

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
F&C 60 LLC,

Plaintiff,

- against -

R. DONAHUE PEEBLES,  
THE PEEBLES CORPORATION, and  
CIVIC CENTER COMMUNITY  
GROUP BROADWAY MEZZANINE

Defendants.  
-----X

:  
:  
:  
:  
:  
: Index No. \_\_\_\_\_

: **SUMMONS**

:  
: Plaintiff designates New York  
: County as the place of trial

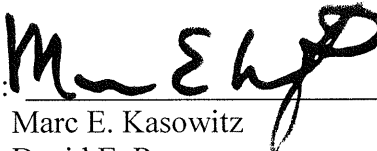
:  
: Venue is proper pursuant to  
: CPLR § 503

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer on Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: March 23, 2017

KASOWITZ, BENSON, TORRES &  
FRIEDMAN LLP

By:  \_\_\_\_\_  
Marc E. Kasowitz

David E. Ross

Sarmad M. Khojasteh

1633 Broadway  
New York, New York 10019  
Tel.: (212) 506-1700  
Fax: (212) 506-1800

*Attorneys for Plaintiff*

To: R. Donahue Peebles  
745 Fifth Avenue, Suite 1610  
New York, New York 10151

The Peebles Corporation  
745 Fifth Avenue, Suite 1610  
New York, New York 10151

Civic Center Community Group Broadway Mezzanine LLC  
745 Fifth Avenue, Suite 1610  
New York, New York 10151

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
F&C 60 LLC,

Plaintiff,

- against -

R. DONAHUE PEBBLES,  
THE PEBBLES CORPORATION, and  
CIVIC CENTER COMMUNITY  
GROUP BROADWAY MEZZANINE

Defendants.  
-----X

Index No. \_\_\_\_\_

**COMPLAINT**

Plaintiff F&C 60 LLC (“El Ad”), for its complaint against defendants R. Donahue Peebles (“Don Peebles”), The Peebles Corporation (“Peebles Corp.”), and Civic Center Community Group Broadway Mezzanine LLC (the “Peebles JV Member” and together with Peebles Corp. and Don Peebles, “Peebles”), alleges:

**PRELIMINARY STATEMENT**

1. This action arises from Peebles’s fundamental breaches of its fiduciary and contractual duties to El Ad. As is now clear from Peebles’s admissions and self-dealing, Peebles caused El Ad to pay tens of millions of dollars to it in connection with El Ad’s investment in their joint venture, the purpose of which was to redevelop 346 Broadway in New York City (the “Property”) as a world-class condominium, when Peebles had no intention of redeveloping the Property. Peebles has taken advantage of El Ad’s good faith and financial exposure to improperly extract from El Ad monies and other benefits to which Peebles in no way was entitled. As a result, Peebles has improperly obtained more than \$40 million from El Ad while depriving El Ad of any value in the joint venture.

2. Thus, before entering into their joint venture and thereafter, Peebles repeatedly made material misrepresentations to El Ad concerning its intention to redevelop the Property as a condominium conversion. In reliance on those misrepresentations, El Ad participated in and contributed tens of millions of dollars to the joint venture, entered into various agreements with Peebles, loaned Peebles millions of dollars, and paid Peebles more than \$27 million as a “finder’s fee” for the redevelopment project. In reality, however, as Peebles has now admitted, Peebles never intended to redevelop the Property.

3. In addition, from the outset of the joint venture, Peebles has acted in bad faith -- stalling the redevelopment of the Property by refusing to approve reasonable and customary decisions in a timely manner -- and by creating other obstacles to the advancement and completion of the project, all as a subterfuge for demanding money and rights to which it was not entitled.

4. Now, in its latest breach of its fiduciary and contractual duties, Peebles is refusing to sign the joint venture’s condominium offering plan (the “Offering Plan”), which must be filed with the Office of New York Attorney General. That filing is necessary for the joint venture to commence the redevelopment of the Property, begin marketing the condominiums by Spring 2017, and satisfy the joint venture’s obligations to its lenders. Peebles has no valid reason to withhold its signature from the Offering Plan.

5. Instead, Peebles has asserted one pretext after another to withhold its signature, because its true motivation is to hold El Ad up until El Ad buys Peebles out at an inflated price or gives Peebles more monies and benefits to which it is not entitled. First, Peebles falsely claimed it needed more time to review the Offering Plan despite having had it under review for months. Next, it conditioned signing the Offering Plan on El Ad endorsing Peebles’s



unsupportable tax position by which Peebles falsely sought to recast its role as that of a passive investor. Indeed, Peebles represented to the City of New York and to the joint venture's lenders just the opposite -- that it was a condominium developer. Then, Peebles claimed that it was going to invoke a purported buyout right, which it was not entitled to invoke, and failed to exercise in any event. Now, Peebles is withholding its signature on the false pretext that El Ad's signatory is not authorized to sign the Offering Plan. Each of these stalling tactics has been intended to force El Ad to buy Peebles out at an inflated price, or to otherwise extract monies from El Ad to which Peebles is not entitled. Each of these acts constitutes a willful and intentional breach of Peebles's fiduciary duties among other things.

6. Peebles's improper refusal to sign the Offering Plan has already caused El Ad substantial damage, and will also result in El Ad's being unable to begin the scheduled marketing of the condominiums in Spring 2017, with the attendant delays in construction and development, as well as the risk of default on obligations to the joint venture's lenders.

7. By reason of Peebles's breaches of fiduciary duty and breaches of contract, all as detailed herein, El Ad is entitled to compensatory damages of at least \$72 million, punitive damages, and attorney's fees and costs.

### PARTIES

8. Plaintiff F&C 60 LLC is a Delaware limited liability company with its principal place of business at 575 Madison Avenue, 22<sup>nd</sup> Floor, New York, New York, 10022.

9. Defendant R. Donahue Peebles is a citizen of the State of Florida.

10. Defendant Civic Center Community Group Broadway Mezzanine LLC is a New York limited liability company with its principal place of business at 745 Fifth Avenue, Suite 1610, New York, New York 10151.

11. Defendant The Peebles Corporation is a District of Columbia corporation with its principal place of business at 745 Fifth Avenue, Suite 1610, New York, New York 10151.

### **JURISDICTION AND VENUE**

12. Jurisdiction is proper pursuant to CPLR § 301 in that, among other things, defendants are citizens of New York and/or they have transacted business and committed tortious acts within New York, causing injury in this State and resulting in the claims herein, and, as to the Peebles JV Member, has contractually agreed to jurisdiction in this Court pursuant to Section 13.7 of the Amended and Restated Limited Liability Company Agreement of Peebles El Ad Tribeca Partners LLC (the “Amended JV Agreement”) between the Peebles JV Member and El Ad. A copy of the Amended JV Agreement is attached hereto as Exhibit 1.

13. Venue is proper pursuant to CPLR § 503(a) as El Ad maintains its principal place of business in New York County, and a substantial portion of the activities from which this matter arises occurred in New York County.

### **FACTUAL BACKGROUND**

#### **I. The Property**

14. F&C 60 LLC and Civic Center Community Group Broadway Mezzanine LLC jointly own Peebles El Ad Tribeca Partners LLC (the “Joint Venture”), the indirect owner of the property located at 346 Broadway (also known as 108 Leonard Street) in New York City known as the “Clock Tower Building” (the “Property”). The 13-story property occupies an entire block in Tribeca, and has been designated as a New York City Landmark.

#### **II. Peebles Acquires The Property**

15. In 2012, New York City, which owned the Property, offered it for sale to private developers and the New York Economic Development Corporation (“EDC”) issued the Request

for Proposal on April 23, 2012, through which bids for the Property were to be received from private developers.

16. Following a bidding process, Peebles was awarded the opportunity to acquire the property for \$145 million, in accordance with its proposal to redevelop the Property as a mixed-use space, with retail space on the ground floor, and high-end luxury residential rentals or condominiums and/or a hotel on the remaining twelve floors. A contract of sale for the Property was executed on February 25, 2013, which was amended on July 18, 2013. In connection therewith, Peebles was required to post a deposit of \$7.25 million.

**III. Peebles Induces El Ad To Invest In The Property By Falsely Representing That It Intended To Redevelop The Property As A Condominium Conversion**

17. Shortly after the execution of the amendment to the contract of sale in July 2013, The Peebles Corp. provided El Ad with a copy of the public investment memorandum (the “Investment Memorandum”) pursuant to which Peebles was seeking investors for its redevelopment of the Property into a “one of a kind,” “high-end *condominium* that will exceed any upcoming development project in all of New York City.”

18. In early August 2013, meetings were held between and among Don Peebles, representatives of El Ad, and representatives of Peebles for the purpose of discussing the redevelopment of the Property as a condominium conversion. At those meetings, Don Peebles and other representatives of Peebles stated their intention to redevelop the Property as a condominium conversion.

19. Thereafter, on August 15, 2013, El Ad and Peebles executed a term sheet in connection with the sale of the Property and formation of the Joint Venture. The term sheet expressly stated that “[t]he Property will be developed as a primarily residential condominium and/or hotel project.” Don Peebles signed the term sheet on behalf of the Peebles JV Member.

20. In reliance on the representations made by Peebles that it intended to redevelop the Property as a condominium conversion, on December 13, 2013, El Ad agreed to enter into the Joint Venture with Peebles to own and develop the Property. In particular, El Ad agreed to contribute \$60 million to the Joint Venture in exchange for a sixty-five percent (65%) equity stake in the Joint Venture, and Peebles contributed 100% of its interest in the Peebles JV Member -- which owned 100% of the Property -- to the Joint Venture in exchange for the remaining 35% equity stake in the Joint Venture and a distribution of \$27.69 million from El Ad's initial \$60 million investment, and \$7.65 million as reimbursement for the deposit and other costs funded in connection with the contract of sale. Thus, Peebles pocketed nearly \$35 million at the inception of the project, more than \$27 million of which was pure profit to Peebles.

21. The terms of the joint venture agreement between El Ad and Peebles were memorialized in a Limited Liability Company Agreement of Peebles El Ad Tribeca Partners, LLC (the "Original JV Agreement"), and a development management agreement (the "Development Management Agreement"), each dated December 13, 2013.

22. The Development Management Agreement provided that the Joint Venture was "to renovate and redevelop the existing building(s) on the Property." The Original JV Agreement defined (i) the "Project" to be completed by the Joint Venture to mean "all work to be completed in connection with the design, construction, development, Condominium Conversion, marketing, advertising, operation, leasing and sale of the Property," and (ii) "Condominium" to mean "the condominium to be created by the Company . . . at the Property."

23. In connection with its participation in and contribution to the Joint Venture, El Ad and Peebles also entered into a restrictive deed on the Property. The deed on the Property provides that, if the Joint Venture does not complete redevelopment of the Property within five

years of the Property being vacated by its prior tenant, New York City is entitled to take the property back from the Joint Venture.

24. Had Peebles not represented that it intended to redevelop the Property as a condominium conversion, El Ad would not have entered into the Development Management Agreement and the Original JV Agreement or signed the restrictive deed, or invested \$60 million in the Property, or consented to the distribution to Peebles of more than \$27 million.

#### IV. The Original JV Agreement

25. Pursuant to the terms of the Original JV Agreement, Peebles was required to “fully and faithfully discharge its obligations and responsibilities under this Agreement” and to “devote such time and attention to Company affairs as may be reasonably necessary for the proper management and supervision of the Company’s business and the discharge of its duties under this Agreement.” (Original JV Agreement § 6.1.1(a).)

26. Under the terms of the Original JV Agreement, prior written consent from both El Ad and Peebles was necessary for “Major Decisions,” which included, among others,

(a) the “fil[ing] with any Governmental Authority [of] any documents and instruments required to establish a condominium form of ownership for the property, including, without limitation, an offering plan;” (Original JV Agreement § 6.5.32);

(b) “engaging architects, design consultants, leasing agents, engineers, sales and marketing agents in connection with the design, construction leasing, sales and marketing of the Property, the Project, and following the Condominium Conversion, the sale of the condominium units” (*id.* § 6.5.26(a));

(c) “causing the Company or any Subsidiaries to enter into any Loan (including, without limitation, Loans for the acquisition of the Property and construction of the Project”) (*id.* § 6.5.6).

27. Critically, however, the Original JV Agreement also provided that “[n]o Member shall *unreasonably withhold*, condition or delay consent to any Major Decision with respect to the construction and development of the Project if the same would delay the Project schedule in

any material way.” (Original JV Agreement § 6.5 (emphasis added).) Peebles has knowingly, intentionally and willfully violated this provision of the Original JV Agreement, among its other violations of the parties’ agreements.

**V. Peebles Pressures El Ad To Grant Peebles Benefits Not Due Under the Agreements By Withholding Approvals And Stalling Redevelopment Of The Property**

28. In addition, from the outset of the Joint Venture, Peebles has knowingly, willfully and intentionally breached its fiduciary duties, and other express and implied obligations of good faith to El Ad. For example, Section 6.5 of the Original JV Agreement provides that “[n]o member shall unreasonably withhold, condition or delay consent to any Major Decision with respect to the construction and development of the Project.” In breach of this provision, Peebles repeatedly withheld its consent to various decisions, and otherwise conditioned or delayed the project, thereby stalling the redevelopment of the Property unless El Ad gave in to its demands for money and other benefits to which Peebles had no right under the parties’ agreements. Peebles’s actions not only breached express terms of the parties’ agreements, they also breached Peebles’s fiduciary duties and duty to act in good faith as El Ad’s partner and co-venturer.

29. El Ad has already suffered, and continues to suffer, substantial damages by reason of the foregoing breaches by Peebles.

**A. Peebles Refuses To Approve A Construction Loan Unless El Ad Agrees To Grant It A Buy-Out Option**

30. In order to obtain the funds necessary to develop the Property into a condominium, it was necessary for the Joint Venture to enter into construction loan and a mezzanine loan to finance the condominium project. Despite the market for such financing being extremely tight during 2015 and early 2016, El Ad in late 2015 was able to secure \$411 million in loans, comprised of \$334 million pursuant to a construction loan agreement (the

“Construction Loan Agreement”) and \$77 million pursuant to a mezzanine loan agreement (the “Mezzanine Loan Agreement” and, together with the Construction Loan Agreement, the “Loan Documents”), on favorable terms.

31. Because the execution of the Loan Documents constituted a “Major Decision” under the Original JV Agreement, Peebles’s consent was required. Although the loans were crucial to the future of the condominium project, Peebles breached the parties’ agreements, its fiduciary duties, and its duty to act in good faith, by withholding consent until El Ad granted it benefits not due under the parties’ existing agreements. Among those breaches, Peebles demanded that El Ad enter into a new agreement which granted Peebles an option to have its interest bought out by El Ad as a condition to providing its consent to the Loan Documents.

32. Because El Ad already reimbursed Peebles for its original investment in the Property of \$7.65 million, and Peebles already has received more than \$32.69 million from El Ad in connection with the Property (including a loan of \$5 million for Peebles’s tax liability), only El Ad stood to suffer the loss of all or most of its multi-million dollar investment if these loans were not executed and the Property was not redeveloped. Therefore, El Ad had no real choice but to grant Peebles’s improper demand for the buyout agreement.

33. Having no other realistic choice, El Ad capitulated to Peebles’s improper demand, and, on February 2, 2016, under duress, El Ad entered into an agreement with Peebles, which, subject to Peebles’s honoring its obligations under the operative agreements, provided Peebles with the “one time right” to require El Ad to purchase all of its 35% interest in the Joint Venture or a 15% interest in the Joint Venture, exercisable prior to December 31, 2016 (the “Put Option Agreement”). The Put Option Agreement required that if Peebles exercised that right to sell its

entire 35% interest in the Joint Venture, the EDC must provide its prior written consent to a sale to avoid running afoul of the Property deed restriction.

34. At the same time, the parties entered into the Amended JV Agreement and the Loan Documents. As with the Original JV Agreement, the Amended JV Agreement prohibits Peebles from “unreasonably withhold[ing], condition[ing] or delay[ing] consent to any Major Decision with respect to the construction and development of the Project if the same would delay the Project schedule in any material way.” The Amended JV Agreement also defines the “Project Business Plan” to mean “the plan to develop the Project as a mixed use residential building with a retail component, garage component and community facility component . . . .” The Loan Documents expressly acknowledge that the purpose of the loans is to redevelop the Property as a condominium conversion, and require that, among other things, (i) the Joint Venture “no later than August 2017 . . . procure the acceptance for filing of the Offering Plan” and (ii) “[n]ot later than August 2, 2018, [the Joint Venture] shall have entered into no fewer than thirty five (35) Qualified Sales Contracts for Residential Units.”

35. In addition to coercing El Ad to execute the Put Option Agreement, Peebles also imposed another condition upon El Ad in order to obtain its approval of the Loan Documents: Peebles required that El Ad make a loan of \$2.7 million to it to cover its share of an additional equity contribution to the Joint Venture that was required in connection with the Loan Documents and the Original JV Agreement. This was another in a series of cash benefits extracted by Peebles to which Peebles was not entitled under the parties’ original agreements.



**B. Peebles Conditions Its Approval Of The Offering Plan On El Ad's Agreement To Recast Peebles's Involvement In The Project As That Of A Passive Investor Rather Than A Developer -- And Risks Causing El Ad Serious Financial Harm**

36. Peebles's wrongful actions did not stop with extracting the foregoing monies, benefits and agreements to which Peebles was not entitled under the operative agreements. Peebles has since continuously breached its contractual and fiduciary obligations by withholding its signature to the Offering Plan unless El Ad once again accedes to demands that serve only Peebles's interests.

37. Beginning in May 2016, El Ad sought to draft and ultimately file an Offering Plan. The filing of the Offering Plan with the Office of the New York State Attorney General is a necessary prerequisite for the Property to be redeveloped into condominiums. Without the approval of the Offering Plan, the Joint Venture cannot begin marketing and selling the condominiums. The approval and filing of the Offering Plan with the New York Attorney General's Office is particularly time-sensitive and critical because the Loan Documents require that, among other things, (i) the Joint Venture "no later than August 2, 2017 . . . procure the acceptance for filing of the Offering Plan" and (ii) "[n]ot later than August 2, 2018, [the Joint Venture] shall have entered into no fewer than thirty five (35) Qualified Sales Contracts for Residential Units."

38. To facilitate the drafting and filing of the Offering Plan, in May 2016, El Ad and Peebles jointly retained Kramer, Levin, Naftalis & Frankel LLP ("Kramer Levin") to draft the relevant documents. Kramer Levin circulated drafts to Peebles and El Ad in September 2016.

39. Throughout this months-long drafting process, Peebles never raised any issues regarding the execution of the Offering Plan documents despite having ample opportunity to do so. However, in mid-October 2016, Peebles, for the first time, informed El Ad that it was

unwilling to execute the Offering Plan. Peebles claimed that it would be harmful to it from a tax perspective to consider the Property a development project with condominiums for sale and thus was requiring that El Ad recast the description of Peebles's involvement in the project as a pre-condition to its signing the Offering Plan.

40. Specifically, Peebles asserted that it has "held its [i]nterest for rental income and equity appreciation," and not for the purpose of redeveloping the Property as a condominium conversion. The assertion is flatly contrary not only to the written representations that Peebles made to El Ad before and after the execution of the Original JV Agreement, the Put-Option Agreement and the Amended JV Agreement, and to the Joint Venture's lenders in connection with the execution of its Loan Documents, it is also at odds with the deed restrictions themselves, which require that Peebles, or its affiliates, be a developer and in control of the day-to-day management of the Peebles JV Member, which is required to redevelop the Property.

**VI. Peebles Files A Lawsuit Seeking To Further Delay Approving The Offering Plan**

41. On December 2, 2016, Peebles filed a lawsuit against El Ad styled as *Civic Center Community Group Broadway Mezzanine LLC v. F&C 60 LLC*, No. 656300/2016 (N.Y. Sup. Ct.), seeking, among other things, to enlarge the deadline to elect its purported buyout option under the Put Option Agreement, which was scheduled to expire on December 31, 2016.

42. As yet another pretext for not signing the Offering Plan, Peebles invoked the lawsuit it filed, and the claimed uncertainty as to whether it would be bought out, as a basis for refusing to sign the Offering Plan.

43. On December 21, 2016, Peebles made an application to the Court for preliminary injunctive relief seeking to enlarge the dates by which it could elect to exercise its buyout option under the Put Option Agreement. The original deadline was to expire on December 31, 2016,

but the Court ordered an extension until January 6, 2017, so that it could hear arguments on the injunctive relief on January 5, 2017.

44. At the January 5, 2017 hearing, the Court rejected Peebles's attempt to further extend the Put Option Agreement's deadline, thereby requiring Peebles to comply with the terms of the Put Option Agreement and thus make a decision on whether or not to exercise its buyout option by January 6, 2017.

45. Peebles declined to exercise the option, and thus lost the right to do so. Peebles nevertheless maintains a groundless suit claiming a breach of the Put Option Agreement, which likewise is aimed at forcing El Ad to buy Peebles out or pay Peebles other benefits to which Peebles was not entitled.

**VII. Peebles Invents New False Excuses For Refusing To Sign The Offering Plan**

46. Peebles now has asserted new, false reasons not to sign the Offering Plan. Peebles now claims that it is insufficient for Orly Daniell to sign the Offering Plan on behalf of El Ad, despite the fact that Ms. Daniell has been the President of El Ad US Holding, Inc. for the last 17 years, and is the President of F&C 60 LLC. Peebles's position is utterly meritless, and is but the latest pretextual excuse for Peebles to refuse to sign the Offering Plan in order to coerce El Ad to buy Peebles out at an inflated price or otherwise extract benefits from El Ad to which Peebles has no right.

47. Peebles also has refused to accept the pricing analysis prepared by Douglas Elliman -- the real estate broker Don Peebles himself suggested and approved. As a result, the Offering Plan cannot be finalized for submission to the New York Attorney General's Office.

48. If Peebles continues to withhold its approval of the Offering Plan, the Joint Venture will lose the opportunity to commence the marketing of the condominiums in the Spring

2017. Not only will delaying the marketing efforts beyond the Spring 2017 severely limit the Joint Venture's ability to satisfy its obligations to its lenders -- including the requirement to sell at least 35 units by August 2, 2018 -- it will also cause damage to the marketability of the condominiums and adversely impact the price at which the Joint Venture is able to sell each unit. Likewise, because the Joint Venture has entered into a two-year lease agreement for a marketing and sales office at 66 Leonard Street, the term of which commenced on August 18, 2016, the delay in commencing the marketing already has damaged El Ad and will continue to do so.

49. Additional delays also will jeopardize the Joint Venture's compliance with its lender obligations, which include meeting critical completion deadlines by August 2, 2017 -- including the acceptance of the Offering Plan by the New York State Attorney General's office. Specifically, pursuant to the Loan Documents, the Joint Venture must satisfy particular sales, development and construction milestones, or risk defaulting on the loan. Thus, Peebles's continuing refusal to sign the Offering Plan and to cooperate in the redevelopment of the Property will cause serious financial harm to El Ad and the Joint Venture, and places El Ad in jeopardy of losing hundreds of millions of dollars.

#### **FIRST CAUSE OF ACTION**

(Breach of the Amended JV Agreement against the Peebles JV Member)

50. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

51. On February 2, 2016, the Peebles JV Member and El Ad entered into the Amended JV Agreement. The Amended JV Agreement constitutes a valid and binding contract that governs the terms of the Joint Venture.

52. The Peebles JV Member breached the Amended JV Agreement by the conduct alleged herein, including, without limitation, by unreasonably withholding its approval of the Offering Plan.

53. The Peebles JV Member breached the Amended JV Agreement with willful misfeasance, bad faith or gross negligence, or with reckless disregard of its obligations under the Amended JV Agreement.

54. Plaintiff performed all of its material obligations under the Amended JV Agreement.

55. Section 13.17 of the Amended JV Agreement provides that “in the event of any litigation... arising as a result of or by reason of this Agreement, the prevailing party in any such litigation... shall be entitled to, in addition to any other Damages assessed, its reasonable attorney fees, and all other costs and expenses actually incurred in connection with settling or resolving such dispute.”

56. As a direct and proximate result of the Peebles JV Member’s breach of the Amended JV Agreement, El Ad has been damaged in an amount to be proven at trial of not less than \$72 million, together with interest thereon, attorneys’ fees and costs.

### **SECOND CAUSE OF ACTION**

(Breach of Fiduciary Duty against the Peebles JV Member)

57. El Ad repeats and re-alleges the allegations set forth in paragraphs 1 through 56 as if fully set forth herein.

58. The Peebles JV Member is the Managing Member of the Joint Venture.

59. As Managing Member of the Joint Venture, the Peebles JV Member owes fiduciary duties to El Ad. Among other duties, the Peebles JV Member owed a duty to deal with El Ad with the utmost good faith and with absolute and undivided fidelity.

60. The Peebles JV Member knowingly, intentionally and willfully breached its fiduciary duties to El Ad by, without limitation, misleading El Ad concerning its intentions to redevelop the Property, delaying or conditioning the carrying out of its duties upon extracting monies and benefits from El Ad for its sole benefit and at the expense of the Joint Venture, failing to provide El Ad and the Joint Venture with its absolute and undivided fidelity and loyalty, failing to deal with El Ad and the Joint Venture in utmost good faith, and failing to disclose all facts within their knowledge which were material to El Ad.

61. As a direct and proximate result of the Peebles JV Member's breach of fiduciary duty, Plaintiff has been damaged in an amount to be proven at trial of not less than \$72 million, together with interest thereon, attorneys' fees and costs.

### **THIRD CAUSE OF ACTION**

(Unjust Enrichment against Don Peebles and the Peebles Corp.)

62. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 61 as if fully set forth herein.

63. Don Peebles and The Peebles Corp. have engaged in wrongful and inequitable conduct that has caused, and will continue to cause, injury to Plaintiff. Don Peebles, by and through The Peebles Corp., exercises complete domination over the Peebles JV Member, and has used that domination to cause the Peebles JV Member to misrepresent its intention to redevelop the Property as a condominium conversion, and coerce El Ad to provide to it monies and benefits by unreasonably withholding its approval to Major Decisions in furtherance of the Joint Venture, and wrongfully benefitting from the time and resources that El Ad has devoted in furtherance of the Joint Venture.

64. As a result of Don Peebles's and The Peebles Corp.'s wrongful and inequitable conduct, Don Peebles and The Peebles Corp. has been unjustly enriched by the monies and other

benefits it has received, including by the increased value of its interests in the Joint Venture that is wholly a result of the time and resources El Ad has devoted in furtherance of the Joint Venture.

65. As a direct and proximate result of Don Peebles's and The Peebles Corp.'s unjust enrichment, Plaintiff has been damaged in an amount to be proven at trial of not less than \$72 million, together with interest thereon, attorneys' fees and costs.

66. Plaintiff pleads its unjust enrichment claim in the alternative to its breach of contract claim against Peebles.

**FOURTH CAUSE OF ACTION**

(Breach of the Implied Covenant of Good Faith and Fair Dealing  
against the Peebles JV Member)

67. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 66 as if fully set forth herein.

68. On February 2, 2016, the Peebles JV Member and El Ad entered into the Amended JV Agreement. The Amended JV Agreement constitutes a valid and binding contract that governs the terms of the Joint Venture.

69. Inherent in every contract is an implied covenant of good faith and fair dealing whereby each party promises not to frustrate the purpose of, or deprive the other party of the fruits of, the contract.

70. As alleged herein, the Peebles JV Member has breached its obligation to act in furtherance of the interests of the Joint Venture -- namely, the redevelopment of the Property as a condominium conversion -- and intentionally and purposefully applied the provisions of the Amended JV Agreement in a manner inconsistent with the reasonable expectations of the parties so as to deprive El Ad of the benefit of its bargain under the Amended JV Agreement by, among

other things, delaying or conditioning the carrying out of its duties upon extracting monies and benefits from El Ad for its sole benefit and at the expense of the Joint Venture.

71. As a direct and proximate result of the Peebles JV Member's breach of the covenant of good faith and fair dealing, El Ad has been damaged in an amount to be proven at trial of not less than \$72 million, together with interest thereon, attorneys' fees and costs.

**PRAYER FOR RELIEF**

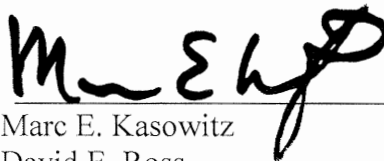
**WHEREFORE**, El Ad demands judgment:

- (a) Awarding El Ad compensatory and consequential damages in amounts to be determined at trial not less than \$72 million;
- (b) Awarding Plaintiff punitive and exemplary damages in amounts to be determined at trial;
- (c) Awarding Plaintiff the costs of this action, including attorney's fees in amounts to be determined at trial;
- (d) Awarding Plaintiff prejudgment and post-judgment interest; and
- (e) Granting such other and further relief as is just and proper.



Dated: March 23, 2017

KASOWITZ, BENSON, TORRES &  
FRIEDMAN LLP

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

Marc E. Kasowitz

David E. Ross

Sarmad M. Khojasteh

1633 Broadway

New York, New York 10019

Tel.: (212) 506-1700

Fax: (212) 506-1800

*Attorneys for Plaintiff*

# EXHIBIT 1

EXECUTION

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY  
AGREEMENT**

**OF**

**PEEBLES EL AD TRIBECA PARTNERS LLC  
(a Delaware Limited Liability Company)**

---

**Dated as of February 2, 2016**

---

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>ARTICLE 1 DEFINITIONS AND TERMS.....</b>	<b>1</b>
1.1 Definitions.....	1
<b>ARTICLE 2 THE COMPANY AND ITS BUSINESS.....</b>	<b>22</b>
2.1 Formation of Company .....	22
2.2 Name .....	23
2.3 Principal Office.....	23
2.4 Registered Office and Registered Agent.....	23
2.5 Period of Duration.....	23
2.6 Business and Purpose of the Company .....	23
2.7 Representations by Members.....	24
2.8 Survival .....	27
<b>ARTICLE 3 MEMBERS AND CAPITAL CONTRIBUTIONS .....</b>	<b>27</b>
3.1 Names and Addresses of Members .....	27
3.2 Initial Capital Contributions .....	27
3.3 Additional Contributions .....	27
3.4 Rights with Respect to Capital.....	35
3.5 General Rules for Adjustment of Capital Accounts .....	36
3.6 Special Rules with Respect to Capital Accounts .....	36
3.7 Transferee's Capital Account .....	37
<b>ARTICLE 4 ALLOCATION OF PROFITS AND LOSSES .....</b>	<b>37</b>
4.1 Allocation of Net Profits and Net Losses .....	37
4.2 Qualified Income Offset .....	37
4.3 Minimum Gain Chargeback.....	37
4.4 Member Nonrecourse Debt Minimum Gain Chargeback.....	38
4.5 Nonrecourse Deductions.....	38
4.6 Special Allocations .....	38
4.7 Fees To Members Or Affiliates .....	38
4.8 Allocations for Tax Purposes.....	39
4.9 Recapture .....	39
4.10 Allocations Upon Transfer.....	39
<b>ARTICLE 5 DISTRIBUTIONS .....</b>	<b>39</b>
5.1 Distributions to Members .....	39
5.2 Limitation on Distributions.....	40
5.3 Offset Right.....	41
<b>ARTICLE 6 POWERS, RIGHTS AND DUTIES OF MEMBERS.....</b>	<b>41</b>
6.1 Authority of Members.....	41
6.2 Certain Acts of Operating Members .....	43
6.3 Management Duties, Authority and Powers .....	44

6.4	Restrictions on Operating Member's Authority .....	45
6.5	Major Decisions .....	45
6.6	Affiliate Transactions.....	54
6.7	Duty of Care.....	55
6.8	Authority of Members to Deal with Company and Advances and Reimbursement to the Members .....	56
6.9	Limitations on Liability .....	56
6.10	Other Business Ventures.....	56
6.11	Resignation of Operating Member; Death or Incapacity of Peebles Key Principal .....	56
6.12	Compensation of Members .....	57
6.13	Termination of Operating Member .....	57
6.14	Development Management Agreement .....	59
6.15	Project Budget; Approved Annual Budgets.....	59
6.16	Management of Subsidiaries.....	60
6.17	Officers .....	60
<b>ARTICLE 7 CERTAIN RIGHTS, OBLIGATIONS AND LIABILITIES .....</b>		<b>60</b>
7.1	Limitation of Liability.....	60
7.2	No Participation in Management .....	60
7.3	Return of Capital Contributions.....	61
<b>ARTICLE 8 RESTRICTIONS ON TRANSFER OR CONVERSION OF COMPANY INTERESTS .....</b>		<b>61</b>
8.1	Transfer or Assignment of Member's Interest.....	61
8.2	Subtransfers in Peebles JV Member .....	62
8.3	El Ad JV Member Subtransfers .....	62
8.4	Admission of New Members .....	62
8.5	Loans to the Company .....	62
8.6	Void Transfers .....	62
8.7	El Ad Party Covenant .....	63
<b>ARTICLE 9 [INTENTIONALLY OMITTED] .....</b>		<b>63</b>
<b>ARTICLE 10 BOOKS, RECORDS, REPORTS AND BANK ACCOUNTS.....</b>		<b>63</b>
10.1	Books and Records .....	63
10.2	Reports .....	63
10.3	Working Capital Reserve and Other Reserves.....	64
10.4	Company Accounts.....	64
10.5	Tax Matters Handled by El Ad JV Member .....	65
10.6	Tax Returns.....	66
<b>ARTICLE 11 TERMINATION AND DISSOLUTION .....</b>		<b>66</b>
11.1	Dissolution .....	66
11.2	Distribution of Liquidation Proceeds.....	67
11.3	Continuation of the Company .....	68

**ARTICLE 12 INDEMNIFICATION OF THE MEMBERS AND THEIR**

<b>AFFILIATES .....</b>	<b>68</b>
12.1 Exculpatory Provisions .....	68
12.2 Indemnification of The Members And Their Principals .....	68
12.3 Expenses .....	69
12.4 Indemnification Rights Non-Exclusive.....	69
12.5 Modification of Liability.....	69
12.6 Errors and Omissions Insurance .....	69
12.7 Assets of the Company .....	69
12.8 Subordination of Indemnification .....	69

**ARTICLE 13 MISCELLANEOUS PROVISIONS .....70**

13.1 Counterparts .....	70
13.2 Survival of Rights .....	70
13.3 Severability .....	70
13.4 Notification or Notices.....	70
13.5 Construction.....	71
13.6 Section Headings .....	71
13.7 Governing Law; Venue.....	72
13.8 Intentionally Omitted .....	72
13.9 Certain Terminology .....	72
13.10 Time of the Essence .....	72
13.11 Further Actions .....	72
13.12 Waiver of Right to Jury.....	72
13.13 Third Party Beneficiaries .....	73
13.14 Partition.....	73
13.15 Entire Agreement .....	73
13.16 Waiver.....	73
13.17 Attorneys' Fees .....	73
13.18 Authorized Representatives .....	74
13.19 Non-Solicitation .....	74
13.20 Confidentiality .....	74
13.21 Litigation Without Termination.....	75
13.22 Cumulative Remedies .....	75
13.23 No Suretyship Defenses.....	76
13.24 Acknowledgement by Members .....	76
13.25 Brokers.....	76
13.26 Effectiveness .....	76
13.27 Guaranties .....	76
13.28 Amendments .....	78
13.29 Limitation on Liability .....	78
13.30 Limitation On Use of Names .....	78
13.31 Publicly Traded Partnership Provision .....	78
13.32 Public Announcements .....	79
13.33 Usury Savings Clause .....	79

**ARTICLE 14 Non-Binding Mediation.....79**  
14.1 Major Decision Disputes.....79  
14.2 Mediation .....80

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”), is made and entered into and effective as of February 2, 2016 (“**Effective Date**”), by and between CIVIC CENTER COMMUNITY GROUP BROADWAY MEZZANINE LLC, a New York limited liability company (“**Peebles JV Member**”) and F&C 60 LLC, a Delaware limited liability company (“**El Ad JV Member**”).

