

**PURCHASE AND SALE AGREEMENT**

**Between**

**WEST-PARK PRESBYTERIAN CHURCH OF NEW YORK CITY,  
a New York Religious Corporations Law corporation**

**and**

**ALCHEMY WEST 86<sup>th</sup> STREET LLC,  
a Delaware limited liability company**

**Premises:**

**165 West 86th Street, New York, New York**

**Block: 1217**

**Lot:1**

**March 3, 2022**

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**THIS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) made as of the 3<sup>rd</sup> day of March, 2022 (the “**Effective Date**”), between **WEST-PARK PRESBYTERIAN CHURCH OF NEW YORK CITY**, a New York religious corporations law corporation (the “**Seller**” or “**WPPC**”), having an address c/o West Park Administrative Commission c/o The Presbytery of New York City, 475 Riverside Drive, Suite 1270, New York, New York 10115, and **ALCHEMY WEST 86TH STREET LLC**, a Delaware limited liability company, (the “**Purchaser**” and together with the WPPC, a “**Party**” and collectively, the “**Parties**”), having an address at c/o Alchemy Properties Inc., 800 Third Avenue, 22<sup>nd</sup> Floor, New York, New York 10022.

**W I T N E S S E T H:**

**WHEREAS**, WPPC is the owner in fee of the land located in the City, County and State of New York known and numbered as 165 West 86th Street, New York, New York, designated as Lot 1 in Block 1217 on the Tax Map of the City, County and State of New York (the “**Tax Map**”), as such premises are more particularly described in Schedule A attached hereto (collectively, the “**Land**”), together with the building and improvements thereon (the “**Improvements**” and the Land and Improvements herein being referred to collectively as “**Premises**”);

**WHEREAS**, on or prior to the Closing Date (as defined in Section 8.2 hereof), WPPC intends to record a declaration of condominium (as may be amended from time to time in accordance with the terms hereof and the terms of the Development Agreement (as hereinafter defined) (the “**Declaration**”) and accompanying Floor Plans (as defined in the Declaration) (as the same may be amended from time to time in accordance with the terms hereof and the Development Agreement, the “**Condominium Plans**,” which together with the Declaration, are referred to herein as the “**Condominium Documents**”), all in accordance with and pursuant to the terms hereof and the Development Agreement and submit the Premises to a condominium form of ownership, which condominium formed thereby (the “**Condominium**”) shall initially contain, in accordance with the terms of this Agreement and the Development Agreement (i) the Community Space Unit, (ii) the Developer Unit, which Developer Unit is sometime referred to herein as the “**Purchaser Premises**”) and (iii) certain Common Elements;

**WHEREAS**, WPPC desires to sell, subject to the terms of this Agreement, the Purchaser Premises to Purchaser in accordance with the terms of this Agreement, and Purchaser desires to purchase the Purchaser Premises from WPPC; and

**WHEREAS**, in furtherance of the foregoing, upon the transfer of the Purchaser Premises from WPPC to Purchaser pursuant to this Agreement, WPPC, Purchaser and Developer will enter into, and record a memorandum of that certain Development Agreement in substantially the form attached hereto as Exhibit B (the “**Development Agreement**”), pursuant to which Developer shall perform the demolition of the existing Improvements and construct a new building in accordance with the terms of this Agreement, the Development Agreement and the Approved Plans and Specifications (as hereinafter defined) (the “**Project**”);

WHEREAS, promptly following the Substantial Completion of the WPPC Space Construction Work (as such term is defined in the Development Agreement), the Parties will amend and restate the Declaration (the “**A&R Declaration**”) and the Condominium Plans (the “**A&R Condominium Plans**,” and together with the A&R Declaration are referred to herein as the “**A&R Condominium Documents**”) in accordance with the terms of the Development Agreement to reflect as built conditions at the Premises, which A&R Condominium Documents will reflect a Condominium comprising the following condominium units and certain Common Elements as designed and constructed pursuant to this Agreement, the Development Agreement and the Approved Plans and Specifications: (a) the Community Space Unit (to be initially owned by WPPC); (b) one or more individual residential condominium units (the “**Residential Units**”) (to be initially owned by Purchaser); and (c) a retail unit (the “**Retail Unit**”) (to be initially owned by Purchaser).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the Parties covenant and agree as follows:

## **ARTICLE ONE**

### **DEFINITIONS**

For the purposes hereof, the following terms shall have the following meanings:

“**Access Agreement**” shall mean that certain Access Agreement dated as of March 30, 2021 between West Park Administrative Commission (“**WPAC**”), the governing body of Seller and Alchemy Properties Inc., a New York corporation and an Affiliate of Purchaser, as amended by that certain First Amendment to Access Agreement dated as of June 28, 2021 between WPAC and Alchemy Properties Inc. Seller and Purchaser hereby adopt the Access Agreement and the terms thereof are incorporated herein as if set forth at length, and shall survive so long as this Agreement is in effect.

“**Additional Deposit**” shall have the meaning set forth in Section 2.4.

“**Affiliate**” shall mean, as to any Person, any other Person that Controls, is Controlled by, or is under common Control with such Person.

“**Alchemy Alternate Principal**” shall mean Joel Breitkopf.

“**Anti-Money Laundering Laws**” shall have the meaning set forth in Section 10.5(h).

“**Appraiser**” shall mean BBG Real Estate Services, New York office, Eric Haims, or a replacement reasonably acceptable to both WPPC and Purchaser.

“**Apportionment Date**” shall have the meaning set forth in Section 19.1.

“**Approved Plans and Specifications**” shall have the meaning set forth in Section 6.5(b).

“**Asbestos**” shall mean asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable.

“**A&R Condominium Documents**” shall have the meaning set forth in the Recitals.

“**A&R Condominium Documents Effective Date**” shall have the meaning set forth in the Development Agreement.

“**A&R Condominium Plans**” shall have the meaning set forth in the Recitals.

“**A&R Declaration**” shall have the meaning set forth in the Recitals.

“**Book of Order**” shall mean Part II of the Constitution of the Presbyterian Church (U.S.A.).

“**Breach Notice**” shall have the meaning set forth in Section 10.8.

“**Breaching Party**” shall have the meaning set forth in Section 10.8.

“**Break-Up Fee**” shall have the meaning set forth in Schedule C.

“**Broker**” shall have the meaning set forth in Section 13.1.

“**Business Day**” shall mean every day other than Saturdays, Sundays, all days observed by the federal or New York State government as legal holidays and all days on which commercial banks in New York State are required by law to be closed. Any reference in this Agreement to a “day” or a number of “days” (other than references to a Business Day or Business Days) shall mean a calendar day or calendar days.

“**Casualty**” shall mean a fire or other casualty at the Premises.

“**City Register**” shall mean the Office of the City Register of the City of New York, New York County.

“**Claiming Party**” shall have the meaning set forth in Section 10.8.

“**Claiming Party Damages**” shall have the meaning set forth in Section 10.8.

“**Claims**” shall mean any demands, rights, causes of action, penalties, actions, judgments, suits, proceedings, claims, liabilities, costs, expenses (including reasonable out-of-pocket attorneys’ fees and disbursements whether a suit is instituted or not), damages (except for special, consequential, or punitive damages), losses, injuries and liens, whether known or unknown, liquidated or contingent.


“**Closing**” shall have the meaning set forth in Section 8.2.

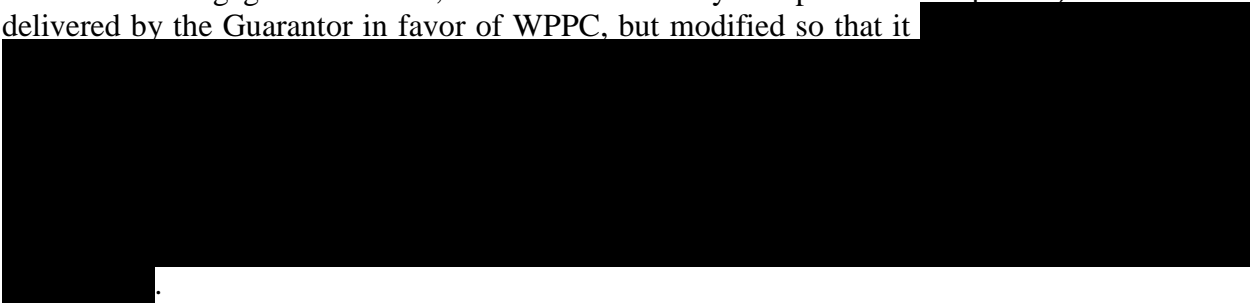
“**Cash Consideration**” shall have the meaning set forth in Section 2.2(a).

**“Closing Date”** shall have the meaning set forth in Section 8.2.

**“Common Elements”** shall have the meaning set forth in the Declaration and which will be set forth on the Condominium Plans.

**“Community Space Unit”** shall have the meaning set forth in the Condominium Documents, as may be amended from time to time in accordance with the terms of this Agreement and the Development Agreement, provided that on and after the A&R Condominium Documents Effective Date, such term shall have the meaning set forth in the A&R Condominium Documents. On the A&R Condominium Documents Effective Date the Community Space Unit (exclusive of any limited common elements) shall consist of approximately 10,084 square feet and shall otherwise have the dimensions, be in the configuration and satisfy the requirements set forth in the Development Agreement, all in accordance with this Agreement and the Development Agreement.

**“Completion Guaranty”** shall mean a guaranty of completion of the Community Space Unit in the same form as the guaranty of completion of the Project delivered to Mortgagee (or if there is no mortgage at that time, in a form reasonably acceptable to the parties) executed and delivered by the Guarantor in favor of WPPC, but modified so that it 



**“Condemnation Election Period”** shall have the meaning set forth in Section 12.2.

**“Condominium”** shall have the meaning set forth in the Recitals.

**“Condominium Applications”** shall have the meaning set forth in Section 5.3 hereof.

**“Condominium Bylaws”** shall have the meaning set forth in the Declaration.

**“Condominium Documents”** shall have the meaning set forth in the Recitals. For avoidance of doubt, on and after the A&R Condominium Documents Effective Date, Condominium Documents shall mean the A&R Condominium Documents.

**“Condominium Plans”** shall have the meaning set forth in the Recitals. For avoidance of doubt, on and after the A&R Condominium Documents Effective Date, Condominium Plans shall mean the A&R Condominium Plans.

**“Condominium Principles”** shall have the meaning set forth in Section 5.1 hereof.

**“Congregational and Board/AC Approval”** shall mean a majority vote of Qualified Voters present at a duly called Annual or Special Congregational Meeting of WPPC for which

Notice has been properly given and a Quorum is present, in accordance with the Amended and Restated By-Laws of WPPC and the Book of Order, followed by the approval of the Board of Trustees and/or the approval of WPAC, if and to the extent necessary.

**“Consideration”** shall mean the total consideration to be received by Seller for the sale of the Purchaser Premises, which shall consist of: (i) Thirty Three Million Dollars (\$33,000,000.00) in cash, subject to the reductions and adjustments set forth in Section 2.3 hereof, plus (ii) Final Completion of the WPPC Space Construction Work in accordance with this Agreement and the Development Agreement, plus (iii) if applicable, the amount (the **“Potential Construction Savings”**) by which

**“Construction Agreement”** shall mean one or more guaranteed maximum price contracts or at Purchaser’s election, any other form of “fixed price,” “lump sum” or “cost plus” contracts for the demolition and construction of all or a portion of the Project entered into by Purchaser with one or more construction managers.

**“Consultant”** shall mean any or all of WPPC’s Consultants or Purchaser’s Consultants, as applicable in context.

**“Control”** shall have the meaning set forth in the Development Agreement.

**“Cure Period”** shall have the meaning set forth in Section 10.8.

**“Declaration”** shall have the meaning set forth in the Recitals. For avoidance of doubt, on and after the A&R Condominium Documents Effective Date, Declaration shall mean the A&R Declaration.

**“Default”** shall mean (a) with respect to Purchaser, (i) Purchaser’s failure to satisfy its obligation to pay the Cash Consideration or the Additional Deposit or Purchaser’s failure to perform any of its other material obligations hereunder to be performed on the Closing Date, (ii) Purchaser’s failure to perform any of its monetary obligations hereunder (other than as set forth in clause (i) above) to be performed on or prior to the Closing Date, within the time period set forth herein, or if no period is specified, within fifteen (15) days after Purchaser’s receipt of written demand therefor, (iii) Purchaser’s failure to perform any of its other material obligations hereunder to be performed prior to the Closing Date, which failure continues for forty-five (45) days after Purchaser’s receipt of written notice of such default or (iv) any other event or circumstance expressly stated to constitute a Default by Purchaser pursuant to the terms of this Agreement which failure continues for forty-five (45) days after Purchaser’s receipt of written notice of such default, and (b) with respect to WPPC, (i) WPPC’s failure to perform any of its material obligations to be performed on the Closing Date, (ii) WPPC’s failure to perform any of its material obligations to be performed prior to the Closing Date, which failure continues for forty-five (45) days after Purchaser’s receipt of written notice of such default, or (iii) any other event or circumstance expressly stated to constitute a Default pursuant to the terms of this

Agreement, which failure continues for forty-five (45) days after WPPC's receipt of written notice of such default, it being understood and agreed by the Parties that each of the foregoing time periods set forth in clauses (a)(iii) – (iv) or clauses (b)(ii) – (iii) of this definition of "Default" shall toll on a day-for-day basis during the course of any Unavoidable Delay and may be extended for such time as is reasonably necessary to cure such non-monetary Default if such non-monetary Default is susceptible of cure, but cannot reasonably be cured within the applicable cure period; provided that such Party shall have commenced to cure such non-monetary Default during such cure period and thereafter diligently and expeditiously proceeds to cure the same, but in no event longer than one hundred twenty (120) days from the date the initial notice of default is given unless otherwise provided herein. For the avoidance of doubt, it shall not be a Default by WPPC in the event the representations and warranties contained in Sections 10.5(e), (j) and/or (k) hereof become untrue based on facts or circumstances arising after the date hereof that are not the result of a breach by WPPC of the terms of this Agreement. For purposes of clarification, the notice and cure periods set forth in this definition shall not apply to defaults under the Development Agreement, it being understood and agreed that the applicable notice and cure period, if any, for a default under the Development Agreement shall be set forth in the Development Agreement

**"Deposit"** shall have the meaning set forth in Section 2.4.

**"Design Change Request"** shall have the meaning set forth in Section 6.6(a).

**"Design Development Plans"** shall have the meaning set forth in Section 6.4(b).

**"Developer"** shall mean Initial Developer, and any Qualified Developer appointed in accordance with the terms of the Development Agreement.

**"Developer Unit"** shall have the meaning set forth in the Declaration and which will be set forth on the Condominium Plans, as each of the same may be amended from time to time in accordance with the terms hereof and the Development Agreement.

**"Development Agreement"** shall have the meaning set forth in the Recitals.

**"Development Expenses"** shall mean an amount not to exceed [REDACTED] in the aggregate (the **"Initial Cap"**), consisting of Purchaser's actual, documented (to WPPC's reasonable satisfaction) out-of-pocket expenses paid to the professionals set forth in Schedule B, attached hereto and made a part hereof solely with respect to costs incurred in seeking the LPC Approval for the Project (and excluding (i) any costs that would have been incurred if LPC Approval was not required for the Project, and (ii) any CSU Soft Costs) (**"Purchaser's LPC Costs"**), and in the event it takes WPPC over two (2) years from the Effective Date to obtain LPC Approval for the Project: (a) the cap on the Development Expenses shall be increased to an amount not to exceed [REDACTED], and (b) for purposes of calculating any payment by WPPC or credit to Purchaser (including under Section 2.3 hereof) with respect to Development Expenses, such payment or credit above the Initial Cap shall be equal to [REDACTED] of Purchaser's LPC Costs above the Initial Cap (i.e. if Purchaser's LPC Costs exceed

the Initial Cap by [REDACTED], then the amount of such excess to be used for the purpose of calculating the payment or credit shall be [REDACTED]).

“**DOB Expenses**” shall mean all expenses paid by Purchaser to or as directed by Seller at Seller’s request in connection with the final located at the Premises, which amount shall be credited against the Cash Consideration due at the Closing, however, in no event shall Purchaser be required to expend in excess of [REDACTED] Dollars in connection with the DOB Expenses. As of the date hereof Purchaser has not paid any DOB Expenses.

“**DOF**” shall have the meaning set forth in Section 5.3 hereof.

“**Effective Date**” shall have the meaning set forth in the Preamble.

“**Environmental Laws**” shall mean all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources or the Release or control of Hazardous Materials (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S. §§ 6901 et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f et seq.), Environmental Protection Agency regulations pertaining to Asbestos (including, without limitation, 40 C.F.R. Part 61, Subpart M, the United States Environmental Protection Agency Guidelines on Mold Remediation in Schools and Commercial Buildings, the United States Occupational Safety and Health Administration regulations pertaining to Asbestos including, without limitation, 29 C.F.R. Sections 1910.1001 and 1926.58), applicable New York State and New York City statutes and the rules and regulations promulgated pursuant thereto regulating the storage, use and disposal of Hazardous Materials, the New York City Department of Health Guidelines on Assessment and Remediation of Fungi in Indoor Environments and any state or local counterpart or equivalent of any of the foregoing, and any related federal, state or local transfer of ownership notification or approval statutes.

“**Escrow Agent**” shall have the meaning set forth in Section 2.4.

“**Exception**” shall have the meaning set forth in Section 4.2.

“**Existing Lease**” shall mean that certain Lease dated April 6, 2018 between Seller, as landlord, The Center at West Park, Inc., as tenant.

“**Existing Tenant**” shall mean The Center at West Park, Inc.

**“Failure to Cure Notice”** shall have the meaning set forth in Section 4.4.

**“Final Closing Statement”** shall have the meaning set forth in Section 19.9.

**“Final Completion of the WPPC Space Construction Work”** shall have the meaning ascribed to such term in the Development Agreement.

**“Final Completion Closing”** shall have the meaning ascribed to such term in the Development Agreement.

**“Financial Institution”** shall have the meaning set forth in Section 10.5(g).

**“Floor Area”** shall have the meaning defined in Section 12-10 of the Zoning Resolution.

**“Government Entity”** shall mean the United States, the State of New York, the City of New York and any other political subdivision or other instrumentality of any of the foregoing, together with any governmental or quasi-governmental body, board, bureau, agency, authority, department, court, commission or other legal entity of any of the foregoing having jurisdiction over WPPC, Purchaser, the Premises, the Project or any portion thereof.

**“Guarantor”** shall mean the Person delivering the guaranty of completion of the Project and non-recourse carve-out guaranty to the Mortgagee, or a replacement permitted pursuant to this Agreement and satisfying the net worth and liquidity requirements set forth in the completion guaranty or other loan document delivered to the Mortgagee.

**“Hardship Appeals Panel”** shall have the meaning set forth in Chapter 3021 of the New York City Charter.

**“Hazardous Materials”** shall mean (i) those substances that are now or may hereafter be included within the definitions of any one or more of the terms “hazardous materials,” “hazardous wastes,” “hazardous substances,” “industrial wastes,” and “toxic pollutants,” as such terms are defined under the Environmental Laws, or any of them, (ii) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof, (iii) natural gas, synthetic gas and any mixtures thereof, (iv) Asbestos, (v) PCBs or PCB-containing materials or fluids, (vi) radon, (vii) mold, (viii) any other hazardous or radioactive substance, material, pollutant, contaminant or waste, and (ix) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation.

**“Improvements”** shall have the meaning set forth in the Recitals.

**“Indemnity Agreement”** shall mean a non-recourse carve-out guaranty in the same form as the non-recourse carve-out guaranty delivered to Mortgagee (or if there is no mortgage at that time, in a form reasonably acceptable to the parties) executed and delivered by the Guarantor in favor of WPPC, but modified so that it references the transactions contemplated herein and in the Development Agreement instead of the loan, and also to include an indemnity for any liens against the Community Space Unit arising through Purchaser or Developer, and transfers in violation of this Agreement or the Development Agreement, among other matters.

**“In-Kind Consideration”** shall have the meaning set forth in Section 2.2(b).

**“Initial Deposit”** shall have the meaning set forth in Section 2.4.

**“Initial Developer”** shall mean 165 West 86th Street Developer LLC, a Delaware limited liability company and an Affiliate of Purchaser.

