere in any manner with any portion of the heating or lighting apparatus which are part of the Common Elements and not part of the Unit Owner's Unit.

18. No Unit Owner shall use or permit to be brought into the Building any inflammable oils or fluids such as gasoline, kerosene, naphtha, benzene, or other explosives or articles deemed extra hazardous to life, limb or property without in each case obtaining the written consent of the Board.

19. The Unit Owner shall not be allowed to put his name on any entry to the Building or entrance to any Unit, except in the proper places approved by the Board for such purposes.

20. Any damage to the Building or equipment caused by Unit Owners, their guests, visitors, clients, patients or employees shall be repaired at the expense of the said Unit Owner.
21. Complaints regarding the management of the Building and grounds or regarding the actions of other Unit Owners shall be made in writing to the Board.
22. No Unit shall be used or be occupied in such manner as to obstruct or interfere with the enjoyment of occupants or owners of adjoining Units; nor shall any nuisance or illegal activity be committed or permitted to occur in or about any, Unit or upon any part of the Common Elements.
23. Certain parts of the Common Elements are intended for the purpose of affording pedestrian and vehicular movement within the Condominium and of providing access to the Units. No part of the Common Elements shall be obstructed so to interfere with its use for the purposes hereinabove recited; nor shall any part of the Common Elements be used for general storage purposes, except maintenance storage; nor shall anything be done thereon in any manner which shall increase the rate of hazard and liability insurance covering said area and improvements situated thereon.
24. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Violations of laws, orders, rules, regulations, or requirements or any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be eliminated, by and at the sole expense of the Unit Owners, or the Board, whichever shall have the obligation to maintain or repair such portion of the Property.

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## ESCROW AGREEMENT

AGREEMENT made this 1st day of \_\_\_\_\_ 2004, between Dorami Realty of New York, Inc. (“Sponsor”) as sponsor of the offering plan and Smith, Buss & Jacobs, LLP (“Escrow Agent”) as escrow agent.

WHEREAS, Dorami Realty of New York, Inc. is the sponsor of an offering plan to convert to condominium ownership the premises located at 120 Main Street, Tuckahoe, New York, which premises are known as 120 VivaBene Condominium; and

WHEREAS, Smith, Buss & Jacobs, LLP is authorized to act as an escrow agent hereunder in accordance with General Business Law (“GBL”) Section 352-e (2-b) and the Attorney General’s regulations promulgated thereunder; and

WHEREAS, SPONSOR desires that ESCROW AGENT act as escrow agent for deposits and payments by purchasers and subscribers, pursuant to the terms of this agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereby agree as follows:

1. ESTABLISHMENT OF THE ESCROW ACCOUNT.
  - 1.1 SPONSOR and ESCROW AGENT hereby establish an escrow account with ESCROW AGENT for the purpose of holding deposits or payments made by purchasers or subscribers. The escrow account has been opened with Hudson Valley Bank at its branch located at 865 McLean Avenue, Yonkers, New York 10704. The account number is \_\_\_\_\_.
  - 1.2 The name of the account is SBJ- 120 VivaBene Condominium Escrow Account.
  - 1.3 ESCROW AGENT is the sole signatory on the account.
  - 1.4 The escrow account shall be an interest-bearing account as disclosed in the offering plan.

1.5 The escrow account is not an IOLA established pursuant to Judiciary Law Section 497.

2. DEPOSITS INTO THE ESCROW ACCOUNT.

2.1 All funds received from prospective purchasers or subscribers prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payer, shall be deposited in the escrow account. All instruments to be deposited into the escrow account shall be made payable to, or endorsed by, the purchaser or subscriber to the order of Smith, Buss & Jacobs, LLP as escrow agent for the 120 VivaBene Condominium offering plan. Any instrument payable or endorsed other than as required hereby, and which cannot be deposited into such escrow account, shall be returned to the prospective purchaser or subscriber promptly, but in no event more than five (5) business days following receipt of such instrument by ESCROW AGENT. In the event of such return of funds, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this Agreement.