**RECITALS**

WHEREAS, El Ad JV Member and Peebles JV Member formed PEEBLES EL AD TRIBECA PARTNERS LLC, a Delaware limited liability company (the “**Company**”), pursuant to the provisions of the Delaware Limited Liability Company Act, Delaware Code, Title 6 Section 18-101, et seq., as amended from time to time (the “**Act**”) and pursuant to that certain Certificate of Formation dated as of October 25, 2013 and filed with the Secretary of State of the State of Delaware (the “**Secretary of State**”) on October 25, 2013 (the “**Certificate of Formation**”); and

WHEREAS, Peebles JV Member and El Ad JV Member entered into that certain Limited Liability Company Agreement of the Company (the “**Original Agreement**”), dated as of December 11, 2013; and

WHEREAS, Peebles JV Member and El Ad JV Member hereby desire to amend and restate the Original Agreement in order to modify certain of the respective rights and obligations of the Members, effective as of the date hereof and on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and the promises contained herein (the receipt and sufficiency of which being hereby acknowledged), the parties hereto, intending to be legally bound, do hereby agree that the Original Agreement is hereby amended and restated in its entirety to read as follows:

**ARTICLE 1  
DEFINITIONS AND TERMS**

1.1 **Definitions.** Unless the context otherwise requires, the following terms shall have the following meanings for the purposes of this Agreement:

“**Act**” has the meaning ascribed thereto in the Recitals to this Agreement.

“**Accounts**” means each Operating Account and the Money Market Account.

“**Accrued Monthly Installments**” means “Accrued Monthly Installments” as defined in the Development Management Agreement.

“**Additional Capital Contribution**” shall mean a Capital Contribution that is made or deemed made, pursuant to the terms hereof, after the date hereof.



“**Additional Funds**” has the meaning ascribed thereto in Section 3.3.1(a) of this Agreement.

“**Additional Funds Notice**” has the meaning ascribed thereto in Section 3.3.1(a) of this Agreement.

“**Additional Investment**” shall mean any Investment made pursuant to Section 3.3.1(a).

“**Adjusted Capital Account**” means, with respect to any Member, the balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to contribute to the Company (pursuant to the terms of this Agreement or otherwise) or is deemed to be obligated to contribute to the Company pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

(c) The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“**Administrative Operating Member**” means Peebles JV Member or any other replacement of Peebles JV Member as Administrative Operating Member made in accordance with this Agreement.

“**Affiliate**” means, with respect to a specified Person, (a) a Person that, directly or indirectly through one or more intermediaries, Controls, is controlled by or is under common control with, the specified Person, (b) a Person that owns, directly or indirectly, more than ten percent (10%) of the ownership interests in the specified Person, (c) a Person in which the specified Person owns, directly or indirectly, more than ten percent (10%) of the ownership interests, (d) any Person that is an officer, director, partner, manager, managing member or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner, manager, managing member or trustee, or with respect to which the specified Person serves in a similar capacity, (e) the spouse, issue or parent of the specified Person and (f) in the case of a trust, any trustee or beneficiary of such trust. The Company and the Subsidiaries shall not be deemed to be an Affiliate of any Member. Peebles JV Member and the Peebles Key Principal shall be deemed to be Affiliates of each other. El Ad Developer, El Ad Entity Guarantor, El Ad Individual Guarantor and El Ad Member shall be deemed to be Affiliates of each other.

“**Agreement**” means this Amended and Restated Limited Liability Company Agreement and all Exhibits referred to herein and attached hereto, each of which is made a part hereof, as amended and in effect from time to time with the prior written consent of any Lender (if so required hereunder or under any of the applicable Loan Documents), as the context requires. Words such as “herein,” “hereinafter,” “hereto,” “hereby” and “hereunder”, when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

“**Annual Budget**” has the meaning ascribed thereto in Section 6.15.2 of this Agreement.

“**Approved Annual Budget**” has the meaning ascribed thereto in Section 6.15.3 of this Agreement.

“**Approved Accountant**” means any independent certified public accounting firm approved as a Major Decision.

“**Approved Scope Change**” means a change in scope of the Project, which change in scope has been approved as a Major Decision.

“**Approved Substitute**” has the meaning ascribed thereto in Section 6.15.4 of this Agreement.

“**Authorized Representative**” means, with respect to Peebles JV Member, R. Donahue Peebles (provided, in the event of the death or legal incapacity of R. Donahue Peebles, the Authorized Representative with respect to the Peebles JV Member shall be Katrina Peebles), and with respect to El Ad JV Member, Ehud Erez, Yoel Shargian and Orly Daniell, in their capacities as authorized signatories, or such other individuals as such Member shall identify in a notice given to the other Member in accordance with Section 13.4 of this Agreement.

“**Available Cash**” means, for the applicable period, the amount, if any, by which (a) Revenues for such period from whatever source (including reductions in Reserves reasonably agreed upon as a Major Decision) exceeds (b) the sum of (i) all Expenses and (ii) any additions to reserves or escrows required under a Loan Document and/or Reserves set forth in the Project Budget or any Approved Annual Budget and/or recommended by either Member and reasonably approved as a Major Decision.

“**Bankruptcy Act**” means the United States Bankruptcy Reform Act of 1978, as amended, or any successor Act, and the rules promulgated thereunder.

“**Bankruptcy**” or “**Bankruptcy Action**” means, with respect to any Person, that such Person shall (a) generally fail or admit in writing its inability to pay its debts as they become due; (b) suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of himself or itself of any substantial portion of his or its property, or shall make a general assignment for the benefit of his or its creditors; (c) file a voluntary petition in bankruptcy, or seek reorganization, in order to effect a plan or other rearrangement, with creditors or any other relief under the Bankruptcy Code or under any state or Federal law granting relief to debtors, whether now or hereafter in effect; (d) be adjudged a bankrupt, or be the subject of any order for relief entered by any court of competent jurisdiction under the Bankruptcy Code or any other state or Federal law relating to bankruptcy reorganization or the relief for debtors; or (e) have filed or commenced against such person or entity any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or Federal laws relating to bankruptcy or reorganization or other relief for debtors unless the petition is dismissed or discharged within ninety (90) days after filing. The foregoing definition of “Bankruptcy” is intended to replace and shall supersede and replace the definition of “Bankruptcy” set forth in Sections 18-101(1) and 18-304 of the Act.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which national banks in New York, New York are not open for business.

“**Business of the Company**” means the purpose of the Company as described in Section 2.6 of this Agreement.

“**Capital Account**” of a Member has the meaning ascribed thereto in Section 3.4.3 of this Agreement.

“**Capital Contribution**” has the meaning ascribed thereto in Section 3.6.1 of this Agreement.

“**Capital Due Date**” has the meaning ascribed thereto in Section 3.3.1(a) of this Agreement.

“**Certificate of Formation**” has the meaning ascribed thereto in the Recitals to this Agreement, as the same may be amended from time to time with the prior written consent of any of the Lenders (if so required hereunder or under any Loan Documents).

“**City**” means the City of New York, a municipal corporation, acting through the Department of Citywide Administrative Services, with an address at 1 Centre Street, 20<sup>th</sup> floor, New York, New York 10007.

“**City Lease**” means the Lease between the Property Owner, as landlord, and the City, as tenant, dated as of February 25, 2013, as amended by that certain amendment to Lease dated as of July 18, 2013, as superseded by that certain Occupancy Agreement (as defined herein), and as may be hereafter further amended or modified as a Major Decision.

“**CLS Interest Rate**” shall mean the weighted average of (x) the non-default annual interest rate for the Senior Construction Loan (at such interest rate as is in effect for the calendar month of closing under the Senior Construction Loan based on the LIBOR-based rate in effect during such calendar month plus the spread) plus one and one-half percent (1½%) and (y) the non-default annual interest rate for the Mezzanine Construction Loan (at such interest rate as is in effect for the calendar month of closing under the Mezzanine Construction Loan based on the LIBOR-based rate in effect during such calendar month plus the spread) plus one and one-half percent (1½%), compounded monthly.

“**Code**” means the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of any succeeding law).

“**Company**” has the meaning ascribed thereto in the Recitals to this Agreement.

“**Company Minimum Gain**” means “partnership minimum gain” as defined in Regulations Section 1.704-2(d).

“**Company Property**” means any assets of the Company, whether tangible or intangible, or any portion thereof.

“**Condominium**” means the condominium to be created by the Company or a Subsidiary at the Property upon, inter alia, the filing of the Condominium Declaration.

**“Condominium Conversion”** has the meaning ascribed thereto in Section 6.5.32 of this agreement.

**“Condominium Declaration”** means the condominium declaration and by-laws which are necessary to submit the Property to a condominium regime.

**“Confidential Information”** has the meaning ascribed thereto in Section 13.20 of this Agreement.

**“Construction Contract”** means each of the services and/or materials contracts executed or otherwise agreed to by the Company or the Property Owner for the permitting, design, engineering, purchasing, delivery, demolition, removal, replacement, reconditioning, repair, construction, installation, inspection, certification or warranty of the Property as part of the Project, including, without limitation, any architect agreement, general contract or construction management agreement and any other contracts between the Company or the Property Owner and any construction manager, general contractor or construction manager.

**“Consultant’s Fees”** means “Consultant’s Fees” as such term is defined in the Peebles Consulting Agreement.

**“Contract of Sale”** means that certain Contract of Sale, dated as of February 25, 2013, between New York City Economic Development Corporation (the **“Seller”**), and the Property Owner as amended by that certain Amendment to Contract of Sale, dated as of July 18, 2013, between the Seller and the Property Owner, as same may be further amended, restated, supplemented, assigned or otherwise modified from time to time as a Major Decision.

**“Contribution Agreement”** means that certain Contribution Agreement, dated as of October 2, 2013, between the El Ad JV Member and Peebles JV Member.

**“Control”** or **“control”** (and the correlative terms **“controlled by”**, **“controlling”** and **“under common control with”**) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the business and affairs of such Person, whether through ownership interests, by contract or otherwise.

**“Cost Overruns”** means any Development Costs in excess of amounts set forth in the Project Budget.

**“Cure Notice”** means a written notice that a default, event or circumstance that would constitute a Peebles Event of Default (subject to expiration of any applicable Cure Period) has occurred.

**“Cure Period”** means (A) ten (10) days after delivery by El Ad JV Member to Peebles JV Member of a Cure Notice with respect to a monetary Peebles Event of Default or (B) thirty (30) days after delivery by El Ad JV Member to Peebles JV Member of a Cure Notice with respect to a non-monetary Peebles Event of Default; provided that, in the case of clause (B), if, notwithstanding the exercise of diligent efforts by Peebles, Peebles cannot reasonably cure such non-monetary Peebles Event of Default within such thirty (30) day period, such longer period as may be required to cure same with the exercise of diligent, good faith efforts not to exceed sixty (60) days; provided, further, however, that notwithstanding the foregoing, (x) with respect to any

Peebles Event of Default triggered by any action that has led or if uncured would lead to an event of default under any Loan Documents, Contract of Sale or the Deed, the cure periods provided for above shall not be longer than the applicable cure period afforded the Company or the applicable Subsidiary, as applicable, under the applicable agreement, or instrument before such default becomes an event of default under such agreement or instrument and (y) if a Peebles Event of Default is also a breach of a Peebles Document, then the cure periods specified above shall govern and control (and run concurrently with the cure periods specified in such Peebles Document) without further notice or cure periods and without any extension pursuant to the terms of the cure period provided in the applicable Peebles Document.

**“Customary Nonrecourse Carveout Losses”** means (a) losses, costs or Damages relating to or arising from physical waste, fraud, misappropriation of funds, environmental matters, material intentional misrepresentation, violation of industry standard “single purpose entity” covenants and agreements contained in any Loan Documents, industry standard litigation costs in connection with the foregoing and (b) losses, costs or Damages or repayment of a Loan in the event of prohibited indebtedness, prohibited transfers, liens in violation of the loan documents evidencing a Loan and upon the taking of a Bankruptcy Action in respect of the Company or any Subsidiary by the Company or any Subsidiary or against the Company or any Subsidiary with the consent or acquiescence of the Company or any Subsidiary and industry standard litigation costs in connection with the foregoing.

**“Damages”** means all losses, costs, expenses, damages, claims, liabilities, or fines (including but not limited to any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim or the enforcement of a Person’s obligation to indemnify or reimburse such Damages; provided that “Damages” shall not include any consequential or punitive damages other than consequential or punitive damages actually paid by any Indemnitee to a third party (*i.e.* which are actual out-of-pocket damages of the Indemnitee).

**“Deed”** shall mean that certain Indenture made by the New York City Economic Development Corporation, as grantor, to the Property Owner, as grantee, dated as of December 11, 2013, and recorded on December 27, 2013 as CFRN 2013-000-528741, in the New York City Register’s Office.

**“Deficit Capital”** means funds (x) that do not constitute Non-Discretionary Capital and (y) to be used to cure operating or other cash flow deficits pertaining to the Property (including, without limitation, (i) the curing of cash operating shortfalls for the Property, (ii) the curing of any default under any Loan secured by the Property or the membership interests in the Property Owner and (iii) the curing of any default or violation under the City Lease, or the Contract of Sale or Deed).

**“Depreciation”** means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to any Company Property for such Fiscal Year; provided, however, if the Gross Asset Value of any Company Property differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization,

or other cost recovery deduction for such Fiscal Year or period bears to such beginning adjusted tax basis; provided, further, however, that if the adjusted basis for federal income tax purposes of any Company Property at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the TMP.

**“Development Costs”** means all Hard Costs and “soft costs” of the Project for line items set forth in the Project Budget, including, without limitation, the fees of architects, engineers and other design professionals.

**“Development Fee”** means “Development Fee” as defined in the Development Management Agreement.

**“Development Management Agreement”** means that certain Development Management Agreement with respect to the Property, dated as of December 11, 2013, between the Property Owner and El Ad Developer, as amended pursuant to that certain First Amendment to Development Management Agreement, dated as of the date hereof, or any subsequent development management agreement entered into by the Company or any Subsidiary in accordance with this Agreement, as the same may be amended, supplemented or modified from time to time in accordance with this Agreement.

**“Discretionary Change”** means any cost or expense relating to the Property (x) that is not an Approved Scope Change or Non-Discretionary Capital and (y) the incurrence of which has been approved as a Major Decision.

**“Dispute”** has the meaning ascribed thereto in Section 14.1 of this Agreement.

**“Dissolution”** means (a) when used with reference to the Company, the earlier to occur of the date upon which the Company (i) is terminated under the Act or any similar statute enacted in lieu thereof or (ii) ceases to be a going concern and (b) when used with reference to any Member, the earlier to occur of the date upon which (i) there is a Dissolution of the Company or (ii) such Member’s entire interest in the Company is terminated by means of a distribution or series of distributions by the Company to such Member.

**“Distributions”** means each distribution of Available Cash received by the applicable Member from the Company pursuant to Section 5.1.1 hereof.

**“Effective Date”** has the meaning ascribed thereto in Preamble of this Agreement.

**“El Ad Bad Act”** means the gross negligence, fraud, defalcation (that is, an act of embezzlement, theft or similar act), misappropriation of funds, or willful misconduct by El Ad Member, El Ad Developer or any El Ad Control Affiliate, in each case, in connection with the Company, any Subsidiary, the Company Property (including, without limitation, the Property and the Subsidiary Entity Interests) or under or in connection with this Agreement, any operating agreement of any Subsidiary, or the Development Management Agreement or any other agreement between El Ad Member, El Ad Developer or an El Ad Control Affiliate, on the one hand, and the Company or any Subsidiary, on the other hand, provided that if any of the foregoing arise as a result of the actions of any natural person, other than the senior management

of El Ad Entity Guarantor or any El Ad Control Affiliate or El Ad Individual Guarantor, who was not acting with the approval or at the direction of any such senior management, such event, circumstance or act shall not constitute an El Ad Bad Act if such natural person who committed the applicable action is removed from any and all responsibility with respect to (and to the extent there is a right to require such individual to relinquish any interest, such individual shall cease to have any interest in) the Company, each Subsidiary, the Property, and the Company Property and El Ad JV Member reimburses the Company, the Subsidiaries and Peebles JV Member for any Damages incurred by the Company, any Subsidiary or Peebles JV Member arising from such El Ad Bad Act within ten (10) Business Days after notice of such Damages.

“**El Ad Claim**” has the meaning ascribed thereto in Section 5.3.1 of this Agreement.

“**El Ad Control Affiliate**” means an Affiliate of El Ad JV Member that is Controlled by, Controls or is under common Control with El Ad JV Member.

“**El Ad Developer**” means El Ad 346 Development LLC, a New York limited liability company.

“**El Ad Decision**” means any decision hereunder which (i) El Ad JV Member expressly has the unilateral authority to implement under the terms of this Agreement and/or (ii) is expressly designated an “El Ad Decision” pursuant to the terms of this Agreement.

“**El Ad Funding Default**” has the meaning ascribed thereto in Section 3.3.1(f) of this Agreement.

“**El Ad Entity Guarantor**” means El-Ad Group, Ltd. or El Ad US Holding, Inc. to the extent either is required by Lender as a guarantor with respect to any Loan.

“**El Ad Individual Guarantor**” means Yitzhak (Isaac) Tshuva, an individual.

“**El Ad JV Member**” has the meaning ascribed thereto in the introductory paragraph of this Agreement.

“**El Ad JV Member Loan**” has the meaning ascribed thereto in Section 3.3.1(e) of this Agreement.

“**El Ad Non-Reimbursable Payments**” has the meaning ascribed thereto in Section 3.3.2 of this Agreement.

“**El Ad Operating Member**” means El Ad JV Member.

“**El Ad Party**” means any of Orly Daniell, Ehud Erez, Yoel Shargian and/or any such other person as Senior Lender and Mezzanine Lender may reasonably approve in accordance with the Senior Loan Documents and the Mezzanine Construction Loan Documents, respectively.

“**El Ad Permitted Units**” has the meaning ascribed thereto in Section 6.6(c) of this Agreement.

“**Embargoed Person**” has the meaning ascribed thereto in Section 2.7.1(f) of this Agreement.

**“Emergency Expenditures”** means payments required to be made by the Company or any Subsidiary to (a) avoid or minimize the imminent threat of either (i) loss or impairment of life or of personal injury or (ii) damage to a Property or (b) without limiting the generality of the provisions of the preceding clause (a), make any repairs or capital improvements or take other action immediately required in order to avoid a significant penalty by reason of failure of compliance with any laws, orders, rules, regulations and other requirements enacted, imposed or enforced by any Governmental Authority.

**“Excess Capital Contribution”** has the meaning ascribed thereto in Section 3.3.1(b) of this Agreement.

**“Excess Interest”** has the meaning ascribed thereto in Section 3.3.1(f) of this Agreement.

**“Expenses”** means the sum of the following: (a) all sums expended in respect of the Property, the Company or any Subsidiary to pay for the costs of owning, operating and maintaining the Property, the Company and any Subsidiary, (b) all payments required to be made under any Loan, including, without limitation, in respect of interest, principal, servicing fees, real estate tax and insurance impounds, but excluding all other escrows and other reserves required to be paid in accordance with the Loan Documents, (c) salaries (and fringe benefits) of any employees (including amounts reimbursed pursuant to the Development Management Agreement) to the extent included in the Project Budget or any Approved Annual Budget or otherwise approved as a Major Decision, (d) the Development Fee and other amounts paid or reimbursed pursuant to the Development Management Agreement, including any portion of such Development Fee which has been deferred in accordance with this Agreement and the Development Management Agreement, together with all accrued interest thereon, and any Unreimbursed Expenses, together with all accrued interest thereon as provided herein (without duplication of other amounts constituting Expenses), (e) the Consultant’s Fees and the Peebles Overhead Expenses, (f) to the extent not paid pursuant to clause (a) above, expenditures for improvements and capital repairs to the Property not paid from the proceeds of any Loan, and (g) Emergency Expenditures relating to the Property.

**“Fiscal Year”** means the taxable year of the Company, which shall begin on January 1 and end on December 31.

**“For Cause Removal”** has the meaning ascribed thereto in Section 6.13.1 of this Agreement.

**“Fourth Tier Percentage”** means (i) with respect to Peebles JV Member, thirty five percent (35%); and (ii) with respect to El Ad JV Member, sixty five percent (65%).

**“GAAP”** means generally accepted accounting principles, consistently applied.

**“Governmental Authority”** means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**“Gross Asset Value”** means, with respect to any Company Property, such Company Property’s adjusted basis for federal income tax purposes, except as follows:



(a) the initial Gross Asset Value of any property contributed by a Member to the Company shall be the fair market value of such property as reasonably determined by the TMP and the contributing Member;

(b) the Gross Asset Values of all Company Property shall be adjusted to equal their respective fair market values, as reasonably determined by the TMP, as of the following times: (i) immediately prior to the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution, (ii) immediately prior to the distribution by the Company to a Member of more than a *de minimis* amount of money or other Company Property as consideration for an interest in the Company, (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); (iv) the grant of an interest in the Company as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity or in anticipation of being a Member; and (v) under GAAP in accordance with Regulations Section 1.704-1(b)(2)(iv)(f)(5); provided, however, that the adjustments pursuant to clauses (i), (ii) and (v) above shall be made only if the TMP determines, in its reasonable discretion and subject to the reasonable consent of Peebles JV Member, that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) the Gross Asset Value of any Company Property distributed to any Member shall be adjusted to equal the fair market value, as agreed to by the TMP and the distributee, of such Company Property on the date of distribution; and

(d) the Gross Asset Value of each Company Property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Company Property pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Value shall not be adjusted pursuant to this clause (d) to the extent the TMP determines, in its reasonable discretion, that an adjustment pursuant to clause (b) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d).

If the Gross Asset Value of any Company Property has been determined or adjusted pursuant to clauses (a), (b) or (d) of this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Company Property for purposes of computing Net Profits and Net Losses.

“GS Lender” has the meaning ascribed thereto in Section 3.3.2(b) of this Agreement.

“Guaranty Charge” has the meaning ascribed thereto in Section 3.3.2(b) of this Agreement.

“Hard Costs” means the aggregate costs of all labor and materials necessary for completion of the Project.

“Immediate Family Member” means, as to any individual, the father, mother, sister, brother, son, daughter, grandson, granddaughter, spouse (or spouse of any of the foregoing), and domestic partner of such individual.

“**Indemnatee**” has the meaning ascribed thereto in Section 12.2 of this Agreement.

“**Initial Capital Contribution**” has the meaning ascribed thereto in Section 3.2 of this Agreement.

“**Initial Peebles Capital Credit**” means the amount equal to Thirty-Five Million and 00/100 Dollars (\$35,000,000.00).

“**Interest**” means a Member’s ownership interest in the Company, including its share of the profits and losses of the Company and its right to receive distributions of Company Property and any and all rights, powers and benefits accorded to a Member under this Agreement and the duties and obligations of such Member hereunder.

“**Interest Accrual Period**” means each period from and including the first (1<sup>st</sup>) day of a calendar month through and including the last day of such calendar month. Notwithstanding the foregoing, the first (1<sup>st</sup>) Interest Accrual Period shall commence on and include the date hereof and the last Interest Accrual Period shall end on and include the date on which all unpaid amounts which are due and payable (or which become due and payable) in respect of the Development Fee or the Unreimbursed Expenses (including interest accruing thereon in accordance with Section 3.3.1(c) hereof) are paid.

“**Interim Priming Venture Loan**” has the meaning ascribed thereto in Section 3.3.1(d) of this Agreement.

“**Investment**” means a Capital Contribution or Priming Venture Loan.

“**Investment Shortfall**” has the meaning ascribed thereto in Section 3.3.1(f) of this Agreement.

“**Key Principal Trusts**” has the meaning ascribed thereto in Section 8.2 of this Agreement.

“**Knowledge of Peebles JV Member**” has the meaning set forth in Section 2.7.1 of this Agreement.

“**Leases**” has the meaning ascribed thereto in Section 6.5.5 of this Agreement.

“**Lender**” means the holder of a Loan, from time to time.

“**LIBOR Rate**” means a rate per annum equal to the rate of interest which is identified and normally published by Bloomberg Professional Service page USD-LIBOR-BBA (BBAM) as the offered rate for loans in United States dollars for a one (1) month period, rounded upward, if necessary, to the nearest one-eighth (1/8) of one percent (1%). Such rate for any day shall be the rate set by the British Bankers Association as of 11:00 a.m. (London time) on such day (unless such date is not a Business Day, in which event the most recent Business Day will be used).

“**Liquidation Event**” means any sale, transfer or other disposition or liquidation of all or any portion of the Property (including a foreclosure sale of all or any portion of the Property); provided, however, such event shall not cause a dissolution except as otherwise provided pursuant to Article 11.

**“Liquidation Proceeds”** means, with respect to any Liquidation Event, all amounts paid to or received by or on behalf of the Company in connection with such Liquidation Event.

**“Loan Documents”** means, collectively, the Senior Loan Documents, the Mezzanine Loan Documents and all other documents evidencing or securing any Loan.

**“Loans”** means, collectively, the Senior Loan, the Mezzanine Loan, and any other loan to the Company or its Subsidiaries, including the Property Owner, made by a third-party.

**“Major Decision”** has the meaning ascribed thereto in Section 6.5 of this Agreement.

**“Material Adverse Effect”** means an effect costing, causing (or presenting imminent risk of) or resulting in Damages of \$250,000 or more to The Company, El Ad JV Member and/or its Affiliates.

**“Material Agreement”** means, individually and collectively, the City Lease, the Deed, the Loan Documents, the Development Management Agreement, any sales and marketing agreement, any property management agreement, leasing agreement, any retail lease, the Construction Contracts, any contract of sale for any unit of the Condominium, any agreement or instrument to which the Company or any Subsidiary is a party which requires payment of amounts in excess of \$350,000.00 in the aggregate over the term of such agreement or annual payments in excess of \$75,000.00, and each other contract, agreement, understanding or obligation of the Company or the Property Owner that is material to the on-time and on-budget completion of the Project in accordance with the Senior Construction Loan or the breach of which by the Company would or is reasonably likely to have a material adverse effect on the business, operations or financial condition of the Company, the Property Owner or the Project.

**“Mediator”** has the meaning ascribed thereto in Section 14.2 of this Agreement.

**“Member Loan Documents”** has the meaning ascribed thereto in Section 13.33 of this Agreement.

**“Member Nonrecourse Debt”** has the meaning ascribed to “partner nonrecourse debt” in Regulations Section 1.704-2(b)(4).

**“Member Nonrecourse Debt Minimum Gain”** means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability of the Company, determined in accordance with Regulations Sections 1.704-2(i)(2) and (3).

**“Member Nonrecourse Deductions”** has the meaning ascribed to “partner nonrecourse deductions” in Regulations Section 1.704-2(i)(2).

**“Members”** means, collectively, all Persons who hold Interests, each in such Person’s capacity as a member of the Company. Reference to a **“Member”** shall be to any one of the Members.

**“Mezzanine Construction Loan”** means the Mezzanine Loan obtained by a Subsidiary of the Company as of the date hereof in connection with the construction of the Project.

**“Mezzanine Lender”** means the holder(s) of the Mezzanine Construction Loan from time to time.

**“Mezzanine Loan”** means any loan or loans made to a Subsidiary, secured by direct or indirect interests in the Property Owner or such Subsidiary, including any Mezzanine Construction Loan.

**“Mezzanine Loan Documents”** means all loan documents relating to a Mezzanine Loan.

**“Money Market Account”** has the meaning ascribed thereto in Section 10.4 of this Agreement.

**“Net Liquidation Proceeds”** means, with respect to any Liquidation Event, all Liquidation Proceeds, less (a) amounts paid in respect of any Loan or other indebtedness of the Company or any Subsidiary in respect of the Property for which such Liquidation Event has occurred, (b) reasonable and customary costs and expenses incurred in connection with such Liquidation Event and (c) without duplication of any of the foregoing, payment of the costs and establishment of reserves described in Section 11.2.1 of this Agreement.

**“Net Profits”** and **“Net Losses”** mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(b)(2)(B) or treated as Code Section 705(b)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profits or Net Losses shall be subtracted from such taxable income or loss;

(c) gain or loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of such Company Property disposed of, notwithstanding that the adjusted tax basis of such Company Property differs from its Gross Asset Value;

(d) in lieu of depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period;

(e) in the event the Gross Asset Value of any Company property is adjusted pursuant to this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property for purposes of computing Net Profits or Net Losses, and shall be allocated in accordance with the provisions of Section 4.1.

(f) to the extent an adjustment to the adjusted tax basis of any Company property pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such Company property) or loss (if the adjustment decreases the basis of such Company property) from the disposition of such Company property and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(g) notwithstanding any other provision of this subsection, any items of income, gain, loss or deduction which are specially allocated pursuant to Sections 4.2 through 4.7 hereof shall not be taken into account in computing Net Profits or Net Losses.

**"Non-Discretionary Capital"** means (a) Investments necessary to fund Hard Costs required to be paid under any Loan Document or as determined by the third-party engineer, architect, or construction manager engaged by the Company or a Subsidiary in accordance with this Agreement, insurance premiums, and real estate taxes and assessments or interest on any Loan, or (b) Investments required to be funded for amounts contemplated by the Project Budget or any Approved Annual Budget.

**"Nonrecourse Deductions"** has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Company taxable year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

**"Notices"** has the meaning ascribed thereto in Section 13.4 of this Agreement.

**"Objecting Member"** has the meaning ascribed thereto in Section 6.15.4 of this Agreement.

**"Occupancy Agreement"** means that certain Surrender of Tenancy and Occupancy Agreement by and between the Property Owner and the City dated as of October 5, 2015 and effective as of November 1, 2015, which replaced the City Lease in its entirety and exclusively governs the City's occupancy of the Property.

**"Officer"** has the meaning ascribed thereto in Section 6.17 of this Agreement.

**"Operating Account"** has the meaning ascribed thereto in Section 10.4 of this Agreement.

**"Operating Members"** means Administrative Operating Member (or any other replacement thereof) and the El Ad Operating Member (or any replacement thereof).

**"Original Agreement"** has the meaning ascribed thereto in the Recitals of this Agreement.

**"Payable Monthly Installments"** has the meaning ascribed thereto in Section 3.3.1.(c) of this Agreement.

**"Partially Adjusted Capital Account"** means, with respect to any Member for any Fiscal Year, the Capital Account of such Member at the beginning of such Fiscal Year, (a) adjusted as set forth in Section 3.5 for all contributions and distributions during such year, (b) adjusted as set

forth in Section 3.5 for all special allocations pursuant to Sections 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7 with respect to such Fiscal Year, but before giving effect to any allocations of Net Profits or Net Losses for such Fiscal Year pursuant to Section 4.1 and (c) increased by the Member's share of Company Minimum Gain determined pursuant to Regulations Section 1.704-2(g) and the Member's share of Member Nonrecourse Debt Minimum Gain determined in accordance with Regulations Section 1.704-2(i)(5), all computed immediately prior to the hypothetical sale described in the definition of "Target Capital Account."

"Peebles Claim" has the meaning ascribed thereto in Section 5.3.2 of this Agreement.

"Peebles Consultant" means Civic Center Developers, LLC, an Affiliate of the Peebles JV Member.

"Peebles Consulting Agreement" means that certain Development Consulting Agreement dated as of December 11, 2013, by and between the El Ad Developer and the Peebles Consultant, as amended pursuant to that certain First Amendment to Development Consulting Agreement, dated as of the date hereof, as the same may be further amended, supplemented or modified from time to time in accordance with this Agreement.

"Peebles Control Affiliate" means an Affiliate of Peebles JV Member that is Controlled by, Controls or is under common Control with Peebles JV Member.

"Peebles Control Standard" means a condition relating to the management and control of Peebles JV Member, which condition shall be deemed to have been satisfied only if (i) Peebles Key Principal, and/or the Immediate Family Members of Peebles Key Principal and/or any trusts and/or other estate planning vehicles created for the benefit of Peebles Key Principal's Immediate Family Members ("Key Principal Trusts"), own, directly or indirectly, at least fifty-one percent (51%) of the direct or indirect ownership interests in Peebles JV Member and (ii) either (x) Peebles JV Member is Controlled by the Peebles Key Principal or (y) there is an Approved Substitute (or El Ad JV Member's approval of a proposed Approved Substitute is pending).