**“Institutional Lender”** shall mean a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a pension, welfare or retirement fund or plan, an accredited college or university, an insurance company organized and existing under the laws of the United States or any state thereof, a real estate investment trust existing in compliance with Sections 856 through 860 of the Internal Revenue Code of 1986, as amended, an investment bank, trust company, commercial credit corporation, advisory fund, rental fund, a governmental entity or plan, an investment company, money management firm, or a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended; a religious, educational or eleemosynary institution or foundation; any trustee holding a loan in a publicly traded securitization, a trustee or issuer of collateralized mortgage obligations, a loan conduit, or other similar investment entity and any other entity then in the business of making loans secured by mortgages on real property, or any combination of thereof; provided, however, that each of the above entities shall qualify as within the provisions of this definition only if it is not a Prohibited Person and has, at the time of making its loan to Purchaser or at the time of such entity’s acquisition of a loan made to Developer, a net worth of not less than Two Hundred Million Dollars (\$200,000,000) or assets of not less than Two Billion Dollars (\$2,000,000,000).

**“Land”** shall have the meaning set forth in the Recitals.

**“Landmarks Law”** shall mean Sections 3020 and 3021 of the New York City Charter and Title 25 Chapter 3 of the New York City Administrative Code.

**“Law”** or **“Laws”** shall mean any covenants, conditions, restrictions or agreements, site plan approvals, zoning or subdivision regulations, urban redevelopment plans, the laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions or requirements of any governmental entity governing or regulating the use and operation, or otherwise applicable to the Premises.

**“Leases”** shall mean all leases, or other written or oral agreements or arrangements heretofore or hereafter entered into by WPPC granting occupancy of the Premises, or any portions thereof, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions and other rights and estates appurtenant thereunder.

**“Lien”** shall mean any mortgage, deed of trust, lien (statutory or otherwise), *lis pendens*, pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, in each case recorded against all or any part of the Premises, including any conditional sale or other title retention agreement, any financing lease having substantially the

same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

“**LPC**” shall mean the New York City Landmarks Preservation Commission.

“**LPC Approval**” shall mean the issuance of a Notice to Proceed or a written permit by LPC and/or the Hardship Appeals Panel that allows for the full demolition of the existing Improvements and the construction of approximately 101,483 zoning square feet of Floor Area resulting in a project consisting of approximately 96,399 zoning square feet of residential Floor Area, approximately 1,589 zoning square feet of retail Floor Area, and approximately 3,655 zoning square feet of community facility Floor Area. In the event that the landmarks designation of the Premises has been rescinded, LPC Approval shall be deemed to be satisfied by the written permit permitting demolition by the New York City Department of Buildings.

“**Material Portion**” shall have the meaning set forth in Section 12.2.

“**Memorandum of Development Agreement**” shall have the meaning set forth in Section 16.3(c).

“**Mezzanine Lender**” shall mean an Institutional Lender, and any other entity then regularly in the business of making mezzanine loans secured by the equity interests in the owner of real estate, or any combination of thereof, and not regularly in the business, whether itself or an affiliate, of owning or developing real estate; provided, however, that each of the above entities shall qualify as within the provisions of this definition only if it is not a Prohibited Person and has, at the time of making its loan to Purchaser or at the time of such entity's acquisition of a loan made to Developer, a net worth of not less than [REDACTED].

“**Mezzanine Loan**” shall mean financing secured by the equity interests in Purchaser (and not by a lien on Developer's interest in the Development Agreement).

“**Milestone Schedule**” shall have the meaning set forth in Section 8.1.

“**Mortgage**” shall mean any mortgage or trust indenture which is a Lien on Purchaser's interest in the Purchaser Premises, as the same may be renewed, modified, extended, consolidated and coordinated from time to time; it being understood that in no event, except as expressly provided in Section 18.2(a) below, shall Purchaser be permitted to encumber the Community Space Unit with any mortgage, trust indenture or other Lien.

“**Mortgagee**” shall mean the holder of a Mortgage which is an Institutional Lender.

“**New Closing Notice**” shall have the meaning set forth in Section 4.6.

“**Notices**” shall have the meaning set forth in Section 17.1.

“**NPCL**” shall have the meaning set forth in Section 10.4(a).

“**NYS Law Department**” shall have the meaning set forth in Section 5.2 hereof.

**“Objection Deadline”** shall have the meaning set forth in Section 4.2.

**“OFAC”** shall have the meaning set forth in Section 10.5(g).

**“Outside Closing Date”** shall have the meaning set forth in Section 8.2.

**“Party”** and **“Parties”** shall have the meanings set forth in the Preamble.

**“Patriot Act”** shall have the meaning set forth in Section 10.5(h).

**“PCBs”** shall mean polychlorinated biphenyl.

**“Permitted Encumbrances”** shall have the meaning set forth in Section 3.1.

**“Person”** shall mean an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

**“Pre-Arbitration Period”** shall have the meaning set forth in Section 33.1.

**“Preliminary Closing Statement”** shall have the meaning set forth in Section 19.9.

**“Premises”** shall have the meaning set forth in the Recitals.

**“Presbytery Approval”** shall mean a majority vote of the members present at a duly called meeting of the Commission on Mission, Budget & Corporate Responsibility (Board of Trustees) of the Presbytery of New York City, as confirmed by a vote of the Presbytery of New York City in accordance with the Book of Order.

**“Presbytery Loans”** shall mean any existing or future loans made by the Presbytery of New York City to WPPC, not to exceed [REDACTED] in the aggregate.

**“Prohibited Person”** shall mean:

(a) any Person that (i) has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or (ii) directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure;

(b) any government, or any Person that is directly or indirectly controlled by a government, that is in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or

indirectly, is controlled (rather than only regulated) by a government that is, subject to the regulations or controls thereof;

(c) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended; and

(d) any Person that is an Affiliate of, or with respect to Purchaser and Developer only, any of the direct or indirect partners, members, principals or controlling equity investors in which (excluding security holders in any publicly-traded corporation, trust or other entity), irrespective of the size of their equity ownership interest, are Affiliates of, any nation, organization or group adjudicated in violation, or under indictment for violation, of or under any applicable anti-money laundering and anti-terrorist laws, regulations, rules, executive orders and government guidance (including, without limitation, the reporting, record keeping and compliance requirements of the Bank Secrecy Act, as amended by The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, Title III of the USA PATRIOT Act, and other authorizing statutes, executive orders and regulations administered by the Office of Foreign Assets Control of the U.S. Department of Treasury), and related Securities and Exchange Commission, self-regulatory organization or other agency rules and regulations.

**“Project”** shall have the meaning set forth in the Recitals.

**“Project Architect”** shall mean (a) FX Collaborative Architects LLP, and (b) any replacement architect reasonably acceptable to WPPC engaged by Purchaser in accordance with the terms of this Agreement.

**“Property Taxes”** shall have the meaning set forth in Section 3.1(b).

**“Purchaser”** shall have the meaning set forth in the Recitals.

**“Purchaser Construction Drawings”** shall have the meaning set forth in Section 6.5(a).

**“Purchaser Design Development Plans”** shall have the meaning set forth in Section 6.4(a).

**“Purchaser Party”** shall have the meaning set forth in Section 10.6(f).

**“Purchaser Permitted Parties”** shall mean the Purchaser Principal, Joel Breitkopf, Alan Gilbert, and Edward Friedman, their spouses, siblings or issue, trusts for the benefit of any of the foregoing, and the executors, estates, heirs or legal guardians of any of the foregoing.

**“Purchaser Principal”** shall mean Kenneth S. Horn.

**“Purchaser Related Parties”** shall mean Purchaser and its disclosed or undisclosed, direct and indirect, shareholders, officers, directors, trustees, partners, principals, members,

employees, agents, Affiliates, representatives, consultants, accountants, contractors and attorneys or other advisors, and any successors or assigns of any of the foregoing.

**“Purchaser Schematic Plans”** shall have the meaning set forth in Section 6.3(a).

**“Purchaser’s Closing Conditions”** shall have the meaning set forth in Section 9.2.

**“Purchaser’s Consultants”** shall mean any or all of the architects (including the Project Architect), construction managers, contractors, engineers, consultants or advisors, and/or any of their respective subconsultants, engaged by or on behalf of Purchaser with respect to the development and construction of the Project.

**“Purchaser’s Costs”** shall mean any and all reasonable out-of-pocket costs incurred by Purchaser in connection with Purchaser’s analysis of Premises, this Agreement, any other document or agreement contemplated by this Agreement, and the transactions contemplated by this Agreement, including, without limitation, (i) the Development Expenses; (ii) title and violations searches and survey costs; (iii) the actual legal fees and expenses incurred by Purchaser in connection with its negotiation of this Agreement and all other documents or agreements contemplated by this Agreement; (iv) any and all architectural and engineering fees and costs in connection with this Agreement and Purchaser’s anticipated development of the Premises; and (iv) fees owed by Purchaser to any prospective lender utilized by Purchaser. Purchaser’s Costs shall not include lost profits or any other consequential, punitive or special damages.

**“Purchaser’s Demolition Plans”** shall mean the plans prepared by the engineer for the demolition contractor for demolition of the Improvements located on the Premises.

**“Purchaser’s Knowledge”** shall mean and refer solely to facts within the actual knowledge of any of Kenneth S. Horn, Joel Breikopf, Blake Goodman and/or Benjamin Charles, and shall not be construed to refer to the knowledge of any other employee, officer, director, member, manager, direct or indirect owner, Affiliate or agent of Purchaser or imply any obligation to conduct an independent inquiry of facts; provided, however, in no event shall the foregoing impose any personal liability on the aforementioned individuals.

**“Purchaser’s Title Election Notice”** shall have the meaning set forth in Section 4.4.

**“Purchaser’s Title Policy”** shall have the meaning set forth in Section 9.2(h).

**“Qualified Developer”** shall have the meaning ascribed to such term in the Development Agreement.

**“Residential Units”** shall have the meaning set forth in the Recitals.

**“Retail Unit”** shall have the meaning set forth in the Recitals.

**“RCL”** shall have the meaning set forth in Section 10.4(a).

“**Release**” shall mean any release, spill, leak, discharge, presence of, abandonment, disposal, pumping, pouring, emitting, emptying, injecting, leaching, dumping, depositing, dispersing, allowing to escape or migrate into or otherwise enter the environment (including ambient air, surface water, groundwater, wetlands, land, surface, and subsurface strata or within any building, structure, facility or fixture).

“**Review Submission Date**” shall have the meaning set forth in Section 6.1(b).

“**Scheduled Closing Date**” shall have the meaning set forth in Section 8.2.

“**Specially Designated Nationals and Blocked Persons**” shall have the meaning set forth in Section 10.5(g).

“**Statement of Changes**” shall have the meaning set forth in Section 6.6(a).

“**Supreme Court Approval**” shall have the meaning set forth in Section 10.4(a).

“**Supreme Court Petition**” shall have the meaning set forth in Section 10.4(a).

“**Supreme Court Order**” shall have the meaning set forth in Section 10.4(a).

“**Survival Period**” shall have the meaning set forth in Section 10.8.

“**Surviving Representations**” shall have the meaning set forth in Section 10.8.

“**Taking**” shall have the meaning set forth in Section 12.1.

“**Tax Map**” shall have the meaning set forth in the Recitals.

“**Tenants**” shall mean collectively, tenants, licensees, Persons in possession and other Persons with any rights to occupy all or any portion of the Premises, in each case pursuant to a Lease.

“**Tenant Expenses**” shall mean all expenses paid by Purchaser to Seller at Seller’s written request to terminate the Existing Lease and cause the Existing Tenant to vacate the Premises, which amount shall be credited against the Cash Consideration due at the Closing.

“**Term**” shall mean the period from the Effective Date through the Closing Date.

“**Termination of Memorandum of Development Agreement**” shall have the meaning set forth in Section 16.3(c).

“**Title Company**” shall mean First American Title Insurance Company.

“**Title Cure Period**” shall have the meaning set forth in Section 4.3.

“**Title Objections**” shall have the meaning set forth in Section 4.2.

“**Title Objection Notice**” shall have the meaning set forth in Section 4.2.

**“Title Report”** shall have the meaning set forth in Section 4.1.

**“Transaction Documents”** shall mean this Agreement, the Development Agreement, the Completion Guaranty, the Indemnity Agreement, all documents executed in connection with any Mortgage, all documents executed in connection with any Mezzanine Loan (if any), and any and all documents, instruments, affidavits, and other agreements executed by WPPC, Purchaser and/or Developer in connection with the transactions contemplated by this Agreement, the Development Agreement, the Completion Guaranty, the Indemnity Agreement, the documents executed in connection with any Mortgage, and the documents executed in connection with any Mezzanine Loan.

**“Transfer Taxes”** shall have the meaning set forth in Section 15.1.

**“Transfer Tax Laws”** has the meaning set forth in Section 15.1.

**“Unavoidable Delay”** shall mean any actual delays resulting from acts, events or conditions beyond the reasonable control of Purchaser or Developer, including, without limitation: (i) actions or inactions taken by WPPC in violation of this Agreement, (ii) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the continuation of construction of the Project), (iii) labor disputes (including strikes, lockouts not caused by Purchaser or Developer, slowdowns and similar labor problems), (iv) systemic shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute at a comparable cost is readily available), (v) acts of God (including earthquakes, floods and inordinately severe weather conditions), (vi) enemy action (including a terrorist act or acts), civil disturbance or commotion, (vii) inability to obtain labor, materials or permits due to extraordinary governmental restrictions, (viii) action or inaction by any Government Entity that is on a city-wide basis and is not particular to Purchaser or Developer, (ix) delay caused by or arising out of any legal action or lawsuits, including, but not limited an Article 78 Proceeding challenging the decision of LPC or other governmental entity, any action commenced by a neighborhood association, or a neighbor of the Premises, (x) fire or other casualty, (xi) delay caused by or arising out of action taken by any politician or other political group delaying Purchaser’s ability to comply with its obligations hereunder or under the Development Agreement or (xii) delay caused by a pandemic or other emergency similar in nature to the current COVID-19 pandemic. Notwithstanding anything to the contrary set forth herein, any claim by Purchaser with respect to any delay caused by Unavoidable Delay or the wrongful acts or omissions of WPPC shall not be taken into account unless Purchaser or Developer has notified WPPC thereof in writing within thirty (30) days after the first day that Purchaser or Developer has notice of such delay caused by such Unavoidable Delay or such wrongful acts or omissions of WPPC. If Purchaser or Developer fails to notify WPPC of the occurrence of a delay caused by Unavoidable Delay or the wrongful acts or omissions of WPPC within such period of thirty (30) days, then the period of excused delay caused by such Unavoidable Delay or such wrongful acts or omissions of WPPC shall be deemed to have commenced on the date on which notice thereof is delivered to WPPC (unless such Unavoidable Delay or delays caused by such wrongful acts or omissions of WPPC ends prior to the delivery of such notice, in which case such Unavoidable Delay or such delays caused by the wrongful acts or omissions of WPPC shall be deemed to have caused no delay). Under no circumstances

shall (i) the non-payment of money or a failure attributable to a lack of funds or a delay due to Purchaser's or Developer's financial condition or inability to obtain financing be deemed to be (or to have caused) an event of Unavoidable Delay, (ii) the breach of the Transaction Documents by Purchaser or Developer be deemed to be (or to have caused) an event of Unavoidable Delay, (iii) the gross negligence or willful misconduct of Purchaser or Developer or any of their respect employees, agents or contractors, or (iv) the failure of WPPC to consent to or approve anything for which WPPC's consent or approval is required herein or in the Development Agreement, constitute an event of Unavoidable Delay. Purchaser and Developer shall use diligent efforts to minimize any Unavoidable Delay. In the cases where Unavoidable Delay is used for the benefit of WPPC, references hereinabove to Purchaser and/or Developer shall be deemed to mean WPPC and references to WPPC shall be deemed to mean Purchaser and/or Developer, as the case may be.

**“Unit”** and **“Units”** shall mean each of the individual condominium units to be included in the Condominium, and will initially include the Community Space Unit and the Developer Unit, provided that after the A&R Condominium Documents Effective Date, the Units shall include the Community Space Unit, the Residential Unit(s) and the Retail Unit. As of the date hereof, the general locations of the Community Space Unit and Developer Unit are depicted on Exhibit F annexed hereto, but legal descriptions sufficient to record the Declaration and create the two Units will be finalized by the Parties by Closing.

**“U.S. Person”** shall have the meaning set forth in Section 10.5(g).

**“Utilities”** shall have the meaning set forth in Section 19.8.

**“Violations”** shall have the meaning set forth in Section 4.7.

**“WPPC”** shall have the meaning set forth in the Recitals.

**“WPPC Approval Components”** shall mean the Community Space Unit and the items set forth in the Community Space Unit Specifications and Conceptual Plans, including, without limitation: (a) the exterior façade of the Community Space Unit (including, without limitation, the glass used thereon) and the transition thereof into the balance of the building adjoining such façade, (b) the specifications for the Community Space Unit, (c) any signage or lighting on the exterior of the Community Space Unit, (d) the location of egress and ingress points, circulation to the Community Space Unit within the Common Elements and loading docks, (e) any shared systems, common areas, coordinated elements, or penetrations into the Community Space Unit, and (f) any other matters affecting access to or operating costs (other than to a de minimis extent) or use, design or value of the Community Space Unit or limiting the use of the Community Space Unit.

**“WPPC Expenses”** shall mean the actual fees and expenses, excluding Development Expenses, DOB Expenses and Tenant Expenses, of architects, engineers, attorneys and/or other expenses incurred by WPPC in connection with the negotiation of the Transaction Documents, the design of the Community Space Unit and the negotiation and consummation of the transactions contemplated herein and in the other Transaction Documents, and otherwise in connection with the transactions contemplated by this Agreement, but Purchaser's obligation to

pay the foregoing pursuant to this Agreement shall not exceed [REDACTED] [REDACTED] (as increased as set forth below, the “**WPPC Expense Cap**”) without the prior written consent of Purchaser; provided, however, that the WPPC Expense Cap shall increase by [REDACTED] following Supreme Court Approval and such increase shall apply with respect to all WPPC Expenses regardless of whether theretofore or thereafter incurred.

“**WPPC Governing Body**” shall mean the West-Park Administrative Commission, established by the Presbytery of New York City on December 1, 2020, and granted “original jurisdiction” for WPPC in accordance with G-3.0303 of the Book of Order.

“**WPPC Governing Documents**” shall mean any and all documents governing the management and operation of WPPC and the WPPC Governing Body, including, without limitation (i) the Certificate of Incorporation of WPPC recorded in the New York County Clerk’s Office, and (ii) the Amended and Restated Bylaws of WPPC adopted on September 12, 2021.

“**WPPC’s Owner’s Rep**” shall mean the exclusive representative of WPPC with whom Purchaser and Developer shall coordinate in connection with the design, development and construction of the Community Space Unit and the Project. The current WPPC’s Owner’s Rep is Gardiner and Theobald.

“**WPPC Related Parties**” shall mean WPPC and its direct and indirect, shareholders, members, congregants, officers, directors, clergy, congregants, trustees, board members, administrative commissions, partners, principals, members, employees, agents, Affiliates, representatives, consultants, accountants, contractors and attorneys or other advisors, and any successors or assigns of any of the foregoing.

“**WPPC Response Period**” shall have the meaning set forth in Section 6.6.

“**WPPC’s Closing Conditions**” shall have the meaning set forth in Section 9.1.

“**WPPC’s Consultants**” shall mean any architects, owners representatives, engineers, consultants, or advisors engaged by or on behalf of WPPC from time to time with respect to the development and construction of the Project; provided, however, that WPPC’s Consultants shall not include Façade MD or Krypton.

“**WPPC’s Knowledge**” shall mean and refer solely to facts within the actual knowledge of Roger Leaf and shall not be construed to refer to the knowledge of any other employee, officer, director, member, manager, direct or indirect owner, Affiliate or agent of WPPC or imply any obligation to conduct an independent inquiry of facts; provided, however, in no event shall the foregoing impose any personal liability on the aforementioned individual.

“**Zoning Resolution**” shall mean the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time.

## **ARTICLE TWO**

### **PURCHASE AND SALE; CONSIDERATION; DEPOSIT**

2.1 Purchase and Sale. WPPC shall sell, assign and convey to Purchaser, and Purchaser shall purchase and assume from WPPC, subject to the terms and conditions of this Agreement, all of WPPC's right, title and interest in and to the Purchaser Premises.

2.2 The Consideration. The Consideration shall consist of the following:

(a) A fixed cash purchase price of Thirty-Three Million and 00/100 Dollars (\$33,000,000.00) (the "**Cash Consideration**") to be paid at Closing, subject to the reductions and adjustments set forth in Section 2.3 below;

(b) Final Completion of the WPPC Space Construction Work pursuant to the terms of this Agreement and the Development Agreement (the "**In-Kind Consideration**");

(c) the Potential Construction Savings; and

(d) the Back End Participation.