2.2 Within ten (10) business days after tender of the deposit submitted with the subscription or purchase agreement, ESCROW AGENT shall notify the purchaser of the deposit of such funds in the bank indicated in the offering plan, provide the account number, and disclose the initial interest rate.

3. RELEASE OF FUNDS.

3.1 ESCROW AGENT shall not release the escrowed funds of a defaulting purchaser until after consummation of the plan as defined in the Attorney General's regulations. Consummation of the plan shall not relieve SPONSOR of its fiduciary obligations pursuant to GBL Section 352-h.

3.2 ESCROW AGENT shall continue to hold the funds in escrow until otherwise directed in (a)

- a writing signed by both sponsor and purchaser or (b) a determination of the Attorney General or (c) a judgment or order of a court of competent jurisdiction or until released pursuant to the regulations of the Attorney General pertaining to release of escrowed funds.
- 3.3 SPONSOR shall not object to the release of the escrowed funds to (a) a purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan or (b) all purchasers after an amendment abandoning the plan is accepted for filing by the Department of Law.
- 3.4 If there is no written agreement between the parties to release the escrowed funds, ESCROW AGENT shall not pay the funds to SPONSOR until ESCROW AGENT has given the purchaser written notice of not fewer than ten (10) business days. Thereafter, the funds may be paid to SPONSOR unless the purchaser has made application to the Department of Law pursuant to the dispute resolution provisions contained in the Attorney General's regulations and has so notified ESCROW AGENT in accordance with such provisions.
- 3.5 All funds received by Sponsor for upgrades or extras will initially be placed in the Escrow Account. However such funds may be released from the Escrow Account by the ESCROW AGENT upon request 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.
4. RECORD KEEPING.
- 4.1 ESCROW AGENT shall maintain all records concerning the escrow account for seven (7) years after release of the funds.
- 4.2 Upon the dissolution of a law firm which was ESCROW AGENT, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these



records by one of the partners or members of the firm or by the successor firm and shall notify the Department of Law of such transfer.

4.3 ESCROW AGENT shall make available to the Attorney General, upon his request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

5. GENERAL OBLIGATIONS OF ESCROW AGENT.

5.1 ESCROW AGENT shall maintain the accounts called for in this Agreement under the direct supervision and control of ESCROW AGENT.

5.2 A fiduciary relationship shall exist between ESCROW AGENT and Purchasers, and ESCROW AGENT acknowledge its fiduciary obligations.

6. RESPONSIBILITIES OF SPONSOR.

6.1 SPONSOR agrees that SPONSOR and its agent, including any selling agent, shall immediately deliver all deposits and payments received by them prior to closing of an individual transaction to ESCROW AGENT.

6.2 SPONSOR agrees that it shall not interfere with ESCROW AGENT'S performance of its fiduciary duties and compliance with the Attorney General's regulations.

7. TERMINATION OF AGREEMENT.

7.1 This 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 with the Department of Law providing for a successor ESCROW AGENT; or
- (b) The resignation of ESCROW AGENT upon giving notice to SPONSOR of its desire to so resign, which resignation shall take effect only upon the filing of an amendment

with the Department of Law providing for a successor ESCROW AGENT; or

(c) All shares or units offered pursuant to the plan have been sold and all sales transactions have been consummated.

7.2 Upon termination of the duties of ESCROW AGENT as described in paragraph 7.1 above, ESCROW AGENT shall deliver any and all funds held by it in escrow and any all contracts or documents maintained by ESCROW AGENT to the new escrow agent.

8. SUCCESSORS AND ASSIGNS.

8.1 This Agreement shall be binding upon SPONSOR and ESCROW AGENT and their successors and assigns.

9. GOVERNING LAW.

9.1 This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

10. ESCROW AGENT'S COMPENSATION.

10.1 SPONSOR agrees that ESCROW AGENT's compensation shall not be paid from escrowed principal nor from any interest accruing thereon and that compensation to ESCROW AGENT, if any, shall not be deducted from escrowed funds by any financial institution under any circumstances.