"Peebles Document" means the Peebles Consulting Agreement, the Reimbursement Agreement and Contribution Agreement and any contract or agreement entered into on or after the date hereof between Peebles JV Member or any Peebles Control Affiliate, on the one hand, and the Company, Property Owner or any other Subsidiary of the Company, on the other hand.

"Peebles Event of Default" means any of the following acts, activities or events by (or at the direction of) Peebles JV Member, the Peebles Key Principal, any Peebles Control Affiliate, or any employee or agent (subject to the provisions of this defined term) of Peebles JV Member or any Peebles Control Affiliate (excluding any third party agents, contractors or other Persons that are hired on behalf of the Company or any Subsidiary) (each of the foregoing, a "Peebles Control Party");

(a) gross negligence, fraud, defalcation (that is, an act of embezzlement, theft or similar act), misappropriation of funds, or willful misconduct, in each case, in connection with the Company, any Subsidiary, the Company Property (including,

without limitation, the Property and the Subsidiary Entity Interests) or under or in connection with this Agreement, any operating agreement of any Subsidiary, or Peebles Document;

(b) conviction of a felony (or a guilty plea in connection therewith) (excluding, however, such conviction and/or plea of an individual other than the Peebles Key Principal; provided that such individual is removed from any and all responsibility with respect to (and to the extent there is a right to require such individual to relinquish any interest, such individual shall cease to have any interest in) the Company, each Subsidiary, the Property, and the Company Property);

(c) the taking of any Bankruptcy Action with respect to the Company, any Subsidiary, Peebles JV Member, or the Peebles Key Principal; provided, however, (i) a Bankruptcy Action by or with respect to the Company, any Subsidiary, Peebles JV Member or the Peebles Key Principal that is taken with the prior written consent of (or solely as a result of an act of, or as a result of collusion by) El Ad JV Member (or an El Ad Control Affiliate) shall not constitute a Peebles Event of Default and (ii) a Bankruptcy Action by Peebles JV Member or the Peebles Key Principal solely under clause (a) of the definition of Bankruptcy Action shall not constitute a Peebles Event of Default);

(d) if Peebles JV Member resigns as Administrative Operating Member hereunder, unless replaced by an Affiliate of Peebles JV Member reasonably acceptable to El Ad JV Member;

(e) the occurrence of a Transfer by Peebles JV Member or the Peebles Key Principal in violation of Article 8 hereof or the failure by Peebles JV Member to maintain the Peebles Control Standard, provided that if the sole reason that the Peebles Control Standard is not maintained is that the Peebles Key Principal died or is incapacitated, then same shall not constitute a Peebles Event of Default (and the provisions of Section 6.11.2 shall be applicable thereto);

(f) the intentional causing by one or more Peebles Control Parties, solely through their actions, of an event of default (*i.e.*, continuing beyond notice and cure) under a Loan, the Contract of Sale, the Deed or other Material Agreement, or an event of default (*i.e.*, continuing beyond notice and cure) by Peebles JV Member under any guaranty given by it in respect of Customary Nonrecourse Carveout Losses in connection with a Loan, unless the causing of such event of default is approved in writing by El Ad JV Member;

(g) failure by Peebles JV Member to implement any action which El Ad JV Member has the sole right to cause the Company or any Subsidiary to take in accordance with the provisions of this Agreement and has instructed Peebles JV Member in writing to implement;

(h) Peebles JV Member taking of an action which constitutes a Major Decision without El Ad JV Member's prior written approval;

(i) any misrepresentation by Peebles JV Member, the Peebles Key Principal, or any Peebles Control Affiliate, in this Agreement, for so long as the representation in question survives under the applicable Peebles Document, or any Peebles Document which has a

Material Adverse Effect (whether individually or in the aggregate with all other misrepresentations);

(j) the failure of Peebles JV Member, the Peebles Key Principal, or the applicable Peebles Control Affiliate, as the case may be, to meet any of its material obligations to the Company (or applicable Subsidiary) under this Agreement or any Peebles Document, in each case, resulting in a material breach of this Agreement or any Peebles Document, to the extent such breach causes a Material Adverse Effect (whether individually or in the aggregate with all other breaches); or

(k) the dissolution or liquidation of Peebles JV Member;

provided, however,

(i) with respect to the events, circumstances, or acts described in clause (a) of this definition that arise as a result of the actions of any natural person other than the Peebles Key Principal or a natural person acting with the approval or at the direction of Peebles Key Principal, such event, circumstance or act shall not constitute a Peebles Event of Default if such natural person who committed the applicable action is removed from any and all responsibility with respect to (and to the extent there is a right to require such individual to relinquish any interest, such individual shall cease to have any interest in) the Company, each Subsidiary, the Property, and the Company Property, unless and until El Ad JV Member provides a Cure Notice with respect to such Peebles Event of Default to Peebles JV Member and Peebles JV Member fails to cure (at no cost to the Company or any Subsidiary or El Ad JV Member) such event, circumstance or act within the Cure Period (including, without limitation, reimbursement to the Company, the Subsidiaries and El Ad JV Member of any Damages incurred by the Company, any Subsidiary or El Ad JV Member arising from such Peebles Event of Default, within ten (10) Business Days of notice of such Damages);

(ii) with respect to the events, circumstances, or acts described in clause (g), (h) or (j) of this definition, such event, circumstance or act shall not constitute a Peebles Event of Default, unless and until El Ad JV Member provides a Cure Notice with respect to such Peebles Event of Default to Peebles JV Member and Peebles JV Member fails to cure (at no cost to the Company or any Subsidiary) such event, circumstance or act within the Cure Period (including, without limitation, reimbursement to the Company, the Subsidiaries and El Ad JV Member of any Damages incurred by the Company, any Subsidiary or El Ad JV Member arising from such Peebles Event of Default, within ten (10) Business Days of notice of such Damages); provided that, solely with respect to clause “(h)”, there shall be no Cure Period, if (x) the Peebles Event of Default in question is not capable of being cured or (y) at the time that the Peebles Event of Default in question occurred, the Peebles Key Principal was aware that the action in question constituted a Major Decision;

(iii) with respect to a misrepresentation described in clause (i) of this definition that is not made with the actual knowledge of the Peebles Key Principal at the time of such misrepresentation, such misrepresentation shall not constitute a



Peebles Event of Default, unless and until El Ad JV Member provides a Cure Notice with respect to such Peebles Event of Default to Peebles JV Member and Peebles JV Member fails to pay without duplication (at no cost to the Company, any Subsidiary or El Ad JV Member) the actual Damages suffered by the Company, each Subsidiary and El Ad JV Member as a result of the Peebles Event of Default in question within the Cure Period (including, without limitation, reimbursement to the Company, the Subsidiaries and El Ad JV Member of any Damages incurred by the Company, any Subsidiary or El Ad JV Member arising from such Peebles Event of Default, within ten (10) Business Days of notice of such Damages); and

(iv) Notwithstanding anything else herein to the contrary, the failure of Peebles JV Member to perform an obligation to the extent resulting solely from the Company's or El Ad JV Member's failure (if required under this Agreement) to provide sufficient funds to Peebles JV Member to perform such obligation (including by reason of any failure by El Ad JV Member to make an Additional Capital Contribution, or Priming Venture Loan pursuant to Section 3.3), El Ad JV Member's failure to approve performance by Peebles JV Member of such obligation (if and only if such approval is expressly required to be obtained hereunder) or failure of El Ad JV Member or El Ad Developer to perform any other obligations of such party under this Agreement or under the Development Agreement shall not be deemed a Peebles Event of Default.

**"Peebles JV Member"** has the meaning ascribed thereto in the introductory paragraph of this Agreement.

**"Peebles Key Principal"** means R. Donahue Peebles, an individual.

**"Peebles Non-Reimbursable Payments"** has the meaning ascribed thereto in Section 3.3.2 of this Agreement.

**"Peebles Overhead Expenses"** has the meaning ascribed thereto in Section 3.3.1(c) of this Agreement.

**"Peebles Permitted Units"** has the meaning ascribed thereto in Section 6.6(c) of this Agreement.

**"Permitted Unit Purchase"** has the meaning ascribed thereto in Section 6.6(c) of this Agreement.

**"Period of Duration"** has the meaning ascribed thereto in Section 2.5 of this Agreement.

**"Periodic Report"** has the meaning ascribed thereto in Section 5.1.3 of this Agreement.

**"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, unincorporated organization, governmental or regulatory body or other entity.

**"Pre-Closing Expenses"** means the costs and expenses incurred by the Property Owner, Peebles JV Member or any Affiliate thereof in connection with the acquisition of the Property as

approved by El Ad JV Member and Peebles JV Member in their reasonable discretion and the costs and expenses incurred, after the date of the Contribution Agreement by the El Ad JV Member or any Affiliate thereof in connection with the acquisition of the Property as approved by El Ad JV Member and Peebles JV Member in their reasonable discretion. The Members agree that the aggregate amount of the Pre-Closing Expenses incurred by the Peebles JV Member or any Affiliate thereof as of the date of the Contribution Agreement was \$650,000.00. The Members further acknowledge that, (i) prior to the effective date of the Contribution Agreement, the Peebles JV Member had deposited certain sums with the Seller to be drawn upon by the Seller in payment of legal and other costs incurred in connection with the transactions under the Contract of Sale, (ii) as of the effective date of the Contribution Agreement, a portion of such initial deposit in an amount equal to \$88,183.00 remains unused and continued to be on deposit with the Seller (the "Remaining Seller Deposit"), and (iii) the Remaining Seller Deposit shall constitute additional Pre-Closing Expenses of the Peebles JV Member as and to the extent the same was/is drawn upon by Seller in payment of costs incurred in connection with the transactions under the Contract of Sale. In no event shall Pre-Closing Expenses include the costs of negotiating this Agreement, the Contribution Agreement, the Development Management Agreement or any Peebles Document.

"Priming Venture Loan" has the meaning ascribed thereto in Section 3.3.1(b) of this Agreement.

"Priming Venture Loan Rate" means, except as otherwise set forth in Section 3.3.1(b) of this Agreement, an annual rate of return equal to the lower of twelve percent (12%), compounded monthly and (ii) the highest rate permitted by applicable laws.

"Principal" means an individual who is in ultimate control of a Member.

"Prohibited Person" means 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 or any Loan Documents, whether such prohibition arises under United States law, regulation, executive orders and lists published by Office of Foreign Assets Control ("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 regulation of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC or otherwise.

"Project" means all work to be completed in connection with the design, construction, development, Condominium Conversion, marketing, advertising, operation, leasing and sale of the Property, as further described in the Project Budget and the Project Business Plan.

"Project Budget" means the Project Budget approved by the Lenders pursuant to the Loan Documents upon closing of the construction financing for the Project and attached hereto as Exhibit C, which includes all periods through final completion of the Project and the projected sell-out of all the Units (as such Project Budget may be amended, supplemented or modified in accordance with the Loan Documents and this Agreement and as such Project Budget may be extended to the extent necessary until such time as complete sell-out of the Units is achieved).

**“Project Business Plan”** means the plan to develop the Project as a mixed use residential building with a retail component, garage component and community facility component (as the same may be updated, modified and supplemented from time to time in accordance with the Loan Documents, this Agreement and the Development Management Agreement) which Project Business Plan shall remain in full force and effect from the date hereof through final completion of the Project.

**“Property”** means that certain real property more particularly described on Exhibit A attached hereto, together with all buildings and improvements now existing or hereafter constructed thereon, located at and commonly known as 346 Broadway, New York, New York.

**“Property Owner”** means Civic Center Community Group Broadway LLC, a New York limited liability company.

**“Proposing Member”** has the meaning ascribed thereto in Section 6.15.4 of this Agreement.

**“Reimbursement Agreement”** means that certain Indemnity and Contribution Agreement dated as of the date hereof made by and among El Ad JV Member, El Ad Entity Guarantor, Peebles JV Member and Peebles Key Principal in the form of Exhibit D annexed hereto.

**“Regulations”** means the federal income tax regulations promulgated by the Treasury Department under the Code, as such regulations may be amended from time to time. All references herein to a specific section of the Regulations shall be deemed also to refer to any corresponding provisions of succeeding Regulations.

**“Removal Notice”** shall have the meaning ascribed thereto in Section 6.13.1 of this Agreement.

**“Reporting Member”** means El Ad JV Member.

**“Requirements”** means this Agreement, the Project Budget, the Project Business Plan, any lease, rental agreement, loan agreement, mortgage, easement, covenant, restriction or other agreement or instrument at any time or times affecting the Company, any Subsidiary or all or a portion of the Property or any of the Company Property, including, without limitation, the Loan Documents, the Contract of Sale, the Deed, and the City Lease, and all procedural and substantive federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders and other governmental requirements including those relating to the environment, health and safety, or handicapped persons, applicable to the Company or any Subsidiary).

**“Reserves”** means funds set aside by the Company pursuant to the Project Budget or any Approved Annual Budget or from Capital Contributions, Priming Venture Loans, or Revenues as reserves in amounts reasonably necessary or prudent for payment of Expenses not likely to be covered out of any other account of the Company, including, without limitation, possible (a) capital expenditures in respect of the Property, (b) debt service under any Loan, and (c) Emergency Expenditures, excluding, however, the amount of any reserves held and maintained by any Lender pursuant to the applicable Loan Documents.

“**Revenues**” means all actual cash receipts of the Company from the Property or a Subsidiary (including Liquidation Proceeds arising from a Liquidation Event), excluding Capital Contributions and Priming Venture Loans.

“**Secretary of State**” has the meaning ascribed thereto in the Recitals of this Agreement.

“**Securities Act**” has the meaning ascribed thereto in Section 13.24 of this Agreement.

“**Senior Acquisition Loan**” has the meaning ascribed thereto in Section 3.3.1(c) of this Agreement.

“**Senior Construction Loan**” means the Senior Loan obtained by Property Owner from Senior Lender as of the date hereof in connection with the construction of the Project.

“**Senior Lender**” means the holder(s) of the Senior Loan from time to time.

“**Senior Loan**” means a loan made in connection with the acquisition of the Property and/or construction of the Project or refinancing of the foregoing, including any Senior Construction Loan, which loan is secured by a fee mortgage interest in the Property, and any replacement, renewal, extension, substitution, addition, supplement, modification, amendment or refinancing thereof.

“**Senior Loan Documents**” means, all loan documents relating to a Senior Loan.

“**Shortfall Loan**” has the meaning ascribed thereto in Section 3.3.1(f) of this Agreement.

“**Shortfall Loan Rate**” has the meaning ascribed thereto in Section 3.3.1(f) of this Agreement.

“**Subsidiary**” means any Person directly or indirectly owned by the Company including the Property Owner.

“**Subsidiary Entity Interests**” means the ownership interest in each Subsidiary now or hereafter owned directly or indirectly by the Company, together with any and all rights arising therefrom.

“**Target Capital Account**” means, with respect to any Member for any Fiscal Year, an amount equal to the hypothetical distribution such Member would receive if all Company Property were sold for cash equal to their Gross Asset Values (which Gross Asset Values shall reflect only actual adjustments to Gross Asset Value made prior to such deemed sale), all Company liabilities were satisfied to the extent required by their terms (limited, with respect to each nonrecourse liability, to the Gross Asset Value of the Company Property securing each such liability), and the net assets of the Company remaining after payment of such liabilities and taking into account all cash then on hand, including reserves, were distributed in full to the Members pursuant to Section 5.1, all as of the last day of such Fiscal Year, excluding, however, amounts distributable with respect to any amount loaned by a Member (including interest thereon).

“**Term**” has the meaning ascribed thereto in Section 2.5 of this Agreement.

“**Third Party Shortfall Financing**” has the meaning ascribed thereto in Section 3.3.1(f).

“**TMP**” has the meaning ascribed thereto in Section 10.5 of this Agreement.

“**Total Closing Costs**” means the sum of Total Closing Equity and the principal amount of the Senior Loan and, if applicable, the principal amount of the Mezzanine Loan, to be funded at Closing of the acquisition of the Property.

“**Total Closing Equity**” means, as of the date of determination, the sum of the PFTR plus the amount of Investments made by El Ad JV Member as of such date in accordance with the Project Budget or otherwise in accordance with this Agreement.

“**TPSF Costs**” has the meaning ascribed thereto in Section 3.3.1(f) of this Agreement.

“**Transfer**” has the meaning ascribed thereto in Section 8.1.1 of this Agreement.

“**Transfer Effective Date**” has the meaning ascribed thereto in Section 3.7 of this Agreement.

“**Unanimous Decisions**” means those Major Decisions set forth in Sections 6.5.1, 6.5.2 (other than development rights ancillary or relating to or usable by the Property), 6.5.3 (other than in connection with the sale of condominium units to non-Affiliates of El Ad JV Member in accordance with the Condominium Documents), 6.5.12 (excluding, for the avoidance of doubt, any dissolution or liquidation in connection with or following the sale of the Property or voluntary Bankruptcy Action), 6.5.13 (excluding, for the avoidance of doubt, any dissolution or liquidation in connection with or following the sale of the Property or voluntary Bankruptcy Action), 6.5.14, 6.5.18, 6.5.20, 6.5.23, 6.5.28, 6.5.30 and 6.5.36 of this Agreement.

“**Unit**” means a residential unit in the Condominium.

“**Unpaid Interest**” has the meaning ascribed thereto in Section 3.3.1(d).

“**Unreimbursed Expenses**” means the amount of any “Project Employees Reimbursement” and any “Expense Reimbursement”, as each such term is defined in the Development Management Agreement, to the extent such amounts have accrued and are due and payable as of the date hereof or accrue and become due and payable after the date hereof, but which amounts have not yet been paid to El Ad Developer.

## **ARTICLE 2**

### **THE COMPANY AND ITS BUSINESS**

2.1 **Formation of Company.** The Company was formed pursuant to the provisions of the Act by the execution and delivery of the Certificate of Formation to the Secretary of State in accordance with and pursuant to the Act. Upon the filing of the Certificate of Formation with the Secretary of State, James P. Godman’s powers as an “authorized person” ceased and Administrative Operating Member thereupon became a designated “authorized person” and shall continue as a designated “authorized person” within the meaning of the Act. The rights and liabilities of the Members, the management of the affairs of the Company and the conduct of its business shall be as provided in the Act, except as herein otherwise expressly provided.

2.2 **Name**. The name of the Company is “Peebles-El Ad Tribeca Partners LLC”. The Members shall operate the Business of the Company under such name or use such other or additional names as is approved as a Major Decision, provided that: (a) no such name shall contain the individual name of any Principal of any Member (other than “Peebles”), or any similar name or variation thereof, (b) Administrative Operating Member shall have reasonably determined, before use of any such name, that the Company is entitled to use such name and will not by reason of such use infringe upon any rights of any other Person, or violate any applicable laws or governmental regulations, and (c) Administrative Operating Member shall register such name under assumed or fictitious name Acts or similar laws of the states in which the Company operates.

2.3 **Principal Office**. The Company shall maintain its principal place of business at c/o The Peebles Corporation, 745 Fifth Avenue, 16<sup>th</sup> Floor, New York, New York 10151 or at such other place as is approved as a Major Decision from time to time.

2.4 **Registered Office and Registered Agent**. The registered office and registered agent for service of process of the Company shall be Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808, or such other place as is approved as a Major Decision from time to time. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State pursuant to the Act.

2.5 **Period of Duration**. The period of duration of the Company (“**Period of Duration**” or “**Term**”) commenced on the date of the filing of the Certificate of Formation with the Secretary of State, and shall continue until the Company is terminated or dissolved in accordance with the provisions of this Agreement. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

2.6 **Business and Purpose of the Company**. The business purpose of the Company (“**Business of the Company**”) is limited solely to the following:

2.6.1 acquiring, holding, leasing, operating, developing, improving, renovating, rehabilitating, managing, selling, financing, refinancing, Condominium Conversion, transferring and exchanging the Property, the Property Owner Interests and the Subsidiary Entity Interests or any development rights or air rights ancillary or relating to the Property;

2.6.2 acting as the direct or indirect member of each Subsidiary and Property Owner and performing the obligations of such member;

2.6.3 causing each Subsidiary and Property Owner either directly or indirectly to acquire, own, hold, lease, operate, develop, improve, renovate, rehabilitate, manage, sell, finance, refinance, Condominium Conversion, transfer and exchange any portion of the Property;

2.6.4 causing the Subsidiaries and Property Owner to obtain Loans, execute and deliver the Loan Documents and to perform the obligations of the borrower, mortgagor, assignor, pledgor, debtor or otherwise, as the case may be, thereunder; and

2.6.5 transacting any and all lawful business for which a limited liability company may be organized under the Act that is incident, necessary or appropriate to accomplish the foregoing, including, without limitation, contracting for necessary or desirable services of professionals and others and doing any of the actions described above on its own and/or through any Subsidiaries.

**2.7 Representations by Members.**

2.7.1 Representations and Warranties of Peebles JV Member. To induce El Ad JV Member to execute, deliver and perform this Agreement, Peebles JV Member hereby represents and warrants to El Ad JV Member, its successors and assigns the following, as of the date hereof:

(a) Peebles JV Member is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, and has the full right, power and authority to enter into this Agreement, and to perform all of its obligations hereunder;

(b) This Agreement has been duly and validly executed and delivered by and on behalf of Peebles JV Member and constitutes a valid, binding and enforceable obligation of Peebles JV Member, enforceable in accordance with its terms, except to the extent such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general;

(c) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation or any obligation under any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which Peebles JV Member is a party, or by which Peebles JV Member is otherwise bound or that would reasonably be expected to have a material adverse effect on the Property, the Company or any Subsidiary or the performance of Peebles JV Member's obligations hereunder;

(d) There is no claim, cause of action or other litigation or any judicial, administrative or investigative proceeding pending or, to the best of Peebles JV Member's knowledge, threatened against Peebles JV Member or the Peebles Key Principal that would reasonably be expected to have a material adverse effect on the Property, the Company or any Subsidiary or the performance of Peebles JV Member's obligations hereunder;

(e) To the Knowledge of Peebles JV Member, Peebles JV Member is in compliance with Executive Order 13224 (September 23, 2001), the rules and regulations of the Office of Foreign Assets Control, Department of Treasury, and any enabling legislation or other Executive Orders in respect thereof; and

(f) To the Knowledge of Peebles JV Member, at all times, including after giving effect to any Transfers permitted pursuant to this Agreement, (i) none of the funds or other assets of Peebles JV Member constitutes property of, or are beneficially owned, directly or

indirectly, by any person, entity or government subject to trade restrictions under U.S. law (including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder) (any such person, entity or government, an “**Embargoed Person**”) with the result that the investment in Peebles JV Member (whether directly or indirectly), is prohibited by any applicable law, rule, regulation, order or decree is in violation thereof; (ii) no Embargoed Person has any interest of any nature whatsoever in Peebles JV Member with the result that the investment in Peebles JV Member (whether directly or indirectly), is prohibited by any applicable law, rule, regulation, order or decree or is in violation thereof; and (iii) none of the funds of Peebles JV Member have been derived from any unlawful activity with the result that the investment in Peebles JV Member (whether directly or indirectly), is prohibited by any applicable law, rule, regulation, order or decree or is in violation thereof.

(g) The Peebles Key Principal (i) Controls Peebles JV Member, (ii) owns legally and beneficially not less than fifty-one percent (51%) of all direct or indirect ownership interests in Peebles JV Member and (iii) together with Immediate Family Members of Peebles Key Principal (and/or trusts or other estate planning vehicles for the benefit of the foregoing) own legally, and beneficially one hundred percent (100%) of all direct or indirect ownership interests in Peebles JV Member.

For purposes of this Section 2.7.1, to the “**Knowledge of Peebles JV Member**” refers to facts actually within the knowledge of R. Donahue Peebles.

2.7.2 Representations and Warranties of El Ad JV Member. To induce Peebles JV Member to execute, deliver and perform this Agreement, El Ad JV Member hereby represents and warrants to Peebles JV Member, its permitted successors and permitted assigns the following as of the date hereof:

(a) El Ad JV Member is a Delaware limited liability company, validly existing and in good standing under the laws of the State of Delaware, with full right, power and authority to enter into this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly and validly executed and delivered by and on behalf of El Ad JV Member and constitutes a valid, binding and enforceable obligation of El Ad JV Member, enforceable in accordance with its terms, except to the extent such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general.

(c) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under, any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which El Ad JV Member is a party, or by which El Ad JV Member is otherwise bound that would reasonably be expected to have a



material adverse effect on the Property, the Company or any Subsidiary or the performance of El Ad JV Member's obligations hereunder.

(d) There is no claim, cause of action or other litigation or any judicial, administrative or investigative proceeding pending or, to the best of El Ad JV Member's knowledge, threatened against El Ad JV Member or any of its Affiliates that would reasonably be expected to have a material adverse effect on the Property, the Company or any Subsidiary or the performance of El Ad JV Member's obligations hereunder;

(e) To the knowledge of El Ad JV Member, El Ad JV Member is in compliance with Executive Order 13224 (September 23, 2001), the rules and regulations of the Office of Foreign Assets Control, Department of Treasury, and any enabling legislation or other Executive Orders in respect thereof.

(f) To the knowledge of El Ad JV Member, at all times, including after giving effect to any Transfers permitted pursuant to this Agreement, (a) none of the funds or other assets of El Ad JV Member constitutes property of, or are beneficially owned, directly or indirectly, by an Embargoed Person with the result that the investment in El Ad JV Member (whether directly or indirectly), is prohibited by any applicable law, rule, regulation, order or decree is in violation thereof; (b) no Embargoed Person has any interest of any nature whatsoever in El Ad JV Member with the result that the investment in El Ad JV Member (whether directly or indirectly), is prohibited by any applicable law, rule, regulation, order or decree or is in violation thereof; and (c) none of the funds of El Ad JV Member have been derived from any unlawful activity with the result that the investment in El Ad JV Member (whether directly or indirectly), is prohibited by any applicable law, rule, regulation, order or decree or is in violation thereof.

(g) El-Ad Group, Ltd. (i) Controls El Ad JV Member and (ii) owns legally and beneficially one hundred percent (100%) of all direct or indirect ownership interests in El Ad JV Member.

For purposes of this Section 2.7.2, to the "knowledge of El Ad JV Member" refers to facts actually within the knowledge of Ehud Erez.

#### 2.7.3 Indemnification.

(a) Peebles JV Member shall indemnify the Company, El Ad JV Member, El Ad JV Member's Affiliates, and their respective shareholders, members, partners, directors, officers, managers, successors and assigns from and against all Damages arising out of, relating to or as a result of or in connection with the breach by Peebles JV Member of any of its representations and warranties set forth herein.

(b) El Ad JV Member shall indemnify the Company, Peebles JV Member, Peebles JV Member's Affiliates and their respective shareholders, members, partners, directors, officers, managers, successors and assigns from and against all Damages arising out of, relating to or as a result of or in connection with the breach by El Ad JV Member of any of its representations and warranties set forth herein.

2.8 **Survival.** All warranties, representations, covenants, obligations and agreements contained in this Agreement shall survive any and all performances hereunder. All warranties and representations shall be effective regardless of any investigations made or which could have been made by the party benefiting from such warranties and representations.

### **ARTICLE 3**

#### **MEMBERS AND CAPITAL CONTRIBUTIONS**

3.1 **Names and Addresses of Members.** The addresses of the Members are:

3.1.1 **Peebles JV Member:** Civic Center Community Group Broadway Mezzanine, LLC, a New York limited liability company having an address c/o The Peebles Corporation, 745 Fifth Avenue, 16<sup>th</sup> Floor, New York, New York 10151.

3.1.2 **El Ad JV Member:** F&C 60 LLC, a Delaware limited liability company having an address c/o El Ad US Holding, Inc., 575 Madison Avenue, 22<sup>nd</sup> Floor, New York, New York 10022.

3.2 **Initial Capital Contributions.**

As of the date of the Original Agreement, (x) Peebles JV Member indirectly contributed 100% of the membership interests in the Property Owner to the Company by assignment thereof to Peebles El Ad Tribeca Mezz LLC, a wholly owned subsidiary of the Company, and (y) El Ad JV Member contributed cash to the Company (which was contributed to the Property Owner to the extent required in connection with the acquisition of the Property), and, in connection therewith, each of El Ad JV Member and Peebles JV Member were deemed to have made a capital contribution to the Company in the amounts set forth in the Original Agreement (each the "**Initial Capital Contribution**" of Peebles JV Member or El Ad JV Member (as applicable)). The Members agreed to treat the contribution by Peebles JV Member of 100% of the membership interests in Property Owner as (i) a sale by Peebles JV Member to El Ad JV Member with respect to a portion of the membership interests in Property Owner and (ii) as a contribution by Peebles JV Member of the remaining interests in Property Owner ("**Contributed Property**") to the Company which remaining interests were deemed to have a value equal to the Initial Peebles Capital Credit. As of the date hereof, after giving effect to any distributions made on or prior to the date hereof and Capital Contributions made on or prior to the date hereof, the Members have made (or deemed to have made) total Capital Contributions as set forth on Exhibit B attached hereto, which Exhibit B also sets forth the date such Capital Contributions were made or deemed made.

3.3 **Additional Contributions.**

3.3.1 **Capital Contributions and Loans.**

(a) If (a) Administrative Operating Member or El Ad Operating Member determines that additional funds are needed (i) for an Approved Scope Change or Discretionary Change that, in each case, has been approved as a Major Decision or as set forth in the Project Budget, (ii) to fund Non-Discretionary Capital or (iii) to fund Emergency Expenditures of up to \$50,000.00 in any one-year period (b) except as otherwise provided under

the foregoing clause (a), El Ad JV Member determines that additional funds are required to fund Cost Overruns, Emergency Expenditures or Deficit Capital (regardless of whether such amounts are set forth in the Project Budget), or (c) at any time, El Ad Operating Member and Administrative Operating Member jointly determine as a Major Decision that the Company requires additional funds for the Business of the Company, (in each instance, “**Additional Funds**”), then the applicable Member shall have the right to deliver notice to the other Member in the manner provided in Section 13.4 (an “**Additional Funds Notice**”), setting forth (i) the specific purpose for which the Additional Funds are required, (ii) whether such Additional Funds constitute an Approved Scope Change, Cost Overrun, Non-Discretionary Capital, Discretionary Change, Emergency Expenditure or Deficit Capital (and with respect to Non-Discretionary Capital, whether such amounts are included within the Project Budget) and (iii) the date on which such Additional Funds are due, which date shall be ten (10) Business Days after the date of the Additional Funds Notice (or such earlier date, as reasonably approved by El Ad JV Member, as is necessary to comply with any contractual obligation or for an Emergency Expenditure) (such date the “**Capital Due Date**”). On or before the Capital Due Date, El Ad JV Member shall make an Investment (in the form (*i.e.*, Capital Contribution or Priming Venture Loan) permitted or required under this Agreement) in the amount of the Additional Funds set forth in the Additional Funds Notice (each such Investment, an “**Additional Investment**”); provided that, with respect to any Additional Funds Notice, Peebles JV Member shall have the right, but not the obligation, to fund a pro rata (in accordance with its Fourth Tier Percentage) portion of the amount required by such Additional Funds Notice, provided that Peebles JV Member provides notice of its intention to fund such pro rata share at least five (5) Business Days prior to the Capital Due Date. All Additional Investments shall be treated in accordance with this Section 3.3.1, as applicable. No Additional Investment made by El Ad JV Member shall result in a reduction in Peebles JV Member’s Fourth Tier Percentage.

(b) Priming Venture Loans Generally. In the event that El Ad JV Member makes Additional Investments after the Effective Date in accordance with the terms of this Agreement, then (i) the amount of any such Additional Investment shall be treated as a loan to the Company in the amount of such Additional Investment and (ii) such loan shall be a “**Priming Venture Loan**”. Interest on any Priming Venture Loan shall accrue at the applicable interest rate set forth in this Section 3.3. Additionally, if Peebles JV Member shall fund its pro rata share of the amount required pursuant to the Additional Funds Notice to which the Additional Investment in question relates (provided that it delivered notice of its intention to fund such pro rata share at least five (5) Business Days prior to the applicable Capital Due Date), such amount funded by Peebles JV Member shall also be a Priming Venture Loan and shall earn interest at the same rate as the Priming Venture Loan made by El Ad JV Member. Each Priming Venture Loan made pursuant to this Section 3.3.1(b) shall (except as provided in Sections 3.3.1(c), 3.3.1(e), and 3.3.1(f)) bear interest at the Priming Venture Loan Rate and shall be repaid from distributions of Available Cash pursuant to Section 5.1 of this Agreement.