2.3 Reductions and Increases to the Cash Consideration. The Cash Consideration shall be reduced by each of following at Closing (the following, collectively, the "**Cash Consideration Deducts**"): (i) the unreimbursed Tenant Expenses; (ii) the unreimbursed WPPC Expenses paid by Purchaser, (iii) the unreimbursed Development Expenses, and (iv) the unreimbursed DOB Expenses.

2.4 Deposit. No later than two (2) Business Days following the execution of this Agreement by the Parties and delivery of same to counsel for the Parties, Purchaser shall deliver to Title Company, as escrow agent (the "**Escrow Agent**"), via wire transfer in immediately available federal funds, the amount of Four Hundred Thousand and 00/100 Dollars (\$400,000.00) (the "**Initial Deposit**") to the escrow account of Escrow Agent in accordance with the wire instructions set forth on Schedule 2.4 attached hereto. If Purchaser shall fail to timely pay the Initial Deposit then this Agreement shall be null and void *ab initio* and WPPC shall be entitled to retain all sums previously paid by Purchaser. Within seven (7) Business Days after the later of (i) Congregational and Board/AC Approval, (ii) Presbytery Approval, (iii) Supreme Court Approval and (iv) LPC Approval, Purchaser shall pay an additional deposit to Escrow Agent in an amount equal to \$3,682,350, less the Development Expenses, DOB Expenses and any Tenant Expenses paid by Purchaser to date, but in no event shall such additional deposit be less than One Million and 00/100 Dollars (\$1,000,000.00) (the "**Additional Deposit**" and together with the Initial Deposit, and interest thereon, the "**Deposit**"). The Initial Deposit, Additional Deposit and all other sums payable by Purchaser under this Agreement shall be non-refundable, except as otherwise expressly set forth in this Agreement.

2.5 Escrow Agent Provisions for the Deposit. Upon receipt by Escrow Agent of any portion of the Deposit, Escrow Agent shall cause the same to be deposited into an interest bearing account at First American Trust-Santa Ana or another nationally recognized bank selected by Escrow Agent, it being agreed that Escrow Agent shall not be liable for (x) any loss of such investment (unless due to Escrow Agent's gross negligence, willful misconduct or breach of this Agreement) or (y) any failure to attain a favorable rate of return on such investment. Subject to the further terms of this Section 2.5, Escrow Agent shall deliver the Deposit, to WPPC or to Purchaser, as the case may be, under the following conditions:

(a) The Deposit, or so much thereof as may then be held by Escrow Agent, shall be delivered to WPPC upon the Closing (and Purchaser shall be credited against the Cash Consideration for the amount of the Deposit and any interest accrued thereon) upon receipt by Escrow Agent of a statement executed by WPPC and Purchaser authorizing the Deposit to be released; or

(b) The Deposit, or so much thereof as may then be held by Escrow Agent, shall be delivered to WPPC following receipt by Escrow Agent of written demand therefor from WPPC stating that WPPC is entitled to the Deposit in accordance with this Agreement, and specifying the Section of this Agreement which entitles WPPC to the Deposit, provided Purchaser shall not have given written notice of objection in accordance with the provisions set forth below; or

(c) The Deposit (less any unpaid WPPC Expenses, subject to the WPPC Expense Cap, which shall first be paid to WPPC from the Deposit, to the extent expressly set forth herein) shall be delivered to Purchaser following receipt by Escrow Agent of written demand therefor from Purchaser stating that Purchaser is entitled to the Deposit in accordance with this Agreement, and specifying the Section of this Agreement which entitles Purchaser to the return of the Deposit, provided WPPC shall not have given written notice of objection in accordance with the provisions set forth below; or

(d) The Deposit, or so much thereof as may then be held by Escrow Agent, shall be delivered to Purchaser or WPPC as directed by written instructions of both WPPC and Purchaser.

(e) Upon the receipt of a written demand for the Deposit by WPPC or Purchaser, pursuant to clause (b) or (c) of this Section 2.5, Escrow Agent shall promptly give notice thereof (including a copy of such demand) to the other Party. The other Party shall have the right to object to the delivery of the Deposit, by giving written notice of such objection to Escrow Agent at any time within ten (10) Business Days after such Party's receipt of notice from Escrow Agent, but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice of objection, Escrow Agent shall promptly give a copy of such notice of objection to the Party who filed the written demand. If Escrow Agent shall have timely received such notice of objection, Escrow Agent shall continue to hold the Deposit, and the interest accrued thereon, until (x) Escrow Agent receives joint written notice from WPPC and Purchaser directing the disbursement of the Deposit, in which case Escrow Agent shall then disburse the Deposit, and the interest accrued thereon, in accordance with said direction, or (y) there shall have been served upon Escrow Agent an order or judgment which is final and non-appealable in nature duly entered in a court of competent jurisdiction setting forth the manner in which the Deposit is to be paid out and delivered, in which event Escrow Agent shall deliver the balance of the Deposit as set forth in such order or judgment, or (z) Escrow Agent delivers to a court of competent jurisdiction the Deposit in an action for interpleader in order to terminate Escrow Agent's duties as Escrow Agent, the costs thereof to be borne by whichever of WPPC or Purchaser is the losing party in such interpleader action, as determined by a final non-appealable order of such court.

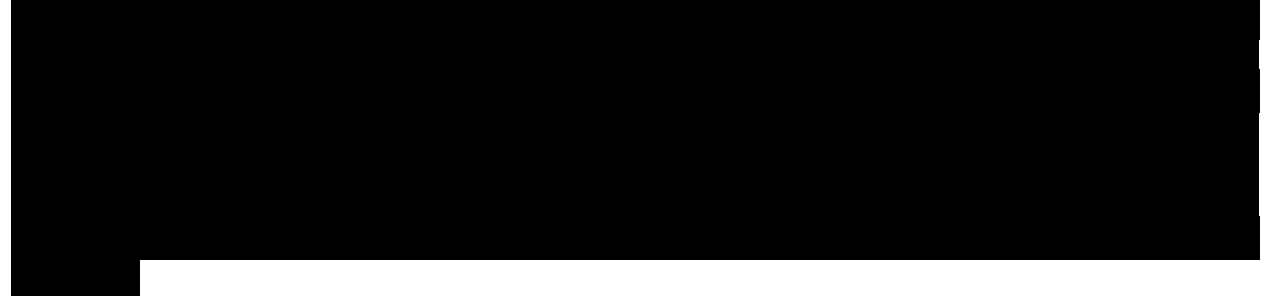
2.6 Duties of Escrow Agent. Escrow Agent may rely and act upon any instrument or other writing reasonably believed by Escrow Agent to be genuine and purporting to be signed and presented by any Person or Persons purporting to have authority to act on behalf of WPPC or Purchaser, as the case may be, and shall not be liable in connection with the performance of any duties imposed upon Escrow Agent by the provisions of this Agreement, except for Escrow Agent's own gross negligence, willful misconduct or breach of this Agreement and except that Escrow Agent shall confirm all wire instructions telephonically. Escrow Agent shall have no duties or responsibilities except those set forth herein. Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless the same is in writing and signed by Purchaser and WPPC, and if Escrow Agent's duties hereunder are affected, unless Escrow Agent shall have given prior written consent thereto. Escrow Agent shall be reimbursed by WPPC and Purchaser for any actual and reasonable expenses (including reasonable legal fees and disbursements of outside counsel), including all of Escrow Agent's reasonable fees and expenses with respect to any interpleader action incurred in connection with this Agreement, and such liability shall be joint and several; provided, however, that as between Purchaser and WPPC, the prevailing Party in any dispute over the Deposit shall be entitled to reimbursement by the losing Party of any such expenses paid to Escrow Agent. In the event that Escrow Agent shall be uncertain as to Escrow Agent's duties or rights hereunder, or shall receive instructions from Purchaser or WPPC that in Escrow Agent's reasonable opinion, are in conflict with any of the provisions hereof, Escrow Agent shall be entitled to hold the Deposit, and the interest accrued thereon, and may decline to take any other action. After delivery of the Deposit, and the interest accrued thereon, in accordance herewith, Escrow Agent shall have no further liability or obligation of any kind whatsoever.

2.7 Escrow Agent Resignation. Escrow Agent shall have the right at any time to resign upon at least ten (10) Business Days' prior notice to WPPC and Purchaser. WPPC and Purchaser shall jointly select a successor Escrow Agent and shall notify Escrow Agent of the name and address of such successor Escrow Agent within ten (10) Business Days after receipt of such notice by Escrow Agent of its intention to resign. If Escrow Agent has not received written notice of the name and address of such successor Escrow Agent within such period, Escrow Agent shall have the right to select on behalf of WPPC and Purchaser a bank or trust company licensed to do business in the State of New York and having a branch located in New York County, which regularly provides escrow services of the nature described in this Agreement, to act as successor Escrow Agent hereunder. At any time after such ten (10) Business Day period, Escrow Agent shall have the right to deliver the Deposit, and the interest accrued thereon, to any successor Escrow Agent selected hereunder, provided such successor Escrow Agent shall execute and deliver to WPPC and Purchaser an assumption agreement whereby it assumes all of Escrow Agent's obligations hereunder. Upon the delivery of all such amounts and such assumption agreement, the successor Escrow Agent shall become the Escrow Agent for all purposes hereunder and shall have all of the rights and obligations of the Escrow Agent hereunder, and the resigning Escrow Agent shall have no further responsibilities or obligations hereunder.

2.8 Taxpayer Identification Number. Except as otherwise provided in Section 2.5, the interest comprising a portion Deposit shall be paid to the Party entitled to receive the Deposit as provided in this Agreement. The Party entitled to receive the interest shall pay any income taxes thereon. Purchaser's taxpayer identification number is 88-0848827. WPPC's taxpayer

identification number is 13-1623872. Escrow Agent is hereby designated as the Reporting Person for filing a 1099-S.

2.9 Within ten (10) Business Days after written demand therefor by WPPC from time to time, Purchaser shall pay WPPC for WPPC Expenses incurred, up to the WPPC Expense Cap.



2.10 Notwithstanding anything to the contrary contained herein, in the event that the Project (i) includes a substantial subterranean space (such as a parking garage), or (ii) utilizes more than 101,483 zoning square feet of Floor Area (other than by acquisition by Purchaser of additional Floor Area in a private arms-length transaction from a bona fide third party seller), then there will be an increase to the Consideration to be agreed upon between WPPC and Purchaser, to be paid at Closing, or if the foregoing is not known by Closing, prior to the commencement of any demolition or construction.

2.11 Survival. The provisions of Article 2 shall survive the Closing or termination of this Agreement.

### **ARTICLE THREE**

#### **STATUS OF TITLE**

3.1 Subject to the terms and provisions of this Agreement and the Development Agreement, WPPC's interest in the Purchaser Premises shall be sold, assigned and conveyed by WPPC to Purchaser, and Purchaser shall purchase, assume and accept the same, subject to the following (collectively, the "**Permitted Encumbrances**"):

(a) any other title exceptions approved or waived by Purchaser in writing as provided in this Agreement;

(b) real estate taxes, sewer rents and taxes, water rates and charges, vault charges and taxes, business improvement district taxes and assessments and any other governmental taxes, charges or assessments levied or assessed against the Purchaser Premises (collectively, "**Property Taxes**") which are a lien, but not yet due and payable, subject to apportionment in accordance with the terms of this Agreement;

(c) any laws, rules, regulations, statutes, ordinances, orders or other Laws affecting the Purchaser Premises, including, without limitation, all zoning, land use, building and environmental laws, rules, regulations, statutes, ordinances, orders or other Laws, including landmark designations and all zoning variances and special exceptions, if any;

(d) all utility company rights, covenants, restrictions, and easements existing as of the date hereof relating to electricity, water, steam, gas, telephone, sewer or other service or the right to use and maintain poles, lines, wires, cables, pipes, boxes and other fixtures and facilities in, over, under and upon the Purchaser Premises existing as of the date hereof, provided that none of such rights, covenants, restrictions, easements and franchises impose any regular recurring monetary obligation on the owner of the Purchaser Premises or render title to the Purchaser Premises uninsurable at regular rates without the payment of additional premiums;

(e) all Violations now or hereafter issued or noted;

(f) any installment not yet due and payable of assessments imposed after the date hereof and affecting the Purchaser Premises or any portion thereof;

(g) possible encroachments and/or projections of stoop areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, satellite dishes, protective netting, sidewalk sheds, ledges, fences, coping walls (including retaining walls and yard walls), air conditioners and the like, if any, on, under, or above any street or highway, the Purchaser Premises or any adjoining property, provided same do not render title to the Purchaser Premises uninsurable at regular rates without the payment of additional premiums;

(h) the Declaration;

(i) the memorandum of Development Agreement;

(j) Any matters caused by Purchaser or Developer or either of their respective employees, agents, affiliates or contractors;

(k) Standard pre-printed exceptions; and

(l) any matters which a survey of the Premises may disclose.

#### **ARTCILE FOURTH**

#### **TITLE INSURANCE; LIENS; VIOLATIONS**

4.1 Purchaser has delivered to Seller, a title report with respect to the Premises, prepared by the Title Company, together with copies of all items shown as exceptions to title therein (collectively, the “**Title Report**”) and Purchaser has accepted all exceptions contained therein as Permitted Encumbrances. Purchaser hereby agrees to purchase an owner’s title insurance policy through the Title Company at its sole cost and expense.

4.2 Purchaser shall direct the Title Company to deliver a copy of any updates to the Title Report to WPPC simultaneously with its delivery of the same to Purchaser. If any update to the Title Report discloses additional Liens or other title exceptions that are not in the Title Report, affect the Purchaser Premises and which do not otherwise constitute Permitted Encumbrances hereunder (each, an “**Exception**”), then Purchaser shall have until the earlier of (A) five (5) Business Days after delivery of such update to Purchaser or its counsel or (B) the

Closing Date, time being of the essence (the “**Objection Deadline**”), to deliver written notice (a “**Title Objection Notice**”) to WPPC objecting to any of the Exceptions (the “**Title Objections**”). If Purchaser fails to deliver such Title Objection Notice by the Objection Deadline, Purchaser shall be deemed to have waived its right to object to any Exceptions (and the same shall not constitute Title Objections, but shall instead be deemed Permitted Encumbrances). If Purchaser shall deliver such Title Objection Notice by the Objection Deadline, any Exceptions which are not objected to in such Title Objection Notice shall not constitute Title Objections, but shall be Permitted Encumbrances. Purchaser shall cause the Title Company to deliver all Title Report updates to WPPC’s counsel simultaneously with the delivery to Purchaser or its counsel. If the Title Company will not omit a given Title Objection, WPPC shall have the right to select another nationally recognized title company that is willing to omit such exception without additional premium, and in such event such title company shall be deemed the Title Company hereunder.

4.3 Notwithstanding anything to the contrary contained herein, if WPPC fails to or is unable to eliminate from Purchaser’s Title Policy any Title Objections identified in any Title Objection Notice by the then Scheduled Closing Date, unless the same are waived in writing by Purchaser, WPPC may, from time to time, upon at least five (5) Business Days’ prior notice to Purchaser (except with respect to Exceptions first disclosed during the twenty (20) Business Day period prior to the then Scheduled Closing Date, as to which no advance notice shall be required, adjourn the Scheduled Closing Date from time to time for an aggregate period not to exceed ninety (90) days in the aggregate (the “**Title Cure Period**”), during which period WPPC shall continue to attempt to eliminate such the Title Objections.

4.4 If WPPC is unable or fails to eliminate any Title Objection by the then Scheduled Closing Date or if applicable, the end of the Title Cure Period, WPPC shall deliver a notice to Purchaser indicating WPPC’s inability or failure to cure such Title Objection (such notice, a “**Failure to Cure Notice**”), and in such case Purchaser may, as its sole and exclusive remedy, elect by notice to WPPC (“**Purchaser’s Title Election Notice**”) given within ten (10) Business Days of receipt of the Failure to Cure Notice either to (i) accept the Purchaser Premises subject to such Title Objection without abatement of the Closing Consideration, in which event such Title Objection shall be deemed to be, for all purposes, a Permitted Encumbrance, and Purchaser shall close hereunder notwithstanding the existence of same, or (ii) terminate this Agreement, in which event Purchaser shall be entitled to the immediate return of the Deposit (together with the interest earned thereon) less any unpaid WPPC expenses (subject to the WPPC Expense Cap), which shall be paid to WPPC out of the Deposit first and thereafter neither Party shall have any further rights or obligations hereunder other than those, which are expressly provided to survive the termination hereof. If Purchaser shall fail to deliver Purchaser’s Title Election Notice within the ten (10) Business Day period described therein, time being of the essence, Purchaser shall be deemed to have made the election under clause (ii), and this Agreement shall terminate, the Deposit shall be refunded to Purchaser (together with the interest earned thereon) less any unpaid WPPC Expenses (subject to the WPPC Expense Cap), which shall be paid to WPPC out of the Deposit first, and thereafter neither Party shall have any further rights or obligations hereunder other than those, which are expressly provided to survive the termination hereof.

4.5 It is expressly understood that in no event shall WPPC be required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any Title Objections from Purchaser’s Title Policy, or take any other actions to cure

or remove any Title Objections from Purchaser's Title Policy, or to otherwise cause title in the Purchaser Premises to be in accordance with the terms of this Agreement on the Closing Date. Notwithstanding anything in this Agreement to the contrary, on or prior to the Closing Date, WPPC shall be required to remove from Purchaser's Title Policy, by payment, bonding or otherwise, at WPPC's sole cost and expense, at or prior to Closing, any Liens caused by Seller (but not Violations), which are encumbering the Purchaser Premises or have been recorded against the Purchaser Premises after the Effective Date of this Agreement (including judgments and federal, state and municipal tax liens against Seller), which are in liquidated amounts and which may be satisfied solely by the payment of money (including the preparation or filing of appropriate satisfaction instruments in connection therewith) not to exceed One Million Dollars (\$1,000,000.00) in the aggregate (excluding any Liens hereafter voluntarily placed upon the Purchaser Premises by Seller).

4.6 If WPPC shall have adjourned the Scheduled Closing Date in order to cure Title Objections in accordance with the provisions of this Section 4, upon the satisfactory cure thereof, WPPC shall promptly reschedule the Scheduled Closing Date, upon at least twenty (20) Business Days' prior notice to Purchaser (the "**New Closing Notice**").

4.7 Purchaser agrees to purchase the Purchaser Premises subject to any and all notes or notices of violations of law, or municipal ordinances, orders, designations or requirements whatsoever noted in or issued by any federal, state, municipal or other governmental department, agency or bureau or any other governmental authority having jurisdiction over the Purchaser Premises (collectively, "**Violations**"), or any condition or state of repair or disrepair or other matter or thing, whether or not noted, which if noted, would result in a Violation being placed on the Purchaser Premises.

## **ARTICLE FIFTH**

### **CONDOMINIUM DOCUMENTS**

5.1 Statement of Condominium Principles. Promptly after the Supreme Court Approval has been obtained and WPPC has executed an agreement with the Existing Tenant to terminate the Existing Lease (or on such earlier date as may be determined by WPPC in its sole discretion), WPPC shall prepare or cause to be prepared the Condominium Documents (including the Declaration, the Condominium Bylaws and Condominium Floor Plans), pursuant to which WPPC will be the declarant thereunder, and which Condominium Documents will establish the Condominium that shall initially include the Community Space Unit and the Developer Unit. The Condominium Documents shall include, among other things, the specific provisions contained in Exhibit A, attached hereto and made a part hereof (the "**Condominium Principles**"), and shall be subject to the prior review and the written approval of Purchaser (provided that Purchaser shall only have approval rights with respect to matters which are either not covered by or are inconsistent with the Condominium Principles), and provided further that, in any case, such approval shall not be unreasonably withheld, conditioned or delayed.

5.2 Application for No Action Letter. Promptly after the Supreme Court Approval has been obtained and WPPC has executed an agreement with the Existing Tenant to terminate the Existing Lease (or on such earlier date as may be determined by WPPC in its sole discretion)

WPPC shall make an application (the “**No Action Application**”) to the New York State Department of Law (the “**NYS Law Department**”) requesting a no-action letter, a no-filing required letter, a no jurisdiction letter or letter of similar advice (the “**No Action Letter**”) in order to permit the creation of the Condominium and the conveyance of the Developer Unit to Purchaser. In connection therewith, Purchaser shall promptly (i) upon request from WPPC, deliver an executed and notarized original of an affidavit in support of the No Action Letter, and (ii) reasonably cooperate in all other respects with WPPC in connection with the No Action Application and securing the No Action Letter from the NYS Law Department, which cooperation shall include, without limitation, submitting any revised affidavits or additional information that the NYS Law Department may reasonably require in connection with issuing such No Action Letter. The No Action Application materials shall be subject to the review and approval of Purchaser prior to submission by WPPC to the NYS Law Department, provided that such approval shall not be unreasonably withheld, conditioned or delayed.