11. SEVERABILITY.

11.1 If any provision of this Agreement or the application thereof to any person or circumstances is determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

12. ENTIRE AGREEMENT.

12.1 This Agreement, read together with GBL Section 352-e (2-b) and the Attorney General's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

ESCROW AGENT:

Smith, Buss & Jacobs, LLP

By: \_\_\_\_\_  
Kenneth R. Jacobs, Partner

SPONSOR:

Dorami Realty of New York, Inc.

By: \_\_\_\_\_  
Philip Raffiani, Vice President

APPLICATION TO THE ATTORNEY GENERAL  
FOR A DETERMINATION ON THE  
DISPOSITION OF DOWNPAYMENTS

[Send this application to the reviewing attorney assigned to the subject plan.]

Re: \_\_\_\_\_  
                    Address of Building or Name of Project

File Number: \_\_\_\_\_

Application is made to the Attorney General to consider and determine the disposition of down payments held pursuant to GBL Sections 352-e(2-b) and 352-h. The following information is submitted in support of this application:

1. Name of Applicant \_\_\_\_\_
2. Address of Applicant \_\_\_\_\_
3. Name, Address, and Telephone Number of Applicant's Attorney (if any) \_\_\_\_\_  
\_\_\_\_\_
4. This is an application for  
     return of downpayment.  
     forfeiture of downpayment.  
     other: \_\_\_\_\_
5. The project is      a conversion of occupied premises.  
                          newly constructed or rehabilitated.  
                          vacant (as is).
6. The project is structured as  
     a cooperative.  
     a condominium.  
     a homeowners association.  
     a timeshare.  
     other: \_\_\_\_\_

7. Name and Address of Sponsor: \_\_\_\_\_  
\_\_\_\_\_

8. Name and Address of Escrow Agent: \_\_\_\_\_  
\_\_\_\_\_

9. If downpayments are maintained in an escrow account:

(a) Name of account \_\_\_\_\_

(b) Name and address of bank \_\_\_\_\_

(c) Account number (if known) \_\_\_\_\_

(d) Initial interest rate (if known) \_\_\_\_\_

10. If downpayments have been secured by bonds:

(a) Name and address of bond issuer or surety: \_\_\_\_\_  
\_\_\_\_\_

(b) Copy of bond included in this application. (DO NOT SEND ORIGINAL BOND). If not included, explain:  
\_\_\_\_\_  
\_\_\_\_\_

11. If downpayments have been secured by a letter of credit:

(a) Name and address of bank which issued the letter of credit: \_\_\_\_\_  
\_\_\_\_\_

(b) Date of expiration of the letter of credit, if known:  
\_\_\_\_\_

12. Plan information:

(a) Date of filing of plan: \_\_\_\_\_

- (b) Plan
  - has been declared effective. Approximate date: \_\_\_\_\_
  - has not been declared effective.
  
- (c) If effective, the plan
  - has closed or the first unit has closed. Approximate date: \_\_\_\_\_
  - has not closed.
  - don't know.
  
- (d) Downpayments are secured by
  - escrow account.
  - bonds.
  - letter of credit.

13. Contract information:

- (a) Copy of contract and of all riders or modification letters are attached. (DO NOT SEND ORIGINALS.)
- (b) Date on which subscription or purchase agreement was signed: \_\_\_\_\_
- (c) Date(s) of downpayment(s): \_\_\_\_\_
- (d) Total amount of downpayment(s): \_\_\_\_\_
- (e) Names and addresses of subscribers or purchasers affected by this application:

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14. State the basis for your claim. Please be as specific as possible. You may add additional sheets. Attach copies of any relevant documents.

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15. I am contemporaneously sending a copy of this application to the following persons:

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**Note:** You are required to mail a copy of this Application to all other affected parties.

In filing this application, I understand that the Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from unlawful business practices. I also understand that if I have any questions concerning my legal rights or responsibilities I may contact a private attorney. The above application is true and accurate to the best of my knowledge. False statements made herein are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.