(c) Priming Venture Loans in Connection with Property Acquisition. On the date of the closing of the acquisition of the Property, El Ad JV Member made a Priming Venture Loan in an amount equal to Thirty Million Dollars (\$30,000,000) (the “**Acquisition Priming Venture Loan**”). From the date of the closing of the acquisition of the Property through the date hereof, interest has accrued on the Acquisition Priming Venture Loan in an amount equal to \$3,308,032.34. The parties hereby acknowledge that as of the date hereof, in

connection with the Acquisition Priming Venture Loan, the El Ad JV Member has been paid a facility fee in the amount of \$375,000.00, an extension fee in the amount of \$150,000.00 and interest in the amount of \$3,201,209.42 through February 2, 2016. The Acquisition Priming Venture Loan and all further accrued and unpaid interest thereon shall be repaid in full on the date hereof from the proceeds of the Senior Construction Loan and/or the Mezzanine Construction Loan. Although, pursuant to the Original Agreement, the parties agreed that from and after El Ad JV Member's funding of the Acquisition Priming Venture Loan and until the closing of the construction financing with respect to the Project, a portion of the Development Fee in an amount equal to One Hundred Thousand Dollars (\$100,000) (the "**Payable Monthly Installments**") was to be funded by the Company to the Property Owner on a monthly basis from Available Cash and/or proceeds of the Acquisition Priming Venture Loan, such Payable Monthly Installments were instead deferred as agreed by the Members (it being understood that the Property Owner's obligation to pay the balance of the Development Fee under the Development Management Agreement was deferred until following the closing of the construction financing with respect to the Project, as provided in the Development Management Agreement) and the Members have further agreed to pay the Consultant's Fee (to the extent due and payable) on a current basis after the date hereof notwithstanding the deferral of the Development Fee. All Development Fees, Unreimbursed Expenses and interest accrued thereon shall be paid in accordance with the Development Management Agreement. Payments made to the Peebles Consultant on account of the Consultant's Fee and Peebles Overhead Expenses (hereinafter, as defined in the Peebles Consulting Agreement) shall be paid in accordance with the Peebles Consulting Agreement. All accrued and unpaid Development Fees, Unreimbursed Expenses and Peebles Overhead Expenses (together with all accrued interest on all such amounts thereof) shall be paid prior to distributions of Available Cash and such payment shall reduce Available Cash and paid prior to distributions of Available Cash pursuant to Section 5.1 of this Agreement (but for the avoidance of doubt, no such accrued Peebles Overhead Expenses in excess of the \$300,000.00 cap (but not to exceed \$8,180.00 per month) as described in the Peebles Consulting Agreement, nor any accrued interest thereon, shall be paid to Peebles Consultant until after the payment to El Ad Developer of (i) the Fixed Development Fee Interest, (ii) the Fixed Overhead Expense Interest, (iii) all Deferred Development Fees and (iv) the Deferred Overhead Expenses and interest thereon which accrued prior to the date on which Peebles Overhead Expenses in the amount of \$300,000.00 were paid (i.e., until the applicable cap is met) (each of (i)-(iv), as defined in the Development Management Agreement). Thereafter, Peebles Consultant and El Ad Developer shall be paid all accrued Peebles Overhead Expenses and Deferred Overhead Expenses (as defined in the Development Management Agreement), respectively, pro rata on a pari passu basis based on the relative accrued amounts.

(d) Priming Venture Loans Subsequent to Property Acquisition and Prior to the Date of this Agreement. Prior to the date of this Agreement, El Ad JV Member made Priming Venture Loans (collectively, the "**Interim Priming Venture Loan**") to the Company in the aggregate principal amount of \$3,625,300, and each such Interim Priming Venture Loan accrued interest at a rate equal to the Priming Venture Loan Rate from the date on which each such Interim Priming Venture Loan was made until the outstanding principal balance of all such Interim Priming Venture Loans was repaid on December 23, 2014. The parties acknowledge and agree that accrued and unpaid interest on such Interim Priming Venture Loans in the amount of \$67,186.82 (the "**Unpaid Interest**") remains due and payable as of the date

hereof, and such Unpaid Interest shall be repaid from distributions of Available Cash pursuant to Section 5.1(a) of this Agreement.

(e) Priming Venture Loans In Connection with Construction Loan Closing. The Members hereby acknowledge that on the date hereof, El Ad JV Member is making an Investment in the amount of Three Million Dollars (\$3,000,000.00) on account of the amount in excess of One Hundred Million Dollars (\$100,000,000) that the Project Budget exceeds the sum of the maximum principal amount of the Senior Construction Loan and the maximum principal amount of the Mezzanine Loan (the amount of such difference, the “Construction Loan Shortfall”). El Ad JV Member’s Investment in respect of the Construction Loan Shortfall shall constitute a Priming Venture Loan but it shall bear interest at an annual rate of return equal to the lower of (A) the CLS Interest Rate and (B) the highest rate permitted by applicable laws in lieu of the CLS Interest Rate.

(f) El Ad JV Member Loans. As of the date hereof, El Ad JV Member has made a loan in the principal amount of \$2,692,307.69 to Peebles JV Member (the “El Ad JV Member Loan”) for the purpose of funding a portion of Peebles JV Member’s Capital Contributions required under this Agreement, which amount has been deemed contributed by Peebles JV Member as an Additional Capital Contribution to the Company on the date hereof. The El Ad JV Member Loan shall bear interest based on a 360 day year at an annual rate of return equal to eight percent (8.0%), compounded quarterly, from the date hereof until repaid in full, and shall be repaid from the first distributions of Available Cash pursuant to Section 5.1 or Section 11.2 that would otherwise be distributed to Peebles JV Member (except to the extent Peebles JV Member, in its sole discretion, elects to use other funds for such repayment), provided that such amounts shall be deemed to be distributed to Peebles JV Member pursuant to Section 5.1 or Section 11.2, as applicable, prior to any distributions to be made to Peebles JV Member. The Members further acknowledge that El Ad JV Member made a loan in the amount of Five Million Dollars (\$5,000,000.00) (the “IT Loan”) to Peebles JV Member pursuant to that certain promissory note (the “IT Loan Note”) dated as of April 20, 2015. The Members acknowledge and agree that the El Ad JV Member Loan and all interest thereon shall be repaid prior to any distributions from Available Cash on account of the IT Loan. Interest has accrued and shall continue to accrue on the IT Loan in accordance with the provisions of the IT Loan Note.

(g) Notwithstanding anything to the contrary in this Section 3.3.1, if any Additional Investment made by El Ad JV Member is less than the amount of Additional Funds set forth in the Additional Funds Notice delivered with respect thereto and required to be funded by El Ad JV Member hereunder or El Ad JV Member shall not fund any such Additional Investment required to be funded by El Ad JV Member under this Section 3.3.1 (except if Peebles JV Member shall have elected to fund its pro rata share of such Additional Funds pursuant to Section 3.3.1(a) and failed to so fund) (the amount of such shortfall, an “Investment Shortfall”), then, provided that Peebles JV Member has repaid the El Ad JV Member Loan (together with all interest thereon) in full, as the sole and exclusive remedy of Peebles JV Member (subject to Section 10.4):

(i) Peebles JV Member shall have the right, but not the obligation, to fund all or a portion of the Investment Shortfall within sixty (60) days of

the Capital Due Date. Each amount so funded by Peebles JV Member in respect of an Investment Shortfall shall (i) be treated as a loan (a "**Shortfall Loan**") to the Company in the amount of such Investment Shortfall, (ii) bear interest at an annual rate of return (the "**Shortfall Loan Rate**") equal to the lower of (A) twenty percent (20%) and (B) the highest rate permitted by applicable laws, and (iii) be repaid from distributions of Available Cash pursuant to Section 5.1.

(ii) Peebles JV Member shall have the right, but not the obligation, to have a third party ("**Third Party Shortfall Lender**") fund all or a portion of the Investment Shortfall on behalf of the Peebles JV Member ("**Third Party Shortfall Financing**"), notwithstanding the restrictions of Article 8 hereof, and the Company and El Ad JV Member shall recognize such Third Party Shortfall Financing. Any Third Party Shortfall Financing shall bear interest (or a preferred return, as the case may be) at an annual rate that is less than or equal to the Shortfall Rate (provided that any such interest or preferred return shall be payable only to the extent of Available Cash, but shall otherwise accrue (but shall not be deemed to be added to principal for purposes of this Section 3.3.1(g)). Subject to El Ad JV Member's approval (which shall not be unreasonably withheld, conditioned or delayed), Peebles JV Member shall also have the right to (i) obtain a third party mezzanine, preferred equity or other financing on behalf of the Company or any Subsidiary for all or a portion of the Investment Shortfall, and (ii) cause the Company and/or any such Subsidiary to enter into such documentation on such terms as Peebles JV Member negotiates with such lender, which documentation shall be subject to El Ad JV Member's approval (which shall not be unreasonably withheld, conditioned or delayed). Any such financing shall be deemed to constitute a "Third Party Shortfall Financing". El Ad JV Member will reasonably cooperate with Peebles JV Member in connection with any Third Party Shortfall Financing obtained as provided in this paragraph.

(iii) If the amount of all Investment Shortfalls, in the aggregate, is greater than or equal to \$5,000,000 plus the outstanding principal balance of the El Ad JV Member Loan and all accrued and unpaid interest thereon (if not cured in accordance with the following sentence an "**El Ad Funding Default**"), Peebles JV Member shall have the right to notify El Ad JV Member of its intent to terminate the Development Management Agreement. If El Ad JV Member does not, within ten (10) Business Days of such notice, (i) repay Peebles JV Member for all principal and accrued interest on all Shortfall Loans (it being understood and agreed that, upon such repayment of all Shortfall Loans by El Ad JV Member, El Ad JV Member shall be deemed to have made, effective, in the case of each Shortfall Loan, as of the first date to which such accrued interest on the Shortfall Loan relates, a Priming Venture Loan to the Company in the principal amount of the Shortfall Loans that were so repaid, but the El Ad JV Member shall not be entitled to repayment (from the Company, the Peebles JV Member or otherwise) of the payment made by the El Ad Member in respect of interest on Shortfall Loans), (ii) repay (A) all principal and accrued interest on all Third Party Shortfall Financings, (B) all out-of-pocket legal fees and related costs of entering into the Third Party Shortfall Financings and (C) all financing or commitment fees or other comparable amounts payable to the lender (only to the extent inclusion of such fees or other amounts does not result in an all-in average annual interest rate in excess of 20%) (amounts under clauses (B) and (C),

collectively, "**TPSF Costs**") (it being understood and agreed that, upon such repayment of all Third Party Shortfall Financings by El Ad JV Member, El Ad JV Member shall be deemed to have made, effective, in the case of each Third Party Shortfall Financing, as of the first date to which such accrued interest on such Third Party Shortfall Financing relates, a Priming Venture Loan to the Company in the principal amount of the Third Party Shortfall Financings that were so repaid, but the El Ad JV Member shall not be entitled to repayment (from the Company, the Peebles JV Member or otherwise) of the payment made by the El Ad Member in respect of interest on Third Party Shortfall Financings or in respect of TPSF Costs) (it being understood and agreed that if the effective interest rate (after giving effect to any TPSF Costs described in clause "(C)" above) on any such Third Party Shortfall Financing is less than 12% per annum, the applicable interest rate on such Priming Venture Loan shall be deemed to be the effective interest rate of such Third Party Shortfall Financing (after giving effect to any such TPSF Costs) from the first date to which such accrued interest on such Third Party Shortfall Financing relates through the date of such repayment of such Third Party Shortfall Financing, and thereafter at the rate of 12% per annum consistent with other Priming Venture Loans) and (iii) fund to the Company the portion, if any, of the Investment Shortfalls with respect to which no Shortfall Loan was made or Third Party Loan provided, Peebles JV Member shall have the right to cause the Property Owner to so terminate the Development Management Agreement with El Ad Developer and either (i) cause a Peebles Controlled Affiliate to take the place of El Ad Developer as developer of the Project or (ii) appoint any "Permitted Developer" (as defined in the Contract of Sale) to serve as the developer of the Project, subject to the reasonable approval of El Ad JV Member, provided that the approval of El Ad JV Member shall not be required if (x) Seller has approved such developer (or such approval is not required under the Contract of Sale) and (y) the Senior Lender has approved such developer (or such approval is not required under the Senior Loan Documents). Peebles JV Member shall have the right, without the approval of El Ad JV Member (as a Major Decision or otherwise), to cause the Company or the applicable Subsidiary to enter into a Development Management Agreement with the replacement developer substantially in the form of the Development Management Agreement entered into by the El Ad Developer (with such changes thereto as any Lender shall require and Peebles JV Member and such developer shall accept). With respect to any Third Party Shortfall Financing with respect to which (x) the Company or any Subsidiary paid interest at a rate in excess of 12% per annum (to the extent that the Company or any Subsidiary paid such interest, "**Excess Interest**") and/or TPSF Costs (Excess Interest and TPSF Costs, collectively, "**TPSF Amounts**") and (y) El Ad did not repay the same in accordance with the provisions of this Section 3.3.1(g), until Peebles JV Member shall receive funds in an amount equal to the product of Peebles Fourth Tier Percentage and the amount of all such TPSF Amounts, the next amounts, if any, payable or distributable to El Ad JV Member pursuant to Section 5.1 or Section 11.2 shall in lieu of being paid or distributed, as applicable, to El Ad JV Member, be paid to Peebles JV Member; provided that such amounts shall be deemed to have been paid or distributed, as applicable, to El Ad JV Member (and not to Peebles JV Member) for purposes of the provisions of Section 5.1 or Section 11.2.

(iv) Nothing contained in this Section 3.3.1(g) shall release, or be deemed to release, El Ad JV Member from liability under this Agreement for failing to

make all or any portion of an Investment by the applicable Capital Due Date when required under this Agreement or to extend, or be deemed to extent, any such Capital Due Date.

(v) Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Peebles JV Member shall have no right to make any Shortfall Loans, obtain any Third Party Shortfall Financing or declare any El Ad Funding Default (or send a notice on account thereof) unless and until such time as the El Ad JV Member Loan and all accrued interest thereon is repaid in full by Peebles JV Member (including any repayment from distributions of Available Cash in accordance with Section 3.3.1(f) above).

(h) [Intentionally Omitted]

(i) In any case in which an Additional Funds Notice would require an Additional Investment of El Ad JV Member pursuant to Section 3.3.1(b), El Ad JV Member may elect to fund such amount with a third party Loan, provided that the interest rate in connection with such financing shall be no greater than the interest rate that would have applied if El Ad JV Member made such Additional Investment as a Priming Venture Loan pursuant to Section 3.3.1(b), and such Loan shall otherwise be approved by the Peebles JV Member as a Major Decision, which approval shall not be unreasonably withheld, conditioned or delayed.

### 3.3.2 Guaranties

(a) Guaranty Fundings; Non-Reimbursable Payments. If a call is made by a Lender in respect of any guaranty executed by the El Ad Entity Guarantor or El Ad Individual Guarantor in connection with a Loan (other than in respect of Customary Nonrecourse Carveout Losses (or other losses, costs or Damages or repayment of a Loan under any other nonrecourse carveout guaranty executed by the El Ad Entity Guarantor or El Ad Individual Guarantor in connection with a loan) resulting solely from the act(s) of El Ad Individual Guarantor, El Ad Entity Guarantor or El Ad JV Member or one or more El Ad Control Affiliates or the agents, employees or representatives of any of the foregoing (collectively, "El Ad Carveout Liability")) and El Ad Entity Guarantor or El Ad Individual Guarantor makes a payment on account thereof, such amounts shall be treated as a Priming Venture Loan. Notwithstanding anything to the contrary contained herein, (i) neither (A) payments in respect of El Ad Carveout Liability nor (B) payments or contributions made as a result of an intentional default (after expiration of any applicable notice and cure period) under any Loan Documents (including, without limitation, any guaranty or indemnity), hereunder or under the Development Management Agreement caused solely by El Ad JV Member or any Affiliate of El Ad JV Member without approval of the Peebles JV Member (other than payments which were the obligation of the Company or Subsidiary to make notwithstanding such default, such as principal or non-default rate interest) (collectively, "El Ad Non-Reimbursable Payments") shall constitute or be deemed to constitute Capital Contributions or Priming Venture Loans; and (ii) none of the El Ad Entity Guarantor, El Ad Individual Guarantor or El Ad JV Member or any Affiliate of any of the foregoing shall have any claim, and the El Ad JV Member (on behalf of itself and the El Ad Entity Guarantor and El Ad Individual Guarantor and all Affiliates of any of the foregoing) hereby waives any claims, against the Company, any Subsidiary thereof, the



Peebles JV Member, the Peebles Key Principal and all Affiliates of any or all of the forgoing for contribution, reimbursement, subrogation or any other recovery of any kind in respect of El Ad Non-Reimbursable Payments (including, without limitation, the right to recapture any amounts previously paid or distributed to the Peebles JV Member hereunder). If a call is made by a Lender in respect of any guaranty executed by the Peebles Key Principal in connection with a Loan (other than in respect of Customary Nonrecourse Carveout Losses (or other losses, costs or Damages or repayment of a Loan under any other nonrecourse carveout guaranty executed by the Peebles Key Principal in connection with a Loan) resulting solely from the act(s) of Peebles JV Member or one or more Peebles Control Affiliates or the agents, employees or representatives of any of the foregoing (collectively, "Peebles Carveout Liability")) and Peebles Key Principal makes a payment on account thereof, such amounts shall be treated as a Priming Venture Loan (it being understood and agreed that nothing contained herein shall require Peebles Key Principal to sign any guaranty other than as expressly set forth in Section 13.27 hereof). Notwithstanding anything to the contrary contained herein, (i) neither (A) payments in respect of Peebles Carveout Liability nor (B) payments or contributions made as a result of an intentional default (after expiration of any applicable notice and cure period) under any Loan Documents (including, without limitation, any guaranty or indemnity), hereunder or under any Peebles Document caused solely by Peebles JV Member or one or more Peebles Control Affiliates without approval of the El Ad JV Member (other than payments which were the obligation of the Company or Subsidiary to make notwithstanding such default, such as principal or non-default rate interest) (collectively, "Peebles Non-Reimbursable Payments") shall constitute or be deemed to constitute Capital Contributions or Priming Venture Loans; and (ii) neither the Peebles Key Principal nor the Peebles JV Member nor any Affiliate of either shall have any claim, and the Peebles JV Member (on behalf of itself and the Peebles Key Principal and all Affiliates of either) hereby waives any claims, against the Company, any Subsidiary thereof, the El Ad JV Member, the El Ad Entity Guarantor and El Ad Individual Guarantor and all Affiliates of any or all of the forgoing for contribution, reimbursement, subrogation or any other recovery of any kind in respect of Peebles Non-Reimbursable Payments (including, without limitation, the right to recapture any amounts previously paid or distributed to the El Ad JV Member hereunder).

(b) Prior Guaranty Payments. On December 16, 2014, Property Owner obtained an additional Senior Loan from Goldman Sachs Bank USA ("GS Lender") in the aggregate principal amount of \$30,000,000 and, pursuant to Section 13.27 hereof and in connection with such Senior Loan, El Ad Individual Guarantor, a direct owner of El Ad Entity Guarantor and an indirect owner of El Ad JV Member, was required by GS Lender and reasonably agreed to guarantee Property Owner's obligation to repay such Senior Loans and, in respect of such guarantee, the Company agreed to pay to the El Ad JV Member a guaranty fee in the amount of \$750,000 (the "Guaranty Charge"). Interest has accrued on the Guaranty Charge from the date on which the additional Senior Loans were made through the date hereof in the aggregate amount of \$82,362.36. From and after the date hereof, interest shall continue to accrue on the Guaranty Charge at a rate per annum equal to the weighted average of the annual interest rates for all outstanding third party indebtedness (based on the maximum principal amount of such outstanding third party indebtedness) of the Company and any Subsidiary at such interest rates as are or were in effect on the first date of such Interest Accrual Period, compounded monthly, and such Guaranty Charge and all accrued and unpaid interest thereon shall be repaid from distributions of Available Cash in accordance pursuant to Section 5.1 hereof.

3.3.3 Limitation of Liability. Anything contained in this Article 3 to the contrary notwithstanding but without in any way limiting any obligations under the Reimbursement Agreement, if any Member is required pursuant to Section 3.3.1 to provide Additional Funds to the Company and shall fail to do so, such Member's sole liability, and the other Member's sole remedy, shall be expressly as set forth in this Article 3. Except as expressly provided hereunder, and without in any way limiting any obligations under the Reimbursement Agreement, no Member and no member, Principal, partner, shareholder, director, officer or employee of any Member shall have any personal liability to provide such Additional Funds.

3.3.4 Recharacterization of Shortfall Loans and Priming Venture Loans. If the treatment of a Member's Investment as a Shortfall Loan or a Priming Venture Loan pursuant to the terms herein would (x) violate the terms of any Loan Document or (y) in the reasonable opinion of the funding Member, violate any usury laws, then (i) the aggregate amount of such capital contribution shall be treated as a senior preferred capital contribution to the Company by such contributing Member (*i.e.*, subordinate in priority to the distributions pursuant to Section 5.1.1(a) or Section 5.1.1(b) but senior in priority to all other distributions to the Members in respect of the Initial Capital Contributions), and (ii) the Members shall amend this Agreement, as of the date on which such capital contribution is made, to (A) reflect the foregoing senior preferred capital contribution, and (B) provide that such senior preferred capital contribution shall, as nearly as possible, have the same preferences and attributes as a Shortfall Loan or a Priming Venture Loan, as applicable, made pursuant to the terms herein, including, without limitation, that (x) such capital contribution shall accrue a preferred return at the Shortfall Loan Rate or Priming Venture Loan Rate, as applicable, (y) such capital contribution and the related preferred return shall be subordinate in priority to the distributions to Peebles JV Member pursuant to Section 5.1.1(a) or Section 5.1.1(b) but senior in priority to all other distributions to the Members in respect of the Initial Capital Contributions or Additional Capital Contributions, and (z) distributions of Available Cash shall be first applied to the accrued and unpaid preferred return in respect of such capital contribution, and then to the repayment of such capital contribution; provided that if the terms of any Loan Document would prohibit an amendment to this Agreement in accordance with this Section, this Agreement shall, as of the date the related capital contribution is made, be deemed amended (and shall thereafter be construed) to the extent necessary to effectuate the provisions of this Section.

### 3.4 Rights with Respect to Capital.

3.4.1 Company Capital. Except as specifically provided herein, (a) no Member shall have the right to withdraw, or receive any return of, its Investment and (b) no Investment may be returned in the form of property other than cash.

3.4.2 No Interest on Investments. Except as expressly provided in this Agreement, no Investment of any Member shall bear interest or otherwise entitle the contributing Member to any compensation for use of its Investment.

3.4.3 Establishment of Capital Accounts. A separate capital account ("Capital Account") shall be maintained for each Member.

3.5 **General Rules for Adjustment of Capital Accounts.** The Capital Account of each Member shall be adjusted as follows:

3.5.1 **Increases.** The Capital Account of each Member shall be increased by:

- (a) such Member's Capital Contributions in cash;
- (b) the agreed fair market value of property contributed by such Member (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752) excluding that portion of any property properly treated as sold to the Company for federal income tax purposes; and
- (c) all Net Profits and all items of Company income and gain not included in Net Profits or Net Losses allocated to such Member pursuant to Article 4 or other provisions of the Agreement.

3.5.2 **Decreases.** The Capital Account of each Member shall be decreased by:

- (a) the amount of Available Cash and Net Liquidation Proceeds distributed to such Member, excluding amounts distributed with respect to any amount loaned by a Member (including interest thereon);
- (b) the agreed fair market value of all actual and deemed distributions of property made to such Member pursuant to this Agreement (net of liabilities secured by such distributed property that the Member is considered to assume or take subject to under Code Section 752); and
- (c) all Net Losses and all items of Company deduction and loss not included in Net Profits or Net Losses and allocated to such Member pursuant to Article 4 or other provisions of the Agreement.

3.6 **Special Rules with Respect to Capital Accounts.**

3.6.1 **Time of Adjustment for Capital Contributions.** For purposes of computing the balance in a Member's Capital Account, no credit shall be given for any Capital Contribution which such Member is to make until such contribution is actually made or deemed to have been made in accordance with this Agreement. The term "**Capital Contribution**" means the amount of cash and the agreed fair market value (net of liabilities) of any non-cash property initially contributed or deemed contributed (but not loaned) to the Company by that Member pursuant to Section 3.2 and any subsequent contributions of cash and the agreed fair market value (net of liabilities) of any other property subsequently contributed (but not loaned) to the Company by that Member pursuant to Section 3.3 as permitted by this Agreement or as required under the terms and conditions of this Agreement. For the avoidance of doubt and Priming Venture Loans and Shortfall Loans shall not be deemed to be "Capital Contributions".

3.6.2 **Intent to Comply with Treasury Regulations.** The foregoing provisions of Sections 3.5 and 3.6 and the provisions of Article 4 of this Agreement relating to the maintenance of Capital Accounts and the allocation of Net Profits and Net Losses of the

Company are intended to comply with Section 704(b) of the Code and the Regulations thereunder, and shall be interpreted and applied in a manner consistent therewith (with no double counting by reason of the definition of Net Profits and Net Losses).

3.7 **Transferee's Capital Account.** In the event that any Member Transfers any Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest, adjusted for distributions of Available Cash and Net Liquidation Proceeds made pursuant to this Agreement and allocations of Net Profits or Net Losses as of the end of the month that includes the date of such transfer (the "**Transfer Effective Date**").

#### **ARTICLE 4**

##### **ALLOCATION OF PROFITS AND LOSSES**

4.1 **Allocation of Net Profits and Net Losses.** Except as otherwise provided in this Article 4 and in Section 11.2, after giving effect to the special allocations in Section 4.2, Section 4.3, Section 4.4, Section 4.5, Section 4.6 and Section 4.7 hereof, Net Profits and Net Losses, and to the extent necessary, items of income, gain, deduction, loss, and credit comprising each, for any Fiscal Year shall be allocated among the Members so as to reduce, proportionately, the differences between their respective Partially Adjusted Capital Accounts and Target Capital Accounts for such Fiscal Year. No portion of the Net Profits for any Fiscal Year shall be allocated to a Member whose Partially Adjusted Capital Account is greater than or equal to its Target Capital Account for such Fiscal Year. No portion of the Net Losses for any Fiscal Year shall be allocated to a Member whose Partially Adjusted Capital Account is less than or equal to its Target Capital Account for such Fiscal Year.

4.2 **Qualified Income Offset.** If any Member unexpectedly receives any adjustments, allocation or distributions described in clauses (4), (5) or (6) of Regulations Section 1.704-1(b)(2)(ii)(d), items of Company income shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; provided, however, that an allocation pursuant to this Section 4.2 shall be made only if, and to the extent that, such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Article 4 tentatively have been made as if this Section 4.2 were not in this Agreement. This Section 4.2 is intended to constitute a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d)(3) and shall be interpreted consistently therewith.

4.3 **Minimum Gain Chargeback.** If there is a net decrease in Company Minimum Gain during a Fiscal Year, so that an allocation is required by Regulation Section 1.704-2(f), each Member will be allocated, before any other allocation under this Article 4, items of income and gain for such Fiscal Year (and if necessary, subsequent Fiscal Years) in proportion to and to the extent of an amount equal to such Member's share of the net decrease in Company Minimum Gain determined in accordance with Regulations Section 1.704-2(g)(2), subject to the exceptions therein. This Section 4.3 is intended to comply with, and shall be interpreted consistently with, the "minimum gain chargeback" provisions of Regulations Section 1.704-2(f).

4.4 **Member Nonrecourse Debt Minimum Gain Chargeback.** If there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4), subject to the exceptions therein. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 4.4 is intended to comply with the "minimum gain chargeback" requirement of that Section of the Regulations and shall be interpreted consistently therewith.

4.5 **Nonrecourse Deductions.**

4.5.1 **Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members, pro rata, in accordance with their respective Fourth Tier Percentages.

4.5.2 **Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Member who bears (or is deemed to bear) the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(2).

4.5.3 **Excess Nonrecourse Debt.** Excess nonrecourse liabilities of the Company, as defined in Regulations Section 1.752-3(a)(3), shall be allocated to the Members, pro rata, in accordance with their respective Fourth Tier Percentages.

4.6 **Special Allocations.** Any special allocations of items of Net Profits pursuant to Sections 4.2, 4.3, 4.4 and 4.5 shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to Section 4.1, so that the net amount of any items so allocated and the gain, loss and any other item allocated to each Member pursuant to Section 4.1 shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article 4 if such special allocations had not occurred.

4.7 **Fees To Members Or Affiliates.** Notwithstanding the provisions of Section 4.1, in the event that any fees, interest, or other amounts paid to any Member or any Affiliate thereof pursuant to this Agreement or any other agreement between the Company and any Member or Affiliate thereof providing for the payment of such amount, and deducted by the Company in reliance on Section 707(a) and/or 707(c) of the Code, are disallowed as deductions to the Company on its federal income tax return and are treated as Company distributions, then:

4.7.1 the Net Profits or Net Losses, as the case may be, for the Fiscal Year in which such fees, interest, or other amounts were paid shall be increased or decreased, as the case

may be, by the amount of such fees, interest, or other amounts that are treated as Company distributions; and

4.7.2 there shall be allocated to the Member to which (or to whose Affiliate) such fees, interest, or other amounts were paid, prior to the allocations pursuant to Section 4.1, an amount of ordinary gross income for the Fiscal Year equal to the amount of such fees, interest, or other amounts that are treated as Company distributions.

#### 4.8 Allocations for Tax Purposes.

4.8.1 Except as otherwise provided in this Section 4.8, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to this Article 4.

4.8.2 Any item of income, gain, loss, and deduction with respect to any property (other than cash) that has been contributed by a Member to the capital of the Company (including Contributed Property) and which is required or permitted to be allocated to such Member for income tax purposes under Section 704(c) of the Code so as to take into account the variation between the tax basis of such property and its fair market value at the time of its contribution shall be allocated solely for income tax purposes using the so-called "traditional" method in accordance with the Regulations promulgated under Section 704(c).

4.9 Recapture. To the extent any gain resulting from the sale or other taxable disposition of Company Property is "recaptured" by reason of Sections 1245 and 1250 of the Code, the amount of income so recognized shall be allocated among the Members in the same manner as the deductions giving rise to such "recapture" income were allocated among the Members or their predecessors in interest (but not to exceed the amount of gain to be allocated to each Member).

4.10 Allocations Upon Transfer. Upon the sale, transfer or assignment of an Interest, allocations of Net Profits and Net Losses between the transferor and the transferee shall be made in the manner selected by the TMP in accordance with the regulations promulgated under Section 706 of the Code.

### ARTICLE 5 DISTRIBUTIONS

#### 5.1 Distributions to Members.

5.1.1 Subject to Sections 3.3.1(f), 5.1.2, 5.1.4, 5.2 and 5.3, Available Cash shall be distributed to the Members from time to time as proposed by either Member and approved as a Major Decision, but in no event less frequently than quarterly, in the following order and priority:

(a) First, to El Ad JV Member until El Ad JV Member has received payments under this clause (a) in an amount equal to the then outstanding Unpaid Interest (and all such payments, when made, shall reduce, on a dollar-for-dollar basis, the then outstanding

Unpaid Interest; upon payment of all outstanding Unpaid Interest, the Interim Priming Venture Loan shall be deemed to have been paid in full);

(b) Second, to El Ad JV Member until El Ad JV Member has received payments under this clause (b) in an amount equal to the Guaranty Charge and all accrued and unpaid interest thereon (and all such payments, when made, shall reduce, on a dollar-for-dollar basis, the then outstanding Guaranty Charge and interest thereon (first to principal and then to interest); upon payment of the entire outstanding Guaranty Charge and all accrued interest thereon, the Guaranty Charge shall be deemed to have been paid in full);

(c) Third, one hundred percent (100%) to Peebles JV Member, until Peebles JV Member has received distributions under this clause (c) in the amount of the principal of all Shortfall Loans, together with accrued and unpaid interest thereon at the Shortfall Loan Rate;

(d) Fourth, one hundred percent (100%) to each Member that has made a Priming Venture Loan, until such Member has received distributions under this clause (d) in the amount of the then-outstanding principal of such Priming Venture Loans, together with accrued and unpaid interest thereon at the applicable interest rate as set forth in Section 3.3.1;

(e) [Intentionally Omitted]

(f) thereafter, one hundred percent (100%) to the Members on a *pari passu* basis, pro rata in accordance with their respective Fourth Tier Percentage Interests.

#### 5.1.2 Intentionally Omitted.

5.1.3 Administrative Operating Member shall distribute to each Member with each distribution of Available Cash, a report ("**Periodic Report**") for the period or event covered by such distribution showing the calculation of each Member's share of such Available Cash.

5.1.4 The Members acknowledge and agree that (i) any amounts repaid in respect of a Priming Venture Loan or Shortfall Loan shall be allocated, first, to any outstanding interest and, second, to repayment of principal and (ii) if there is more than one Priming Venture Loan and/or Shortfall Loan outstanding during the Term hereof, repayments shall be made pro rata among each group of Priming Venture Loans and Shortfall Loans (e.g., treating Priming Venture Loans, for instance, as a separate group for purposes of calculating the pro rata share of repayments to be made with respect to Priming Venture Loans) in proportion to the relative amount outstanding between each group of Priming Venture Loans and Shortfall Loans, and within each group of Priming Venture Loans and Shortfall Loans, repayments shall be made based upon the relative priority of each such loan in accordance with when such loan was made (e.g., the oldest Priming Venture Loan, for instance, shall be repaid in full first, with any subsequent Priming Venture Loans being repaid in the order same were advanced).

5.2 **Limitation on Distributions.** Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to a Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law.

### 5.3 Offset Right.

5.3.1 If, subsequent to the date hereof, (a) (x) El Ad JV Member has an indemnification claim under Section 2.7.3(a) or the Contribution Agreement or (y) El Ad Entity Guarantor or El Ad Individual Guarantor has the right to make any claim pursuant to the Reimbursement Agreement (any claim pursuant to clause (x) or (y) being referred to herein as an “El Ad Claim”) and (b) it is determined by a court of competent jurisdiction that such El Ad Claim is due under Section 2.7.3(a), the Contribution Agreement or the Reimbursement Agreement, and (c) such El Ad Claim is not paid and satisfied in full by Peebles JV Member or the Peebles Key Principal, then all distributions under Article 5 that would otherwise be payable to Peebles JV Member will be deemed distributed to Peebles JV Member but will be, at the election of El Ad JV Member, either (x) retained by the Company or (y) paid instead to El Ad JV Member, in either instance, until the El Ad Claim has been paid.

5.3.2 If, subsequent to the date hereof, (a) (x) Peebles JV Member has an indemnification claim under Section 2.7.3(a) or the Contribution Agreement or (y) Peebles Key Principal has the right to make any claim pursuant to the Reimbursement Agreement (any claim pursuant to clause (x) or (y) being referred to herein as a “Peebles Claim”) and (b) it is determined by a court of competent jurisdiction that such Peebles Claim is due under Section 2.7.3(a), the Contribution Agreement or the Reimbursement Agreement and (c) such Peebles Claim is not paid and satisfied in full by El Ad JV Member, El Ad Entity Guarantor or El Ad Individual Guarantor, then all distributions under Article 5 that would otherwise be payable to El Ad JV Member will be deemed distributed to El Ad JV Member but will be, at the election of Peebles JV Member, either (x) retained by the Company or (y) paid instead to Peebles JV Member, in either instance, until the Peebles Claim has been paid.