5.3 Additional Applications. WPPC shall make or cause to be made any other applications to the New York City Department of Buildings (“**DOB**”) and the New York City Department of Finance (“**DOF**”) or any other governmental agencies, as may be necessary, in order to obtain approval to record the Condominium Documents in the City Register’s Office, thereby creating the Condominium. Any such applications required in connection with the formation of the Condominium, including but not limited to, any DOB or DOF applications and the No Action Application, are collectively referred to herein as the “**Condominium Applications**”). Purchaser shall cooperate in connection with the Condominium Applications, which cooperation shall include, without limitation, (i) promptly executing and delivering to WPPC and/or any governmental entity (as applicable), any required documents, applications, certifications and/or affidavits the form of which shall be subject to the reasonable approval of Purchaser, (ii) promptly providing any required information or documentation, and (iii) taking any required actions (including, without limitation, attending any meetings or hearings), as either WPPC or any governmental entity may reasonably request in connection with the Condominium Applications. The Condominium Applications shall be subject to the review and approval of Purchaser prior to submission by WPPC to the relevant governmental entity, provided that such approval shall not be unreasonably withheld, conditioned or delayed.

5.4 Creation of the Condominium. On or prior to the Closing, WPPC shall submit the Condominium Documents for filing or recording, as applicable. All costs and expenses in connection with the preparation of the Condominium Documents (including, without limitation, the A&R Condominium Documents) and the Condominium Applications and the creation of the Condominium, including all fees in connection with the Condominium Applications, shall be the sole cost and expense of Purchaser.

5.5 A&R Condominium Document Forms. After the Condominium Documents are prepared by WPPC and approved by Purchaser as and to the extent provided in Section 5.1 hereof, and prior to Closing, the parties shall cooperate to prepare the forms of amendments and restatements to the Condominium Declaration and the Condominium Plans (referred to herein as the “**A&R Condominium Document Forms**”) to be annexed to the Development Agreement as Exhibit F, which A&R Condominium Document Forms shall be consistent in all events with the Condominium Principles and shall reflect the anticipated as built conditions at the Premises consistent with Developer’s Construction Work obligations under the Development Agreement.

The A&R Condominium Document Forms shall provide that the Condominium will include: (i) the Community Space Unit, (ii) the Residential Unit(s), (iii) the Retail Unit and (iv) the Common Elements.

## ARTICLE SIXTH

### DESIGN DEVELOPMENT

#### 6.1 WPPC Consultation and Approvals.

(a) Subject to the terms and conditions set forth in this Agreement, Purchaser shall consult with WPPC throughout the Community Space Unit design development process. In furtherance thereof, Purchaser shall invite (or shall cause Developer, the Project Architect or Purchaser's Consultants to invite), by reasonable advance written notice thereof (which written notice may be by e-mail), WPPC's Consultants to all principal design meetings where the anticipated discussion will involve any WPPC Approval Components. Purchaser shall deliver (or shall cause Developer, the Project Architect or Purchaser's Consultants to deliver) to WPPC's Consultants copies of all plans and specifications prepared by or for Purchaser as necessary in order to comply with this Section 6, and a written description of the progress of the Project at least monthly. Purchaser, the Project Architect and Purchaser's Consultants shall meet with WPPC and WPPC's consultants on a weekly basis to cooperate in good faith to agree upon the design of the Community Space Unit.

(b) WPPC and Purchaser agree to cooperate with one another in good faith throughout the design development process. Any delay in WPPC's approval of plans and specifications in violation of this Article 6 shall constitute Unavoidable Delay. Notwithstanding the foregoing, WPPC's review and comments within the periods contemplated by this Article 6, its election to disapprove any plans and specifications in accordance with the terms hereof and any time expended in resolving such disapproval as contemplated herein shall not be deemed an Unavoidable Delay. Each time Purchaser delivers the Milestone Schedule to WPPC pursuant to Section 8.1, Purchaser shall identify and update, if applicable and to the extent possible, the dates upon which submissions requiring WPPC's review in accordance with this Agreement (a "**Review Submission Date**") are anticipated to be delivered to WPPC. Purchaser shall deliver to WPPC at least thirty (30) days' prior written notice of changes to any anticipated Review Submission Date. Any plans and specifications submitted to WPPC for review prior to the applicable Review Submission Date previously identified to WPPC shall be deemed delivered on such identified Review Submission Date for purposes of this Article 6.

(c) WPPC has appointed WPPC's Owner's Rep as the exclusive representative of WPPC with whom Purchaser shall engage in connection with the design, development and construction of the Community Space Unit and the Project, which WPPC shall have the right to update from time to time upon prior written notice to Purchaser. The decisions of WPPC in connection with the design, development and construction of the Community Space Unit and the Project shall be made through, and communicated to Purchaser by WPPC's Owner's Rep, it being understood and agreed that the communication in writing by WPPC's Owner's Rep of a given decision of WPPC shall be deemed acceptable and sufficient for all purposes hereunder and Purchaser shall be under no obligation to obtain the approval of any

other party with respect to a given decision to be made by WPPC. Purchaser shall be entitled to rely conclusively on the written instructions received from WPPC's Owner's Rep as to any and all acts performed under this Agreement by Purchaser with respect to the design, development and construction of the Community Space Unit and the Project.

6.2 Community Space Unit Specifications and Conceptual Plans. Attached hereto as Schedule 6.2 are the "**Community Space Unit Specifications and Conceptual Plans**", which have previously been approved by WPPC and Purchaser. Purchaser shall be responsible for all costs for architectural or engineering services or materials incurred by either Party (subject to the limit on the amount of WPPC Expenses) associated with the production of the Approved Plans and Specifications pursuant to this Section 6.

6.3 Schematic Plans.

(a) Purchaser has instructed the Project Architect and such other of Purchaser's Consultants as may be necessary to prepare 100% schematic plans for the Project (inclusive of signage for the Project and the facade of the Project) (collectively, the "**Purchaser Schematic Plans**"). Copies of the proposed Purchaser Schematic Plans shall be delivered to WPPC for its review and comment, and WPPC shall have the right to disapprove any WPPC Approval Components that are shown on the Purchaser Schematic Plans and are not consistent with the Community Space Unit Specifications and Conceptual Plans or are not specified on the Community Space Unit Specifications and Conceptual Plans or do not comply with applicable Laws. WPPC shall deliver written notice of its approval or disapproval of such Purchaser Schematic Plans within twenty-one (21) calendar days of delivery thereof to WPPC. If WPPC fails to deliver written notice of its approval or disapproval of such Purchaser Schematic Plans within such twenty-one (21) day period, Purchaser may send another written notice, and WPPC shall have five (5) calendar days following its receipt of such written notice to approve or disapprove such Purchaser Schematic Plans so long as such written notice contains the following legend in at least fourteen (14) point bold type: "**THIS DELIVERY CONSTITUTES A SECOND REQUEST FOR APPROVAL OF THE PURCHASER SCHEMATIC PLANS IN ACCORDANCE WITH SECTION 6.3(a) OF THE PURCHASE AND SALE AGREEMENT MADE AS OF \_\_\_\_\_, 2022, BETWEEN WPPC AND ALCHEMY WEST 86<sup>TH</sup> STREET LLC. IN ACCORDANCE WITH SAID SECTION 6.3(a), WPPC IS REQUIRED TO RESPOND TO THIS REQUEST WITHIN FIVE (5) DAYS FROM THE DATE OF THIS NOTICE.**" If WPPC fails to deliver written notice of its approval or disapproval of the Purchaser Schematic Plans within such five (5) calendar day period, WPPC shall be deemed to have approved such Purchaser Schematic Plans. Any disapproval by WPPC of the Purchaser Schematic Plans shall be accompanied by a written statement of the basis therefor with sufficient detail to enable Purchaser to appreciate and understand the basis for such disapproval, and if WPPC fails to deliver such a written statement, WPPC shall be deemed to have approved the Purchaser Schematic Plans. In the event that WPPC timely raises any objection to the proposed Purchaser Schematic Plans in accordance with the terms of this Section 6.3(a), the Parties shall work together in good faith for five (5) calendar days following WPPC's delivery of such objection to resolve such dispute, following which either (i) Purchaser shall promptly revise the proposed Purchaser Schematic Plans set forth in this Section 6.3(a) and resubmit the same to WPPC for its review and approval in accordance with the procedures for the proposed Purchaser Schematic Plans or (ii) Purchaser may submit such dispute to arbitration

in accordance with Section 33. Any changes to the Purchaser Schematic Plans proposed by Purchaser following initial submission to WPPC shall be delivered promptly by Purchaser to WPPC and shall be subject to the same review and approval process set forth in this Section 6.3(a) and WPPC covenants and agrees to otherwise and cooperate and promptly respond to any changes by Purchaser.

(b) The approved Purchaser Schematic Plans are referred to as the “**Schematic Plans.**”

#### 6.4 Design Development.

(a) Promptly after finalization of the Schematic Plans in accordance with Section 6.3, Purchaser shall instruct the Project Architect and such other of Purchaser’s Consultants as may be necessary to prepare design development drawings and technical specifications for the Project (inclusive of signage for the Project and the facade of the Project) (collectively, the “**Purchaser Design Development Plans**”). The Purchaser Design Development Plans shall include, at a minimum, detailed specifications in a manner customary for similar drawings and specification for similar buildings in the Borough of Manhattan for the Project. Copies of the Purchaser Design Development Plans (and any progressions thereof) shall be delivered to WPPC for its review and comment, and WPPC shall have the right to disapprove any WPPC Approval Components thereof which are not consistent with the approved Schematic Plans or the Community Space Unit Specifications and Conceptual Plans or are not specified on the Schematic Plans or the Community Space Units Specifications and Conceptual Plans or do not comply with applicable Laws. WPPC shall deliver written notice of its approval or disapproval of such Purchaser Design Development Plans within twenty-one (21) calendar days of delivery thereof to WPPC. If WPPC fails to deliver written notice of its approval or disapproval of such Purchaser Design Development Plans within such twenty-one (21) day period, Purchaser may send another written notice, and WPPC shall have five (5) calendar days following its receipt of such written notice to approve or disapprove such Purchaser Design Development Plans so long as such written notice contains the following legend in at least fourteen (14) point bold type: “**THIS DELIVERY CONSTITUTES A SECOND REQUEST FOR APPROVAL OF THE PURCHASER DESIGN DEVELOPMENT PLANS IN ACCORDANCE WITH SECTION 6.4(a) OF PURCHASE AND SALE AGREEMENT MADE AS OF \_\_\_\_\_, 2022, BETWEEN WPPC AND ALCHEMY WEST 86<sup>TH</sup> STREET LLC. IN ACCORDANCE WITH SAID SECTION 6.4(a), WPPC IS REQUIRED TO RESPOND TO THIS REQUEST WITHIN FIVE (5) DAYS FROM THE DATE OF THIS NOTICE.**” If WPPC fails to deliver written notice of its approval or disapproval of the Purchaser Design Development Plans within such five (5) calendar day period, WPPC shall be deemed to have approved such Purchaser Design Development Plans. Any disapproval by WPPC of the Purchaser Design Development Plans shall be accompanied by a written statement of the basis therefor in sufficient detail to enable Purchaser to appreciate and understand the basis for such disapproval, and if WPPC fails to deliver such a written statement, WPPC shall be deemed to have approved the Purchaser Design Development Plans. In the event that WPPC timely raises any objection to the proposed Purchaser Design Development Plans in accordance with the terms of this Section 6.4(a), the Parties shall work together in good faith for five (5) days following WPPC’s delivery of such objection to resolve such dispute, following which either (i) Purchaser shall promptly revise the proposed Purchaser Design Development Plans and

resubmit the same to WPPC for its review and approval in accordance with the procedures for the proposed Purchaser Design Development Plans or (ii) Purchaser may submit such dispute to arbitration in accordance with Section 33. Any changes to the Purchaser Design Development Plans proposed by Purchaser following initial submission to WPPC shall be delivered promptly by Purchaser to WPPC and shall be subject to the same review and approval process.

(b) The approved Purchaser Design Development Plans are referred to as the “**Design Development Plans**.”

#### 6.5 Construction Drawings.

(a) Promptly after the finalization of the Design Development Plans in accordance with Section 6.4, Purchaser shall instruct the Project Architect and such other of Purchaser’s Consultants as may be necessary to prepare complete construction drawings and final technical specifications for the Project and include coordinated structural, mechanical, electrical and plumbing, and fire protection drawings (collectively, the “**Purchaser Construction Drawings**”). Copies of the Purchaser Construction Drawings (and any progressions thereof) shall be delivered to WPPC for its review and comment, and WPPC shall have the right to disapprove any WPPC Approval Components thereof which are not consistent with the approved Design Development Plans or the Community Space Unit Specifications and Conceptual Plans or are not specified on the Design Development Plans or the Community Space Unit Specifications and Conceptual Plans or do not comply with applicable Laws. WPPC shall deliver written notice of its approval or disapproval of such Purchaser Construction Drawings within twenty-one (21) calendar days of delivery thereof to WPPC. If WPPC fails to deliver written notice of its approval or disapproval of such Purchaser Construction Drawings within such twenty-one (21) day period, Purchaser may send another written notice, following which WPPC shall have five (5) calendar days following receipt of such written notice to approve or disapprove such Purchaser Construction Drawings so long as such written notice contains the following legend in at least fourteen (14) point bold type: “**THIS DELIVERY CONSTITUTES A SECOND REQUEST FOR APPROVAL OF THE PURCHASER CONSTRUCTION DRAWINGS IN ACCORDANCE WITH SECTION 6.5(a) OF THE PURCHASE AND SALE AGREEMENT MADE AS OF \_\_\_\_\_, 2022, BETWEEN WPPC AND ALCHEMY WEST 86<sup>th</sup> STREET LLC. IN ACCORDANCE WITH SAID SECTION 6.5(a), WPPC IS REQUIRED TO RESPOND TO THIS REQUEST WITHIN FIVE (5) DAYS FROM THE DATE OF THIS NOTICE.**” If WPPC fails to deliver written notice of its approval or disapproval of the Purchaser Construction Drawings within such five (5) day period, WPPC shall be deemed to have approved such Purchaser Construction Drawings. Any disapproval by WPPC of the Purchaser Construction Drawings shall be accompanied by a written statement of the basis therefor in sufficient detail to enable Purchaser to appreciate and understand the basis for such disapproval, and if WPPC fails to deliver such a written statement, WPPC shall be deemed to have approved the Purchaser Construction Drawings. In the event that WPPC timely raises any objection to the proposed Purchaser Construction Drawings in accordance with the terms of this Section 6.5(a), the Parties shall work together in good faith for five (5) calendar days following WPPC’s delivery of such objection to resolve such dispute, following which either (i) Purchaser shall promptly revise the proposed Purchaser Construction Drawings and resubmit the same to WPPC for its review and approval in accordance with the procedures for the proposed Purchaser Construction Drawings or (ii) Purchaser may submit such

dispute to arbitration in accordance with Section 33. Any changes to the Purchaser Construction Drawings proposed by Purchaser following initial submission to WPPC shall be delivered promptly by Purchaser to WPPC and shall be subject to the same review and approval process.

(b) The Purchaser Construction Drawings, as approved in accordance with this Section 6.5, are referred to herein as the “**Approved Plans and Specifications**.”

#### 6.6 Design Changes Initiated by Purchaser.

(a) Purchaser shall promptly notify WPPC if, as and when, following approval of the Approved Plans and Specifications in accordance with Section 6.5, Purchaser desires that any changes be made to the Approved Plans and Specifications that would affect any WPPC Approval Components. WPPC shall have the right to review, and disapprove in the exercise of its sole discretion, any changes to the Approved Plans and Specifications initiated by Purchaser solely to the extent such changes would affect a WPPC Approval Component (each, a “**Design Change Request**”). In connection with any Design Change Request, Purchaser shall furnish (or cause Developer or Purchaser’s Consultants to furnish) to WPPC copies of the plans and specifications incorporating the proposed change, and such other information with respect to the proposed change as WPPC may reasonably request. Purchaser shall also furnish (or cause Developer or Purchaser’s Consultants to furnish) to WPPC a detailed statement (the “**Statement of Changes**”) of the Design Change Request and Purchaser’s estimate of any delay that may occur as a result of such change it being agreed any such delay shall be deemed to extend the date by which Purchaser is required to deliver the Community Space Unit. Purchaser shall provide WPPC and/or, at WPPC’s direction, any of WPPC’s Consultants with any other supporting documentation for any Statement of Changes promptly upon request by WPPC therefor. WPPC shall respond to any request for approval of any Design Change Request within twenty-one (21) days of submission by Purchaser to WPPC (the “**WPPC Response Period**”); provided, that such request contains the following legend in at least fourteen (14) point bold type: “**THIS DELIVERY CONSTITUTES A REQUEST FOR APPROVAL OF A DESIGN CHANGE REQUEST IN ACCORDANCE WITH SECTION 6.6 OF THE PURCHASE AND SALE AGREEMENT MADE AS OF \_\_\_\_\_, 2022, BETWEEN WPPC AND ALCHEMY WEST 86<sup>th</sup> STREET LLC. IN ACCORDANCE WITH SAID SECTION 6.6, WPPC IS REQUIRED TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN TWENTY-ONE (21) DAYS FROM THE RECEIPT HEREOF.**” In the event that WPPC fails to respond within the WPPC Response Period, WPPC shall be deemed to have approved the Design Change Request in question. Any disapproval by WPPC of any Design Change Requests shall be accompanied by a written statement of the basis for such disapproval in sufficient detail to enable Purchaser to appreciate and understand the basis for such disapproval, and if WPPC shall fail to deliver such a written statement, WPPC shall be deemed to have approved the Design Change Requests in question. In the event that WPPC timely raises any objection to the proposed Design Change Request in accordance with the terms of this Section 6.6(a), Purchaser shall not implement such change.

6.7 WPPC’s Review of Plans Not a Representation or Assumption. The review and/or approval by WPPC (or any of WPPC’s Consultants or any other WPPC Related Party on behalf of WPPC) of any of the concept plans, Purchaser Schematic Plans, Purchaser Design Development Plans, Purchaser Construction Drawings or any change or modification related

thereto shall in no event be or be deemed to be (a) a representation or agreement, implied or otherwise, by WPPC or any of WPPC's Consultants, that any such plans or other materials comply with applicable Laws, or (b) an assumption by WPPC, any WPPC Related Party or WPPC's Consultants of any liability in respect of the implementation of any such plans. Purchaser shall be responsible for ensuring that the Approved Plans and Specifications are in compliance with applicable law.

6.8 WPPC's Use of Floor Area; Column Free Area. Subject to the terms of the Development Agreement and this Agreement, (i) in the event the Project will not utilize all available Floor Area, Purchaser shall promptly notify WPPC upon becoming aware of the same, and WPPC shall have the right to utilize up to 2,000 square feet of the excess Floor Area including, without limitation, in order to eliminate the so-called "double-height" portion of the Community Space Unit, and (ii) WPPC shall have the right to reduce the so-called "column-free" area, i.e. the area projected to be used as a theatre, of the Community Space Unit.

6.9 This Article 6 shall survive the Closing.

## **ARTICLE SEVENTH**

### **CONSTRUCTION CONTRACTS**

7.1 No contractor under contract directly with Purchaser or Developer in the nature of a general contractor for labor, materials, equipment and services required to construct the Project shall be a Prohibited Person.

7.2 Unless otherwise agreed to by WPPC in writing, in no event shall WPPC have any liability or obligation to any construction manager, any contractor, subcontractor or other vendor solicited by or on behalf of Purchaser or Developer.

7.3 WPPC and its representatives shall have the right, from time to time, but no more than once in any three (3) month period, to inspect, audit and make copies of all requisitions and change orders in connection with the Project, and all other books and records of Purchaser and Developer related thereto or otherwise related to the Project and/or the matters contemplated by Transaction Documents, to the extent necessary in order to enable WPPC to establish or confirm (i) the amounts payable by or chargeable to WPPC, (ii) the amounts for which Purchaser is entitled to a credit, and/or (iii) any other adjustments or payments, in each case under this Agreement or the Development Agreement. Purchaser and Developer shall maintain accurate books and records, and receipts and invoices, for all costs and expenses applicable to such payments, charges, credits and adjustments. Any such audit shall be conducted during business hours, on reasonable notice, and at WPPC's cost and expense unless the audit reveals a discrepancy in WPPC's favor in excess of four percent (4%) of the construction budget for the Community Space Unit, in any one instance, in which case Purchaser shall pay such costs and expenses. WPPC shall deliver a copy of each report of auditor's findings to Purchaser.