**Signature:**

**Date:**

**Name (Printed):**

**Telephone: (Home)**

**(Business)**

**Mailing Address:**

2/6/92

Sponsor's Certification

New York State Department of Law  
120 Broadway  
New York, New York 10271

Attention: Real Estate Financing Bureau

**Re: 120 Main Street  
Tuckahoe, New York**

Ladies and Gentlemen:

We are the sponsor and the principals of the Sponsor of the condominium 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 Attorney General in Part 20 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us 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 representations or statement made.

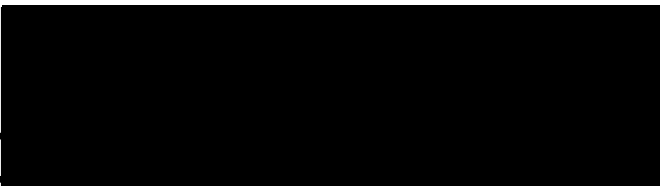

This certification is made under the penalty of perjury for the benefit of all persons to whom this offer is made. We understand the violations are subject to the civil and criminal penalties of the General




Business Law and Penal Law.

Sponsor: DORAMI

By

  
  
Philip Raffiani (individually)

Sworn to before me this

  
Notary Public  
Jeanne Raffiani  
Attorney at law  
State of New Jersey

ARCHITECT'S CERTIFICATION

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

RE: 120 MAIN STREET CONDOMINIUM  
120 MAIN STREET  
TUCKAHOE, NEW YORK

The sponsor of the offering plan to convert the captioned property to condominium ownership and retained our firm to prepare a report describing the construction of the property (the "Report"). Our firm visually inspected existing vacant lot and site preparation work, on 6/23/2003. I reviewed the building plans and specifications and reviewed the Report which was prepared by Franke, Gottsegen, Cox Architects, dated 11/19/2009, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

I am a registered architect in the State in which the property is located.

I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to this Report .

I have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

I certify that the Report:

- (i) sets forth in narrative form the description and/or physical condition of the entire property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I examined;
- (ii) in my professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description and/or physical condition of the property (the aspects of the property discussed in the addendum) as it will exist upon completion of construction, provided that renovation and/or construction is in accordance with the plans and specifications that I examined;
- (iii) does not omit any material fact;

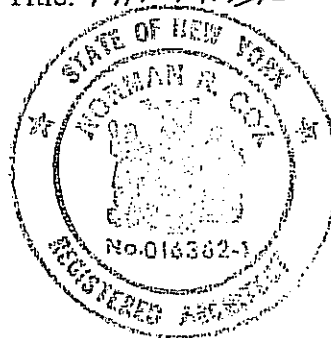
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (vii) does not contain any representation or statement which is false, where I:
  - (a) knew the truth;
  - (b) with reasonable effort could have known the truth;
  - (c) made no reasonable effort to ascertain the truth; or
  - (d) did not have knowledge concerning the representation or statement made.

I further certify that I am not owned or controlled by and have no beneficial interest in the sponsor and that my compensation for reviewing 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.

**FRANKE, GOTTSEGEN, COX ARCHITECTS**

By: 

Name: Norman Cox  
Title: *PARTNER*



Sworn to before me this  
*22nd* day of November, 2004



Notary Public

DEBRA L. PITKIN  
Notary Public - State of New York  
No. 01PI5063084  
Qualified in King County  
My Commission Expires Sept. 10, 2006

***PRIME LOCATIONS, INC.***

*733 Yonkers Avenue*

*Yonkers, New York*

*914-963-7400*

**CERTIFICATION OF EXPERT**

**ADEQUACY OF BUDGET**

Re: 120 VivaBene Condominium  
120 Main Street  
Tuckahoe, New York

The sponsor of the condominium offering plan for the captioned property retained my firm to review or prepare Schedule(s) B and B-1 containing projections of income and expenses for the first year of condominium operation. My experience in this field is as follows:

I have been involved with the management of over forty (40) residential properties in Westchester County. Prime Locations, Inc. has been involved with the management of each of these properties for a minimum period of two years. Prime Locations, Inc. was founded in 1988 and since that time its primary purpose has been to manage rental, cooperative and condominium buildings in New York metropolitan area.