5.3.3 Any sums distributable or payable to El Ad JV Member or its Affiliates from the Company or any Subsidiary shall be offset against any Damages resulting from any El Ad Bad Act finally determined by a court of competent jurisdiction to be due the Company, any Subsidiary, or Peebles JV Member from El Ad JV Member or its Affiliates and shall be paid instead to the Company or Peebles JV Member and any sums distributable or payable to El Ad JV Member or its Affiliates from Peebles JV Member shall be offset against any Damages finally determined by a court of competent jurisdiction to be due Peebles JV Member or its Affiliates from El Ad JV Member or its Affiliates as a result of an El Ad Bad Act (but shall be deemed to have been distributed or paid to El Ad JV Member or its Affiliates and then paid over to the Company or Peebles JV Member or its Affiliates, as the case may be, until such Damages have been fully offset). The foregoing rights shall be without duplication of any Claim made and paid pursuant to the provisions of Section 5.3.2.

## ARTICLE 6 POWERS, RIGHTS AND DUTIES OF MEMBERS

6.1 Authority of Members. Management of the Company shall be vested in the Members in accordance with this Agreement. Subject to the terms and conditions of this Agreement, El Ad JV Member and Peebles JV Member shall be co-Operating Members. Except as otherwise provided in this Agreement or Development Management Agreement, (a) Administrative Operating Member shall have the authority, on behalf of the Company, to



operate (and manage) the day-to-day business and affairs of the Company to the accomplishment of the purposes of the Company, subject to and in accordance with the Project Business Plan and in compliance with the terms and conditions of this Agreement (including provisions of Section 6.5 below, and any consent or approval rights or unilateral authority rights granted to El Ad JV Member pursuant to the express terms hereof) and (b) Peebles JV Member and El Ad JV Member shall have the duties and authority, on behalf of the Company, not performed by Operating Members subject to and in accordance with the Project Business Plan, the Project Budget, any Approved Annual Budget and compliance with the terms and conditions of this Agreement (including provisions of Section 6.5 below and any consent or approval rights or unilateral authority rights granted to El Ad JV Member hereunder).

6.1.1 Duties of Members; Generally.

(a) Without limiting the provisions of Section 6.1.1(c) below, Administrative Operating Member shall fully and faithfully discharge its obligations and responsibilities under this Agreement and shall devote such time and attention to Company affairs as may be reasonably necessary for the proper management and supervision of the Company's business and the discharge of its duties under this Agreement.

(b) Without limitation on the foregoing or other provisions of this Article 6; provided that the Company makes sufficient funds available therefor and subject to the terms of the Development Management Agreement, Administrative Operating Member shall use commercially reasonable efforts to coordinate and manage the development, construction, renovation, rehabilitation, management, operation, leasing, marketing and sale of the Property in accordance with the Project Budget, any Approved Annual Budget and the Project Business Plan, and in substantial compliance with, all other Requirements. Administrative Operating Member shall use reasonable efforts to keep the Members fully informed regarding all material matters relating to the Company, each Property Owner and their respective operations and assets (including the Property) and shall so consult at all reasonable times requested by the Members, and without limitation on the foregoing, shall inform the Members with respect to any major or significant Company matters, including Major Decisions and any other decision over which the other Member has a consent right or unilateral authority, so that the Members may exercise their rights under this Agreement. Notwithstanding the foregoing, Administrative Operating Member shall not have the obligation, responsibility or authority to coordinate and manage the development, construction, renovation, rehabilitation, management and operation, leasing, of the Project to the extent any such obligations, responsibilities, rights or authority have been granted to the El Ad Developer pursuant to the Development Management Agreement.

(c) Except as otherwise expressly provided in this Agreement, none of the Members shall have any duties or liabilities to the Company, any Subsidiary or any other Member (including any fiduciary duties), whether or not such duties or liabilities arise or exist at law or in equity, and each Member hereby expressly waives any such duties or liabilities. This Section shall not eliminate or limit the liability of such Members (A) for acts or omissions that involve fraud, intentional misconduct or a knowing and culpable violation of law, or (B) for any transaction not permitted or authorized under or pursuant to this Agreement from which such Member derived a personal benefit unless approved in accordance with this Agreement. Notwithstanding any duty (including any fiduciary duty) that might otherwise exist at law or in

equity, (i) none of the Members may permit or authorize a transaction under or pursuant to this Agreement from which such Member derived a personal benefit unless approved in accordance with this Agreement and (ii) if such approval is obtained, such Member's duty (including any fiduciary duty) shall be completely satisfied with respect to such transaction. Notwithstanding any duty (including any fiduciary duty) that might otherwise exist at law or in equity, the duty of care of each of the Members is to act in good faith and to not act with fraud, intentional misconduct or a knowing and culpable violation of law. Except as provided in this Agreement, notwithstanding any duty (including any fiduciary duty) that might otherwise exist at law or in equity, whenever in this Agreement a Member is permitted or required to make a decision affecting or involving the Company, any Subsidiary, any Member or any other Person, such Member shall be entitled to consider only such interests and factors as he, she or it desires, including a particular Member's interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company, any Subsidiary or any Member. Without limiting the forgoing, each Member acknowledges that the exercise of the rights of any Member under this Agreement and the taking of action on behalf of the Company or any Subsidiary or with respect to the assets of the Company or any Subsidiary (including, without limitation, with respect to the sale or other disposition of all or any portion of the assets of the Company or any Subsidiary (including the Property)) may arise at a time when current market conditions and other factors may be materially disadvantageous to the Company, one or more Subsidiaries or any other Member.

6.1.2 Member Authorization to Bind Company. Subject to compliance with the other provisions in this Agreement (including Section 6.5 and Section 6.13) each Member may execute in name of the Company any instrument which it is authorized to execute hereunder and such Member's acts shall bind the Company, provided the same is authorized by this Agreement.

6.1.3 Meetings of Members.

(a) Regular Meetings. The Members shall endeavor to hold weekly meetings, but no less frequently than bi-weekly meetings, (or such more frequent meetings as the Members may require) to discuss the Project, the Property and such other matters regarding the Business of the Company as the Members may decide.

(b) Special Meetings. Special meetings of the Members may be called by Administrative Operating Member or by the El Ad Operating Member at any time by delivering at least three (3) Business Days' prior notice thereof to the other Member to discuss such matters regarding Company business as the Members may decide; provided that the failure to attend any such meetings shall not limit any approval rights granted to a Member under this Agreements.

(c) Telephonic Participation at Meetings. Members shall have the right to participate in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and be heard, and such participation shall constitute presence in person at the meeting.

6.2 Certain Acts of Operating Members. Every contract executed by Administrative Operating Member or El Ad Operating Member which either such Operating

Member is authorized to enter into and execute hereunder on behalf of the Company, shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that at the time of the delivery thereof: (a) the Company was in existence, (b) neither this Agreement nor the Certificate of Formation had been amended in any manner so as to restrict the delegation of authority among the Members to such Operating Member and (c) the execution and delivery of such instrument was duly authorized by the Company. Except as expressly provided herein to the contrary, no Operating Member shall (and neither shall have authority to), without the prior written consent of the Administrative Operating Member and the El Ad Operating Member, bind or take any action on behalf of or in the name of the Company, or enter into any commitment or obligation binding upon the Company, except for actions authorized under this Agreement and actions authorized by the Members in the manner set forth herein. Any Person may always rely on a certificate addressed to such Person and signed by Administrative Operating Member or El Ad Operating Member hereunder (unless either such Operating Member's authority in respect thereof has been revoked): (i) setting forth the names of the Members or Operating Members hereunder, (ii) setting forth the Persons who are authorized to execute and deliver any instrument, document or contract which either such Operating Member is authorized hereunder to enter into and execute on behalf of the Company, (iii) certifying as to the authenticity of any copy of the Certificate of Formation, this Agreement, any amendments thereto and hereto and any other document relating to the conduct of the affairs of the Company, or (iv) as to any action taken or not taken by the Company. Nothing contained in this Section 6.2 shall be deemed to expand the rights or authority of Administrative Operating Member or El Ad Operating Member as expressly provided in this Agreement or to limit the approval rights of the Members as expressly provided in this Agreement. For so long as any indebtedness remains outstanding under a Loan, the Operating Members, and any substitute member which serves as an Administrative Operating Member or El Ad Operating Member of the Company, shall not be an individual and shall at all times have as its sole purpose to own its limited liability company interest in the Company, and shall be engaged in no other business and have no other purpose. The Operating Members shall have no authority to perform any act in respect of the Company in violation of any provisions of this Agreement, applicable laws or regulations or any Loan Document.

**6.3 Management Duties, Authority and Powers.** Except as expressly limited by or otherwise provided in the provisions of this Agreement (including, without limitation, Section 6.4, Section 6.5 and Section 6.14) or the Development Management Agreement, Administrative Operating Member shall have the right and duty to manage the day-to-day Business of the Company and to implement all decisions made on behalf of the Company or Property Owner, all in accordance with the terms hereof and such other rights and powers as are granted to Administrative Operating Member hereunder. In connection with the foregoing and without limitation, but subject to the other terms and conditions of this Agreement, Administrative Operating Member shall have the right, power, and authority, to permit or cause the Company to do any of the following:

6.3.1 incur all expenditures, pay from or fund any reserve expressly permitted to be incurred, paid or funded by Administrative Operating Member under this Agreement pursuant to the Project Budget or any Approved Annual Budget;

6.3.2 prosecute, protect, and defend or cause to be prosecuted, protected, and defended all Company rights, including, without limitation, rights and title to Company Property;

6.3.3 enter into, execute and deliver any and all contracts, agreements, licenses, leases and listing agreements and amendments to any of the foregoing approved by the Members (to the extent such approval is required) or which are in accordance with the Project Budget, any Approved Annual Budget or are otherwise authorized hereunder, or waive any immaterial right thereunder; provided, that Administrative Operating Member and El Ad Operating Member shall both be required to execute such agreements to the extent provided in Section 6.5.26 or Section 6.5.27 below;

6.3.4 purchase such insurance as may be required under any of the Loan Documents; and

6.3.5 enter into the Development Management Agreement after approval thereof by the Members (provided, that the Members acknowledge that such approval of the Development Management Agreement with El Ad JV Developer is evidenced by Members' execution hereof).

6.4 **Restrictions on Operating Member's Authority.** Notwithstanding anything to the contrary contained in this Agreement, the prior written consent of El Ad JV Member shall be necessary for all Major Decisions affecting the Company, the Subsidiaries and/or the Property it being understood that neither Operating Member shall cause the Company or the Subsidiaries to take any action which constitutes a Major Decision without El Ad JV Member's consent and Administrative Operating Member's consent. From and after the removal of Peebles JV Member as Administrative Operating Member pursuant to Section 6.13 hereof, but subject to the provisions of Section 13.27, El Ad JV Member shall have the right, power and authority on behalf of the Company or any Subsidiary to do or take, without the consent of Peebles JV Member, any decisions, including Major Decisions, except for those Major Decisions which are Unanimous Decisions and as provided in Section 6.6. In the event that Peebles JV Member fails to perform any of its duties under this Agreement within five (5) Business Days after receipt of written notice of its failure to perform such duties from the El Ad JV Member (and if Peebles JV Member commences such performance within such five (5) Business Day period, El Ad JV Member has a reasonable basis to believe that Peebles JV Member will not cure such failure within the applicable Cure Period), El Ad JV Member shall have the right (but not the obligation), in its sole discretion and in addition to any other rights and remedies available to the El Ad JV Member under this Agreement, to perform such duties; provided that such right of the El Ad JV Member shall not be to the exclusion of the Peebles JV Member's right to cure such failure within the Cure Period to the extent applicable.

6.5 **Major Decisions.** Notwithstanding anything to the contrary contained in this Agreement (except following a Peebles Event of Default where Peebles JV Member is removed as Administrative Operating Member pursuant to Section 6.13 hereof), the prior written consent of both Members shall be necessary for all Major Decisions, it being understood that neither Member may cause the Company to take (or cause the Company to cause a Subsidiary to take) any action which constitutes a Major Decision without the consent of the other Member. A Major Decision may be proposed by either Administrative Operating Member or El Ad JV

Member. No Member shall unreasonably withhold condition or delay consent to any Major Decision with respect to the construction and development of the Project if the same would delay the Project schedule in any material respect. Any failure by either Member to respond within ten (10) Business Days to any proposed Major Decision with respect to the Project construction and development shall be deemed approval of such proposed Major Decision. As used herein, a "Major Decision" shall mean any of the following actions (except as otherwise specified therein):

6.5.1 the voluntary merger, consolidation, dissolution, liquidation, winding up, termination or liquidation of the Company or any Subsidiary (including, without limitation, any Property Owner);

6.5.2 acquiring, directly or indirectly, any real property (other than the Property) or any additional development rights, or any tangible or intangible personal property or any interest therein, other than *de minimis* personal property consistent with the Business of the Company and provided for in the Project Budget or any Approved Annual Budget, or causing the Company or any Subsidiary to enter into any agreement for such purposes;

6.5.3 selling, transferring, encumbering (subject to Section 6.5.6), assigning or otherwise disposing of the Company (or Interests therein), any portion or all of the Property Owner Interests, any Subsidiary Entity Interests or the Property, or development rights or any interest therein (except items of personal property in the ordinary course of business) or all or substantially all of the assets of the Company or a Subsidiary, or entering into a binding agreement to sell, transfer, assign or otherwise dispose of any portion or all of the Property Owner Interests, any Subsidiary Entity Interests or the Property, or development rights or any interest therein (except items of personal property in the ordinary course of business) or, following approval thereof, entering into any amendment, renegotiation, modification, supplement or extension of a binding agreement relating to the foregoing; provided that the Members, in connection with submitting the Property to a condominium regime of ownership, shall agree upon a protocol whereby the Company or the applicable Subsidiary shall sell residential condominium units, in a timely, orderly and efficient manner;

6.5.4 (a) instituting, prosecuting, defending or settling or confessing a judgment against the Company or any Subsidiary with respect to any legal, arbitration, or administrative actions or proceedings on behalf of either the Company or any Subsidiary involving a dispute in excess of \$100,000 (including, without limitation, in connection with any Loans and the applicable Loan Documents or any agreement of sale for all or any part of the Property Owner Interests, any Subsidiary Entity Interests or the Property) and (b) taking any action in order to enforce the rights of the Company or any Subsidiary (including, without limitation, a Property Owner) as (i) borrower under any Loan (including, without limitation, delivering any material notice to any Lender under any Loan, filing any pleading, motion or brief in defense of any enforcement or foreclosure proceeding brought under any Loan, settling, compromising, reinstating or restructuring any Loan or entering into any binding agreement therefor or exercising any rights or remedies, sending any material notices, granting any material consents or waivers, or making any other material strategic decisions binding on the Company or any Subsidiary under, in connection with, or relating to, any Loan, any Loan Documents or the Property), amending or otherwise modifying any Loan or any Loan Documents, or (ii) seller

under any agreement of sale for all or any portion of the Property Owner Interests, the Subsidiary Entity Interests or the Property or any interest therein;

6.5.5 causing or permitting the Company or a Subsidiary to (a) enter into any leases, licenses or occupancy agreements of any portion of the Property, (collectively, "Leases"), or (b) modify or amend any Lease or consent to the cancellation or surrender of or termination of any Lease, whether now existing or hereafter entered into (including the City Lease);

6.5.6 causing the Company or any Subsidiaries to enter into any Loan (including, without limitation, Loans for the acquisition of the Property and construction of the Project), refinancing of any Loan, and any restructuring, amendment, or modification of any Loan; provided that the Members shall not unreasonably withhold their consent to any Loan in respect of construction financing for the Project;

6.5.7 approval of and any modification to, amendment of or deviation from the Project Budget (including, without limitation, incurring, or permitting or causing a Subsidiary (including, without limitation, a Property Owner) to incur, any expense not set forth in the Project Budget); provided that the following shall not constitute a Major Decision to the extent performed by the El Ad Developer under the Development Management Agreement and the applicable Lender consents thereto (or such Lender's consent is not required under the applicable Loan Documents): (A) the reallocation of any line item in the Project Budget to the extent of realized cost savings (*i.e.*, cost savings evidenced by the completion and payment in full of the applicable line item or as a result of any line item being bought or contracted for in an amount less than the amount set forth in the Project Budget) in the Project Budget in order to pay for any Cost Overruns, but only if such reallocation does not result in change to the quality or specifications of any materials or work pertaining to any material component of the Project in any material adverse respect, and (B) the use of up to 40% of the "hard cost" contingency line item in the Project Budget or 40% of the "soft cost" contingency line item in the Project Budget to pay for any Cost Overruns; it being understood that should Developer request the use of any additional portion of either such "hard cost" contingency line item or such "soft cost" contingency line item to pay for any Cost Overruns, Owner will not unreasonably withhold its approval; it being further understood that if Owner does not approve any such request, then, notwithstanding anything herein or in the Development Management Agreement to the contrary, neither Developer nor El Ad Member shall be required to fund the Cost Overruns to which such request relates.

6.5.8 other than in accordance with the Project Budget or any Approved Annual Budget, incurring, or permitting or causing any Subsidiary (including, without limitation, Property Owner) to incur, any capital, operating or other expenditures on behalf of the Company or any Subsidiary that are not within 103% of the most recent Approved Annual Budget; provided, however, that Administrative Operating Member may incur or permit or cause Property Owner to incur such capital or operating expenditures (i) upon one (1) day prior notice to El Ad JV Member in case of Emergency Expenditures not to exceed \$50,000 (in any one-year period) required in the reasonable judgment of Administrative Operating Member, or with such shorter or prior notice (but with subsequent notice as soon as possible) to the extent that one (1) day prior notice would jeopardize the viability of any portion of the Property or the health, safety or welfare of persons or (ii) for Non-Discretionary Capital, provided further that Administrative

Operating Member may only incur such excess expenditures to the extent that the Company (or its Subsidiary) has sufficient funds to pay for such expenditures or Administrative Operating Member has the right to deliver an Additional Funds Notice pursuant to Section 3.3.1(a) with respect to such expenditures;

6.5.9 incurring or permitting or causing any Subsidiary to incur any capital, operating or other expenditures on behalf of the Company or a Subsidiary that would exceed in any calendar year the lesser of (i) as to any individual item, three percent (3%) of the budgeted amount of such line item, or (ii) in the aggregate, cause such expenditures to be greater than 103% of the Project Budget; provided, however, that Administrative Operating Member may incur such excess capital or operating expenditures (i) upon one (1) day prior notice to El Ad JV Member in case of Emergency Expenditures not to exceed \$50,000 (in any one-year period) required in the reasonable judgment of Administrative Operating Member, or with such shorter or no prior notice (but with subsequent notice as soon as possible) to the extent that one (1) day prior notice would jeopardize the viability of any portion of the Property or the health, safety or welfare of persons or (ii) for Non-Discretionary Capital, provided further that Administrative Operating Member may only incur such excess expenditures to the extent that the Company (or its Subsidiary) has sufficient funds to pay for such expenditures or Administrative Operating Member has the right to deliver an Additional Funds Notice pursuant to Section 3.3.1(a) with respect to such expenditures;

6.5.10 admitting or permitting or causing a Subsidiary to admit new or substitute members or causing the Company or any Subsidiary to redeem or repurchase all or any Interest of a Member, the Property Owner Interests, the Subsidiary Entity Interests or any Company Property;

6.5.11 causing or consenting to the taking of any Bankruptcy Action in respect of the Company or a Subsidiary (including, without limitation, Property Owner);

6.5.12 performing any act in contravention of this Agreement or permitting or causing a Subsidiary (including, without limitation, Property Owner) to perform any act in contravention of any organizational document of such Subsidiary which would in any such case make it impossible to carry on the Business of the Company or the business of such Subsidiary;

6.5.13 taking, causing or permitting any action by the Company or a Subsidiary (including, without limitation, Property Owner) that is outside of the Business of the Company or the business of such Subsidiary set forth in the organizational documents of such Subsidiary;

6.5.14 taking or causing or permitting a Subsidiary (including, without limitation, Property Owner) to take any action which would cause the Company or such Subsidiary to become an entity other than a Delaware limited liability company;

6.5.15 selecting, retaining, entering into, renewing or terminating any binding agreement with any asset manager, developer or property manager (subject to the provisions of the Development Management Agreement);

6.5.16 establishing reserves (including, without limitation, Reserves) for the Company or a Subsidiary (including, without limitation, Property Owner), except as provided in the Project Budget or any Approved Annual Budget;

6.5.17 taking or permitting or causing Property Owner to take any affirmative action that would constitute a default under any Loan Document or any other loan of the Company or a Subsidiary (including, without limitation, Property Owner);

6.5.18 except as otherwise contemplated by Section 6.5.6, causing any Member (or Principal thereof) to guarantee or be deemed to become a guarantor or surety of any indebtedness of the Company or a Subsidiary (including, without limitation, Property Owner) or to become liable for any such indebtedness (including, without limitation, any Loan) unless the applicable Member or Principal consents in writing to such guaranty or surety;

6.5.19 adopting or modifying (other than any reallocations permitted under Section 6.5.7 above or change orders permitted under Section 6.5.57) the (i) Project Budget other than in accordance with the Loan Documents or (ii) any Approved Annual Budget other than in accordance with this Agreement;

6.5.20 modifying or amending this Agreement or any organizational document of a Subsidiary, or changing the Business of the Company or the business of a Subsidiary (including, without limitation, Property Owner);

6.5.21 settling or adjusting, or causing or permitting a Subsidiary (including, without limitation, Property Owner) to settle or adjust, any insurance claim in favor of the Company or a Subsidiary or condemnation action involving a claim in excess of \$100,000 or that, when added to all other insurance or condemnation claims during any Fiscal Year, exceeds \$200,000;

6.5.22 adopting or modifying any Approved Scope Change or Discretionary Change (other than change orders permitted under Section 6.5.57);

6.5.23 making distributions to the Members other than in strict accordance with Article 5 hereof;

6.5.24 (a) amending or modifying in any material respect, replacing or terminating any insurance coverages with respect to the Company, any Subsidiary or a Property Owner or the Property or (b) renewing any existing insurance policy, if the terms of such renewal policy set forth any material exclusions from coverage which are not expressly excluded from the insurance policies in effect on the date of this Agreement (it being agreed that both Members shall act reasonably in setting insurance requirements of the Company and any Subsidiary);

6.5.25 the disposition of any casualty insurance proceeds and the application of any condemnation award, including the settlement of any casualty insurance proceeds with an insurance company or the settlement of any condemnation award with any condemning authority, except to the extent required under the Loan Documents and the Leases and any Condominium Documents;



6.5.26 (a) selecting and engaging (i) architects, design consultants and engineers in connection with the design and construction of the Property and (ii) leasing, sales and marketing agents in connection with the leasing, sales and marketing of the Property, the Project and, following the Condominium Conversion, the sale of the condominium Units, (b) entering into or amending, terminating or causing or permitting a Subsidiary (including, without limitation, Property Owner) to enter into, amend (except in a *de minimis* respect) or terminate any agreement or contract with any such party relating to the design, construction, leasing, sales and/or marketing of the Property, the Project and the Units and (c) determining the initial offering price (or any subsequent modification thereto) set forth in an offering plan for any Unit to be sold by such sales and marketing agents (it being understood that any agreement by the Company or any Subsidiary regarding any of the foregoing shall require the signature of both the Administrative Operating Member and El Ad Operating Member except as expressly delegated to El Ad Developer pursuant to the Development Management Agreement, including, but not limited to, with respect to agreements with contractors and subcontractors requiring payments of less than \$2,000,000 in aggregate which El Ad Developer may engage or select pursuant to the Development Management Agreement;

6.5.27 (a) entering into, or causing or permitting a Subsidiary to enter into, any Material Agreement, or (b) amending or modifying any previously approved Material Agreement (except in a *de minimis* respect) (it being understood that any such Material Agreement by the Company or any Subsidiary shall require the signature of both the Administrative Operating Member and El Ad Operating Member except as expressly delegated to El Ad Developer pursuant to the Development Management Agreement, including, but not limited to, with respect to agreements with contractors and subcontractors requiring payments of less than \$2,000,000 in aggregate which El Ad Developer may engage or select pursuant to the Development Management Agreement;

6.5.28 the distribution of any property in kind to any Member;

6.5.29 the filing by or on behalf of the Company of any tax return, the making of any material tax decision, the making or revoking of any tax election, the filing of any claim for refund of taxes or the settling of any tax proceeding or order;

6.5.30 (a) taking or permitting or causing any affirmative action in contravention of the Occupancy Agreement or any affirmative act that would constitute a default under or breach of the Occupancy Agreement, and (b) amending, modifying or terminating the Occupancy Agreement;

6.5.31 entering into or granting any material easement, right-of-way or similar encumbrance, other than customary utility easements in connection with construction or in the ordinary course of business;

6.5.32 electing to convert the Property to condominium ownership regime ("Condominium Conversion"), or to file with any Governmental Authority any documents and instruments required to establish a condominium form of ownership for the Property, including, without limitation, an offering plan, Condominium Declaration or form of unit deed;

6.5.33 except as expressly provided in Section 3.3, issuing an Additional Funds Notice;

6.5.34 approving any requisition or draw request under any Loan; provided that the Members, subject to the provisions of Section 10.2.2 hereof, shall agree upon a protocol whereby El Ad Developer may process such requisitions and draw requests in connection with the Construction Loan in a timely, orderly and efficient manner;

6.5.35 entering into any transaction, contract or agreement with an Affiliate of a Member; provided, however, that if El Ad Operating Member is acting as the sole Operating Member, subject to Sections 6.6(a) and (b), any transaction, contract or agreement with an Affiliate of a Member (other than Major Decisions described in Sections 6.5.3, 6.5.5 and 6.5.6) that is upon arms-length, market terms and conditions shall not require Peebles JV Member's consent.

6.5.36 the application for zoning, variances, map approvals, entitlements or other similar governmental approvals (other than permits or licenses required in the ordinary course of the Project) with respect to the Property and what payments and obligations (including concessions by, and restrictions on, the Company, any Subsidiary or the Property) will be incurred in connection therewith (other than such payments and obligations or concessions as are contemplated by the Project Budget or any Approved Annual Budget);

6.5.37 approval of and any modification to any tax abatement or tax abatement proposals or programs with respect to, affecting or relating to the Property;

6.5.38 possession of any Company Property or assignment of the rights of the Company in specific Company assets for other than a Company purpose;

6.5.39 the giving of any indemnity bond (other than utility company deposits) or surety bond by the Company or a Subsidiary (including, without limitation, Property Owner) in excess of \$25,000;

6.5.40 the making of a loan by the Company to any Member or third party or the extension of credit to any person, firm or corporation, on behalf of the Company or a Subsidiary (including, without limitation, Property Owner);

6.5.41 the employment of employees by the Company or a Subsidiary (including, without limitation, Property Owner) (it being understood that Peebles JV Member and El Ad JV Member may have their own employees);

6.5.42 taking, permitting or causing any action in violation of the Deed, or any modification or amendment to the foregoing;

6.5.43 constructing any new discretionary capital improvements on the Property or replacing on a discretionary basis any existing capital improvement following completion of construction thereof or the entering into of any contract or agreement therefor;

6.5.44 giving or granting any options, rights of first refusal, deeds of trust, mortgages, pledges, ground leases, security or other encumbrances or liens encumbering any property (including the Property) or any portion thereof;

6.5.45 purchasing or acquiring any stock, assets (including debt assets), obligations or securities of, or any other interest in, or making a capital contribution to, any other Person other than Property Owner (other than purchases of inventory or equipment or other personal property in the ordinary course of business and in accordance with the Project Budget or any Approved Annual Budget);

6.5.46 entering into any partnership or joint venture with any Person;

6.5.47 approving or disapproving any creditors' plan, filing any involuntary petition of bankruptcy or dismissing or discharging a claim of bankruptcy in connection with bankruptcy proceedings involving any Person contracting with the Company or any of its Subsidiaries;

6.5.48 creating, forming or organizing any Subsidiary;

6.5.49 making any change in any method of accounting or auditing practice, or hiring, changing, dismissing or engaging accountants and auditors for the Company or any of the Subsidiaries;

6.5.50 canceling or otherwise forgiving or releasing any claim or debt owed to the Company or any of the Subsidiaries;

6.5.51 suffering, permitting or initiating the joint assessment of the Property with any other real property constituting a tax lot separate from the Property;

6.5.52 taking any action relating to environmental matters other than (a) obtaining environmental studies and reports, conducting or scheduling evaluations and analyses thereof and obtaining appropriate permits and (b) any environmental remediation that is expressly provided for in the Project Budget;

6.5.53 appointing, replacing, removing (with or without cause) or causing the resignation of any manager, officer, director or special member (*i.e.*, a member that does not have any interest in the profits, losses or capital and has no rights to receive distributions of assets) of the Company or any Subsidiary;

6.5.54 entering into any binding agreement, contract, binding letter of intent, commitment, assumption or guarantee with respect to any of the actions described in this Section 6.5 and/or following the entering into such binding agreement, contract, binding letter of intent, commitment, assumption or guarantee, granting any consents, approvals, waivers (including waivers of covenants, conditions or defaults) or releases thereunder or exercising any rights or remedies (including the foreclosure of any security) thereunder (provided that the foregoing shall not restrict or prohibit the Administrative Operating Member from implementing any Major Decision that has been approved by the Members);

6.5.55 determining the means of ensuring that the Company and the Property Owner comply with the M/WBE Utilization Plan and Hire NYC Program Plan and that the goals in such plans are achieved with respect to the Project and the implementation of such plans;

6.5.56 subject to Section 6.14, approving contractors and subcontractors under contracts which would cost the Company \$2,000,000 or more;

6.5.57 subject to Section 6.14, to the extent performed by the El Ad Developer under the Development Management Agreement, with respect to any change orders related to the Project, (a) prior to the use of fifty percent (50%) of the "hard cost" contingency line item in the Project Budget, approval of individual change orders in excess of \$250,000 for a single change order and/or \$8,000,000 in the aggregate for all such change orders, and (b) from and after the date upon which fifty percent (50%) of the "hard cost" contingency line item the Approved Budget has been used, approving all change orders; provided, that, (A) in the case of individual change orders in respect of Hard Costs of less than \$100,000 in each instance, if, in El Ad Developer's reasonable judgment, field conditions require immediate approval of such change order in order to avoid adverse impact or delay to the Project, then Property Owner's prior approval of such change order shall not be required so long as El Ad Developer notifies Property Owner of such change order and the circumstances giving rise thereto promptly after approving same and (B) Property Owner agrees to use commercially reasonable efforts to respond to El Ad Developer within 48 hours of Property Owner's receipt of a notice from El Ad Developer requesting approval of any change order;

6.5.58 approving the original design of the Project and approval of non-*de minimis* changes to the design and/or scope of the Project;

6.5.59 retaining (a) attorneys (other than Kramer Levin Naftalis and Frankel LLP and Davis Polk & Wardwell LLP), (b) appraisers hired by the Company (in contradistinction to appraisers required by a Lender or potential Lenders or which are engaged by a Member pursuant to the provisions hereof or (c) auditors;

6.5.60 issuing or registering any securities or interests in the Company or any Subsidiary;

6.5.61 investing Company or any Subsidiary funds in instruments other than time deposits, short-term governmental obligations or commercial paper;

6.5.62 directing the investment of any funds within the Accounts; and

6.5.63 making any other decision or taking any other action which is expressly stated to constitute a Major Decision pursuant to this Agreement or which otherwise expressly requires Peebles JV Member's or El Ad JV Member's consent pursuant to the express provisions of this Agreement.

Any matter that is included under any of the foregoing clauses under this Section 6.5 shall be a Major Decision even if it is not covered by (or excluded from, unless expressly excluded) any other clause under this Section 6.5.

## 6.6 Affiliate Transactions.

(a) Each Member covenants and agrees to promptly disclose, in a reasonably detailed writing, to the Company and the other Members, any transactions, agreements or contracts between such Member or any of its Affiliates and the Company or any direct or indirect Subsidiary.

(b) Notwithstanding anything to the contrary herein, if there is a contract or agreement between the Company or any Subsidiary, on the one hand, and a Member or an Affiliate of a Member, on the other hand, then the other Member shall have the right unilaterally (but not the obligation) with respect to the following in relation to such contract or agreement: (i) the issuance by the Company or any Subsidiary of any consent, waiver or release; (ii) the exercise by the Company or any Subsidiary of any rights or remedies, or the institution of any action, under the applicable contract or agreement; (iii) the enforcement of any rights of the Company or any Subsidiary or obligations of applicable Member or Affiliate under the applicable contract or agreement; (iv) the verification of any fees or reimbursable expenses payable to the applicable Member or any Affiliate thereof under the applicable contract or agreement; (v) any obligations or rights of the Company or any Subsidiary in respect of the applicable contract or agreement following the termination or expiration of the applicable contract or agreement; (vi) any matter or dispute between the Company or any Subsidiary and the applicable Member or any Affiliate thereof in respect of the applicable contract or agreement (whether or not such dispute or matter is being arbitrated or litigated); and (vii) any consent or approval required of the Company or any Subsidiary in respect of any contract or agreement or any transaction or arrangement between the applicable Member or Affiliate and any Affiliate thereof to the extent such consent or approval requires the consent of such Member under this Agreement. Any other approval, consent or other determination to be made by the Company under such contract or agreement shall, if a Major Decision, be subject to the approval of the Members as a Major Decision pursuant to the terms herein. The Members acknowledge that the provisions of this Section 6.6 shall not apply if Peebles JV Member is removed as Administrative Operating Member pursuant to this Agreement.