7.4 Purchaser and WPPC shall consult in good faith to resolve any matter in dispute raised in any audit conducted by WPPC within ten (10) Business Days after Purchaser's receipt of WPPC's audit report. If Purchaser and WPPC cannot resolve a particular dispute (with

respect-to any matter raised in such audit report) within such ten (10) Business Day period, the dispute shall be submitted to arbitration pursuant to the provisions of Section 33.

7.5 Purchaser shall ensure that no mechanics' or material persons' lien is filed against the Community Space Unit in connection with the work contemplated by the Transaction Documents. In no event shall Purchaser or Developer record any document, including without limitation a mortgage or lien, against the Community Space Unit. Purchaser shall indemnify, defend and hold the Seller harmless from and against any and all claims, demands, causes of action, actual losses, costs and expenses (including reasonable attorneys' fees, court costs and disbursements) arising from any lien being filed against the Community Space Unit.

7.6 The provisions of this Section 7 shall survive the Closing or earlier termination of this Agreement.

## **ARTICLE EIGHTH**

### **MILESTONE SCHEDULE; CLOSING; OUTSIDE CLOSING DATE**

8.1 Attached hereto as Schedule 8.1 is the major milestone schedule for initial design, development and construction of the Project, including the development of Schematic Plans, Design Development Plans, Construction Documents, contract bidding, all construction phases and Project completion (as the same may be revised from time to time in accordance with the terms hereof, the "**Milestone Schedule**"). The dates included in the Milestone Schedule shall be extended on a day-for-day basis during the continuance of any Unavoidable Delays to the extent expressly permitted in the Development Agreement. Any revision to the Milestone Schedule, other than on account of Unavoidable Delay to the extent expressly permitted in the Development Agreement, shall be subject to WPPC's prior written approval. Purchaser shall maintain and periodically update (to the extent expressly permitted in the Development Agreement) a comprehensive milestone schedule reflecting the milestone dates included in the Milestone Schedule and shall deliver any update (to the extent expressly permitted in the Development Agreement) of the Milestone Schedule to WPPC on a monthly basis. Purchaser shall cause the Purchaser's Consultants to comply in all respects with the Milestone Schedule.

8.2 The Closing shall occur thirty (30) Business Days from the date of the later to occur of the following: (i) the date of LPC Approval, Congregational and Board/AC Approval, and Presbytery Approval; (ii) the date WPPC provides written notice to Purchaser that the Existing Lease is terminated and the Existing Tenant has vacated the Premises; and (iii) the date Seller provides Purchaser with a copy of the signed Supreme Court Order (the "**Scheduled Closing Date**"). Either party shall have the right to adjourn the Scheduled Closing Date for up to sixty (60) days provided it gives written notice to the other prior to the Scheduled Closing Date (the "**Adjourned Closing Date**"). The closing of the transactions contemplated hereunder (the "**Closing**") shall occur, and the documents referred to in Section 16 shall be delivered on the Scheduled Closing Date, which date shall be subject to adjournment in accordance with the terms of this Agreement. The actual date of the Closing is referred to herein as the "**Closing Date**". The Closing shall be held at the offices of Purchaser's lender in Manhattan, NY, or in escrow with the Title Company, but in no event later than seven (7) years from the Effective Date (the "**Outside Closing Date**"). Time is of the essence as to WPPC and the Purchaser's

respective obligations to close the transactions contemplated hereunder on the Scheduled Closing Date (as same may be adjourned in accordance with this Agreement).

## ARTICLE NINTH

### CONDITIONS TO CLOSING

9.1 Conditions to Obligations of WPPC. The obligation of WPPC to effect the Closing shall be subject to the fulfillment (or written waiver by WPPC) at or prior to the Closing Date of all of the following conditions (“**WPPC’s Closing Conditions**”):

(a) Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as though made at and as of the Closing Date.

(b) Performance of Obligations. Purchaser shall have timely paid the Cash Consideration (as may be adjusted as expressly set forth in this Agreement) and any other sums payable by Purchaser hereunder and in all material respects have performed all other obligations required to be performed by it under this Agreement.

(c) Delivery of Documents. Purchaser, Developer and Guarantor shall have executed, acknowledged (if applicable) and/or delivered all documents required to be executed, acknowledged (if applicable) and/or delivered by Purchaser, Developer and Guarantor hereunder and under the Development Agreement on the Closing Date.

(d) Design and Development Requirements. WPPC shall have approved the Approved Plans and Specifications, as and to the extent required hereunder, and the same shall have been finalized.

(e) Condominium. Purchaser shall have satisfied each of its obligations pursuant to Section 5 in all material respects.

(f) Guaranties. Purchaser shall have caused Guarantor to execute and deliver to WPPC the Completion Guaranty and the Indemnity Agreement.

(g) Financial Plan. Purchaser shall have delivered written evidence reasonably satisfactory to WPPC of committed sources for the debt and/or equity financing of the Project.

(h) Approvals. WPPC shall have received Congregational and Board/AC Approval, Presbytery Approval and a signed Supreme Court Order approving the sale contemplated herein.

(i) LPC Approval. The Parties shall have received written LPC Approval.

(j) Termination of Existing Lease. WPPC shall have terminated the Existing Lease and the Existing Tenant shall have vacated the Premises.

(k) No Litigation. No litigation or other court action shall have been commenced seeking to obtain an injunction or other relief from such court to enjoin the consummation of the transaction described in this Agreement and no preliminary or permanent injunction or other order, decree or ruling shall have been issued by a court of competent jurisdiction or by any governmental authority, that would make illegal or invalid or otherwise prevent the consummation of the transactions described in this Agreement.

9.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to effect the Closing shall be subject to the fulfillment (or written waiver by Purchaser) at or prior to the Closing Date of all of the following conditions (“**Purchaser’s Closing Conditions**”):

(a) Design and Development Requirements. WPPC has approved the Approved Plans and Specifications, as and to the extent required hereunder.

(b) Representations and Warranties. The representations and warranties of WPPC contained in this Agreement (other than those representations made as of the date hereof, which shall not be updated) shall be true and correct in all material respects as of the Closing Date, as though made at and as of the Closing Date, except for changes that do not have a material adverse effect on Purchaser.

(c) Delivery of Documents. WPPC shall have executed, acknowledged (if applicable) and/or delivered all documents required to be executed, acknowledged (if applicable) and/or delivered by WPPC hereunder and the Development Agreement on the Closing Date.

(l) Performance of Obligations. WPPC shall in all material respects have performed all obligations required to be performed by WPPC under this Agreement on or prior to the Closing Date.

(d) Delivery of Purchaser Premises. WPPC shall be prepared to, on the Closing Date, deliver fee title to the Purchaser Premises vacant and free and clear of any and all Liens, Leases and Tenants, other than Permitted Encumbrances.

(e) Approvals. WPPC shall have (i) delivered to Purchaser a copy of the signed Supreme Court Order approving the sale contemplated herein, and (ii) received Congregational and Board/AC Approval and Presbytery Approval.

(f) LPC Approval. The Parties shall have received LPC Approval.

(m) Termination of Existing Lease. WPPC shall have terminated the Existing Lease and the Existing Tenant shall have vacated the Premises (it being understood, however, that in no event shall the failure of WPPC to cause this condition to be satisfied constitute a Default by WPPC hereunder).

(g) Condominium. WPPC shall have satisfied all of its obligations pursuant to Section 5 in all material respects.

(h) Purchaser’s Title Policy. The Title Company shall have irrevocably committed in writing to issue to Purchaser, immediately upon consummation of the Closing and

payment of the premium therefor, an owner's policy of title insurance for the Purchaser Premises ("**Purchaser's Title Policy**"), insuring fee title to the Purchaser Premises in Purchaser, subject only to Permitted Encumbrances.

(i) No Litigation. No litigation or other court action shall have been commenced seeking to obtain an injunction or other relief from such court to enjoin the consummation of the transaction described in this Agreement and no preliminary or permanent injunction or other order, decree or ruling shall have been issued by a court of competent jurisdiction or by any governmental authority, that would make illegal or invalid or otherwise prevent the consummation of the transactions described in this Agreement.

### 9.3 Failure of Condition.

(a) If WPPC's Closing Conditions have not been satisfied or waived, on or prior to the Outside Closing Date, then (x) if such failure of condition precedent is not the result of a Default by Purchaser, then WPPC or Purchaser shall be entitled to terminate this Agreement by notice thereof to the other Party, whereupon, (i) Purchaser shall be entitled to a return of the Deposit (less any then outstanding WPPC Expenses, subject to the WPPC Expense Cap, which shall first be paid to WPPC out of the Deposit) and thereafter, neither Party shall have any obligations, except those that expressly survive termination of this Agreement; and (y) if such failure of condition precedent is the result of a Default by Purchaser, then such failure shall constitute a Default by Purchaser and Section 18.1 shall govern (provided that the failure to close on account of the failure of WPPC to obtain the Supreme Court Approval shall not, unless Purchaser is otherwise in default hereunder, be deemed to constitute a Default by Purchaser hereunder).

(b) If the Purchaser's Closing Conditions have not been satisfied or waived on or prior to the Outside Closing Date, then (x) if such failure of condition precedent is not the result of a Default by WPPC hereunder, then WPPC or Purchaser shall be entitled to terminate this Agreement by notice thereof to the other Party, whereupon, (i) Purchaser shall be entitled to a return of the Deposit (less any then outstanding WPPC Expenses, subject to the WPPC Expense Cap, which shall first be paid to WPPC out of the Deposit), and thereafter neither Party shall have any rights or obligations, except those rights or obligations that expressly survive termination of this Agreement; and (y) if such failure of condition precedent is the result of a Default by WPPC hereunder, then such failure shall constitute a Default by WPPC hereunder and Section 18.2 shall govern.

9.4 Congregational and Board/AC Approval; Presbytery Approval: WPPC shall, promptly after LPC Approval (or on such earlier date determined by WPPC in its sole discretion), use commercially reasonable good faith efforts to obtain the Congregational and Board/AC Approval and the Presbytery Approval approving the sale. Purchaser shall reasonably cooperate with WPPC in WPPC's efforts to obtain the Congregational and Board/AC Approval, and the Presbytery Approval, including by executing documents and providing information as reasonably requested. WPPC shall promptly notify Purchaser in writing, if, as and when the Congregational and Board/AC Approval and the Presbytery Approval are obtained. If (1) the Congregational and Board/AC Approval or the Presbytery Approval approving the sale have not been obtained on or before the date that is nine (9) months after the date of LPC Approval, or (2)

Congregational and Board/AC Approval or the Presbytery Approval is denied and WPPC does not elect to appeal such denial, in each case after WPPC has used commercially reasonable good faith efforts to obtain such approval, either Party may terminate this Agreement, whereupon the full amount of the Deposit shall be refunded to Purchaser. In addition, if this Agreement is terminated pursuant to this Section 9.4, and thereafter WPPC sells the Premises to an unaffiliated third party in which no Purchaser Permitted Parties or Affiliate has any direct or indirect interest, then at the closing of such sale and solely to the extent of cash proceeds actually received by WPPC after the repayment of all Presbytery Loans, it being agreed that WPPC shall not negotiate the terms of such sale in a way so as to circumvent the provisions in this paragraph, WPPC shall reimburse Purchaser in an amount equal to the sum of (1) WPPC Expenses, (2) to the extent such termination under this Section 9.4 occurred after LPC Approval had been obtained, Development Expenses, (3) DOB Expenses, and (4) Tenant Expenses, in each case paid by Purchaser and not theretofore reimbursed. Any amount due to Purchaser hereunder shall constitute a lien on the Premises. In no event shall the failure of WPPC to obtain the Congregational and Board/AC Approval or the Presbytery Approval constitute a Default hereunder or entitle either party to damages unless WPPC shall fail to use commercially reasonable good faith efforts to obtain the Congregational and Board/AC Approval or the Presbytery Approval or Purchaser shall fail to cooperate in connection therewith, as applicable, in which case the provisions of Section 18.1 or Section 18.2 shall apply, as applicable.

9.5 LPC Approval. In the event LPC Approval is not obtained by the date which is forty-eight (48) months after the date of this Agreement, then at any time thereafter until LPC Approval is obtained, either Party may terminate this Agreement, whereupon the full amount of the Deposit (less any then outstanding WPPC Expenses, subject to the WPPC Expense Cap, which shall first be paid to WPPC out of the Deposit) shall be refunded to Purchaser and thereafter, when WPPC has funds available to do so, it shall refund the DOB Expenses to Purchaser, and as of such termination neither Party shall have any rights or obligations, except those rights or obligations that expressly survive termination of this Agreement. This Section 9.5 shall survive the termination of this Agreement.

## **ARTICLE TENTH**

### **CONDITION OF THE PURCHASER PREMISES; REPRESENTATIONS**

10.1 PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER INSTRUMENTS TO BE DELIVERED BY WPPC AT CLOSING, NEITHER WPPC NOR ANY OTHER WPPC RELATED PARTY, NOR ANY OTHER PERSON ACTING ON BEHALF OF WPPC, NOR ANY PERSON OR ENTITY WHICH PREPARED OR PROVIDED ANY OF THE MATERIALS REVIEWED BY PURCHASER IN CONDUCTING ITS DUE DILIGENCE, NOR ANY SUCCESSOR OR ASSIGN OF ANY OF THE FOREGOING PARTIES, HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE PURCHASER PREMISES, THE PERMITTED USE OF THE PURCHASER PREMISES OR THE ZONING AND OTHER

LAWS, REGULATIONS AND RULES APPLICABLE THERETO OR THE COMPLIANCE BY THE PURCHASER PREMISES THEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREIN. PURCHASER FURTHER ACKNOWLEDGES THAT ALL MATERIALS WHICH HAVE BEEN PROVIDED BY ANY OF THE WPPC RELATED PARTIES HAVE BEEN PROVIDED WITHOUT ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED AS TO THEIR CONTENT, SUITABILITY FOR ANY PURPOSE, ACCURACY, TRUTHFULNESS OR COMPLETENESS, AND, EXCEPT TO THE EXTENT INCORPORATED IN THIS AGREEMENT, PURCHASER SHALL NOT HAVE ANY RECOURSE AGAINST WPPC OR ANY OF THE OTHER WPPC RELATED PARTIES IN THE EVENT OF ANY ERRORS THEREIN OR OMISSIONS THEREFROM. PURCHASER IS ENTERING INTO THIS AGREEMENT BASED SOLELY ON ITS OWN INDEPENDENT INVESTIGATION AND INSPECTION OF THE PURCHASER PREMISES AND ANALYSIS OF THE PROJECT AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY WPPC, OR ANY OF THE OTHER WPPC RELATED PARTIES, EXCEPT FOR THE REPRESENTATIONS EXPRESSLY SET FORTH HEREIN. PURCHASER EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS PROVIDED TO IT BY WPPC IN CONNECTION WITH ITS DUE DILIGENCE AND AGREES THAT IT SHALL RELY SOLELY ON ITS OWN INDEPENDENTLY DEVELOPED OR VERIFIED INFORMATION, EXCEPT FOR THE REPRESENTATIONS SET FORTH HEREIN.

10.2 EXCEPT AS OTHERWISE PROVIDED HEREIN OR IN ANY DOCUMENT DELIVERED BY WPPC AT CLOSING, PURCHASER ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PURCHASER PREMISES “AS IS” AND “WITH ALL FAULTS” BASED UPON THE CONDITION (PHYSICAL OR OTHERWISE) OF THE PURCHASER PREMISES AS OF THE DATE OF THIS AGREEMENT AND THE CLOSING DATE, AND THE PROVISIONS OF SECTIONS 11 AND 12, LOSS BY CONDEMNATION OR FIRE OR OTHER CASUALTY EXCEPTED. THE FOREGOING SHALL NOT LIMIT PURCHASER’S CONDITIONS TO ITS OBLIGATION TO EFFECT THE CLOSING AS SET FORTH IN SECTION 9.2.

10.3 PURCHASER ACKNOWLEDGES AND AGREES THAT ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE SUBJECT TO ANY FINANCING CONTINGENCY OR OTHER CONTINGENCIES OR SATISFACTION OF CONDITIONS (OTHER THAN CONDITIONS SET FORTH HEREIN) AND PURCHASER SHALL HAVE NO RIGHT TO TERMINATE THIS AGREEMENT OR RECEIVE A RETURN OF THE DEPOSIT, OR ANY PORTION THEREOF, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

10.4 Supreme Court Approval.

(a) WPPC has advised Purchaser that pursuant to Section 12 of the New York Religious Corporations Law (“**RCL**”) and Section 511 of the Not-for-Profit Corporations Law (“**NPCL**”), Supreme Court of the State of New York, County of New York approval of the sale contemplated herein is required in order to consummate the transactions contemplated by this Agreement (the “**Supreme Court Approval**”). WPPC shall promptly, after the latest of LPC Approval, Congregational and Board/AC Approval and Presbytery Approval (but in no event

more than thirty (30) days after such latest date), commence proceedings for, including, without limitation, making and diligently prosecuting a petition to the Supreme Court (the “**Supreme Court Petition**”), and it shall use commercially reasonable efforts to obtain, the Supreme Court Approval (which shall be at WPPC’s sole cost and expense with respect to its own costs), and WPPC and Purchaser shall comply in all respects with the provisions of the RCL and NPCL with respect to the obtaining of the Supreme Court Approval. WPPC shall provide Purchaser with a copy of the Supreme Court Petition. Purchaser shall reasonably cooperate with WPPC in WPPC’s efforts to obtain the Supreme Court Approval, including by executing documents and providing information as reasonably requested and by procuring an appraisal from Appraiser as required. WPPC shall promptly provide Purchaser with a copy of the signed Supreme Court order approving the sale (the “**Supreme Court Order**”), if, as and when the Supreme Court Order is obtained. Nothing contained in this Agreement is intended to constitute a representation or warranty by WPPC that the Supreme Court Approval will be obtained. In the event the Supreme Court mandates a competitive bidding process, then Purchaser shall bid with the other bidders and if the Purchaser is not the successful bidder (it being understood, however, that Purchaser shall not be permitted to lower its bid from the purchase price contemplated prior to such mandate), WPPC shall pay to Purchaser the Development Expenses, the WPPC Expenses, the Tenant Expenses, the DOB Expenses and the Break-Up Fee, each to the extent not theretofore reimbursed to Purchaser, which shall be due to Purchaser at the closing of the sale to winning bidder and which shall be paid solely to the extent of cash proceeds received by WPPC from the winning bidder at the Closing after repayment of all Presbytery Loans, it being agreed that WPPC shall not negotiate the terms of such sale in a way so as to circumvent the provisions in this paragraph, and at such closing Purchaser shall assign or cause the assignment (and obtain all required approvals in connection therewith) to WPPC or its designee, at Purchaser’s sole cost, all permits, approvals, design documents and other documents pertaining to the design of the Project and all third party reports relating to the Project (whether obtained by Purchaser, Developer or any other related party), for such assignee to freely use in connection with the Premises (the foregoing, collectively, the “**Permit Assignment**”).

(b) If (1) WPPC, despite its reasonable, diligent and good faith efforts, shall not have received a response to the Supreme Court Petition for any reason whatsoever (other than WPPC’s refusal to use commercially reasonable efforts to obtain the Supreme Court Approval) on or before the date that is nine (9) months after the date of submission of the Supreme Court Petition, it being agreed that either Party may elect to extend the foregoing nine (9) month period for an additional three (3) months, or (2) WPPC’s application for the Supreme Court Approval shall be finally and unequivocally denied, including after any good faith appeal having been made by WPPC (it being understood and agreed that, upon a denial of the Supreme Court Approval, WPPC, at its sole cost and expense, may make a good faith appeal thereof, but is not required to do so), WPPC shall promptly notify Purchaser of any denial in writing and whether or not WPPC has elected to appeal, whereupon this Agreement shall terminate and, subject to the remainder of this paragraph, the full amount of the Deposit (less any then outstanding WPPC Expenses, subject to the WPPC Expense Cap, which shall first be paid to WPPC out of the Deposit) shall be refunded to Purchaser, except that Purchaser may, by written notice given to WPPC within ten (10) business days after such notice from WPPC, elect to pursue any appeal at Purchaser’s sole cost and expense, in which event this Agreement shall remain in effect until such appeal is denied or Purchaser discontinues its efforts with respect to such appeal. Notwithstanding the foregoing or anything to the contrary contained herein, in the

event that WPPC's application to obtain the Supreme Court Approval has been denied and an appeal shall have been taken of such denial as set forth above, Purchaser or WPPC shall have the option, in its sole discretion, to extend the Outside Closing Date from time to time until the termination of this Agreement occurs as set forth above, during which period Purchaser and WPPC shall continue to use commercially reasonable efforts to obtain the Supreme Court Approval. In no event shall the failure of WPPC to obtain the Supreme Court Approval constitute a Default hereunder or entitle either party to damages unless WPPC shall fail to use commercially reasonable efforts to obtain the Supreme Court Approval or Purchaser shall fail to cooperate in connection therewith, as applicable, in which case the provisions of Section 18.1 or Section 18.2 shall apply, as applicable.