I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to Schedule(s) B and B-1.

I have reviewed the Schedule(s) and investigated the facts set forth in the Schedule(s) and the facts underlying it with due diligence in order to form a basis for this certification. I have also relied on my experience in managing residential buildings.

I certify that the projections in Schedule(s) 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

I certify that the Schedule(s):

- (i) sets forth in detail the projected income and expenses for the first year of condominium operation;
- (ii) affords potential investors, purchasers and participants an adequate basis upon

which to found their judgment concerning the first year of condominium operation;

- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (vii) does not contain any representation or statement which is false, where I:
  - (a) knew the truth;
  - (b) with reasonable effort could have known the truth;
  - (c) made no reasonable effort to ascertain the truth; or
  - (d) did not have knowledge concerning the representation or statement made.

I further certify that I am not owned or controlled by the sponsor. I 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 or second year of condominium operation.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Prime Locations, Inc.



David J. Amster, Vice President

Sworn to before me  
this 6<sup>th</sup> day of December, 2004



Notary Public

ANTHONY T. SIMARI  
Notary Public, State of New York  
No. 02S16002629  
Qualified in New York County  
Commission Expires April 16, 2006

***PRIME LOCATIONS, INC.***

*733 Yonkers Avenue*

*Yonkers, New York*

*914-963-7400*

**CERTIFICATION OF EXPERT  
ADEQUACY OF BUDGET FOR COMMERCIAL UNIT(S)**

Re: 120 VivaBene Condominium  
120 Main Street  
Tuckahoe, New York

The sponsor of the condominium offering plan for the captioned property retained my firm to review Schedule(s) B and B-1 which include projections of common charges payable by the owner of the commercial unit(s) for the first year of condominium operation.

My experience in this field is as follows:

I have been involved with the management of over forty (40) residential properties in Westchester County. Prime Locations, Inc. has been involved with the management of each of these properties for a minimum period of two years. Prime Locations, Inc. was founded in 1988 and since that time its primary purpose has been to manage rental, cooperative and condominium buildings in New York metropolitan area.

I understand that I am responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the commercial unit(s) listed in Schedule(s) B and B-1.

I have reviewed the Schedule(s) as its impacts upon the commercial unit(s) and investigated the facts underlying it with due diligence in order to form a basis for this certification. I have also relied on my experience in managing residential buildings.

I certify that the projections in Schedule(s) B and B-1 for common charges payable by the owners of commercial unit(s) appear reasonable and adequate under existing circumstances to meet the anticipated operating expenses fairly attributable to such commercial unit(s) for the projected first year of condominium operation, and that the allocation of common charges attributable to the commercial unit(s) also reflects special or exclusive control of particular common areas.

I certify that the estimates in Schedule(s) B and B-1 for the common charges payable by the owner of the commercial unit(s):

- (i) sets forth in detail the projected income and expenses for the first year of condominium operation;

condominium operation;

- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the common charges payable by the owners of the commercial unit(s);
- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and
- (vii) does not contain any representation or statement which is false, where:
  - (a) knew the truth;
  - (b) with reasonable effort could have known the truth;
  - (c) made no reasonable effort to ascertain the truth; or
  - (d) did not have knowledge concerning the representation or statement made.

I further certify that I am not owned or controlled by the sponsor. I understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the common charges fairly attributable to the commercial unit(s) 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. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Prime Locations, Inc.



David J. Amster, Vice President

Sworn to before me  
this 1<sup>st</sup> day of December, 2004



ANTHONY T. SIMARI  
Notary Public, State of New York  
No. 02SI6002629  
Qualified in New York County  
Commission Expires April 16, 2006