(c) Each of El Ad JV Member and Peebles JV Member shall have the right to purchase (each, a "**Permitted Unit Purchase**") up to three (3) residential Units in the Condominium selected by such respective Member at the initial offering price set forth in an offering plan for the Condominium for such Units and otherwise in accordance with such offering plan, provided such Units acquired by a Member shall be (i) no more than ten thousand (10,000) square feet in the aggregate and (ii) shall be located on or below the twelfth (12th) floor of the Condominium, provided, further that such right shall be subject to any restrictions in any Loan Documents. Promptly following the Condominium offering plan being accepted for filing by the Attorney General, the Members shall use good faith efforts to meet (which meeting may be telephonically) to designate the residential Unit(s) each respective Member desires to acquire as a Permitted Unit Purchase subject to the limitations set forth in subsections (i) and (ii) above of this Section 6.6(c). Peebles JV Member shall have the right to make the (A) first Permitted Unit Purchase election and (B) second Permitted Unit Purchase election (provided the second Unit selected is adjacent to the first Unit selected pursuant to Peebles JV Member's first Permitted Unit Purchase election). Thereafter, El Ad JV Member shall have the right to make the (1) next Permitted Unit Purchase election and, provided that Peebles JV Member has made the first two

Permitted Unit Purchase elections as set forth above, (ii) Permitted Unit Purchase election following its first election (provided the second Unit selected by El Ad JV Member is adjacent to the first Unit selected pursuant the El Ad JV Member's first Permitted Unit Purchase election). Thereafter, the Members shall make alternating Permitted Unit Purchase elections until each respective Member has designated three (3) residential Units or any lesser number of residential Units with an aggregate square footage of no more than ten thousand (10,000) square feet (the "Peebles Permitted Units" and the "El Ad Permitted Units", respectively). For the avoidance of doubt, if Peebles JV Member does not exercise its right under item (B) above, then Peebles JV Member shall have the right to make the first Permitted Unit Purchase election and, thereafter, El Ad JV Member shall have the right to make the second Permitted Unit Purchase election. Thereafter, the Members shall make alternating Permitted Unit Purchase elections subject to the limitations in the preceding sentence. In the event that El Ad JV Member or Peebles JV Member, as applicable, has not entered into a contract (in the form attached to the offering plan subject to changes agreed to by the Members) to purchase any of the El Ad Permitted Units or any of the Peebles Permitted Units, as applicable, at the respective initial offering prices set forth in the offering plan for such residential Units (and posted the applicable contract deposits (which the Members agree shall be five percent (5%)) payable thereunder) within thirty (30) days after the Condominium offering plan being accepted for filing by the Attorney General, then El Ad JV Member and/or Peebles JV Member, as applicable, shall forfeit the right to purchase any such El Ad Permitted Units and/or Peebles Permitted Units, as applicable, with respect to which a contract has not been entered into as of the expiration of such thirty (30) day period, and such El Ad Permitted Units and/or the Peebles Permitted Units, as applicable, may be offered for sale to unaffiliated third party purchasers in accordance with the offering plan and such Member shall have no further rights under this Section 6.6(c) with respect to such Units.

#### 6.7 Duty of Care.

(a) Subject, to Section 6.1.1(c) above, Administrative Operating Member shall, at the expense of the Company, use its diligent, good faith efforts to cause (i) the Property Owner to manage and operate the Company Property in accordance with the Project Budget and, as applicable, any Approved Annual Budget, and (ii) the Company to carry out the Business of such Property Owner and the Company substantially in accordance with the prevailing standards of the real estate industry. Administrative Operating Member shall, at the expense of the Company (provided funds are made available therefor), use its good faith efforts to take such actions as may be necessary; provided that if the prior approval of either Member therefor is not then necessary or has been granted, Administrative Operating Member shall use its diligent, good faith efforts to cause the Company and Property Owner to comply with all laws, rules, and regulations and any and all orders or requirements of any Governmental Authority having jurisdiction over the Company, the Project or the Property, including, without limitation, all laws, rules, regulations, orders, and requirements relating to the use, generation, storage and disposal of hazardous wastes and materials. Administrative Operating Member shall, at the expense of the Company, use its good faith efforts to take such actions as may be necessary or proper to comply with the terms and provisions of all Loan Documents and the City Lease. Notwithstanding the foregoing, Administrative Operating Member shall not have the obligations set forth in this Section 6.7(a) or elsewhere in this Agreement with respect to any obligation that is expressly set forth as a duty of El Ad Developer under the Development Management Agreement.

(b) The Members shall use good faith efforts to provide for the safekeeping and use of all funds, property and assets of the Company, whether or not in its immediate possession or control, and shall not employ, or permit another to employ, such funds, property or assets in any manner, except for the benefit of the Company and its Subsidiaries.

(c) Notwithstanding anything to the contrary contained herein, the Operating Members shall not be liable for any good faith error in judgment or for any action taken or omitted to be taken by it hereunder, except for their fraud, gross negligence or willful misconduct.

**6.8 Authority of Members to Deal with Company and Advances and Reimbursement to the Members.** The Members shall be entitled to receive, out of Company funds available therefor, reimbursements of all reasonable actual and out-of-pocket costs and expenses incurred in connection with the Business of the Company to the extent incurred in accordance with the terms of this Agreement and expressly set forth in the Project Budget or any Approved Annual Budget.

**6.9 Limitations on Liability.** Anything to the contrary notwithstanding (but without limiting any obligations of the parties under the Reimbursement Agreement), neither Member nor any of their respective Affiliates shall be liable for the return of Capital Contributions of the Members, Shortfall Loans or Priming Venture Loans made by the Members, or for any portion thereof, it being expressly understood that any return of capital and repayment of loans shall be made solely from the assets of the Company, nor shall any Member be required to pay to the Company or to any other Member any capital deficits of any Member upon Dissolution of the Company or otherwise.

**6.10 Other Business Ventures.** Without limiting any of the restrictions and obligations of the El Ad Developer under the Development Management Agreement, the Members and/or their respective Affiliates (including, without limitation, any member and any manager thereof) may engage in or possess an interest in other business ventures of every nature and description, independently or with others, whether such ventures are competitive with the Company and its Subsidiaries or otherwise; and except as expressly provided in an independent written and duly executed instrument, none of the Company, any Subsidiary, or the other Members or their Affiliates shall have any right by virtue of this Agreement in or to such independent ventures or to the income or profits derived therefrom.

**6.11 Resignation of Operating Member; Death or Incapacity of Peebles Key Principal.**

6.11.1 Provided same is permitted by the Contract of Sale and Deed and does not violate the terms of any other Material Agreement, Administrative Operating Member (and any successor manager) or other officer of the Company may resign at any time without prejudice to any rights of the Company or El Ad JV Member under this Agreement or under any contract to which Administrative Operating Member (or any successor manager) or other officer of the Company are party, by giving written notice to the Members. Any permitted resignation hereunder shall take effect at the date of the receipt of such notice or at any later time specified

therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.11.2 Upon the death or incapacity of Peebles Key Principal, Peebles JV Member shall continue as Administrative Operating Member if it designates a direct or indirect member, manager or officer of Peebles JV Member to Control Peebles JV Member and such person is approved by El Ad JV Member, which approval shall not be unreasonably withheld, conditioned or delayed (such person so designated and approved, an “**Approved Substitute**”), it being understood that if a consent or approval is required under the Deed, Contract of Sale, Loan Documents or other Material Agreement for such person to Control Peebles JV Member, then unless and until such consent or approval is obtained, or if such consent or approval is subject to the imposition of conditions on the Company or its Subsidiaries or El Ad JV Member or its Affiliates that are not fully satisfied by Peebles JV Member without cost or liability to the Company, its Subsidiaries, El Ad JV Member or its Affiliates, El Ad JV Member shall be deemed reasonable for withholding any such approval. Prior to such approval by El Ad JV Member, El Ad JV Member shall have the right to act as the Administrative Operating Member. In the event that El Ad JV Member reasonably withholds its approval of such person, Peebles JV Member shall be removed as Administrative Operating Member and El Ad JV Member shall be the Administrative Operating Member.

6.12 **Compensation of Members.** No salaries or other benefits shall be paid to the Operating Members or any successor in its capacity as an Operating Member.

6.13 **Termination of Operating Member.**

6.13.1 El Ad JV Member shall have the right to remove Peebles JV Member as Administrative Operating Member upon the occurrence of a Peebles Event of Default (a “**For Cause Removal**”). If El Ad JV Member believes a Peebles Event of Default has occurred, then El Ad JV Member shall deliver written notice to Peebles JV Member of such Peebles Event of Default (a “**Removal Notice**”) in accordance with the provisions of Section 13.4 hereof; provided, however, that for purposes of the Removal Notice only, such Removal Notice shall state “REMOVAL NOTICE” in bold, capitalized letters across the top of the first page of the Removal Notice.

6.13.2 If a Peebles Event of Default occurs, then, in addition to any other rights and remedies available to El Ad JV Member under this Agreement, at law or in equity:

(a) El Ad JV Member (or its designated Affiliate) shall have the right to become the Administrative Operating Member (and the sole Operating Member) with all the power and authority previously possessed by Peebles JV Member or its successor as Administrative Operating Member in accordance with the provisions of Section 6.13.1.

(b) Any sums distributable or payable to Peebles JV Member or its Affiliates from the Company or any Subsidiary shall be offset against any Damages resulting from such Peebles Event of Default finally determined by a court of competent jurisdiction to be due the Company, any Subsidiary, or El Ad JV Member from Peebles JV Member or its Affiliates and shall be paid instead to the Company or El Ad JV Member and any sums



distributable or payable to Peebles JV Member or its Affiliates from El Ad JV Member shall be offset against any Damages finally determined by a court of competent jurisdiction to be due El Ad JV Member or its Affiliates from Peebles JV Member or its Affiliates as a result of a Peebles Event of Default (but shall be deemed to have been distributed or paid to Peebles JV Member or its Affiliates and then paid over to the Company or El Ad JV Member or its Affiliates, as the case may be, until such Damages have been fully offset). The foregoing rights shall be without duplication of any Claim made and paid pursuant to the provisions of Section 5.3.

(c) Peebles JV Member shall execute and acknowledge any amendments to this Agreement reasonably required to reflect the foregoing or any of the other provisions of this Section 6.13.

(d) Peebles JV Member or its successor shall forthwith: (i) deliver to El Ad JV Member a final accounting; (ii) surrender and deliver to El Ad JV Member (for the benefit of the Company) all rents and income, including tenant security deposits, of the Property and other monies of the Company held by, or under the control of Peebles JV Member or such successor; (iii) deliver to El Ad JV Member, as received, any monies due the Company or any Subsidiary received after such removal; (iv) deliver to El Ad JV Member all materials and supplies, keys, leases, contracts and documents, all other accounting papers and records of the Company and the Subsidiaries, and all books and records, receipts for deposits, bills and other materials in Peebles JV Member's or such successor's possession that relate to the Property, the Company and the Subsidiaries; and (v) execute and deliver to El Ad JV Member a notice to third parties directly involved with the Property in form reasonably satisfactory to El Ad JV Member and Peebles JV Member to the effect that Peebles JV Member is no longer the Administrative Operating Member.

(e) Peebles JV Member and such successor shall cooperate with the Company and the Subsidiaries to allow the Company and its Subsidiaries to effectively and productively continue the renovation, leasing, operation, marketing and other activities of the Company and its Subsidiaries. Without limitation on the foregoing, Peebles JV Member and such successor shall deliver to the Company such information and documentation in Peebles JV Member's or such successor's control or possession at the time of removal as El Ad JV Member may reasonably request concerning the Company, each Subsidiary, the Project, and the Property, including any potential tenants for the Property known by Peebles JV Member or such successor at the time of removal.

(f) All Peebles Documents and any and all other documents or agreements between the Company or any Subsidiary and Peebles JV Member or its Affiliates other than the Reimbursement Agreement and Contribution Agreement shall be immediately terminable at the discretion of the El Ad JV Member at no cost or expense to the Company or any Subsidiary or El Ad JV Member (and upon such termination, any rights to future fees under such Peebles Document shall be terminated other than any fees that have accrued or been earned prior to the For Cause Removal which shall be paid to the applicable party under any such Peebles Document promptly following any final accounting for such fees) and, at the discretion of the El Ad JV Member, the Company and the Subsidiaries may enter into property management agreements or similar agreements with El Ad JV Member or, subject to Section 6.6, any other Affiliate of El Ad JV Member.

(g) Peebles JV Member shall have no further right to approve any decision with respect to the Company, any Subsidiary, the Property or otherwise other than those Major Decisions which are Unanimous Decisions or as described in Section 6.6; provided that, except as specifically set forth in this Section 6.13, Peebles JV Member shall retain all of its rights set forth in this Agreement, the Contribution Agreement and the Reimbursement Agreement.

6.14 **Development Management Agreement.** For the avoidance of doubt, the provisions of Section 6.6(b) shall apply with respect to the Development Management Agreement. Notwithstanding anything herein to the contrary, Administrative Operating Member shall not exercise its rights under this Agreement relating to the design and construction of the Project to the extent such rights have been expressly delegated to the El Ad Developer under the Development Management Agreement (as opposed, *e.g.*, to a Major Decision which shall require the approval of Administrative Operating Member notwithstanding the provisions of this Section 6.14).

6.15 **Project Budget; Approved Annual Budgets.**

6.15.1 As of the date hereof, the Members have approved the Project Budget for the Company, the Subsidiaries and the Property. The Project Budget may be further updated, modified and supplemented from time to time in each case in accordance with this Agreement and the Development Management Agreement (and subject to the Loan Documents). The Project Budget (as the same may be updated, modified and supplemented from time to time in accordance with this Agreement and the Development Management Agreement) shall be the sole development and operating budget of the Company from the date hereof until the anticipated repayment of the Senior Loans.

6.15.2 At least thirty (30) days prior to the expected repayment of the Senior Loans (or such earlier date as may be approved as a Major Decision) and not later than November 15<sup>th</sup> prior to any subsequent calendar year, and for so long as Administrative Operating Member is Peebles JV Member, Administrative Operating Member shall submit to the Members for their approval, which shall not be unreasonably withheld, conditioned or delayed, an annual operating budget (an "Annual Budget") for the Company and the Subsidiaries for such calendar year (or remaining portion thereof), setting forth in reasonable detail projected cash flow, income and budgeted monthly operating, capital and other expenses for the Company and each Subsidiary. If Administrative Operating Member fails to propose such Annual Budget on or prior to such thirty (30) day period or such November 15<sup>th</sup>, as applicable, then, provided such failure continues for fifteen (15) days after notice thereof from El Ad JV Member to Administrative Operating Member, without limitation of any other rights or remedies El Ad JV Member may have under this Agreement or applicable law, El Ad JV Member may propose an Annual Budget for approval as a Major Decision.

6.15.3 If either Member (the "**Objecting Member**") reasonably objects to a proposed Annual Budget it shall advise the other Member (the "**Proposing Member**") of its objections within ten (10) Business Days after receipt thereof and the Proposing Member shall promptly revise such Annual Budget and resubmit the same, together with all additional information with respect thereto that such Member may reasonably request. The Objecting

Member shall advise the Proposing Member of any reasonable objections to such revised Annual Budget within ten (10) Business Days after receipt thereof and the Proposing Member shall promptly revise the same in accordance with the process described in this sentence until such Annual Budget is approved as a Major Decision. Each Annual Budget approved by the Members for any calendar year following the year (or portion thereof) in which the Senior Loans are repaid in full in accordance with the terms and provisions hereof shall hereinafter be referred to as an **“Approved Annual Budget”**. Until such time as the Members approve a proposed Annual Budget, the Project Budget or the most recently Approved Annual Budget, as applicable, shall apply.

6.16 **Management of Subsidiaries.** The provisions of this Agreement regarding the management and governance of the Company shall, to the fullest extent legally permissible, apply as well to the management and governance of the Subsidiaries, whether such Subsidiaries are managed or controlled directly or indirectly by the Company as a member, manager, partner, stockholder or otherwise. Any action to be taken by any Subsidiary shall be construed as an action taken by the Company and shall be subject to the same rights and limitations granted and imposed on the Members under this Agreement.

6.17 **Officers.** Subject to Section 6.5.53, (i) Administrative Operating Member may, but shall not be required to, delegate certain functions to one or more officers of the Company and any Subsidiary (each, an **“Officer”**), including a President, a Secretary, a Treasurer, one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers, (ii) Administrative Operating Member may appoint such Officers and agents as it shall, acting reasonably and in good faith, deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Members as a Major Decision, (iii) the Officers of the Company shall hold office until their successors are chosen and qualified, (iv) any Officer may be removed at any time, with or without cause, by the Members as a Major Decision and (v) the Officers appointed by Administrative Operating Member may perform such acts designated by Administrative Operating Member to the extent of the powers and authority of Administrative Operating Member set forth in this Agreement or otherwise vested in them by action of the Members not inconsistent with this Agreement. Any number of offices may be held by the same individual. Notwithstanding the foregoing, the Members agree that the El Ad Operating Member shall have the right to designate two individuals as Officers of the Company and any Subsidiary.

## **ARTICLE 7** **CERTAIN RIGHTS, OBLIGATIONS AND LIABILITIES**

7.1 **Limitation of Liability.** The Members will not be bound by, or be personally liable for, the expenses, liabilities or obligations of the Company except as otherwise provided in the Act. The Members will not be obligated to make any Capital Contributions or loan to the Company other than as expressly provided in this Agreement.

7.2 **No Participation in Management.** Except as otherwise expressly provided in this Agreement, the Members, in their capacity as such, may not transact any business for the Company or any Subsidiary, and will have no power to execute agreements on behalf of or otherwise bind or commit the Company or any Subsidiary, but they may exercise the rights and

powers granted to them in this Agreement, including, without limitation, the right to give consents and approvals to the extent provided in this Agreement.

7.3 **Return of Capital Contributions.** Except as otherwise provided in this Agreement, no Member will have the right: (a) to demand a withdrawal, reduction, or return of its Capital Contributions, or to receive interest thereon, (b) to demand property other than cash in return of its Capital Contributions or to bring an action for partition against the Company or (c) to receive any priority over any other Member with respect to the return of its Capital Contributions.

## **ARTICLE 8**

### **RESTRICTIONS ON TRANSFER OR CONVERSION OF COMPANY INTERESTS**

#### **8.1 Transfer or Assignment of Member's Interest.**

8.1.1 **In General.** Subject to the terms of this Article 8, the Interest of each Member is personal property, and may be transferred or assigned only as provided in this Agreement and in accordance with the Contract of Sale, Deed and the City Lease and, so long as any Loan remains outstanding, in accordance with the applicable Loan Documents. Except as otherwise provided in this Article 8, no transfer, hypothecation, pledge, encumbrance, redemption or assignment of a Member's Interest, or any part thereof or any right to receive distributions thereof, direct or indirect, at any level or tier of ownership (including any direct or indirect ownership interest in a Member), in the Company, whether voluntary, involuntary, by operation of law or otherwise (a "**Transfer**") will be valid without the written consent of the Peebles JV Member and El Ad JV Member. To the fullest extent permitted by law, any attempted Transfer of all or any portion of an Interest, other than in strict accordance with this Article 8 shall be void.

8.1.2 **Certain Transfers Permitted.** Notwithstanding Section 8.1.1, a Member may Transfer its Interest or allow the direct or indirect Transfer of ownership interests in such Member or in the partners, members or shareholders thereof, as follows, subject in each case, to, and only to the extent permitted under, the provisions of the Loan Documents, the Contract of Sale, the Deed, and the City Lease that are applicable from time to time:

- (a) to the Company or to another Member;
- (b) if the proposed transferor is a natural Person, by succession or testamentary disposition upon his death;
- (c) if the proposed transferor is a natural Person, to any Immediate Family Member or to a trust for the benefit of such Immediate Family Member with respect to the proposed Transfer, but only if the proposed transferor retains management authority and control of the interest so transferred;
- (d) if the proposed transferor is any direct or indirect owner of the Interest proposed to be transferred, as provided in Section 8.3 and 8.7; and

(e) if the proposed transferor is any direct or indirect owner of Peebles JV Member, as provided in Section 8.2.

**8.2 Subtransfers in Peebles JV Member.** Peebles JV Member shall have the right, without the consent of the other Members, to permit the holders of a direct or indirect interest in Peebles JV Member to transfer direct and indirect interests in Peebles JV Member, or any portion thereof or any interest therein, to any other Person or Persons other than Prohibited Person(s); provided that (1) the same does not result in any default under any Loan or a default or breach under any Material Agreement or violate the restrictions in the Deed and (2) after any such Transfer, the Peebles Control Standard shall remain satisfied.

**8.3 El Ad JV Member Subtransfers.** El Ad JV Member shall have the right, without the consent of the other Members, to permit the holders of a direct or indirect interest in El Ad JV Member to transfer direct or indirect interests in El Ad JV Member, or any portion thereof or any interest therein, to any other Person or Persons other than Prohibited Person(s), provided that (1) the same does not result in any default under any Loan or a default or breach under any Material Agreement or violate the restrictions in the Deed and (2) after any such Transfer, El-Ad Group, Ltd. shall continue (i) to own, directly or indirectly, no less than fifty-one percent (51%) of the ownership interests and (ii) Control each of El Ad JV Member and El Ad Entity Guarantor. Without limiting the generality of the foregoing, and provided the same does not result in any default under any Loan or a default or breach under any Material Agreement or violate the restrictions in the Deed, the direct or indirect transfer of the stock, partnership interest or limited liability company interest or other interest in El Ad Entity Guarantor or any corporation, partnership, trust, limited liability company or other Person that directly or indirectly holds an interest in El Ad Entity Guarantor shall be freely permitted.

**8.4 Admission of New Members.** Notwithstanding anything to the contrary set forth in this Article 8, no Transfer shall be permitted or effective for any purpose unless all required consents, if any, of the Lender and the City shall have been obtained in writing. In addition, no such transfer of a direct interest in the Company shall be binding on the Company unless (a) the transferee shall execute and acknowledge an instrument, in form and substance reasonably satisfactory to the remaining Members, whereby it agrees to assume and be bound by all of the covenants, terms and conditions of this Agreement, as the same may have been amended, from and after the effective date of such transfer, (b) a duplicate original of such instrument duly executed and acknowledged by the parties thereto is delivered to the Company and (c) the transferee shall pay all reasonable expenses in connection with its admission as a Member (including, without limitation, all transfer taxes payable in connection therewith). Except as otherwise provided in this Article 8, no Person shall be admitted into the Company as a new Member.

**8.5 Loans to the Company.** In the event of any transfer of an Interest, if the transferor shall have made any Shortfall Loans and/or Priming Venture Loans, the transferor shall transfer to the transferee of such Interest a proportional share of its interest therein.

**8.6 Void Transfers.** Any Transfer made in violation of this Article 8 shall be of no force or effect and shall not bind or be recognized by the Company, and the transferring Member

shall continue to be treated as a member for all purposes, and remain obligated under each and every provision, of this Agreement.

**8.7 El Ad Party Covenant.** To the extent required pursuant to the terms and conditions of the Senior Loan Documents and/or the Mezzanine Loan Documents, El Ad JV Member hereby covenants and agrees that at least one El Ad Party shall be in a senior management position at El Ad Entity Group, Ltd. at all times during the term of the Senior Construction Loan and the Mezzanine Construction Loan.

**ARTICLE 9**  
**[INTENTIONALLY OMITTED]**

**ARTICLE 10**  
**BOOKS, RECORDS, REPORTS AND BANK ACCOUNTS**

**10.1 Books and Records.** The Reporting Member shall cause to be kept proper and complete records and books of account in which shall be entered fully and accurately all transactions and other matters relating to the Company's or any Subsidiary's business as are usually entered into such records and books of account kept for businesses of a like character. Any costs or expenses incurred in accordance with this Agreement and in connection with the keeping of such books and records (including any amounts payable pursuant to the Development Management Agreement in accordance with the terms of the Development Management Agreement) shall be at the Company's (or any applicable Subsidiary's) expense. The Company's and each Subsidiary's records and books shall be kept on an accrual basis in accordance with GAAP. Either Member may, at such Member's expense, review and/or audit the books, records and reports of the Company or any Subsidiary, and in furtherance thereof, may inspect and copy during normal business hours any of the Company or any Subsidiary's books and records required to be maintained in accordance with this Agreement. Such right may be exercised through any agent, representative or employee of such Member; provided, however, that if El Ad JV Member or Peebles JV Member elects to have an annual audit performed by the Approved Accountant, the Company shall bear the cost of such annual audit performed by the Approved Accountant. Such audit report shall be delivered to all Members within thirty (30) days after completion of such audit report.

**10.2 Reports.**

**10.2.1** The Reporting Member shall provide Peebles JV Member with a copy of any financial or other reports, and any other certificates, documents or written communications or materials (collectively, "**Reports**"), as may be required under any Loan Documents then in effect, promptly following delivery thereof to the Lender thereunder.

**10.2.2** The Reporting Member shall provide Peebles JV Member with a copy of each draw request submitted in connection with the Senior Construction Loan, the Mezzanine Construction Loan and/or any other loan providing for future advances to the Company or any Subsidiary at least two (2) days prior to the date on which such draw requests are delivered to the Lender;

10.2.3 For any month in which a draw request is submitted in connection with the Senior Construction Loan, the Mezzanine Construction Loan and/or any other loan providing for future advances to the Company or any Subsidiary, so long as a For Cause Removal has not occurred, if requested by Peebles JV Member, the Reporting Member shall use commercially reasonable efforts to provide Peebles JV Member with a reconciliation report reconciling such draw request with the Project Budget within thirty (30) days following Peebles JV Member's request therefor; provided, however, that if after the use of commercially reasonable efforts the Reporting Member fails to provide such reconciliation report to Peebles JV Member within such thirty (30) day period, then the Reporting Member shall have an additional fifteen (15) days to provide such reconciliation report to Peebles JV Member;

10.2.4 If at any time no Senior Loan is outstanding, the Reporting Member shall provide Peebles JV Member with such Reports, and at such times, as required under the most recently outstanding Senior Loan.

10.2.5 In addition, each Member shall deliver to the other Member, promptly upon receipt thereof, any and all notices with respect to the Loan Documents, Construction Contracts the Contract of Sale, or any Lease or other Material Agreement (including without limitation, the City Lease) received by such Member. The Members shall use good faith efforts to provide that each Member be a copy party with respect to notices under any of the foregoing.

10.2.6 Reporting Member shall, at the Company's cost, also deliver other information and reports as may be reasonably requested relating to the operations of the Company.

10.3 **Working Capital Reserve and Other Reserves.** The Administrative Operating Member shall use good faith efforts to cause the Company and the Subsidiaries, as applicable, to establish and maintain reasonable reserves for future costs, expenses and payments or for substantial costs (including capital repairs, improvements and replacements), to the extent the payment of such costs is not contemplated by other reserves maintained by or on behalf of the Company or Subsidiaries and the amount of such reserves is approved as a Major Decision or is required by the applicable Loan Documents.

10.4 **Company Accounts.** Subject to the terms of any Loan, all funds of the Company and each Subsidiary shall be deposited by Administrative Operating Member or El Ad Developer into a federally insured operating account for each such entity (each, an "**Operating Account**"). In addition, subject to the terms of any Loan, if approved by both Members, Administrative Operating Member shall transfer portions of the balance of each Operating Account which are not imminently needed to pay for Company or Subsidiary operations for the applicable Subsidiary from time to time to a bank controlled investment account (that invests in high grade commercial paper) in accordance with sound cash management principles ("**Money Market Account**"). Subject to the terms of any Loan, each Operating Account shall be maintained in the name of the Company or the applicable Subsidiary and the Money Market Account shall be maintained in the name of the Company, in each instance, in New York City with a money center financial institution selected by El Ad JV Member and reasonably approved by Peebles JV Member. The funds within the Accounts shall be segregated from, and not commingled with any accounts of any Member or Affiliate thereof, or any other accounts that the Members may

hereafter establish for the Company or any Subsidiary from time to time. The investment of the funds within the Accounts shall be directed by the Members pursuant to Section 6.5.62. Withdrawals (including any checks) from the Accounts shall be made upon such signature or signatures as the Members may designate, provided that (i) such withdrawals and/or checks shall be made only in connection with expenses related to the Company Property or the Business of the Company which are in conformance with the Requirements, (ii) Peebles JV Member shall have the right to have at least one signatory on such Accounts so long as a Peebles Event of Default has not occurred, and El Ad JV Member shall have the right to have at least one signatory on such Accounts so long as no El Ad Bad Act has occurred, and (iii) any withdrawal or check in excess of \$5,000 shall, so long as no El Ad Bad Act has occurred, require the signature of a signatory designated by the El Ad JV Member and, so long as a Peebles Event of Default has not occurred, the Peebles JV Member, except for withdrawals and/or checks made by the El Ad Developer in accordance with the Development Management Agreement for monthly (or other periodic) requisitions to fund Development Costs that have been approved by the El Ad JV Member (so long as no El Ad Bad Act has occurred) and the Peebles JV Member (so long as a Peebles Event of Default has not occurred). From and after any El Ad Funding Default, Peebles JV Member shall have the right to fund any Investment made by Peebles JV Member (or cause any third party to fund any Investment made in accordance with this Agreement) in accordance with this Agreement into, one or more Accounts for the Company or any Subsidiary (which the Members hereby agree Peebles JV Member shall have the authority to open) for which Peebles JV Member is the sole signatory.

10.5 **Tax Matters Handled by El Ad JV Member.** El Ad JV Member shall be designated as “tax matters partner” as defined in Code Section 6231 (the “**TMP**”), to represent the Company and the Subsidiaries (at the Company’s expense) in connection with all examinations of the Company’s and the Subsidiaries affairs by tax authorities, including resulting judicial and administrative proceedings, and to expend Company funds for professional services and costs associated therewith. In its capacity as TMP, El Ad JV Member shall oversee the Company and the Subsidiaries tax affairs in the overall best interests of the Company and the Subsidiaries and shall comply with the requirements of Sections 6221 through 6232 of the Code and regulations promulgated thereunder, and the Members further agree as follows:

(a) The TMP shall have a continuing obligation to provide the Internal Revenue Service with sufficient information so that proper notice can be mailed to all Members as provided in Section 6223 of the Code.

(b) The TMP shall keep the Members informed of all administrative and/or judicial proceedings by the IRS or other taxing jurisdiction relating to the Company or any Subsidiary. Without limiting the generality of the foregoing sentence, (i) within fifteen (15) days of receiving any written or oral notice of the time and place of a meeting or other proceeding from the Internal Revenue Service regarding the Company or any Subsidiary (and in any event, within a reasonable time prior to such meeting or proceeding so that each Member shall have the opportunity to participate in or attend such meeting or proceeding), the TMP shall furnish a copy of such written communication or notice or inform the Members in writing of the substance of any such oral communication, and (ii) within fifteen (15) days of receiving any other significant written or oral communication from the IRS or other taxing jurisdiction



regarding the Company or any Subsidiary, the TMP shall furnish a copy of such written communication or inform the Members of the substance of any such oral communication.

(c) Notwithstanding anything to the contrary in this Agreement, the TMP may not extend or waive the statute of limitations or enter into any settlement agreement relating to any Company or any Subsidiary item of income, gain, loss, deduction or credit for any Fiscal Year or make any tax election that could have a material adverse effect on a Member without receiving the prior written consent of such Member, which consent shall not be unreasonably withheld, conditioned or delayed.

10.6 **Tax Returns.** The TMP shall prepare or cause to be prepared all income and other tax returns of the Company and the Subsidiaries required by applicable law and shall cause the same to be filed in a timely manner (including extensions); provided that approval of all such tax returns shall be a Major Decision in accordance with Section 6.5.29. In the event no extension is filed, the TMP shall prepare or cause to be prepared and submitted to Peebles JV Member for approval all draft K-1's on or prior to March 15<sup>th</sup> of each year, and Peebles JV Member shall provide any comments to such K-1's on or prior to March 31<sup>st</sup> of such year; provided that if Peebles JV Member fails to provide comments to or approval of such K-1's on or prior to March 31<sup>st</sup> of such year, such K-1's shall be deemed approved by Peebles JV Member. Notwithstanding the foregoing, the Members agree that the TMP shall be permitted to file an extension for filing of such tax returns without consent of Peebles JV Member. In the event an extension is filed, El Ad JV Member shall prepare or cause to be prepared and submitted to Peebles JV Member for approval all income and other tax returns of the Company and the Subsidiaries on or prior to August 1<sup>st</sup> of each year, and Peebles JV Member shall provide any comments to such tax returns on or prior to August 31<sup>st</sup> of such year; provided that if Peebles JV Member fails to provide comments to or approval of such tax returns on or prior to August 31<sup>st</sup> of such year, such tax returns shall be deemed approved by Peebles JV Member.

## ARTICLE 11 **TERMINATION AND DISSOLUTION**

### 11.1 **Dissolution.**

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining Member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act, (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act, which decree may not be sought without the prior written consent of El Ad JV Member and, so long as no Peebles Event of Default has occurred, Peebles JV Member, including in the event of any deadlock with respect to any decision required to be made by the Members, and (iii) the written approval of the Members as a Major Decision to dissolve the Company. Upon the occurrence of any event that causes the last remaining Member of the Company to cease to be a Member of the Company, to the fullest extent permitted by law, the personal representative of such Member is hereby authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such Member in the Company, agree in writing (y) to

continue the Company and (z) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute Member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining Member of the Company.

(b) Except as hereinabove provided, no act, thing, occurrence, event or circumstance shall cause or result in the dissolution of the Company.

(c) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed in the manner provided in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

**11.2 Distribution of Liquidation Proceeds.** The Members shall continue to allocate Net Profits and Net Losses and distribute Available Cash during the winding-up period in the same manner and the same priorities as provided for in Articles 4 and 5 hereof. The proceeds from the liquidation of Company Property shall be applied in the following order:

11.2.1 to the payment of creditors (other than the Members), in the order of priority as provided by law and to the establishment of such reserves that the Members may, as a Major Decision, reasonably deem necessary, appropriate or desirable for any contingent, conditional, or unmatured liabilities, debts or obligations of the Company arising out of or in connection with the Company operations; and

11.2.2 to the Members in accordance with Section 5.1.