10.5 WPPC hereby represents and warrants to Purchaser that, as of the date hereof and as of the Closing Date:

(a) WPPC is a religious corporation, duly formed, validly existing and in good standing under the laws of the State of New York and, so long as it obtains Supreme Court Approval, Congregational and Board/AC Approval and Presbytery Approval, is not subject to any law, order, decree, restriction or agreement which prohibits or would be violated by this Agreement or the consummation of the transactions contemplated hereby.

(b) Except for obtaining the Congregational and Board/AC Approval, Presbytery Approval and Supreme Court Approval, WPPC and the individual executing this Agreement on behalf of WPPC has full power and authority to enter into and perform this Agreement in accordance with its terms. This Agreement and all documents executed by WPPC which are to be delivered to Purchaser at Closing are (subject to obtaining the Supreme Court Approval and Congregational and Board/AC Approval and Presbytery Approval), and at the time of Closing will be, duly authorized, executed and delivered by WPPC, and at the time of Closing will be the legal, valid and binding obligations of WPPC enforceable against WPPC in accordance with their respective terms, subject to applicable bankruptcy, insolvency and other similar laws pertaining to the relief of debtors and to general principals of equity.

(c) The execution and delivery of this Agreement by WPPC and the consummation by WPPC of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or governmental authority or (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of WPPC, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which WPPC is a party or by which WPPC may be bound.

(d) WPPC is the sole owner of fee title to the Premises and has not granted to any person, firm or other entity any right or option or the right of first refusal or first offer to acquire the Premises or any portion thereof or any interest therein, other than any rights of the Presbytery.

(e) 

[REDACTED]

(f) WPPC has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by WPPC's creditors, suffered the appointment of a receiver to take possession of all, or substantially all of WPPC's assets, suffered the attachment or other judicial seizure of all, or substantially all of WPPC's assets, or made an offer of settlement, extension or composition to creditors generally, in each case in connection with a bankruptcy.

(g) WPPC is not now, nor shall it be, at any time prior to or at the Closing, a Person with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "**U.S. Person**"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC "**Specially Designated Nationals and Blocked Persons**") or otherwise. WPPC is not now nor shall it be at any time prior to or at the Closing a Person with whom a U.S. Person, including a United States Financial Institution as defined in 31 U.S.C. 5312, as periodically amended ("**Financial Institution**"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(h) WPPC: (A) is not under investigation by any Government Entity for, nor has it been charged with, or convicted of money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws (as hereinafter defined); (B) has not been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (C) has not had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. For purposes of this Agreement, the term "**Anti-Money Laundering Laws**" shall mean laws, regulations and sanctions, state and federal, criminal and civil, that: (w) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (x) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (y) require identification and documentation of the parties with whom a Financial Institution conducts business; or (z) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "**Patriot Act**"), the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

(i) WPPC is in compliance with any and all applicable provisions of the Patriot Act.

(j)

(k) As of the date hereof, there are no pending or to WPPC's Knowledge, threatened condemnation, eminent domain or similar proceedings with respect to all or any portion of the Premises. As of the date hereof, WPPC has received no written notice of any pending or proposed special assessments affecting the Premises or any portion thereof.

(l) There are no tax certiorari proceedings pending with respect to the Premises or any part thereof.

(m) There are no Leases or any occupancy agreements affecting all or any portion of the Premises which are binding on WPPC other than the Existing Lease and any subleases thereunder.

(n) WPPC is not a party to any union contracts, labor agreements, collective bargaining agreements or any other labor-related agreements or arrangements with any labor union, labor organization or works council with respect to the Premises that are binding on WPPC and the Premises and that will be binding upon Purchaser and the Premises after the Closing.

(o) There are no service contracts, commission agreements, management agreements or any other agreements affecting the Premises or the operation thereof that shall be binding on Purchaser or the Premises after the Closing (collectively, the "**Service Contracts**").

(p) There are no employees of WPPC in connection with the Premises whose employment will be an obligation of Purchaser after the Closing Date. No employee has any right to use, occupy or live-in the Premises or any part thereof.

(q) To WPPC's knowledge, no part of the Premises is being operated as a single room occupancy dwelling.

(r) Subject to the approvals contemplated by this Agreement, WPPC has not commenced any proceeding with the City Planning Commission and/or the New York City Board of Standards and Appeals for rezoning or variance which remains open.

10.6 Purchaser hereby represents and warrants to WPPC as of the date hereof and as of Closing that:

(a) Purchaser is duly formed and in good standing under the laws of the State of Delaware and is not subject to any law, order, decree, restriction or agreement which prohibits

or would be violated by this Agreement or the consummation of the transactions contemplated hereby.

(b) Purchaser and the individual executing this Agreement on behalf of Purchaser has full power and authority to enter into and perform this Agreement in accordance with its terms and this Agreement and all documents executed by Purchaser which are to be delivered to WPPC at Closing are and at the time of Closing will be duly authorized, executed and delivered by Purchaser and are, and at the time of Closing will be the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency and other similar laws pertaining to the relief of debtors and to general principals of equity.

(c) Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby is prohibited, or requires Purchaser to obtain any consent, authorization, approval or registration under, any law, statute, rule, regulation, judgment, order, writ, injunction, decree or other agreement or instrument which is binding upon Purchaser or under the organizational documents of Purchaser.

(d) There are no judgments, orders or decrees of any kind against Purchaser unpaid and unsatisfied of record, nor any actions, suits or other legal or administrative proceedings pending or to Purchaser's Knowledge, threatened in writing against Purchaser, which would prevent Purchaser's ability to consummate the transactions contemplated by this Agreement.

(e) Purchaser has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Purchaser's creditors, suffered the appointment of a receiver to take possession of all, or substantially all of Purchaser's assets, suffered the attachment or other judicial seizure of all, or substantially all of Purchaser's assets or made an offer of settlement, extension or composition to creditors generally, in each case in connection with a bankruptcy.

(f) Purchaser is not now, nor shall it be, at any time prior to or at the Closing, a Person with whom a U.S. Person is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by OFAC (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Specially Designated Nationals and Blocked Persons or otherwise). Neither Purchaser, nor any Person who owns an interest in Purchaser (other than the owner of publicly traded shares) (collectively, a "**Purchaser Party**") is now nor shall be at any time prior to or at the Closing a Person with whom a U.S. Person, including a United States Financial Institution, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(g) Neither Purchaser nor any Purchaser Party, nor any Person providing funds to Purchaser: (A) is under investigation by any governmental authority for, or has been

charged with, or convicted of money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (B) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (C) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws.

(h) Purchaser is in compliance with any and all applicable provisions of the Patriot Act.

(i) There is no pending or to Purchaser's Knowledge, threatened in writing, litigation, arbitration, administrative or other adjudicatory proceeding or legal action against or affecting Purchaser, this Agreement or the transactions contemplated by this Agreement in any court of law or in equity or before any Government Entity, which if adversely determined would prevent Purchaser from performing its material obligations hereunder or under the Development Agreement.

(j) The Ownership and Control Standards are satisfied with respect to Purchaser and Developer.

10.7 WPPC makes no warranty with respect to the absence or presence of Hazardous Materials on, above or beneath the Premises (or any parcel in proximity thereto) or in any water on or under the Premises. Purchaser's closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to cause WPPC to be joined in any action brought under any Environmental Laws (including, without limitation, any action brought by any Government Entity). Except (i) with respect to any claims arising out of any breach of covenants, representations or warranties set forth in Section 10.5, and (ii) as set forth in any closing document executed by WPPC, and in each case subject to the limitations on WPPC's liability set forth in this Agreement, Purchaser, for itself and its agents, Affiliates, successors and assigns, hereby releases and forever discharges WPPC, and the other WPPC Related Parties from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this Agreement, which Purchaser has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Premises, including, without limitation, any claim for indemnification or contribution arising under any Environmental Law.

10.8 The representations and warranties of each of WPPC and Purchaser contained in Sections 10.5 and 10.6 (the "**Surviving Representations**") shall survive the Closing until the date which is one (1) year following the Closing Date (the "**Survival Period**"). Each such Surviving Representation shall survive until, and shall automatically be null and void and of no further force and effect upon, the expiration of the Survival Period unless, prior to the expiration of the Survival Period, either party (the "**Claiming Party**") shall have provided to the other party (the "**Breaching Party**") a notice (a "**Breach Notice**") alleging that the Breaching Party is in breach of representations or warranties and specifying in reasonable detail the nature of such breach. The Claiming Party shall allow the Breaching Party sixty (60) days after the Breaching Party's receipt of a Breach Notice within which to cure such breach (the "**Cure Period**"). If the Breaching Party fails to cure such breach during the Cure Period, the Claiming Party's sole remedy shall be to commence a legal proceeding against the Breaching Party alleging that the Breaching Party has breached the representations or warranties identified in the applicable

Breach Notice and that the Claiming Party has suffered actual damages (but not any consequential or other damages) as a result thereof, which proceeding must be commenced, if at all, within ninety (90) days after the expiration of the Cure Period. If the Claiming Party shall have timely commenced a proceeding as described in the previous sentence and a court of competent jurisdiction shall determine (pursuant to a final, non-appealable order in connection with such proceeding) that (1) the Breaching Party was in breach of the applicable representation or warranty as of the Closing Date, (2) the Claiming Party suffered actual damages (the “**Claiming Party Damages**”) by reason of such breach, (3) the Claiming Party did not have actual knowledge of such breach on or prior to the Closing Date, and (4) the information that is the subject of such breach was not contained in any diligence materials or reports provided to the Claiming Party by the other party or any third party, then the Claiming Party shall be entitled, as its sole remedy, to receive an amount equal to the Claiming Party Damages (subject to the limitations set forth below). Any such Claiming Party Damages shall be paid within thirty (30) days following the entry of such final, non-appealable order and delivery of a copy thereof to the Breaching Party. Notwithstanding the foregoing, in no event shall a Claiming Party be entitled to sue, seek, obtain or be awarded Claiming Party Damages from the Breaching Party unless and until the aggregate amount of Claiming Party Damages for which the Breaching Party is obligated to indemnify the Claiming Party exceeds the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00), whereupon the Breaching Party shall be liable to the Claiming Party for all Claiming Party Damages from dollar one and not just Claiming Party Damages in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00). Notwithstanding anything to the contrary contained in this Agreement, in no event shall a Breaching Party shall have any liability for Claiming Party Damages in the aggregate with all breaches under this Agreement in excess of One Million and 00/100 Dollars (\$1,000,000.00); provided further, however, that nothing contained in this Section 10.8 shall limit either party’s obligations under the Development Agreement. The terms and provisions of this Section 10.8 shall survive the Closing.

## **ARTICLE ELEVENTH**

### **DAMAGE AND DESTRUCTION**

11.1 The occurrence of any Casualty at the Premises prior to the Closing Date shall not entitle either Party to terminate this Agreement, and the Parties shall consummate the transactions contemplated by this Agreement, notwithstanding such Casualty in accordance herewith without any liability or obligation on the part of WPPC by reason of such Casualty. WPPC shall have the right to make a claim for and to retain any casualty insurance proceeds received under the casualty insurance policies in effect with respect to the Premises on account of such physical damage or destruction attributable to such casualty, and shall have the right to perform additional repairs to the Improvements and/or to rebuild the Improvements to substantially the same condition as it existed prior to the occurrence of such fire or other casualty, but shall not be obligated to do so.

11.2 The provisions of this Section 11 shall be deemed an “express provision to the contrary” and shall supersede any law applicable to the Premises governing the effect of fire or other casualty on contracts for real property or interests therein.

## ARTICLE TWELFTH

### CONDEMNATION

12.1 If, prior to the Closing Date, any part of the Premises is taken, or if WPPC shall receive an official notice from any Government Entity having eminent domain power over the Premises of its intention to take, by eminent domain proceeding, permanently or temporarily, any part of the Premises (a “**Taking**”), then WPPC shall notify Purchaser of same in writing and:

(a) if such Taking involves less than a Material Portion of the Premises, neither Party shall have any right to terminate this Agreement, and the Parties shall nonetheless consummate this transaction in accordance with this Agreement, without any abatement of the Consideration or other payments due WPPC under the Development Agreement or any liability or obligation on the part of WPPC by reason of such Taking; provided, however, that WPPC shall, on the Closing Date, (A) assign and remit to Purchaser the net proceeds of any award or other proceeds of such Taking which may have been collected by WPPC as a result of such Taking that is allocable to the Purchaser Premises (as opposed to the Community Space Unit) less a proportionate share of the actual reasonable out-of-pocket expenses incurred by WPPC in connection with such Taking, or (B) if no award or other proceeds shall have been collected, deliver to Purchaser an assignment of WPPC’s right to any such award or other proceeds which may be payable to WPPC as a result of such Taking that is allocable to the Purchaser Premises (as opposed to the Community Space Unit) less a proportionate share of the actual reasonable out-of-pocket expenses incurred by WPPC in connection with such Taking, or

(b) if such Taking involves a Material Portion of the Premises, Purchaser shall have the option, exercisable by the end of the Condemnation Election Period, time being of the essence, to terminate this Agreement by delivering notice of such termination to WPPC, whereupon this Agreement shall be deemed canceled and of no further force or effect, the full Deposit (less any then outstanding WPPC Expenses, subject to the WPPC Expense Cap, which shall first be paid to WPPC out of the Deposit) shall be returned to Purchaser, and no Party shall have any further rights or liabilities against or to any other Party except pursuant to the provisions of this Agreement which are expressly provided to survive the termination hereof. If a Taking described in this clause (b) shall occur and Purchaser shall not timely elect to terminate this Agreement, then Purchaser and WPPC shall consummate this transaction in accordance with this Agreement, without any abatement of the Consideration or any liability or obligation on the part of WPPC by reason of such Taking; provided, however, that WPPC shall, on the Closing Date, (A) assign and remit to Purchaser the net proceeds of any award or other proceeds of such Taking which may have been collected by WPPC as a result of such Taking that is allocable to the Purchaser Premises (as opposed to the Community Space Unit) less a proportionate share of the reasonable expenses incurred by WPPC in connection with such Taking, or (B) if no award or other proceeds shall have been collected, deliver to Purchaser an assignment of WPPC’s right to any such award or other proceeds which may be payable to WPPC as a result of such Taking that is allocable to the Purchaser Premises (as opposed to the Community Space Unit) less a proportionate share of the actual reasonable out-of-pocket expenses incurred by WPPC in connection with such Taking. This Section 12.1 shall survive the termination of this Agreement.

12.2 As used herein, a “**Material Portion**” of the Premises shall mean such portion of the Land when so taken, would leave remaining a balance of the Land, which due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws, or building regulations then existing or prevailing, readily accommodate the Parties’ anticipated development of the Project in Purchaser’s reasonable discretion. “**Condemnation Election Period**” shall mean the period of time commencing on the date of delivery by WPPC to Purchaser of written notice of a Taking and ending on the date that is thirty (30) days following the date of such delivery by WPPC to Purchaser of written notice of such Taking, during which period all time periods and deadlines in this Agreement shall toll on a day-for-day basis.

12.3 In the event of any Taking with respect to which Purchaser does not exercise its right of termination pursuant to Section 12.1(b), the Scheduled Closing Date, if it would have otherwise occurred earlier, shall be extended to the tenth (10th) Business Day following the end of the Condemnation Election Period.

12.4 The provisions of this Section 12 supersede any law applicable to the Premises governing the effect of condemnation on contracts for real property or interests therein.

## **ARTICLE THIRTEENTH**

### **BROKERS AND ADVISORS**

13.1 Purchaser and WPPC each represent and warrant to the other Party that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each a “**Broker**”) in connection with this Agreement or the transactions contemplated hereby. Each Party hereby agrees to indemnify, defend and hold the other Party harmless from and against any and all claims, demands, causes of action, losses, costs and expenses (including reasonable attorneys’ fees, court costs and disbursements) arising from any claim for commission, fees or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with such Party in connection with this Agreement or the transactions contemplated hereby.

13.2 The provisions of this Section 13 shall survive the termination of this Agreement or the Closing.

## **ARTICLE FOURTEENTH**

### **TAX REDUCTION**

Purchaser and WPPC will reasonably collaborate to structure the Project and to seek as-of-right and discretionary exemptions and abatements so as to minimize the amount of real estate taxes attributable to the Project (including the Community Space Unit and the Purchaser Premises). In furtherance thereof, each of Purchaser and WPPC shall make applications (which, if required, shall be joint applications) and/or otherwise seek such exemptions and abatements from the appropriate governmental authorities as reasonably

requested by the other Party. Notwithstanding the foregoing, (i) in no event shall the Closing be conditioned or adjourned, and neither Party shall have the right to terminate this Agreement, should such abatements or exemptions not be obtained, and (ii) this Section 14 shall not modify either party's rights or obligations contained elsewhere in this Agreement, or require a party to incur any cost or expense.

## **ARTICLE FIFTHTEENTH**

### **TRANSFER TAXES AND TRANSACTION COSTS**

15.1 At the Closing, WPPC and Purchaser shall execute, acknowledge, deliver and file all such returns (or, if required by ACRIS E-tax procedures, an electronic version thereof) as may be necessary to comply with Article 31 of the Tax Law of the State of New York and the regulations applicable thereto, and the New York City Real Property Transfer Tax Law (Admin. Code Article 21) and the regulations applicable thereto (collectively, as the same may be amended from time to time, the "**Transfer Tax Laws**"); it being understood that, due to WPPC's tax exempt status, the Parties expect the transfer of the Purchaser Premises to be exempt from any taxes that would otherwise be due pursuant to the New York City Real Property Transfer Tax Law (Admin. Code Article 21), but not from Article 31 of the Tax Law of the State of New York. The transfer taxes payable in respect of the conveyance of the Purchaser Premises to the Purchaser pursuant to the Transfer Tax Laws shall collectively be referred to as the "**Transfer Taxes.**" WPPC shall pay (or cause to be paid) to the appropriate governmental entities the Transfer Taxes in connection with the consummation of the transactions contemplated by this Agreement in an amount not to exceed the Consideration (but taking in account WPPC's exemption, if any). Purchaser shall be obligated to pay any Transfer Taxes or other fees payable in excess of the Consideration in connection with the execution and delivery of this Agreement, the Development Agreement or otherwise in connection with the Project, if any. Each Party hereby agrees to indemnify, defend and hold the other Party harmless from and against any and all claims, demands, causes of action, losses, costs and expenses (including reasonable attorneys' fees, court costs and disbursements) arising from such Party's failure to pay the Transfer Taxes or other transfer taxes, as applicable, pursuant to this Section 15.1.

15.2 Except as otherwise expressly provided in this Agreement, the Development Agreement, the Completion Guaranty and the Indemnity Agreement, WPPC shall be responsible for the costs of its legal counsel and other advisors employed by it in connection with this Agreement and the Project.

15.3 Except as otherwise expressly provided in this Agreement, Purchaser shall be responsible for (i) the costs and expenses associated with its due diligence, (ii) the costs and expenses of its legal counsel, advisors and other professionals employed by it in connection with this Agreement and the Project (including the Project Architect and all Purchaser's Consultants), (iii) all premiums and fees for title examination and title insurance and endorsements obtained and all related charges and survey costs in connection therewith, (iv) all costs and expenses incurred in connection with any financing obtained by Purchaser, including without limitation, loan fees, mortgage recording taxes, financing costs and lender's legal fees, (v) all escrow and/or closing fees, and (vi) any recording fees for documentation to be recorded in connection with the transactions contemplated by this Agreement.

15.4 The provisions of this Section 15 shall survive the Closing.

## ARTICLE SIXTEENTH

### DELIVERIES TO BE MADE ON THE CLOSING DATE

16.1 WPPC's Documents and Deliveries: On the Closing Date, WPPC shall deliver or cause to be delivered to Purchaser the following:

(a) A deed (the "**Deed**") in the form annexed hereto and made a part hereof as Exhibit C with respect to the Purchaser Premises, and WPPC shall have the right, but not the obligation, to execute and record (together with ACRIS forms) a confirmatory deed with respect to the Community Space Unit.

(b) Executed counterparts to all tax returns (or, if required by ACRIS E-tax procedures, an electronic version thereof) required by Section 15.1 hereof.