It is intended that prior to a distribution of the proceeds from a liquidation of the Company pursuant to this Section 11.2, the positive Capital Account balance of each Member shall be equal to the amount that such Member is entitled to receive pursuant to Section 5.1. Accordingly, notwithstanding anything to the contrary in Article 4, to the extent permissible under Section 704(b) of the Code and the Treasury Regulations promulgated thereunder, Net Profits and Net Losses and, if necessary, items of gross income and gross deductions, of the Company for the year of liquidation of the Company (or, if earlier, the year in which all or substantially all of the Company's assets are sold, transferred or disposed of) shall be allocated among the Members so as to bring the positive Capital Account balance of each Member as close as possible to the amount that such Member would receive if the Company were liquidated and all the proceeds were distributed in accordance with Section 5.1.

Where the distribution pursuant to this Section 11.2 consists both of cash (or cash equivalents) and non-cash assets, the cash (or cash equivalents) shall first be distributed, in a descending order, to fully satisfy each category starting with the most preferred category above. In the case of non-cash assets, the distribution values are to be based on the fair market value thereof as determined in good faith by the liquidator, and the shortest maturity portion of such non-cash assets (e.g., notes or other indebtedness) shall, to the extent such non-cash assets are readily divisible, be distributed, in a descending order, to fully satisfy each category above, starting with the most preferred category.

11.3 **Continuation of the Company.** Notwithstanding anything to the contrary contained herein, the death, retirement, resignation, expulsion, bankruptcy, dissolution or removal of a Member shall not in and of itself cause the dissolution of the Company, and the Members are expressly authorized to continue the business of the Company in such event, without any further action on the part of the Members.

## **ARTICLE 12**

### **INDEMNIFICATION OF THE MEMBERS AND THEIR AFFILIATES**

12.1 **Exculpatory Provisions.** No Member (including, without limitation, in its role as an Operating Member or TMP) nor any Member's members, managers, shareholders, partners, direct or indirect owners and/or their respective officers, directors, employees, agents, Principals and Affiliates (each individually, an "Indemnatee") shall be liable, responsible or accountable in Damages or otherwise to the Company or any Member for any (i) act performed in good faith within the scope of the authority conferred by this Agreement that does not constitute a breach of this Agreement, (ii) failure or refusal to perform any acts except those required by the terms of this Agreement, or (iii) performance of or omission to perform any acts in reliance on the advice of accountants or legal counsel for the Company other than those which would constitute a breach of this Agreement; provided, however, that each Indemnatee shall nevertheless be liable and shall not be entitled to indemnification with respect to acts or omissions by such Indemnatee which constitute fraud, willful misconduct or gross negligence (or with respect to Peebles JV Member, a Peebles Event of Default set forth in clause (a) or (b) of the definition thereof or with respect to El Ad JV Member, an El Ad Bad Act). For the avoidance of doubt, this Section 12.1 shall not provide indemnification or exculpation to an Indemnatee resulting from a breach of this Agreement or any other document or agreement entered into between such Indemnatee and the Company.

12.2 **Indemnification of The Members And Their Principals.** The Company shall indemnify and hold harmless each Indemnatee from and against any and all Damages arising from any and all claims, demands, actions, suits or proceedings in which the Indemnatee may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to the Business of the Company (excluding liabilities to any Member), regardless of whether the Indemnatee continues to be a Member, or a member, partner, officer, director, employee, agent, Principal or Affiliate as aforesaid at the time any such liability or expense is paid or incurred, to the extent the Indemnatee's conduct did not constitute fraud, willful misconduct or gross negligence (or with respect to Peebles JV Member, a Peebles Event of Default or with respect to El Ad JV Member, an El Ad Bad Act) or any action taken by either Member or any of its Affiliates that causes any Damages under any guaranty covering Customary Nonrecourse Carveout Losses (or any nonrecourse carveout guaranty signed by El Ad Entity Guarantor, El Ad Individual Guarantor or any Affiliate of either or both of the foregoing or Peebles Key Principal or any of his Affiliates, as applicable); provided that, to the extent such Damages consist of amounts which can be covered by calls of Additional Funds pursuant to Section 3.3.2 solely by the Member entitled to Indemnification or, in the case of El Ad JV Member, which constitute an El Ad Non-Reimbursable Payment, the applicable Indemnitees shall not seek indemnification and reimbursement from the Company with respect to, or in connection with, such Damages under this Section 12.2. The provisions of this Section 12.2 shall not apply to any services or acts of a Member, its Affiliates or their agents, officers, directors, members, managers, partners,

shareholders and employees, in each case as independent contractors of the Company or any Subsidiary.

12.3 **Expenses.** Expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to Section 12.2 shall, from time to time, be advanced by the Company in order to pay such expenses when due prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that such Person is not entitled to be indemnified as authorized in Section 12.2.

12.4 **Indemnification Rights Non-Exclusive.** The indemnification provided by Section 12.2 shall be in addition to any other rights to which those indemnified may be entitled under any agreement, as a matter of law or equity or otherwise, both as to action in the Indemnitee's capacity as a Member, as an Affiliate or as an officer, director, employee, agent or Principal of a Member and as to any action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrator of the Indemnitee.

12.5 **Modification of Liability.** Notwithstanding anything contained in this Agreement or the Act to the contrary, each Member waives, to the maximum extent permitted by applicable law, any claim or cause of action against any other Member for any breach of any fiduciary duty, duty of care or any other duty, breach of the Act, or breach of any duty created by special circumstances, with regard to or arising as a result of this Agreement, the Company, any Subsidiary or any Subsidiary's operating agreement, to the extent not expressly provided for herein or in any Subsidiary's operating agreement; provided, however, the foregoing will not limit any Member's obligation under, or liability for breach of the express terms and provisions of, this Agreement or any Subsidiary's operating agreement.

12.6 **Errors and Omissions Insurance.** If the Members shall so elect by Major Decision, the Company may purchase and maintain insurance, at the Company's expense, on behalf of the Members and such other Persons as the Members shall determine, against any liability that may be asserted against, or any expense that may be incurred by, such Person in connection with the activities of the Company and/or the Members' acts or omissions as the Members of the Company regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of the Agreement.

12.7 **Assets of the Company.** Any indemnification under Section 12.2 shall be satisfied solely out of the assets of the Company. No Member shall be subject to personal liability by reason of the indemnification provisions set out in Section 12.2.

12.8 **Subordination of Indemnification.** Notwithstanding anything to the contrary contained in this Article 12, the Company's obligation to indemnify the Members shall, for so long as there remains outstanding any indebtedness under any Senior Loan, be fully subordinated to such Senior Loan and shall not constitute a claim against the Company in the event that Available Cash or Net Liquidation Proceeds is insufficient to pay such obligation.

**ARTICLE 13**  
**MISCELLANEOUS PROVISIONS**

13.1 **Counterparts.** This Agreement may be (i) executed in several counterparts, and all counterparts so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart and (ii) delivered by telecopy, facsimile or in portable document format (PDF) by electronic mail which shall be deemed an original for all purposes.

13.2 **Survival of Rights.** Subject to the provisions of this Agreement relating to Transfer, this Agreement shall be binding upon and, as to permitted or accepted successors, transferees and assigns, inure to the benefit of the Members and the Company and their respective heirs, legatees, legal representatives, successors, transferees and assigns, in all cases whether by the laws of descent and distribution, merger, reverse merger, consolidation, sale of assets, other sale, operation of law or otherwise.

13.3 **Severability.** In the event any Section, or any sentence within any Section, is declared by a court of competent jurisdiction to be illegal, void or unenforceable, such sentence or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect and the Members shall amend or substitute such invalid, illegal or unenforceable provision with legal, enforceable and valid provisions which would produce as nearly as possible the rights and obligations previously intended by the Members without renegotiation of any material terms and conditions stipulated herein.

13.4 **Notification or Notices.** In order to be effective, all notifications or notices, consents, approvals and disapprovals required or permitted by this Agreement to be given ("**Notices**") must be in writing and shall be effective only if given as follows: (a) by hand delivery; (b) by overnight nationwide commercial courier service; or (c) by electronic mail; provided that the subject heading of such electronic mail expressly identifies that such correspondence constitutes an official notice pursuant to this Section 13.4); provided, further that, in the case of delivery pursuant to clause (c), a confirmation copy is delivered by duplicate notice in accordance with any of clauses (a) or (b) immediately above, in each case, to the party intended to receive the same at the following address(es):

to Peebles JV Member: Civic Center Community Group Broadway LLC  
c/o The Peebles Corporation  
745 Fifth Avenue, 16<sup>th</sup> Floor  
New York, New York 10151  
Attention: R. Donahue Peebles  
Email: [rdpceo@peeblescorp.com](mailto:rdpceo@peeblescorp.com)

with a copies to:

The Peebles Corporation  
745 Fifth Avenue, 16<sup>th</sup> Floor  
New York, New York 10151  
Attention: Lowell D. Plotkin, Esq., General  
Counsel  
Email: [lplotkin@peeblescorp.com](mailto:lplotkin@peeblescorp.com)

and

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention: James P. Godman  
Email: [jgodman@kramerlevin.com](mailto:jgodman@kramerlevin.com)

to El Ad JV Member:

F&C 60 LLC  
c/o El Ad US Holding, Inc.  
575 Madison Avenue, 22<sup>nd</sup> floor  
New York, New York 10022  
Attention: Sheara Arbit, Esq. and Ehud Erez  
Email: [sarbit@eladgroup.com](mailto:sarbit@eladgroup.com) and  
[uerez@eladgroup.com](mailto:uerez@eladgroup.com)

with copies to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: Michael J. Rishty, Esq.  
Email: [Michael.Rishty@davispolk.com](mailto:Michael.Rishty@davispolk.com)

Any party may change the address to which any such Notice is to be delivered, by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section 13.4. Notices shall be deemed to have been given on the date they are actually received; provided, however, that the inability to deliver Notices because of a changed address of which no Notice was given, or rejection or refusal to accept any Notice offered for delivery shall be deemed to be receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept delivery. Failure or delay in delivering copies of any Notice within any corporation or firm to the persons designated to receive copies shall in no way adversely affect the effectiveness of such Notice.

13.5 **Construction**. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Members.

13.6 **Section Headings**. The captions of the Certificate of Formation or Sections in this Agreement are for convenience only and in no way define, limit, extend or describe the

scope or intent of any of the provisions hereof, shall not be deemed part of this Agreement and shall not be used in construing or interpreting the Agreement.

13.7 **Governing Law; Venue.** This Agreement shall be construed according to the internal laws, and not the laws pertaining to choice or conflict of laws, of the State of Delaware. All actions or proceedings arising in connection with this Agreement shall be tried and litigated in state or federal court located in New York County. Each of the parties to this Agreement submits to the jurisdiction of the courts of that state and agrees that process may be served upon it by registered or certified mail addressed as provided in Section 13.4 or by any other means permitted by applicable law. Service made as set forth above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party within the State of New York.

13.8 **Intentionally Omitted.**

13.9 **Certain Terminology.** Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. Whenever the words “including”, “include” or “includes” are used in this Agreement, they should be interpreted in a non-exclusive manner as though the words “, without limitation,” immediately followed the same. Except as otherwise indicated, all Article, Section and Exhibit references in this Agreement shall be deemed to refer to the Sections and Articles in, and the Exhibits to, this Agreement. As used herein, “good faith” has the meaning set forth for the same in Section 1 201(19) of the Uniform Commercial Code, as adopted in the State of Delaware as of the date of this Agreement. All exhibits attached and referred to in this Agreement are hereby incorporated herein as fully set forth in (and shall be deemed to be a part of) this Agreement. All references herein to the sale, assignment, conveyance, transfer or other disposition of any Property shall mean the sale, assignment, conveyance, transfer or other disposition of the fee interest in such Property if held in fee or the leasehold interest if such Property is subject to a ground lease in each case, together with any development rights relating to such Property.

13.10 **Time of the Essence.** Except as otherwise provided herein, time is of the essence with respect to all time or notice deadlines set forth herein, however, this provision shall not affect the rights of any defaulting party hereunder to cure such default within the time periods (if any) explicitly set forth herein, if and as so permitted pursuant to the terms of this Agreement.

13.11 **Further Actions.** Each of the Members agrees to execute, acknowledge and deliver such additional documents, and take such further actions, as may reasonably be required from time to time to carry out each of the provisions, and the intent, of the Agreement, and every agreement or document relating hereto, or entered into in connection herewith.

13.12 **Waiver of Right to Jury.** WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED AGREEMENT, EACH MEMBER HEREBY IRREVOCABLY WAIVES ALL RIGHTS IT MAY HAVE TO DEMAND A JURY TRIAL. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE MEMBERS AND EACH MEMBER ACKNOWLEDGES THAT NONE OF THE OTHER MEMBERS NOR ANY

PERSON ACTING ON BEHALF OF THE OTHER PARTIES HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH MEMBER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. EACH OF THE MEMBERS FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND SIGNIFICATIONS OF THIS WAIVER PROVISION.

13.13 **Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement except (and only) to the extent Persons other than the parties hereto may be entitled to the benefits of Section 12.2 hereof. Except as expressly provided in this Agreement, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Person other than the Members and their respective successors and assigns, nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision of this Agreement give any third person any right of subrogation or action over or against any party to this Agreement. Without limitation on the foregoing, to the fullest extent permitted by the Act, no third party shall have any right to enforce any contribution obligation on a Member.

13.14 **Partition.** The Members agree that the Company Property that the Company may own or have an interest in is not suitable for partition. Each of the Members hereby irrevocably waives any and all rights that it may have to maintain any action for partition of any Company Property in which the Company may at any time have an interest.

13.15 **Entire Agreement.** This Agreement and the Certificate of Formation (together with the other agreements described herein), constitute the entire agreement of the Members with respect to the subject matter hereof, and supersedes all prior written and oral agreements, understandings and negotiations with respect to the subject matter hereof.

13.16 **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

13.17 **Attorneys' Fees.** In the event of any litigation, arbitration or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation, arbitration or other dispute shall be entitled to, in addition to any other Damages assessed, its reasonable attorney fees, and all other costs and expenses actually incurred in connection with settling or resolving such dispute. The attorneys' fees which the prevailing party is entitled to recover shall include fees actually incurred in connection with prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of reasonable attorneys' fees to the prevailing party, the prevailing party in any lawsuit or arbitration procedure on this Agreement shall be entitled to its reasonable attorneys' fees actually incurred in any post judgment proceedings to



collect or enforce the judgment. This attorneys' fees provision is separate and several and shall survive the merger of the Agreement into any judgment.

13.18 **Authorized Representatives.** Wherever in this Agreement the consent or approval of a Member is required with respect to all matters pertaining to the Company, (a) the written statements and representations of an Authorized Representative of a Member that is not a natural Person shall be the only authorized statements and representations of such Member with respect to the matters covered by this Agreement and (b) the written statement or representation of any one Authorized Representative of such Member shall be sufficient to bind such member with respect to all matters pertaining to the Company. Wherever used in this Agreement, the terms "approved by" or "approval of" or "consented to" or "consent of" or "satisfactory to", or words of similar import, with respect to a Member that is not a natural Person, means a decision or action which has been consented to in writing by the Authorized Representative of such Member, and with respect to a Member who is an individual, means a decision or action which has been consented to in writing by such individual.

13.19 **Non-Solicitation.** Each Member (each, for purposes of this paragraph, the "**Soliciting Member**") agrees that it shall not, and shall ensure that its Affiliates do not, directly, or indirectly, for itself or on behalf of any other person, firm, corporation or other entity, solicit, hire, retain as a consultant, or use the services of, any person who is or was an employee of the other Member or any of its Affiliates at, in connection with or with respect to the Property unless at least twelve (12) months have passed from the time that such employee has left the employment of such other Member or its Affiliate, to the date of solicitation, hiring or retention of such employee by the Soliciting Member or any of its Affiliates (whichever is earliest); provided that this paragraph shall not preclude such Soliciting Member or its Affiliates from hiring any employee of the other Member or its Affiliates who (i) responds to a general solicitation through a public medium or general or mass mailing by such Soliciting Member or its Affiliates or on behalf of such Soliciting Member or its Affiliates and not directly or indirectly targeted at employees of the other Member or its Affiliates; (ii) contacts such Soliciting Member or its Affiliates directly on his/her own sole initiative, without any direct or indirect solicitation or inducement by such Soliciting Member or its Affiliates; or (iii) has been terminated by the other Member or its Affiliates at least twelve (12) months prior to being solicited for employment by such Soliciting Member or its Affiliates..

13.20 **Confidentiality.** (a) The terms of this Agreement and any information relating to the business, operation or finances of a Member or the Company which are proprietary to, or considered proprietary by, such Member or the Company is hereinafter referred to as "**Confidential Information**". All information in tangible form (plans, writings (including, without limitation, customer lists and marketing materials), drawings, computer software and programs, etc. (including copies and tangible embodiments thereof, in whatever form or medium, including electronic media)) or provided to or conveyed orally or visually to a receiving Member (including, without limitation, any marketing techniques), shall be presumed to be Confidential Information at the time of delivery to the receiving Member. Each Member agrees: (i) not to disclose such Confidential Information to any Person except to those of its employees or representatives who need to know such Confidential Information in connection with the conduct of the business of the Company and who have agreed to maintain the confidentiality of such Confidential Information and (ii) neither it nor any of its employees or representatives will

use the Confidential Information for any purpose other than in connection with the conduct of the business of the Company; provided that nothing herein shall prevent any Member from disclosing any portion of such Confidential Information (1) to the Company and allowing the Company to use such Confidential Information in connection with the Company's business (including disclosure to third parties on a need to know basis and subject to such third party agreeing to keep such information confidential in connection with the Company's business), (2) pursuant to judicial order or in response to a governmental inquiry, by subpoena or other legal process, but only to the extent required by such order, inquiry, subpoena or process, and only after reasonable notice to the original divulging Member, (3) as necessary or appropriate in connection with, or to prevent the audit by, a governmental agency of the accounts of any of the Members, (4) in order to initiate, defend or otherwise pursue legal proceedings or arbitration between the parties regarding this Agreement, (5) as necessary in connection with a Transfer of an Interest permitted hereunder; provided that, with respect to any Confidential Information relating to a Member or its Affiliates, the recipient agrees to maintain the confidentiality of such Confidential Information, (6) to a Member's respective attorneys or accountants or other representatives, (7) as, and solely to the extent, required by applicable laws or applicable rules and regulations of a stock exchange; provided that notice of such disclosure is first given to the other Member prior to such disclosure, or (8) to any existing and prospective, direct or indirect, investors, lenders and other capital sources; provided that the recipient agrees to maintain the confidentiality of such Confidential Information. Confidential Information shall not include information (1) which is or hereafter becomes public, other than by breach of this Agreement, (2) which was already in the receiving Member's possession prior to any disclosure of the Confidential Information to the receiving Member by the divulging Member, or (3) which has been or is hereafter obtained by the receiving Member from a third party not bound by any confidentiality obligation with respect to the Confidential Information.

(a) All Confidential Information shall be protected by the receiving Member and the Company from disclosure with the same degree of care with which the receiving Member protects its own Confidential Information from disclosure. The Company, the Members and their Affiliates shall each act to safeguard the secrecy and confidentiality of, and any proprietary rights to, the Confidential Information of the Company and the Members, except to the extent such information may be disclosed pursuant to paragraph (a) above. Each Member and the Company may, from time to time, provide the other Members written notice of any Confidential Information which is subject to this Section.

(b) References in this Section to the Company shall include any Subsidiary of the Company.

**13.21 Litigation Without Termination.** Any action or proceeding brought by any Member or the Company against any Member or the Company (including any action for Damages, specific performance or declaratory relief) for or by reason of a breach by such party of this Agreement or any other agreement entered into in connection with the same, shall not, in and of itself, result in a termination of the Company (other than an action to terminate the Company that is successful).

**13.22 Cumulative Remedies.** Subject to the limitations expressly herein set forth, no remedy conferred upon the Company or any Member in this Agreement is intended to be

exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute. Notwithstanding the foregoing or any other provision of this Agreement, each party hereby waives any right to receive consequential damages (including damages for lost profits) or punitive damages.

13.23 **No Suretyship Defenses.** Each Member hereby waives any guarantor or suretyship defense that may otherwise apply with respect to this Agreement or any provision hereof.

13.24 **Acknowledgement by Members.** Each Member acknowledges the following: (A) it is familiar with the business proposed to be conducted by the Company; (B) it has been advised that its interest in the Company may not be sold, transferred, or otherwise disposed of except as provided herein; (C) it understands that its interest in the Company has not been registered under the Securities Act of 1933 as amended (the "**Securities Act**"), or any State securities laws, in reliance on an exemption for private offerings or the fact that it is not a security and if its interest in the Company is a security, such Member may not be able to resell it unless it is registered under the Securities Act and applicable State securities laws or unless an exemption from such registration is available; (D) it is a "sophisticated investor" with substantial prior experience in high-risk business investments of the type described in this Agreement and is aware of and familiar with the risks associated with a private limited liability company and would qualify as an "accredited investor" as such is defined in Rule 501 of Regulation D, as enacted pursuant to Sections 3(b) and 4(2) of the Securities Act; (E) it is acquiring its interest in the Company for its own account, for investment only and with no present intention of distributing, reselling, pledging, or otherwise disposing of its interest; and (F) that it is familiar with the type of investment which its interest in the Company constitutes and has reviewed the acquisition of such interest with its tax and independent legal counsel and investment representatives to the extent it deems necessary.

13.25 **Brokers.** The parties each represent and warrant to the other that it has not dealt with any broker or any other Person entitled to a fee by reason of the Contribution Agreement, the transactions contemplated thereby, this Company or either party's investment hereunder (a "**Brokerage Fee**") other than Carlton Advisory Services, Inc. ("**Broker**"), whose fee (if and when due) will be an expense of the Company. Each Member hereby agrees to indemnify, defend and hold the harmless the other Member, its Affiliates and the Company from and against any Damages by reason of a breach by such party of the foregoing representation and warranty, and the Company hereby agrees to indemnify, defend and hold the harmless each Member and its Affiliates from and against any Damages by reason of any claim by Broker for a Brokerage Fee.

13.26 **Effectiveness.** In no event shall any draft of this Agreement create any obligation or liability, it being understood that this Agreement shall be effective and binding only when a counterpart hereof has been executed and delivered by each party hereto.

13.27 **Guaranties.** (a) In connection with the Senior Construction Loan and the Mezzanine Construction Loan, (x) El Ad Entity Guarantor and El Ad Individual Guarantor are providing certain required guaranties and indemnities (including a guaranty of Customary Nonrecourse Carveout Losses) and (ii) Peebles Key Principal is providing a guaranty for

Customary Nonrecourse Carveout Losses. Notwithstanding the foregoing, El Ad Entity Guarantor, El Ad Individual Guarantor and any Affiliate of any of the foregoing shall not be required to provide recourse for Customary Nonrecourse Carveout Losses with respect to which to which El Ad Entity Guarantor or El Ad Individual Guarantor would be liable for the actions or inactions of any party other than El Ad JV Member, El Ad Entity Guarantor, El Ad Individual Guarantor and/or the El Ad Control Affiliates, agents, employees and representatives of El Ad JV Member or El Ad Entity Guarantor unless a contribution agreement in form and substance substantially similar to the Reimbursement Agreement in respect of such recourse is executed by Peebles JV Member and Peebles Key Principal. Peebles Key Principal and any Affiliate thereof (other than Peebles JV Member) shall not be required to provide recourse for Customary Nonrecourse Carveout Losses with respect to which Peebles Key Principal would be liable for the actions or inactions of any party other than Peebles JV Member, Peebles Key Principal and/or the Affiliates, agents, employees and representatives of Peebles JV Member and Peebles Key Principal unless a contribution agreement in form and substance substantially similar to the Reimbursement Agreement in respect of such recourse is executed by El Ad Member and El Ad Entity Guarantor (with respect to the Senior Construction Loan and Mezzanine Construction Loan). Notwithstanding anything to the contrary contained herein, after giving effect to the provisions of the Reimbursement Agreement, in no event shall Peebles Key Principal be responsible for payments under or in connection with any Loan Document or Loan other than in respect of Peebles Non-Reimbursable Payments under a guaranty of Customary Nonrecourse Carveout Losses executed and delivered by Peebles Key Principal.

(b) In connection with any Loan incurred after the date hereof (expressly excluding the Senior Construction Loan and the Mezzanine Construction Loan), (x) El Ad Entity Guarantor shall provide all required guaranties and indemnities to the extent approved by El Ad Entity Guarantor in its reasonable discretion; provided, however, any guaranty other than a guaranty of Customary Nonrecourse Carveout Losses and a customary completion guaranty (in the event of construction financing) proposed to be given by El Ad Entity Guarantor shall be subject to El Ad Entity Guarantor's sole discretion and (ii) if required by any Lender, Peebles Key Principal shall provide a guaranty for Customary Nonrecourse Carveout Losses to the extent approved by Peebles Key Principal in his reasonable discretion (provided that such guaranty shall not include any financial covenants or non-customary financial representations and warranties, or require any collateral), provided that El Ad Entity Guarantor shall not be required to provide recourse for Customary Nonrecourse Carveout Losses with respect to which El Ad Entity Guarantor would be liable for the actions or inactions of any party other than El Ad JV Member, El Ad Entity Guarantor and/or the El Ad Control Affiliates, agents, employees and representatives of El Ad JV Member or El Ad Entity Guarantor unless a contribution agreement in form and substance substantially similar to the Reimbursement Agreement in respect of such recourse is executed by Peebles JV Member and Peebles Key Principal. Peebles Key Principal and any Affiliate thereof (other than Peebles JV Member) shall not be required to provide recourse for Customary Nonrecourse Carveout Losses with respect to which Peebles Key Principal would be liable for the actions or inactions of any party other than Peebles JV Member, Peebles Key Principal and/or the Affiliates, agents, employees and representatives of Peebles JV Member and Peebles Key Principal unless a contribution agreement in form and substance substantially similar to the Reimbursement Agreement in respect of such recourse is executed by El Ad Member and El Ad Entity Guarantor. Notwithstanding anything to the contrary contained herein, after giving effect to the provisions of the Reimbursement Agreement, in no event shall Peebles Key Principal be

responsible for payments under or in connection with any Loan Document or Loan other than in respect of Peebles Non-Reimbursable Payments under a guaranty of Customary Nonrecourse Carveout Losses executed and delivered by Peebles Key Principal.

13.28 **Amendments.** Except as provided in Section 6.5.20, no amendment or waiver of this Agreement (or provision hereof) shall be enforceable against any Member unless it is in writing and duly executed by such Member.

13.29 **Limitation on Liability.** The Members shall not be bound by, or be personally liable for, by reason of being a Member, a judgment, decree or order of a court or in any other manner, for the expenses, liabilities or obligations of the Company, and the liability of each Member in respect thereof shall be limited solely to the amount of its Capital Contributions and loans made as provided under Article 3. Except as expressly provided herein or any other written agreement by and among the Members, their Affiliates and/or the Company, any claim against any Member (the "**Member in Question**") which may arise under this Agreement shall be made only against, and shall be limited to, the Interest of such Member in Question, the proceeds of the sale by the Member in Question of such Interest or the undivided interest in the assets of the Company distributed to the Member in Question pursuant to Section 11.2 hereof. Except as expressly provided herein or any other written agreement by and among the Members, their Affiliates, and/or the Company, any right to proceed against (i) any other assets of the Member in Question or (ii) any agent, officer, director, member, manager, partner, shareholder or employee of the Member in Question or the assets of any such Person, as a result of such a claim against the Member in Question arising under this Agreement or otherwise, is hereby irrevocably and unconditionally waived.

13.30 **Limitation On Use of Names.** Notwithstanding anything contained in this Agreement or otherwise to the contrary, each of El Ad JV Member and Peebles JV Member as to itself agrees that neither it nor any of its Affiliates, agents, or representatives is granted a license to use or shall use the name of the other (including, in the case of El Ad JV Member, the names "Peebles" or "R. Donahue Peebles" or any variations thereof) under any circumstances whatsoever, except such name may be used in furtherance of the business of the Company but only as and to the extent approved in writing by the Member whose name is to be used.

13.31 **Publicly Traded Partnership Provision.** Each Member hereby severally covenants and agrees with the other Members for the benefit of such Members, that (i) it is not currently making a market in Interests in the Company and will not in the future make such a market and (ii) it will not Transfer its Interest on an established securities market, a secondary market or an over-the-counter market or the substantial equivalent thereof within the meaning of Code Section 7704 and the Regulations, rulings and other pronouncements of the U.S. Internal Revenue Service or the Department of the Treasury thereunder. Each Member further agrees that it will not Transfer any Interest in the Company to any transferee unless such transferee agrees to be bound by this Section and to Transfer such Interest only to such Persons who agree to be similarly bound.

13.32 **Public Announcements.** Neither Member nor any of its Affiliates shall, without the prior written approval of the Members as a Major Decision, issue any press releases or similar public announcements with respect to the Company, the Subsidiaries or the transactions contemplated by this Agreement.

13.33 **Usury Savings Clause.** It is the intent of all the Members and their Affiliates at all times to comply with applicable laws and that this Section shall control over every other covenant and agreement in this Agreement and under any loan or similar document entered into pursuant to the terms of this Agreement, in each case, in respect of loans made by Members to the Company pursuant to the terms herein (this Agreement and such other loan document, collectively, "**Member Loan Documents**"). If any applicable law is ever judicially interpreted so as to render usurious any amount called for under any Member Loan Document, or contracted for, charged, taken, reserved or received with respect thereto, then it is the express intent of all the Members and their Affiliates that (i) all excess amounts theretofore collected by the lender under the Member Loan Documents shall be credited on the principal balance of the obligations evidenced by the Member Loan Documents (or, if all other obligations under the Member Loan Documents have been or would thereby be paid in full, refunded to the borrower), and the provisions of the Member Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable laws, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder and (ii) all sums paid or agreed to be paid to the lender under the Member Loan Documents for the use, forbearance or detention of the loan evidenced by the Member Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the loan evidenced by the Member Loan Documents until payment in full so that the rate or amount of interest on account of said loan does not exceed the maximum lawful rate from time to time in effect and applicable to said loan for so long as said loan is outstanding.

#### **ARTICLE 14** **Non-Binding Mediation**

14.1 **Major Decision Disputes.** Each Member may at any time present to the Authorized Representative of the other Member for its approval any proposed Major Decision (or after a For Cause Removal, any Unanimous Decision) or any other action or decision requiring the approval of the Members hereunder by delivering written notice to the other Member of the proposed action or decision, a brief explanation of the need for such approval or action and such other information as may be relevant to the action or decision being proposed. The Members hereby covenant and agree to use reasonable efforts and to negotiate in good faith to resolve any disagreement or dispute with respect to any Major Decision or other action (a "**Dispute**") and reach an agreement regarding any action or decision requiring the approval of the Members hereunder described in such written notice within fifteen (15) days from the date of the delivery of such written notice (or such shorter period, as set forth in the written notice, if required). If, despite the exercise of reasonable efforts, the Members are unable to reach agreement on any Dispute described in the written notice delivered by a Member under this **Section 14.1** within the time period set forth above, then the Members hereby covenant and agree, if requested by either Member, to submit the issue for non-binding mediation in

accordance with the applicable AAA Rules and in accordance with the terms of Section 14.2 hereof.

14.2 **Mediation.** Each Member hereby covenants and agrees that any non-binding mediation under the terms of Section 14.1 hereof shall be held, unless otherwise approved by the Members, in New York City, New York, and shall be held before a mediator mutually approved by the Members (the “**Mediator**”). Each Member shall have an opportunity to submit a written summary to the Mediator containing a brief explanation of the Dispute(s) to be resolved, such Member’s positions with respect to such Dispute(s), and any facts that such Member deems appropriate for the Mediator to consider in connection with such mediation. Each Member hereby covenants and agrees to meet before the Mediator for a five Business Day period and to attempt, through good faith and reasonable negotiations before the Mediator, to resolve the Disputes submitted to the Mediator. Each Member hereby covenants and agrees that the purpose of any mediation under the terms of this Article 14 is to facilitate and foster reasonable negotiations between the Members and the Mediator shall not have any authority to impose any resolution of any Disputes without the approval of each of the Members, each in its sole and absolute discretion. The costs of such Mediation, including the fees and expenses of the Mediator, shall be funded equally by the Members, or if so agreed by the Members, by the Company.

*[Remainder of Page Intentionally Blank; Signature Page Follows Immediately]*

IN WITNESS WHEREOF, each of the undersigned has duly executed this  
Consent as of the date first above written.

**CIVIC CENTER COMMUNITY GROUP**  
**BROADWAY MEZZANINE LLC**, a New York  
limited liability company

By: 

Name: R. Donahue Peebles

Title: Authorized Representative

[Signatures continue on the following page]

[Signature page to the Consent of Peebles El Ad Tribeca Partners LLC]



**F&C 60 LLC,**  
a Delaware limited liability company

By: 

Name: Orly Daniell

Title: President

EXHIBIT ALEGAL DESCRIPTION OF LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Catherine Lane and the easterly side of Broadway;

RUNNING THENCE northerly along the easterly side of Broadway 60 feet to the corner formed by the intersection of the easterly side of Broadway with the southerly side of Leonard Street;

THENCE easterly along the southerly side of Leonard Street 399 feet 10 inches to the corner formed by the intersection of the southerly side of Leonard Street and the westerly side of Lafayette Street;

THENCE southerly along the westerly side of Lafayette Street 82 feet 11-3/4 inches to the corner formed by the intersection of the westerly side of Lafayette Street and the northerly side of Catherine Lane;

THENCE westerly along the northerly side of Catherine Lane 400 feet 6-1/2 inches to the corner formed by the intersection of the northerly side of Catherine Lane and the easterly side of Broadway at the point or place of BEGINNING.