(c) A bank or cashiers' checks from WPPC, made payable to the appropriate governmental entity in the required amount(s) due for the Transfer Taxes for the conveyance of the Purchaser Premises to Purchaser, including, but not limited to, any such Transfer Taxes due under the New York City Real Property Transfer Tax Law and pursuant to the New York State Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certificate of Exemption from the Payment of Estimated Personal Income Tax (TP-584) (the "**NYS Return**"), or any successor form thereto required to be filed with respect to the New York State Real Estate Transfer Tax (unless WPPC authorizes the Title Company to pay same and the Title Company agrees to deduct and pay such expenses out of monies payable to WPPC or unless WPPC is exempt from the payment of same).

(d) A certificate of non-foreign status, certifying to Purchaser that WPPC is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code.

(e) The signed Supreme Court Order (if received) and, to the extent required by the Title Company, all organizational consents and resolutions required for WPPC to consummate the transactions contemplated hereby, each such organizational consent or resolution certified to be true and complete by an authorized representative of WPPC.

(f) The certificate issued by LPC evidencing LPC Approval (if received);

(g) Written evidence reasonably satisfactory to Purchaser of termination of the Existing Lease (if received).

(h) Originals, or if originals are unavailable, copies, of plans and specifications, technical manuals and similar materials for the Improvements to the extent same are in WPPC's possession or control.

(i) Originals, or if originals are unavailable, copies, of all permits, licenses and approvals relating to the ownership, use or operation of the Premises, to the extent same are in Seller's possession or control.

(j) Keys and combinations in WPPC's possession relating to the operation of the Premises.

(k) An executed certificate from WPPC dated as of the Closing Date, which updates WPPC's representations and warranties and describes in detail which of such representations and warranties are no longer true, correct, complete and accurate in all respects, and stating, in detail, the reason such representation or warranty is not true, correct, complete and accurate as of the Closing Date.

(l) Such evidence or documents as may be reasonably required by the Title Company evidencing the status, good standing, and capacity of WPPC, and the authority of the person or persons who are executing the various documents on behalf of the WPPC in connection with the sale of the Purchaser Premises.

(m) Such other documents, agreements and instruments as may be reasonably necessary or desirable to consummate the transactions contemplated in this Agreement provided that the same to not impose any additional cost, expense or liability on WPPC.

16.2 Purchaser's Documents and Deliveries: On the Closing Date, Purchaser shall deliver or cause to be delivered to WPPC the following, executed and notarized by Purchaser or the applicable party:

(a) The Deed;

(b) Executed counterparts to all tax returns (or, if required by ACRIS E-tax procedures, an electronic version thereof) required by Section 15.1 hereof;

(c) The Completion Guaranty and the Indemnity Agreement;

(d) (1) Copies of Purchaser's consent of the members of Purchaser authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, being certified as true and correct by the manager(s)/managing member(s), as applicable, of Purchaser; (2) a good standing certificate issued for Purchaser by the state of organization of Purchaser, dated within thirty (30) days of the Closing Date; (3) a good standing certificate for Purchaser issued by the State of New York (if not organized in the State of New York) dated within thirty (30) days of the Closing Date; and (4) an incumbency certificate executed by an officer or manager(s)/managing member(s), as applicable, of Purchaser with respect to individuals executing any documents or instruments on behalf of Purchaser in connection with the transactions contemplated herein; and

(e) An executed certificate from Purchaser dated as of the Closing Date, which updates Purchaser's representations and warranties and describes in detail which of such representations and warranties are no longer true, correct, complete and accurate in all respects, and stating, in detail, the reason such representation or warranty is not true, correct, complete and accurate as of the Closing Date.

(f) Such evidence or documents as may be reasonably required by the Title Company evidencing the status, good standing, and capacity of Purchaser, and the authority of

the person or persons who are executing the various documents on behalf of the Purchaser in connection with the sale of the Purchaser Premises.

(g) Such other documents, agreements and instruments as may be reasonably necessary or desirable to consummate the transactions contemplated in this Agreement provided that the same to not impose any additional cost, expense or liability on Purchaser.

16.3 Jointly Executed Documents: WPPC and Purchaser on the Closing Date, shall execute (or Purchaser shall cause Developer to execute, as applicable), acknowledge (as appropriate) and exchange the following documents:

(a) The Development Agreement, it being agreed that the form of the Development Agreement may be amended prior to Closing from the form attached hereto as Exhibit B, and made a part hereof, if requested by any Mortgagee or Mezzanine Lender but only if such amendment is approved by WPPC in advance in writing in its sole discretion in each instance; provided, however, that WPPC shall not unreasonably withhold its consent if such amendment would not alter WPPC's, Purchaser's or Developer's respective rights, obligations or liability in a manner adverse to WPPC other than to a de minimis extent (considered in the aggregate with any prior amendments pursuant to this Section 16.3(a) and Section 21.2 below). For purposes of clarification, without limitation, WPPC's approval may be withheld in its sole and absolute discretion if the proposed modification would alter any deadline or economic terms. WPPC's denial of any approval pursuant to this Section 16.3(a) shall not affect Purchaser's obligations under this Agreement; Purchaser shall promptly pay WPPC's costs and expenses in connection with the review and finalization of any proposed amendment (which payment shall not be considered WPPC Expenses and shall not be reimbursed to Purchaser or credited against the Consideration).

(b) The NYS Return and any other return required under the Transfer Tax Laws, and any other tax laws applicable to the transactions contemplated herein;

(c) A duly executed memorandum of the Development Agreement substantially in the form of Exhibit D, attached hereto and made a part hereof (the "**Memorandum of Development Agreement**"), which Purchaser shall cause to be recorded against the Purchaser Premises with the City Register at Closing, and a duly executed termination of the Memorandum of Development Agreement (the "**Termination of Memorandum of Development Agreement**") substantially in the form of Exhibit E, attached hereto and made a part hereof, which Termination of Memorandum of Development Agreement shall be delivered to Escrow Agent to be held in escrow and each of the Parties shall authorize Escrow Agent to record the Termination of Memorandum of Development Agreement against the Premises upon the termination of the Development Agreement when there are no further obligations thereunder;

(d) Evidence of the satisfaction of any requirements under the Condominium Documents including, without limitation, any required insurance to be maintained by the applicable party; and

(e) Any other affidavit, document or instrument required to be delivered by Purchaser or WPPC or reasonably requested by the Title Company, pursuant to the terms of this Agreement or applicable law in order to effectuate the Development Agreement.

16.4 Order of Recording. At Closing, the order of recording will be the following: (1) Declaration, (2) Deed, (3) Memorandum of Development Agreement, and then (4) any Mortgage or other lien of the Mortgagee against the Purchaser Premises (it being understood that there is no financing contingency).

## ARTICLE SEVENTEETH

### NOTICES

17.1 Any and all bills, statements, consents, notices, demands, requests or other communications (collectively, “**Notice**”) under this Agreement shall be written and shall be delivered (a) personally with receipt acknowledged, (b) by reputable overnight delivery services such as FedEx, or another reputable overnight delivery service, (c) by prepaid registered or certified mail, return receipt requested, or (d) by electronic mail (following with next-day hard copy delivered personally or by prepaid, reputable overnight delivery service).

17.2 Any Notice required to be sent under the terms of this Agreement shall be sent as follows:

If to WPPC:

Chair, West Park Administrative Commission  
c/o Presbytery of New York City  
475 Riverside Drive, Suite 1270  
New York, NY 10115  
Email: [rwleaf@gmail.com](mailto:rwleaf@gmail.com)

with a copy to:

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
ATTN: Daniel Berman, Esq.  
Email: [dberman@kramerlevin.com](mailto:dberman@kramerlevin.com)

If to Purchaser:

165 West 86th Street Developer LLC  
c/o Alchemy Properties Inc.  
800 Third Avenue, 22<sup>nd</sup> Floor  
New York, New York 10022  
Attention: Kenneth S. Horn

Email: [khorn@alchemy-properties.com](mailto:khorn@alchemy-properties.com)

with copies to:

Schwartz Sladkus Reich Greenberg Atlas LLP  
444 Madison Avenue  
New York, New York 10022  
Attention: Jeffrey M. Schwartz, Esq.  
Email: [jschwartz@ssrga.com](mailto:jschwartz@ssrga.com)

17.3 Any Notice so sent by certified or registered mail, reputable overnight delivery service such as FedEx, personal delivery or electronic mail shall be deemed given on the date of receipt or refusal or failure, as indicated on the return receipt, email bounce back or the receipt of the overnight delivery service or personal delivery service. Notwithstanding the foregoing, whenever under this Agreement a notice is (a) received on a day which is not a Business Day or is required to be delivered on or before a specific day which is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day and (b) delivered by hand (or so attempted, but refused or failed), it shall be deemed given on the day of delivery unless delivery is made after 5:00 p.m. or not on a Business Day, in which event delivery shall be deemed given on the next occurring Business Day.

17.4 By giving to the other party at least ten (10) days of advance Notice thereof, the Parties hereto and their respective successors and assigns will have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each will have the right to specify as its address any other address.

## **ARTICLE EIGHTEENTH**

### **DEFAULT BY PURCHASER OR WPPC**

18.1 If Purchaser shall commit a Default, WPPC's sole remedy by reason thereof shall be to terminate this Agreement and upon such termination, (i) WPPC shall be entitled to retain the Deposit as liquidated damages for Purchaser's default hereunder, it being agreed that the damages by reason of Purchaser's default are difficult, if not impossible, to ascertain, and (ii) thereafter Purchaser and WPPC shall have no further rights or obligations under this Agreement, except for those that are expressly provided in this Agreement to survive the termination hereof. Upon such termination, at WPPC's request Purchaser shall cause the Permit Assignment to occur. Nothing contained herein is intended to or shall be construed to limit any right or remedy of WPPC against Purchaser after the Closing for a breach of any covenant of Purchaser which survives the Closing, or the exercise of any rights of WPPC against Developer under the Development Agreement. Notwithstanding the foregoing, nothing contained in this Section 18.1 shall be deemed to reduce or waive in any respect the additional obligations of Purchaser to indemnify WPPC expressly provided in this Agreement.

18.2 If WPPC shall commit a Default, Purchaser shall be entitled, as its sole remedy, to either:

- (a) terminate this Agreement and upon such termination, (A) Purchaser shall have the right to receive a return of the Deposit, the Tenant Expenses, the DOB Expenses, the WPPC Expenses and the Development Expenses, (B) in the event that WPPC willfully Defaults then WPPC shall reimburse Purchaser for Purchaser's Costs, without duplication of the Development Expenses, WPPC Expenses, the Tenant Expenses and the DOB Expenses as set forth above, and (C) upon such termination and the making of such payments, neither Party shall have any further rights or obligations hereunder, except for those that are expressly provided in this Agreement to survive the termination hereof and all such amounts due under this Section 18.2(a) shall constitute a lien on the Premises for which Purchaser may, after such termination, record without WPPC's consent, or
- (b) in the event that WPPC willfully Defaults, commence an action for specific performance of WPPC's obligations under this Agreement, provided such action is commenced within sixty (60) days after such Default.

18.3 With respect to any legal proceedings or actions which shall be commenced by either WPPC or Purchaser as a result of a Default by the other party, the party which shall prevail in any such proceeding or action, shall be entitled to collect from the non-prevailing party, its reasonable attorneys' fees and disbursements of counsel incurred by the prevailing party in any such action or proceeding.

18.4 The Parties agree that none of the provisions of this Agreement shall survive the Closing or termination of this Agreement unless expressly set forth herein. Any surviving liability shall, if the Closing occurs, be deemed incorporated into the Development Agreement, but Purchaser shall be jointly and severally liable with Developer for all such surviving liability. Furthermore, (a) Purchaser shall be jointly and severally liable with Developer for a default by Developer under this Agreement, (b) a default by Developer in performing its obligations under this Agreement shall be deemed a default by Purchaser under this Agreement, and (c) the failure of Guarantor to perform its obligations under this Agreement shall be deemed a default by Purchaser under this Agreement.

18.5 The provisions of this Section 18 shall survive termination hereof and the Closing.

## ARTICLE NINETEENTH

### APPORTIONMENTS

19.1 The following shall be apportioned between WPPC and Purchaser as of 11:59 p.m. on the day immediately preceding the Closing Date (the "**Apportionment Date**") on the basis of the actual number of days of the month which shall have elapsed as of the Closing Date and based upon the actual number of days in the month and a 365 day year:

19.2 Property Taxes on the basis of the respective periods for which each is assessed or

imposed, to be apportioned in accordance with Section 19.6;

19.3 fuel, if any, as estimated in writing by WPPC's supplier, at current cost, together with any sales taxes payable in connection therewith, if any (a letter from WPPC's fuel supplier shall be conclusive evidence as to the quantity of fuel on hand and the current cost therefor);

19.4 prepaid fees for licenses and other permits assigned to Purchaser or Developer at the Closing in accordance with the Development Agreement; and

19.5 such other items as are customarily apportioned in real estate closings of commercial properties in the City of New York.

19.6 Property Taxes shall be apportioned on the basis of the fiscal period for which assessed. Since the Premises is currently exempt from real estate taxes, Purchaser shall be responsible for all real estate taxes from and after Closing.

19.7 If there are water meters at the Premises, the unfixed water rates and charges and sewer rents and taxes covered by meters, if any, shall be apportioned (i) on the basis of an actual reading done within thirty (30) days prior to the Apportionment Date, or (ii) if such reading has not been made, on the basis of the last available reading. If the apportionment is not based on an actual current reading, then upon the taking of a subsequent actual reading, the Parties shall readjust such apportionment within thirty (30) days following notice of the determination of such actual reading, and WPPC shall deliver to Purchaser or Purchaser shall deliver to WPPC, as the case may be, the amount determined to be due upon such readjustment. WPPC shall endeavor to order a title water meter reading at least thirty (30) days prior to the Closing Date.

19.8 Charges for all electricity, steam, gas and other utility services (collectively, "**Utilities**") shall be billed to WPPC's account up to the Apportionment Date and from and after the Apportionment Date, all Utilities shall be billed to Purchaser's account. If for any reason such changeover in billing is not practicable as of the Closing Date as to any Utility, such Utility shall be apportioned on the basis of actual current readings or, if such readings have not been made, on the basis of the most recent bills that are available. If any apportionment is not based on an actual current reading, then upon the taking of a subsequent actual reading, the Parties shall readjust such apportionment within thirty (30) days following notice of the determination of such actual reading and WPPC shall promptly deliver to Purchaser, or Purchaser shall promptly deliver to WPPC, as the case may be, the amount determined to be due upon such adjustment. At the Final Completion Closing, Utilities with respect to the Community Space Unit shall be changed over to WPPC's account.

19.9 At or prior to the Closing, WPPC and Purchaser and/or their respective agents or designees will jointly prepare a preliminary closing statement (the "**Preliminary Closing Statement**") which will show the net amount due either to WPPC or to Purchaser as the result of the adjustments and proration provided for in this Agreement, and such net due amount will be added to or subtracted from the Cash Consideration, as applicable, including all amounts required to be deducted from the Cash Consideration set forth in Section 2.3. On the Closing Date, WPPC and Purchaser will jointly prepare a final closing statement reasonably satisfactory to WPPC and Purchaser in form and substance (the "**Final Closing Statement**") setting forth the

final determination of the adjustments and prorations provided for herein and setting forth any items which are not capable of being determined at such time (and the manner in which such items shall be determined and paid). The net amount due WPPC or Purchaser, if any, by reason of adjustments to the Final Closing Statement shall be paid in cash by the Party obligated therefor within five (5) Business Days following that Party's receipt of the adjustment. The adjustments, prorations and determinations agreed to by WPPC and Purchaser in the Final Closing Statement shall be conclusive and binding on the Parties, except for any items which are not capable of being determined at the time the Final Closing Statement is agreed to by WPPC and Purchaser, which items shall be determined and paid in the manner set forth in the Final Closing Statement. Prior to and following the Closing Date, each Party shall provide the other with such information as the other shall reasonably request (including, without limitation, access to the books, records, files, ledgers, information and data with respect to the Premises during normal business hours upon reasonable advance notice) in order to make the preliminary and final adjustments and prorations provided for herein.

19.10 The apportionments herein are intended to result in the Purchaser being fully responsible for all costs and expenses with respect to the Premises from and after the Closing, it being understood that although WPPC will retain title to the Community Space Unit, Purchaser will be responsible for the redevelopment of the entire Premises and accordingly Purchaser shall be responsible for all costs and expenses relating to the ownership, use, operation and condition to the Premises from and after Closing, until the Final Completion Closing, at which point the Condominium Documents shall govern the Parties' respective obligations for the same.

19.11 The provisions of this Section 19 shall survive the Closing.

## **ARTICLE TWENTIETH**

### **ENTIRE AGREEMENT**

20.1 This Agreement (including the Exhibits and Schedules hereto and any other written agreement being executed simultaneously herewith) contains all of the terms agreed upon between WPPC and Purchaser with respect to the subject matter hereof, and all prior agreements, understandings, representations and statements, oral or written, between WPPC and Purchaser are merged into this Agreement.

20.2 The provisions of this Section 20 shall survive the Closing or the termination hereof.

## **ARTICLE TWENTY-ONE**

### **AMENDMENTS**

21.1 This Agreement may not be changed, modified or terminated, except by an instrument executed by WPPC and Purchaser. The provisions of this Section 21 shall survive the Closing or the termination hereof.

21.2 In the event that Purchaser's Mortgagee or Mezzanine Lender requests that reasonable modifications to this Agreement be obtained, Purchaser may submit to WPPC a

written amendment to this Agreement incorporating such changes requested by such Mortgagee or Mezzanine Lender for WPPC's prior written approval in each instance, which approval may be withheld by WPPC in its sole and absolute discretion; provided, however, that WPPC shall not unreasonably withhold its consent if such amendment would not alter WPPC's, Purchaser's or Developer's respective rights, obligations or liability in a manner adverse to WPPC other than to a de minimis extent (considered in the aggregate with any prior amendments pursuant to this Section 21.2 and Section 16.3(a) above). For purposes of clarification, without limitation, WPPC's approval may be withheld in its sole and absolute discretion if the proposed modification would alter any deadline or economic terms. WPPC's denial of any approval pursuant to this Section 21.2 shall not affect Purchaser's obligations under this Agreement. Purchaser shall promptly pay WPPC's costs and expenses in connection with the review and finalization of any proposed amendment (which payment shall not be considered WPPC Expenses and shall not be reimbursed to Purchaser or credited against the Consideration).

## **ARTICLE TWENTY-TWO**

### **WAIVER**

No waiver by either Party of any failure or refusal by the other Party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. All waivers must be in writing to be effective. No delay by a Party in enforcing an obligation of the other Party shall be deemed a waiver of such obligation. The provisions of this Section 22 shall survive the Closing or the termination hereof.

## **ARTICLE TWENTY-THREE**

### **PARTIAL INVALIDITY**

If any term or provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. The Parties will reasonably cooperate to substitute an enforceable provision that achieves substantially the same result as the invalid or unenforceable provision. The provisions of this Section 23 shall survive the Closing or the termination hereof.

## **ARTICLE TWENTY-FOUR**

### **SECTION HEADINGS**

The headings of the various sections of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. The provisions of this Section 24 shall survive the Closing or the termination hereof.

## **ARTICLE TWENTY-FIVE**

### **GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York without giving effect to conflict of laws principles thereof. The provisions of this Section 25 shall survive the Closing or the termination hereof.

## **ARTICLE TWENTY-SIX**

### **PARTIES; PURCHASER'S ASSIGNMENT; RECORDING**

26.1 This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and are binding upon WPPC and Purchaser and their respective successors and permitted assigns.

26.2 Purchaser may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder, nor may any of the direct or indirect ownership interests in Purchaser be assigned or transferred, without first obtaining WPPC's written consent thereto, which consent may be withheld in WPPC's sole and absolute discretion. Notwithstanding the foregoing or anything contained herein to the contrary, without the prior consent of WPPC, Purchaser may, at any time, assign any of the direct or indirect ownership interests in Purchaser to an equity investor or investors in Purchaser, so long as upon completion of such assignment of direct or indirect ownership interests in Purchaser, both (the following, collectively, the "**Ownership and Control Standards**") (i) the Purchaser Permitted Parties, in the aggregate, shall continue to own at least five (5%) percent of the ownership interests in each of Purchaser and Developer, and (ii) the Purchaser Principal (or in the case of the death or incapacity of the Purchaser Principal, the Alchemy Alternate Principal) shall continue to Control Purchaser and Developer. Provided, however, in no event shall the Equity Member's right to approve customary joint venture major decisions be a lack of control over the Purchaser and Developer. In addition to the assignment right set forth above, after LPC Approval, in the event of the death or incapacitation of the Purchaser Principal and the Alchemy Alternate Principal, then WPPC shall not unreasonably withhold its consent to an assignment of this Agreement and the Development Agreement to a Qualified Developer; provided that (i) a replacement Guarantor reasonably acceptable to WPPC provides a replacement Completion Guaranty and Indemnity Agreement, and (ii) it shall not be unreasonable for WPPC to withhold its consent because of WPPC's concerns with the proposed Qualified Developer's reputation or character. Purchaser shall provide Notice and a copy of any assignment and assumption agreement to WPPC. Any assignment or transfer in violation of this Agreement shall be null and void.

26.3 Neither this Agreement nor any memorandum hereof may be recorded without first obtaining WPPC's written consent thereto.

26.4 The provisions of Section 26 shall survive the Closing or the termination hereof.

**ARTICLE TWENTY-SEVEN**

**CONFIDENTIALITY AND PRESS RELEASES**

27.1 Purchaser and its partners, members, attorneys, agents, employees and consultants will treat the information disclosed to it by WPPC, or otherwise gained through Purchaser's access to the Premises and WPPC's books and records, as confidential, giving it the same care as Purchaser's own confidential information, and make no use of any such disclosed information not independently known to Purchaser from a third party not under an obligation of confidentiality to WPPC or its Affiliates except in connection with the transactions contemplated hereby. In the event of a termination of this Agreement, Purchaser shall promptly destroy or return all such confidential information to WPPC.

27.2 Prior to the Closing Date, Purchaser and WPPC shall confer and agree on a press release to be issued jointly by Purchaser and WPPC disclosing the transaction and the appropriate time for making such release. Neither Purchaser nor WPPC shall issue any press releases (or other public statements) with respect to the transaction contemplated in this Agreement without approval of the other party, which approval shall not be unreasonably withheld; provided that in no event shall any press release (or other public statements) with respect to this transaction indicate the Consideration (or any of the other terms hereof) or, at the request of the other party, the identity of such party. This Section 27.2 shall not apply to WPPC's actions in furtherance of obtaining Presbytery Approval, Congregational and Board/AC Approval and Supreme Court Approval.

27.3 The provisions of this Section 27 shall survive the termination hereof or the Closing.

**ARTICLE TWENTY-EIGHT**

**FURTHER ASSURANCES**

WPPC and Purchaser will do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, assignments, notices, transfers and assurances as may be reasonably requested by the other Party for carrying out the intentions or facilitating the consummation of this Agreement, so long as such cooperation would not alter the rights or obligations of the cooperating party and is at no cost, expense or liability to the cooperating party. The provisions of this Section 28 shall survive the Closing.

**ARTICLE TWENTY-NINE**

**THIRD PARTY BENEFICIARY**

This Agreement is an agreement solely for the benefit of WPPC and Purchaser (and their permitted successors and/or assigns). No other Person shall have any rights hereunder nor shall any other Person be entitled to rely upon the terms, covenants and provisions contained herein. The provisions of this Section 29 shall survive the Closing or the termination hereof.

**ARTICLE THIRTY**

## **JURISDICTION AND SERVICE OF PROCESS**

The Parties agree to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Agreement and in furtherance of such agreement, the Parties hereby agree and consent that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the Parties in any such action or proceeding may be obtained within or without the jurisdiction of any court located in the State of New York located in New York County and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the parties by registered or certified mail to or by personal service at the last known address of the parties, whether such address be within or without the jurisdiction of any such court. Any legal suit, action or other proceeding by one Party to this Agreement against the other arising out of or relating to this Agreement (other than any dispute which, pursuant to the express terms of this Agreement, is to be determined by arbitration) shall be instituted only in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, and each Party hereby waives any objections which it may now or hereafter have based on venue and/or forum non-conveniens of any such suit, action or proceeding and submits to the jurisdiction of such courts. The provisions of this Section 30 shall survive the Closing or the termination hereof.

### **ARTICLE THIRTY-ONE**

#### **WAIVER OF TRIAL BY JURY**

WPPC AND PURCHASER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 31 SHALL SURVIVE THE CLOSING OR THE TERMINATION HEREOF.

### **ARTICLE THIRTY-TWO**

#### **EXCULPATION**

32.1 WPPC's Exculpation. Purchaser agrees that it does not have and will not have any claims or causes of action against any WPPC Related Party (other than WPPC), arising out of or in connection with this Agreement or the transactions contemplated hereby. Purchaser agrees to look solely to WPPC's interest in the Premises for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the performance of any of the covenants, warranties or other agreements contained herein. Purchaser further agrees not to sue or otherwise seek to enforce any personal obligation against any of WPPC's other assets or properties or against any other WPPC Related Parties (or their assets or properties), with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing provisions of this Section 32.1, Purchaser hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter

have against the WPPC Related Parties (other than WPPC, subject to the foregoing), and hereby unconditionally and irrevocably releases and discharges such other WPPC Related Parties excluding WPPC from any and all liability whatsoever which may now or hereafter accrue in favor of Purchaser against such other WPPC Related Parties, in connection with or arising out of this Agreement or the transactions contemplated hereby.

32.2 Purchaser's Exculpation. WPPC agrees that it does not have and will not have any claims or causes of action against any Purchaser Related Party (other than Guarantor pursuant to the terms of the Completion Guaranty and Indemnity Agreement, Purchaser and Developer), arising out of or in connection with this Agreement or the transactions contemplated hereby. WPPC agrees to look solely to Purchaser and its assets (including, without limitation, the Deposit) and/or Guarantor and its assets pursuant to the terms of the Completion Guaranty, Indemnity Agreement and/or Developer and its assets, as applicable, for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any other Purchaser Related Parties (or their assets or properties) with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby.

32.3 The provisions of this Section 32 shall survive the termination of this Agreement and the Closing.

## ARTICLE THIRTY-THREE

### ARBITRATION

33.1 Pre-Arbitration. If a dispute arises under this Agreement or the Development Agreement with respect to the finalization of the Condominium Documents, the Condominium Plans, the A&R Condominium Documents or the A&R Condominium Plans, or in the review of the Schematic Plans, the Purchaser Design Development Plans, the Purchaser Construction Drawings, any field changes during the Construction Work, or other matters set forth herein or the Development Agreement permitting the Parties to resolve any dispute by arbitration and the Parties are unable to resolve then, in any such case, WPPC and Purchaser (or Developer, as applicable) shall first present such dispute to Roger Leaf, on behalf of WPPC, and Kenneth S. Horn, on behalf of Purchaser and Developer, respectively, for resolution. If, after five (5) Business Days (the "**Pre-Arbitration Period**"), such dispute remains unresolved, then WPPC or Purchaser (or Developer, as applicable) shall present the dispute to an Expedited Arbitration Proceeding.

33.2 Expedited Arbitration Proceeding. The arbitration proceeding ("**Expedited Arbitration Proceeding**") shall be conducted in accordance with the then-prevailing commercial arbitration rules of JAMS for expedited arbitration, modified as follows (i) the list of arbitrators shall be returned to JAMS within five (5) Business Days from the date of mailing; (ii) the Parties shall notify JAMS (or its successor) by telephone, within four (4) Business Days, of any objections to the arbitrator appointed and, subject to clause (vii) below, shall have no right to object if the arbitrator so appointed was on the list submitted by JAMS (or its successor) and was not objected to in accordance with the commercial arbitration rules as modified by clause (i)

above; (iii) the notification of the hearing shall be four (4) Business Days in advance of the hearing; (iv) the hearing shall be held within seven (7) Business Days after the appointment of the arbitrator; (v) the arbitrator shall have no right to vary, modify or waive any provision of this Agreement, the Development Agreement or any other written agreement between the applicable parties (including, without limitation, the Condominium Principles) and, subject to the foregoing, the arbitrator's standard for analysis of a design dispute shall be the best practices of reputable developers of first class new construction of community facility space in Manhattan, New York; (vi) the decision of the arbitrator shall be final and binding on the Parties (including Developer, as applicable); and (vii) the arbitrator shall not have been employed by or affiliated with or have a relationship with (historical or present) either party (or their respective Affiliates) during the period of five (5) years prior to the date of the Expedited Arbitration Proceeding. No dispute arising under this Agreement may be resolved by Expedited Arbitration Proceeding unless the Parties agree, in the sole discretion of each, in writing to resolve such dispute by Expedited Arbitration Proceeding; provided, however, notwithstanding the foregoing, the following disputes shall be resolved by arbitration in accordance herein if (A) (i) this Agreement or the Development Agreement obligates either party hereto to not unreasonably withhold, condition or delay its consent or approval for a particular matter, (ii) such party withholds, delays or conditions its consent or approval for such matter, and (iii) such other party believes that such party did so unreasonably, or (B) such dispute pertains to any matter set forth in Section 33.1 hereof (collectively, "**Mandatory Arbitration Issues**"). If any party desires to submit a Mandatory Arbitration Issue to an Expedited Arbitration Proceeding, then such party shall have the right to submit such matter to an Expedited Arbitration Proceeding by giving Notice thereof to the other party. As used in this Article 33, the term "party" or "Party" shall be deemed to include Developer, as applicable.

33.3 Arbiters' Decision. In the event of an arbitration under this Article 33, the sole issue subject to adjudication in the Expedited Arbitration Proceeding shall be (i) in a dispute relating to an obligation of a party not to unreasonably withhold, condition or delay its consent for a particular matter, whether such party unreasonably withheld, delayed or conditioned its consent with respect to the particular matter being arbitrated, or (ii) in any other arbitration, the determination of any other matter which is, pursuant to the express terms of this Agreement or the Development Agreement, to be determined pursuant to an Expedited Arbitration Proceeding. If the decision in the Expedited Arbitration Proceeding under clause (i) above is that a party hereto unreasonably withheld, conditioned, or delayed consent with respect to such matter for which such party was not permitted to unreasonably withhold, condition or delay its consent, then (A) such party shall be deemed to have consented to such matter, (B) such party shall execute and deliver documentation that is reasonably requested by such other party to evidence such consent, and (C) such party shall be obligated to pay the entire cost of the Expedited Arbitration Proceeding, including, but not limited to, the reasonable attorney fees of the prevailing party. The arbitrator shall be empowered to issue an award of specific performance to effectuate the arbitration award.

33.4 Costs and Expenses of Arbitration. The non-prevailing Party shall pay all fees and expenses relating to the arbitration described herein (including the reasonable fees and expenses of counsel and of experts and witnesses of the prevailing Party and the fees and expenses of JAMS (or its successor), if any, and of the arbitrator. The decision of the Arbiters with respect to the allocation of fees incurred in any arbitration shall be final and binding on all

parties to the arbitration. The provisions of this Section 33.4 shall survive the Closing or the expiration or sooner termination of this Agreement.

33.5 Performance of Obligations. The Parties shall not stop the performance of their obligations hereunder during the pendency of any dispute; provided, however, that any time periods associated with the disputed matters that are the subject of a given arbitration proceeding shall toll until the Arbiter has rendered its decision with respect to such matters, but upon the rendering of such decision, such tolling shall be null and void *ab initio* to the extent such tolling was for the benefit of the non-prevailing party in such arbitration.

## **ARTICLE THIRTY-FOUR**

### **FIRPTA COMPLIANCE**

WPPC shall comply with the provisions of the Foreign Investment in Real Property Tax Act, Section 1445 of the Internal Revenue Code of 1986 (as amended), regarding transaction contemplated by this Agreement. WPPC acknowledges that Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform Purchaser that withholding of tax is not required upon the disposition of a United States real property interest by WPPC, WPPC hereby represents and warrants that WPPC is not a “foreign person” as that term is defined in the Internal Revenue Code and Income Tax Regulations. On the Closing Date, WPPC shall deliver to Purchaser a certification as to WPPC’s non-foreign status, and shall comply with any temporary or final regulations promulgated with respect thereto and any relevant revenue procedures or other officially published announcements of the Internal Revenue Service of the U.S. Department of the Treasury in connection therewith.

## **ARTICLE THIRTY-FIVE**

### **ASSIGNMENT BY WPPC**

This Agreement and the interest of WPPC hereunder shall not be sold, assigned, pledged, mortgaged, hypothecated or otherwise transferred, whether by operation of law or otherwise, without the prior written consent of Purchaser, which may be given or withheld in Purchaser’s sole discretion. No assignment of this Agreement by WPPC shall have any validity unless it complies with the provisions of this Section 35. Any consent by Purchaser under this Section 35 shall apply only to the specific transaction thereby authorized, and shall not relieve WPPC or WPPC’s assignee, as the case may be, from the requirement of obtaining Purchaser’s prior consent in connection with any further sale or assignment of this Agreement, provided however WPPC shall have a right to transfer the Premises to the Presbytery and assign its rights and obligations under this Agreement and the Development Agreement to the Presbytery provided that WPPC provides Notice and a copy of such assignment to Purchaser, and the Presbytery shall become bound to perform all of the obligations of WPPC hereunder and under the Development Agreement.

## **ARTICLE THIRTY-SIX**

### **INTERIM COVENANTS**

36.1 During the period from the Effective Date until the Closing Date or earlier termination of this Agreement, WPPC shall:

(a) be permitted to enter into any agreements with respect to all or any portion of the Premises provided that such agreements expire by their terms on or prior to the Closing Date or in accordance with their terms, would not be binding on Purchaser following the Closing Date, or in the case of any service, maintenance, supply or similar contracts, may be terminated by the owner of the Premises without penalty upon not more than thirty (30) days' (or less) prior notice;

(b) maintain in full force and effect the insurance policies currently in effect with respect to the Premises (or replacements continuing similar coverage) to the extent available at commercially reasonable rates; and

(c) operate and manage the Premises in a manner consistent in all material respects with past practice, except that WPPC shall not be required to make any capital improvement or replacement to the Premises or to cure any violations or to continue to permit the Premises to be occupied; and

(d) not grant any lien or voluntarily cause any instrument to be recorded that would further encumber the Premises in any manner, other than Permitted Encumbrances or liens or encumbrances to be discharged on or before the Closing Date at the sole cost and expense of WPPC.

36.2 During the period from the Effective Date until the Closing Date or earlier termination of this Agreement, WPPC shall not (i) enter into any agreements or contracts, or (ii) modify, amend or extend any Service Contract, in each case to the extent the same would be binding on or affect the Premises or any owner thereof after the Closing, except as permitted under Section 36.1(a), without Purchaser's prior approval which approval may be given or withheld in Purchaser's sole discretion.

36.3 During the period from the Effective Date until the Closing Date or earlier termination of this Agreement, Purchaser shall be afforded access to the Premises pursuant to the terms of the Access Agreement.

36.4 During the period from the Effective Date until the Closing Date or earlier termination of this Agreement, the Purchaser shall advance to the Seller the Tenant Expenses to terminate the Existing Lease and to cause the Existing Tenant to vacate the Premises, within ten (10) Business Days after written request by WPPC. The amount of the Tenant Expenses shall be a credit against the Cash Consideration due on the Closing Date, and shall be shown on the Preliminary Closing Statement and Final Closing Statement. Seller shall handle all negotiations and proceedings with the Existing Tenant and Purchaser shall make its consultants available to assist as required.

36.5 Whenever in this Section 36 WPPC is required to obtain Purchaser's approval with respect to any transaction described herein, Purchaser shall notify WPPC of its approval or disapproval of same within ten (10) Business Days after receipt of WPPC's request therefor, and if Purchaser fails to notify WPPC of its disapproval within said ten (10) Business Day period with the reasonable basis therefor, Purchaser shall be deemed to have withheld its approval.

36.6 During the period from the Effective Date until the Closing Date or earlier termination of this Agreement, Purchaser shall advance to Seller, or at Seller's request shall pay directly, the DOB Expenses in connection with the final work, within ten (10) Business Days after written request by Seller. The amount of the DOB Expenses shall be a credit against the Cash Consideration due on the Closing Date, and shall be shown on the Preliminary Closing Statement and Final Closing Statement. Seller shall determine all costs to be incurred in connection with the final work, without limiting the cap on Purchaser's obligation with respect to DOB Expenses.

## **ARTICLE THIRTY-SEVEN**

### **MISCELLANEOUS**

37.1 This Agreement may be executed manually and transmitted electronically by electronic mail (PDF) and in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

37.2 Any consent or approval to be given hereunder (whether by WPPC or Purchaser) shall not be effective unless the same shall be given in advance of the taking of the action for which consent or approval is requested and shall be in writing. Except as otherwise expressly provided herein, any consent or approval requested of WPPC or Purchaser may be withheld by WPPC or Purchaser in its sole and absolute discretion.

37.3 The Parties acknowledge that each Party and its counsel have reviewed and approved this Agreement, and the Parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement (or any amendments, exhibits or schedules hereto) or of any agreements entered into arising from, relating to or in connection with this Agreement.

37.4 Notwithstanding anything to the contrary contained herein, it is expressly agreed by the Parties that, unless otherwise elected by WPPC, any fixtures, furniture, furnishings, equipment or other personal property (including, without limitation, ritual and other religious objects) owned or leased by WPPC and any contractor, or employee at the Improvements shall not be included in the demise to Purchaser and shall remain WPPC's property. Notwithstanding the foregoing, at WPPC's request made prior to demolition, Purchaser shall remove and store those items and elements of the Premises designated by WPPC, and any items and elements not so designated shall be deemed abandoned and part of the demolition. The actual cost incurred by Purchaser for such removal and storage shall be included in CSU Hard Costs. This Section shall survive the Closing.

37.5 Upon the expiration or sooner termination of the Development Agreement in accordance with the terms thereof, WPPC shall be authorized to record (or cause to be recorded) the Termination of Memorandum of Development Agreement.

37.6 Each of Purchaser and WPPC shall execute and deliver a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and stating whether or not, to the actual knowledge of such Party, the requesting Party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which such Party has knowledge, it being intended that any such statement shall be deemed a representation and warranty to be relied upon by the Person to whom such statement is addressed. Such certification shall be delivered within ten (10) Business Days after request to the requesting Party (or to such Person as the requesting Party may designate, which may include an actual or potential lender to or investor in Purchaser).

37.7 This Agreement shall not be construed to create a partnership or joint venture between or among the Parties.

37.8 The provisions of this Section 37 shall survive the Closing or the termination of this Agreement.

37.9 In the event either Party employs an attorney to enforce any of the provisions hereof (whether before or after Closing), the non-prevailing Party in any final judgment agrees to pay the other Party's reasonable attorneys' fees and expenses in or out of litigation and, if in litigation, trial, appellate, bankruptcy or other proceedings, expended or incurred in connection therewith, as determined by a court of competent jurisdiction. The provisions of this Section 37.9 shall survive Closing and/or any termination of this Agreement.

37.10 WPPC and Purchaser agree to meet and consult with the other Party, upon reasonable notice from such Party from time to time prior to the Closing, to discuss any matters that materially affect the Closing or the Project.

37.11 In no event shall either party be liable for consequential, punitive or special damages in connection with this Agreement.

**[Signatures follow on the next page.]**

IN WITNESS WHEREOF, WPPC and Purchaser have caused this Agreement to be executed the day and year first above written.

**SELLER:**

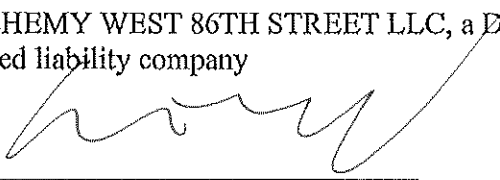
West-Park Presbyterian Church of New York City, a New York religious corporations law corporation

By: West Park Administrative Commission, its governing body

By: Roger W. Leaf  
Name: Roger W. Leaf  
Title: Chair, West Park Administrative Commission

**PURCHASER:**

ALCHEMY WEST 86TH STREET LLC, a Delaware limited liability company

By:   
Name: Kenneth S. Horn  
Title: Manager

[Signature pages continue on the following page.]

The undersigned Developer hereby executes this Agreement, agreeing to be bound by the terms and conditions applicable to Developer, and to be jointly and severally liable with Purchaser for any default by Purchaser hereunder.

DEVELOPER:

**165 WEST 86th STREET DEVELOPER LLC**

By: 

Name: Kenneth S. Horn

Title: Manager

ESCROW AGENT:

**WITH RESPECT TO SECTION 2.5 AND  
ANY OTHER PROVISIONS REGARDING  
DISPOSITION OF THE DEPOSIT AND  
TERMS OF ESCROW AGREED BY:**

First American Title Insurance Company, as  
Escrow Agent

By: 

Name: Aneta Skotnicka

Title: Underwriting Counsel

Address:

666 Third Avenue, 5<sup>th</sup> Floor

New York, NY 10017

Attention: Aneta Skotnicka, Esq. and Steve Farber

Email: askotnicka@firstam.com and

sfarber@<sup>67</sup>firstam.com