**EXHIBIT B****Capital Contributions**

<b>El Ad JV Member</b>	\$60,000,000.00	December 11, 2013
	\$5,000,000.00	February 2, 2016
Total:	<hr/> \$65,000,000.00	February 2, 2016
<hr/>		
<b>Peebles JV Member</b>	\$32,307,692.31	December 11, 2013
	\$2,692,307.69	February 2, 2016
Total:	<hr/> \$35,000,000.00	February 2, 2016

**Exhibit C**

**Project Budget**

(see attached)

**Exhibit D**

**Form of Reimbursement Agreement**

(see attached)

### REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (this "Agreement") dated as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and among F&C 60 LLC, a Delaware limited liability company ("El Ad"), EL-AD GROUP, LTD., a Bermuda exempted company ("El Ad Guarantor"), CIVIC CENTER COMMUNITY GROUP BROADWAY MEZZANINE LLC, a New York limited liability company ("Peebles"), and R. DONAHUE PEEBLES, an individual ("Peebles Guarantor"; and together with the El Ad Guarantor, each a "Guarantor", and collectively the "Guarantors"). Capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to such terms in the Operating Agreement (as hereinafter defined).

### WITNESSETH:

WHEREAS, El Ad and Peebles entered into that certain Limited Liability Company Agreement (the "Original Agreement") of PEEBLES EL AD TRIBECA PARTNERS LLC, a Delaware limited liability company (the "Company"), dated as of December 11, 2013;

WHEREAS, El Ad and Peebles amended and restated the Original Agreement pursuant to that certain Amended and Restated Limited Liability Company Agreement of the Company (the "Operating Agreement"), dated as of the date hereof;

WHEREAS, the Company is the sole member of Peebles El Ad Tribeca Mezz LLC, a Delaware limited liability company (the "Mezz Borrower"), which in turn is the sole member of Civic Center Community Group Broadway LLC, a New York limited liability company (the "Owner");

WHEREAS, the Owner was formed for the purposes of acquiring, owning and developing the parcel of land commonly known as 346 Broadway, New York, New York;

WHEREAS, pursuant to the provisions of Section 13.27 of the Operating Agreement, the Guarantors and Yitzhak (Isaac) Tshuva, an individual ("Tshuva") have provided in favor of Bank of America, as administrative agent ("Administrative Agent") for a syndicate of lenders (the "Lenders"), that certain Recourse Carve-Out Guaranty dated as of the date hereof and El Ad Guarantor and Tshuva have provided that certain Environmental Indemnity Agreement dated as of the date hereof (collectively, the "Mortgage Loan Guaranty") in connection with those certain loans in the aggregate principal amount of Three Hundred and Thirty Four Million and No/100 Dollars (\$334,000,000) pursuant to that certain (i) Building Loan Agreement, (ii) Project Loan Agreement and (iii) Acquisition Loan Agreement, each dated as of the date hereof, among Owner, Administrative Agent and the Lenders party thereto.

WHEREAS, pursuant to the provisions of Section 13.27 of the Operating Agreement, the Guarantors and Tshuva have provided in favor of ACREFI Mortgage Lending, LLC, a Delaware limited liability company ("Mezz Lender"), that certain Recourse Carve-Out Guaranty dated as of the date hereof and that certain Hazardous Materials Indemnity Agreement dated as of the date hereof (collectively, the "Mezz Loan Guaranty"; and together with the Mortgage Loan Guaranty, each a "Guaranty", and collectively the "Guaranties") in connection

with that certain loan in the aggregate principal amount of Seventy Seven Million and No/100 Dollars (\$77,000,000) pursuant to that certain Mezzanine Loan Agreement, dated as of the date hereof, by and between Mezz Borrower and Mezz Lender.

WHEREAS, the Guarantors desire to make provision for the sharing of liabilities under the Guaranties in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10) in hand paid and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Unless the context otherwise requires, the terms defined in this Paragraph 1 shall, for the purposes of this Agreement, have the meanings herein specified.

a. "Excluded Guarantor Payments" shall mean any amounts paid under the Guaranties by El Ad Guarantor or Tshuva that are a Peebles Non-Reimbursable Payment (as such term is defined in the Operating Agreement).

b. "Guarantor Payments" shall mean any payments made by a Guarantor to the Mezz Lender or Administrative Agent (on behalf of the Lenders), as applicable, (or to any other party which is an indemnitee under a Guaranty or which is expressly entitled to a payment thereunder) under or with respect to a Guaranty and all out of pocket expenses incurred by a Guarantor in connection with or arising from such payments.

c. "Guarantor Reimbursement Amount" shall mean the amount of any Guarantor Payments that are not Excluded Guarantor Payments.

2.

a. If any Guarantor Reimbursement Amount is actually paid by Peebles Guarantor under a Guaranty, Peebles Guarantor shall have an immediate right of contribution against El Ad Guarantor for one hundred percent (100%) of such Guarantor Reimbursement Amount. El Ad Guarantor shall reimburse to Peebles Guarantor the Guarantor Reimbursement Amount upon demand and proof of payment of such Guarantor Reimbursement Amount. If any payment required to be made under this Agreement is not made within ten (10) days after receipt of the applicable demand and proof, such payment or reimbursement shall bear interest at the rate (the "Applicable Rate") of twelve percent (12%) per annum, but in no event in excess of the highest lawful rate of interest permitted to be charged thereon in accordance with the laws of the State of New York.

b. El Ad Guarantor and Peebles Guarantor shall use reasonable good faith efforts to recover any insurance proceeds payable in respect of any Guarantor Reimbursement Amount. If recovery is had against any insurance carriers following the payment of any Guarantor Reimbursement Amount by either El Ad Guarantor or Peebles Guarantor, such recovery shall be paid (x) if recovered prior to El Ad Guarantor's reimbursement of Peebles Guarantor pursuant to Paragraph 2(a) above, then to Peebles Guarantor to the extent of such Guarantor Reimbursement Amount actually paid by Peebles Guarantor, and in such event, El Ad

Guarantor shall have no further liability for the amount so recovered and paid over to Peebles Guarantor (but shall be liable to Peebles Guarantor for any difference between the Guarantor Reimbursement Amount paid by Peebles Guarantor and the amount of recovered insurance proceeds in respect of same), or (y) if recovered following El Ad Guarantor's reimbursement of Peebles Guarantor pursuant to Paragraph 2(a) above, then to El Ad Guarantor.

c. If any party to this Agreement fails to make any payment required of it hereunder or under any Guaranty as and when required, then in addition to any other liability which it may have hereunder, such party shall be liable for the costs and expenses of enforcement of this Agreement, and such Guaranty against it (including, without limitation, all court costs and reasonable attorneys' fees and expenses), plus interest on the amount owed by such party at the Applicable Rate, from the date of demand until the date on which payment is made.

3.

a. El Ad Guarantor and Peebles Guarantor, as applicable, shall give prompt notice to the other after receipt of notice of any suit, action, proceeding, exercise of rights or remedies, or other claim with respect to the Guaranties that is the subject of reimbursement hereunder (a "Claim"), which notice shall specify the factual basis of the Claim in reasonable detail to the extent then known to the party giving such notice.

b. Neither El Ad Guarantor nor Peebles Guarantor shall settle, compromise or consent to the entry of any judgment with respect to any Claim without the prior consent of the other in either such instance, which consent shall not be unreasonably withheld, conditioned or delayed, provided that El Ad Guarantor shall have the right to settle or compromise any Claim to the extent El Ad Guarantor is solely responsible for the payment of all amounts in respect thereof under this Agreement or the applicable Guaranty, so long as (i) El Ad Guarantor pays all such amounts in connection with such settlement or compromise and (ii) Peebles Guarantor shall have no further liability with respect to such payments. Subject to the provisions of Paragraph 4 hereof, all costs and expenses (including, without limitation, all reasonable attorneys' fees and disbursements, court costs and experts' and consultants' fees and disbursements) in connection with the defense, settlement or compromise of any Claim, other than fees and expenses of separate counsel and related expenses, if any, engaged by either party, shall be deemed Guarantor Reimbursement Amounts and paid as set forth in Paragraph 2 hereof, except that any such costs and expenses incurred in connection with any Excluded Guarantor Payments shall be paid as set forth in Paragraph 4 hereof.

4. Notwithstanding anything to the contrary contained in this Agreement:

a. To the extent any incurred Guarantor Payment is a Peebles Non-Reimbursable Payment, then (i) El Ad Guarantor shall have a right of contribution against Peebles Guarantor for one hundred percent (100%) of any such Guarantor Payment paid by El Ad Guarantor and (ii) Tshuva shall have a right of contribution against Peebles Guarantor for one hundred percent (100%) of any such Guarantor Payment paid by Tshuva.



b. To the extent any incurred Guarantor Payment is an El Ad Non-Reimbursable Payment (as such term is defined in the Operating Agreement), then Peebles Guarantor shall have a right of contribution against El Ad Guarantor for one hundred percent (100%) of any such Guarantor Payment paid by Peebles Guarantor.

5. El Ad Guarantor and Peebles Guarantor agree that, except as otherwise expressly set forth herein, its obligations under this Agreement shall be unconditional, irrespective of:

a. the validity, enforceability, avoidance, novation or subordination of the Guaranties;

b. the absence of any attempt by, or on behalf of, such party to collect, or to take any other action to enforce, payment of any part of any Guarantor Payment (subject to Paragraph 4 hereof);

c. subject to the provisions of Paragraph 3(b) hereof, the waiver, consent, extension, forbearance or granting of any indulgence by, or on behalf of, any party hereto to any other; or

d. any other circumstance which might otherwise constitute a legal or equitable discharge or defense of either party hereto.

6. Separate and successive actions may be brought under this Agreement to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action.

7. The parties hereto shall remain bound under this Agreement without regard to whether either party shall be released from any Claim or any Guarantor Payment, with or without the consent of the other parties hereto.

8.

a. El Ad Guarantor represents and warrants to Peebles Guarantor as follows:

i. El Ad Guarantor has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of El Ad Guarantor enforceable in accordance with its terms and conditions, except as such enforceability may be limited by bankruptcy, insolvency, liquidation, moratorium, reorganization or other similar laws affecting rights of creditors generally and by general principles of equity (regardless of whether considered in a proceeding at law or in equity).

ii. Neither the execution and the delivery of this Agreement, nor the performance of El Ad Guarantor's obligations hereunder will (i) violate any statute, regulation, rule, injunction, judgment, order, decree, charge or other restriction of any government, governmental agency, or court to which El Ad Guarantor is subject or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right

to accelerate, terminate, modify or cancel, or require any notice or consent which has not been given or obtained, under any agreement, contract, lease, license, instrument, or other arrangement to which El Ad Guarantor is a party or by which it is bound or to which any of its assets are subject.

b. Peebles Guarantor represents and warrants to El Ad Guarantor as follows:

i. Peebles Guarantor has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of Peebles Guarantor enforceable in accordance with its terms and conditions, except as such enforceability may be limited by bankruptcy, insolvency, liquidation, moratorium, reorganization or other similar laws affecting rights of creditors generally and by general principles of equity (regardless of whether considered in a proceeding at law or in equity).

ii. Neither the execution and the delivery of this Agreement, nor the performance of the obligations of Peebles Guarantor hereunder will (i) violate any statute, regulation, rule, injunction, judgment, order, decree, charge or other restriction of any government, governmental agency, or court to which Peebles Guarantor is subject or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice or consent which has not been given or obtained, under any agreement, contract, lease, license, instrument, or other arrangement to which Peebles Guarantor is a party or by which it is bound or to which any of its assets are subject.

9. To the extent that either party makes a payment or payments to the other under this Agreement, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, the portion of such payment or repayment which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as to the time immediately preceding such initial payment, reduction or satisfaction.

10. No delay on the part of a party hereto in the exercise of any right or remedy arising under this Agreement or otherwise with respect to all or any part of the Guarantor Payment, shall operate as a waiver thereof, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof. No modification or waiver of any of the provisions of this Agreement shall be binding upon a party hereto, except as expressly set forth in a writing duly signed and delivered by such party. Failure by a party hereto at any time or times hereafter to require strict performance by the other of all or part of such party's obligations hereunder shall not waive, affect or diminish any right of such party at any time or times hereafter to demand strict performance thereof. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

11. This Agreement shall become effective upon its execution by El Ad, El Ad Guarantor, Peebles and Peebles Guarantor. This Agreement shall continue in full force and

effect and may not be terminated or otherwise revoked until each Guaranty terminates in accordance with its terms or has been terminated by Mezz Lender or Administrative Agent, as applicable, or all applicable statutes of limitation with respect to each such Guaranty has expired, whichever occurs later, or except as expressly set forth in a writing duly signed and delivered by El Ad, El Ad Guarantor, Peebles and Peebles Guarantor.

12. This Agreement shall be binding upon, and shall inure to the benefit of, El Ad, El Ad Guarantor, Peebles and Peebles Guarantor and their respective successors and permitted assigns (and Tshuva is an express third-party beneficiary of this Agreement). All references herein to a party shall be deemed to include their respective successors and permitted assigns, which shall include, without limitation, such party's respective receivers, trustees, debtors-in-possession or any person that acquires all or substantially all of the assets of such party. Notwithstanding the foregoing, no party hereto (including the El Ad Guarantor and the Peebles Guarantor) shall have the right to assign its rights and obligations under this Agreement without the prior written consent of the other parties hereto (which consent may be given or withheld in each party's sole discretion), and any such purported assignment in violation of the terms hereof shall be null and void and shall have no force or effect.

13. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

14. At any time, and from time to time after the date hereof, each party shall, without further consideration and at its own costs and expense, execute and deliver such additional agreements, instruments documents or certificates and take such further action as shall reasonably be requested by any other party to this Agreement in order to carry out the provisions of this Agreement.

15. This Agreement contains the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes all prior oral or written agreements and understandings concerning the subject matter hereof, and it is agreed that there are no terms, understandings, representations, or warranties, express or implied, other than those set forth herein. Neither this Agreement nor any term hereof may be changed, waived, discharged, or terminated unless such change, waiver, discharge or termination is in writing, signed by each party hereto.

16. This Agreement is for the purpose of defining the respective rights and obligations of the parties hereto and is not for the benefit of any creditor or other third party.

17. Each of the parties hereto represents and warrants that it has consulted with its advisors and counsel with respect to its obligations under this Agreement and the adequacy of the consideration that it has received with respect thereto, and that such consideration is in all respects adequate and the value thereof is not less than the value of its obligations under this Agreement.

18. Any notice, request, demand or other communication to be given hereunder to any party shall be given by hand delivery, by overnight carrier, or by electronic mail, and shall be deemed to have been duly received: if delivered by hand or overnight courier, when received by the party to whom such notice is to be given (or receipt is refused), if by electronic mail, when transmitted and received, if sent during regular business hours on a business day, or if not, on the next business day in each case at the addresses or electronic mail addresses set forth below (or such other address as a party may designate in accordance with the terms of this Paragraph):

If to El Ad Guarantor:

c/o El Ad US Holding, Inc.  
575 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10023  
Attention: Sheara A. Arbit, Esq.  
Email: sarbit@eladgroup.com

With a copy to (which shall not constitute notice):

Davis Polk & Wardwell, LLP  
450 Lexington Avenue, Flr. 21  
New York, New York 10017  
Attention: Michael J. Rishty, Esq.  
Email: michael.rishty@davispolk.com

If to Peebles Guarantor:

c/o The Peebles Corporation  
745 Fifth Avenue, 16<sup>th</sup> Floor  
New York, New York 10151  
Attention: R. Donahue Peebles & Lowell Plotkin, Esq.  
Email: [rdpceo@peeblescorp.com](mailto:rdpceo@peeblescorp.com) & [lplotkin@peeblescorp.com](mailto:lplotkin@peeblescorp.com)

With a copy to (which shall not constitute notice):

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention: James P. Godman, Esq.  
Email: jgodman@kramerlevin.com

Any party may change its address for receiving notices by giving written notice of such change to the other parties in a manner permitted under this Agreement.

19. This Agreement shall be construed in accordance with the laws of the State of New York without reference to principles of conflicts of laws.

20. This Agreement may be executed in any number of duplicate originals (including via facsimile or pdf.) and each such duplicate original shall be deemed to constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of  
the date first above written.

**F&C 60 LLC,**  
a Delaware limited liability company

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

**EL-AD GROUP, LTD.**  
an Bermuda exempted company

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

**CIVIC CENTER COMMUNITY GROUP  
BROADWAY MEZZANINE LLC,**  
a New York limited liability company

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

**R. DONAHUE PEEBLES**

\_\_\_\_\_

## REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (7/2012)

Supreme COURT, COUNTY OF New York

Index No: 651533/2017 Date Index Issued: 03/24/2017

CAPTION: Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

F&amp;C 60 LLC

Plaintiff(s)/Petitioner(s)

-against-

R. DONAHUE PEEBLES, THE PEEBLES CORPORATION, and CIVIC CENTER COMMUNITY GROUP BROADWAY MEZZANINE

Defendant(s)/Respondent(s)

## NATURE OF ACTION OR PROCEEDING:

Check ONE box only and specify where indicated.

## MATRIMONIAL

☐ Contested

**NOTE:** For all Matrimonial actions where the parties have children under the age of 18, complete and attach the **MATRIMONIAL RJ1 Addendum**.  
For Uncontested Matrimonial actions, use RJ1 form UD-13.

## TORTS

☐ Asbestos☐ Breast Implant☐ Environmental: \_\_\_\_\_ (specify)☐ Medical, Dental, or Podiatric Malpractice☐ Motor Vehicle☐ Products Liability: \_\_\_\_\_ (specify)☐ Other Negligence: \_\_\_\_\_ (specify)☐ Other Professional Malpractice: \_\_\_\_\_ (specify)☐ Other Tort: \_\_\_\_\_ (specify)

## OTHER MATTERS

☐ Certificate of Incorporation/Dissolution [see NOTE under Commercial]☐ Emergency Medical Treatment☐ Habeas Corpus☐ Local Court Appeal☐ Mechanic's Lien☐ Name Change☐ Pistol Permit Revocation Hearing☐ Sale or Finance of Religious/Not-for-Profit Property☐ Other: \_\_\_\_\_ (specify)

## COMMERCIAL

☐ Business Entity (including corporations, partnerships, LLCs, etc.)☒ Contract☐ Insurance (where insurer is a party, except arbitration)☐ UCC (including sales, negotiable instruments)☐ Other Commercial: \_\_\_\_\_ (specify)

**NOTE:** For Commercial Division assignment requests [22 NYCRR § 202.70(d)], complete and attach the **COMMERCIAL DIV RJ1 Addendum**.

## REAL PROPERTY: How many properties does the application include? \_\_\_\_\_

☐ Condemnation☐ Mortgage Foreclosure (specify): ☐ Residential ☐ Commercial

Property Address: \_\_\_\_\_ Street Address City State Zip

**NOTE:** For Mortgage Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the **FORECLOSURE RJ1 Addendum**.

☐ Tax Certiorari - Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_☐ Tax Foreclosure☐ Other Real Property: \_\_\_\_\_ (specify)

## SPECIAL PROCEEDINGS

☐ CPLR Article 75 (Arbitration) [see NOTE under Commercial]☐ CPLR Article 78 (Body or Officer)☐ Election Law☐ MHL Article 9.60 (Kendra's Law)☐ MHL Article 10 (Sex Offender Confinement-Initial)☐ MHL Article 10 (Sex Offender Confinement-Review)☐ MHL Article 81 (Guardianship)☐ Other Mental Hygiene: \_\_\_\_\_ (specify)☐ Other Special Proceeding: \_\_\_\_\_ (specify)

## STATUS OF ACTION OR PROCEEDING:

Answer YES or NO for EVERY question AND enter additional information where indicated.

YES NO

Has a summons and complaint or summons w/notice been filed?

☒

If yes, date filed: 03/23/2017

Has a summons and complaint or summons w/notice been served?

☐

If yes, date served: \_\_\_\_\_

Is this action/proceeding being filed post-judgment?

☐

If yes, judgment date: \_\_\_\_\_

**NATURE OF JUDICIAL INTERVENTION:**

Check ONE box only AND enter additional information where indicated.

- ☐ Infant's Compromise  
☐ Note of Issue and/or Certificate of Readiness  
☐ Notice of Medical, Dental, or Podiatric Malpractice  
☐ Notice of Motion  
☐ Notice of Petition  
☐ Order to Show Cause  
☐ Other Ex Parte Application  
☐ Poor Person Application  
☒ Request for Preliminary Conference  
☐ Residential Mortgage Foreclosure Settlement Conference  
☐ Writ of Habeas Corpus  
☐ Other (specify): \_\_\_\_\_

Date Issue Joined: \_\_\_\_\_

Relief Sought: \_\_\_\_\_

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

Relief Sought: \_\_\_\_\_

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

Relief Sought: \_\_\_\_\_

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

Relief Sought: \_\_\_\_\_

**RELATED CASES:**

List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

If additional space is required, complete and attach the **RJI Addendum**. If none, leave blank.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case
Civic Center Community Group Broadway Mezzanine LLC v. F&C 60	656300/2016	N.Y. Cnty. Sup. Ct.	Sherwood	Overlapping transactions

**PARTIES:**

For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided.

If additional space is required, complete and attach the **RJI Addendum**.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	<b>F&amp;C 60 LLC</b> Last Name First Name Primary Role: Plaintiff Secondary Role (if any):	<b>Kasowitz</b> Last Name <b>Marc</b> First Name <b>Kasowitz, Benson, Torres &amp; Friedman LLP</b> Firm Name <b>1633 Broadway</b> Street Address <b>New York</b> City <b>New York</b> State <b>10019</b> Zip <b>+1 (212) 506-1700</b> Phone <b>+1 (212) 506-1800</b> Fax <b>mkasowitz@kasowitz.com</b> e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	<b>Peebles</b> Last Name <b>R. Donahue</b> First Name Primary Role: Defendant Secondary Role (if any):	<b>Friedberg</b> Last Name <b>Barry</b> First Name <b>Trachtenberg Rodes &amp; Friedberg LLP</b> Firm Name <b>545 Fifth Avenue</b> Street Address <b>New York</b> City <b>New York</b> State <b>10017</b> Zip <b>+1 (212) 972-2929</b> Phone <b>+1 (212) 972-7581</b> Fax <b>bfriedberg@trflaw.com</b> e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	<b>The Peebles Corporation</b> Last Name First Name Primary Role: Defendant Secondary Role (if any):	<b>Friedberg</b> Last Name <b>Barry</b> First Name <b>Trachtenberg Rodes &amp; Friedberg LLP</b> Firm Name <b>545 Fifth Avenue</b> Street Address <b>New York</b> City <b>New York</b> State <b>10017</b> Zip <b>+1 (212) 972-2929</b> Phone <b>+1 (212) 972-7581</b> Fax <b>bfriedberg@trflaw.com</b> e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	<b>Civic Center Community Group Broadway</b> Last Name First Name Primary Role: Defendant Secondary Role (if any):	<b>Friedberg</b> Last Name <b>Barry</b> First Name <b>Trachtenberg Rodes &amp; Friedberg LLP</b> Firm Name <b>545 Fifth Avenue</b> Street Address <b>New York</b> City <b>New York</b> State <b>10017</b> Zip <b>+1 (212) 972-2929</b> Phone <b>+1 (212) 972-7581</b> Fax <b>bfriedberg@trflaw.com</b> e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 03/24/2017

1309871

ATTORNEY REGISTRATION NUMBER

SIGNATURE

Marc E. Kasowitz

PRINT OR TYPE NAME



SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

## Plaintiff / Petitioner:

F&amp;C 60 LLC

## Defendant / Respondent:

R. Donahue Peebles, The Peebles Corporation and  
Civic Center Community Group Broadway Mezzanine

## AFFIDAVIT OF SERVICE

Index No:

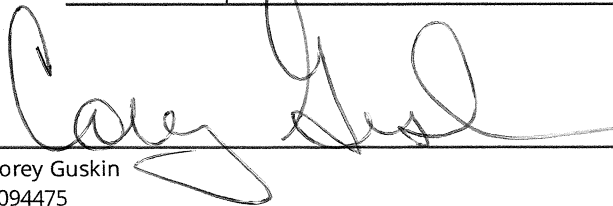
651533/2017

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 1802 Echo Place, Merrick, NY 11566. That on Fri, Mar 24, 2017 at 12:32 PM at 745 Fifth Avenue, Suite 1610, New York, NY 10151 deponent served the within Summons, Complaint, Exhibit 1, Request for Judicial Intervention - Commercial Division Addendum and Notice of Commencement of Action Subject to Mandatory Electronic Filing (Received Mar 24, 2017 at 10:11 am EDT) on R. Donahue Peebles


- ☐ **Individual:** by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- ☐ **Corporation:** \_\_\_\_\_ a defendant, therein named, by delivering a true copy of each to \_\_\_\_\_ personally, deponent knew said corporation so served to be the corporation described, and knew said individual to be \_\_\_\_\_ thereof.
- ☒ **Suitable Person:** by delivering thereat, a true copy of each to Dikla Carmel, a person of suitable age and discretion.
- ☐ **Affixing to Door:** by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at \_\_\_\_\_
- ☒ **Mailing:** Deponent completed service by depositing a copy of same in a first class mailing in an envelope properly addressed at: R. Donahue Peebles, 745 Fifth Avenue, Suite 1610, New York, NY 10151, in an official depository under the exclusive care and custody of the United States Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant. A first class mailing was effected on Fri, Mar 24, 2017.
- ☒ **Military Service:** On Fri, Mar 24, 2017 at 12:32 PM at 745 Fifth Avenue, Suite 1610, New York, NY 10151, deponent asked Dikla Carmel, whether defendant was in active military service of the United States or the State of New York in any capacity whatever or is a dependent of anyone in the military and received a negative reply and that the person so served wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the defendant so served is not in the military service in either New York State or the United States as that term is defined in either the New York statutes or the Federal statutes including the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and the New York "Soldiers' and Sailors' Civil Relief Act.

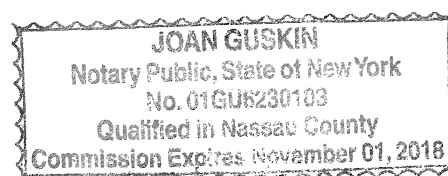
## Description:

Age: 35 Ethnicity: Caucasian Gender: Female Weight: 120  
 Height: 5'5" Hair: Black Eyes: \_\_\_\_\_ Relationship: Authorized  
 Other White skin and parents born in Israel

  
 Corey Guskin  
 1094475

Sworn to before me on 24<sup>th</sup> day of March 2017

  
 Notary Public



SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

## Plaintiff / Petitioner:

F&amp;C 60 LLC

## Defendant / Respondent:

R. Donahue Peebles, The Peebles Corporation and  
Civic Center Community Group Broadway Mezzanine

## AFFIDAVIT OF SERVICE

Index No:

651533/2017

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 1802 Echo Place, Merrick, NY 11566. That on Fri, Mar 24, 2017 at 04:36 PM at 545 Fifth Avenue, 6th Floor, New York, NY 10017 deponent served the within Summons, Complaint, Exhibit 1, Request for Judicial Intervention - Commercial Division Addendum and Notice of Commencement of Action Subject to Mandatory Electronic Filing (Received Mar 24, 2017 at 10:11 am EDT) on R. Donahue Peebles, c/o Barry J. Friedberg at Trachtenberg Rodes & Friedberg LLP

- ☐ **Individual:** by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- ☒ **Law Firm:** R. Donahue Peebles, c/o Barry J. Friedberg, of Trachtenberg, Rodes & Friedberg LLP, by serving the defendant's attorney, therein named, by delivering a true copy of each to Felipe Rubio, personally, deponent knew said law firm so served to be the law firm described, and knew said individual to be Legal Assistant thereof.
- ☐ **Suitable Person:** by delivering thereat, a true copy of each to \_\_\_\_\_ a person of suitable age and discretion.
- ☐ **Affixing to Door:** by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at \_\_\_\_\_
- ☐ **Mailing:** Deponent completed service by depositing a copy of same in a first class and certified mailing in two envelopes properly addressed at: \_\_\_\_\_, in an official depository under the exclusive care and custody of the United States Postal Service within New York State. The envelopes bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the respondent. A first class and certified mailing was effected on \_\_\_\_\_. (See attached receipt and certified mailing #: \_\_\_\_\_)
- ☐ **Military Service:** On \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_, deponent asked \_\_\_\_\_, whether respondent was in active military service of the United States or the State of New York in any capacity whatever or is a dependent of anyone in the military and received a negative reply and that the person so served wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the respondent so served is not in the military service in either New York State or the United States as that term is defined in either the New York statutes or the Federal statutes including the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and the New York "Soldiers' and Sailors' Civil Relief Act.

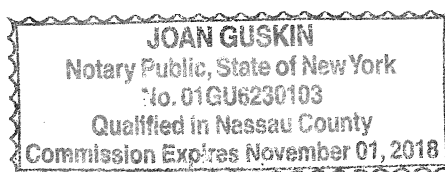
## Description:

Age: 27 Ethnicity: Hispanic Gender: Male Weight: 170  
Height: 5'10" Hair: Black Eyes: \_\_\_\_\_ Relationship: Legal Assistant  
Other Brown skin. Felipe Rubio called Barry J. Friedberg to obtain authorization to accept the legal documents.

Corey Guskin  
1094475

Sworn to before me on 24<sup>th</sup> day of March 2017

Notary Public



SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

## Plaintiff / Petitioner:

F&amp;C 60 LLC

## Defendant / Respondent:

R. Donahue Peebles, The Peebles Corporation and  
Civic Center Community Group Broadway Mezzanine

## AFFIDAVIT OF SERVICE

Index No:

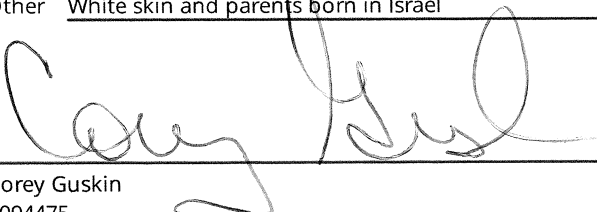
651533/2017

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 1802 Echo Place, Merrick, NY 11566. That on Fri, Mar 24, 2017 at 12:32 PM at 745 Fifth Avenue, Suite 1610, New York, NY 10151 deponent served the within Summons, Complaint, Exhibit 1, Request for Judicial Intervention - Commercial Division Addendum and Notice of Commencement of Action Subject to Mandatory Electronic Filing (Received Mar 24, 2017 at 10:11 am EDT) on The Peebles Corporation

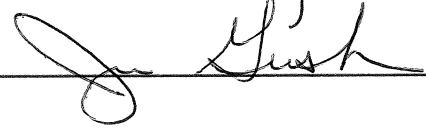
- ☐ **Individual:** by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- ☒ **Corporation:** The Peebles Corporation, a defendant, therein named, by delivering a true copy of each to Dikla Carmel, personally, deponent knew said corporation so served to be the corporation described, and knew said individual to be Chief Administrative Officer / Authorized thereof.
- ☐ **Suitable Person:** by delivering thereat, a true copy of each to \_\_\_\_\_ a person of suitable age and discretion.
- ☐ **Affixing to Door:** by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at \_\_\_\_\_
- ☐ **Mailing:** Deponent completed service by depositing a copy of same in a first class and certified mailing in two envelopes properly addressed at: \_\_\_\_\_, in an official depository under the exclusive care and custody of the United States Postal Service within New York State. The envelopes bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the respondent. A first class and certified mailing was effected on \_\_\_\_\_ . (See attached receipt and certified mailing #: \_\_\_\_\_)
- ☐ **Military Service:** On \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_, deponent asked \_\_\_\_\_, whether respondent was in active military service of the United States or the State of New York in any capacity whatever or is a dependent of anyone in the military and received a negative reply and that the person so served wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the respondent so served is not in the military service in either New York State or the United States as that term is defined in either the New York statutes or the Federal statutes including the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and the New York "Soldiers' and Sailors' Civil Relief Act.

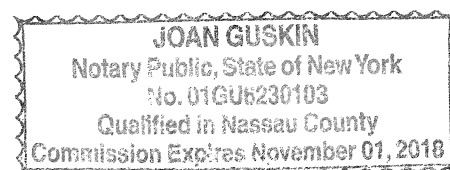
## Description:

Age: 35 Ethnicity: Caucasian Gender: Female Weight: 120  
 Height: 5'5" Hair: Black Eyes: \_\_\_\_\_ Relationship: Authorized  
 Other White skin and parents born in Israel

  
 Corey Guskin  
 1094475

Sworn to before me on 24th day of March 2017

  
 Notary Public



SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

## Plaintiff / Petitioner:

F&amp;C 60 LLC

## Defendant / Respondent:

R. Donahue Peebles, The Peebles Corporation and  
Civic Center Community Group Broadway Mezzanine

## AFFIDAVIT OF SERVICE

Index No:

651533/2017

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 1802 Echo Place, Merrick, NY 11566. That on Fri, Mar 24, 2017 at 04:36 PM at 545 Fifth Avenue, New York, NY 10017 deponent served the within Summons, Complaint, Exhibit 1, Request for Judicial Intervention - Commercial Division Addendum and Notice of Commencement of Action Subject to Mandatory Electronic Filing (Received Mar 24, 2017 at 10:11 am EDT) on The Peebles Corporation c/o Barry J. Friedberg at Trachtenberg Rodes & Friedberg LLP

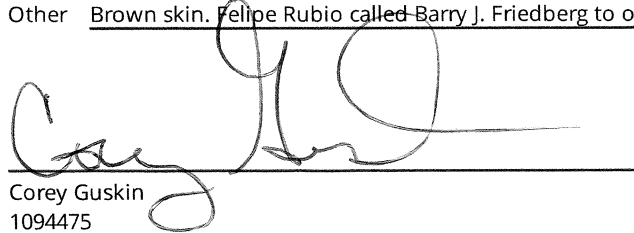
- ☐ **Individual:** by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- ☒ **Law Firm:** The Peebles Corporation c/o Barry J. Friedberg at Trachtenberg Rodes & Friedberg LLP, the defendan's attorney, therein named, by delivering a true copy of each to Felipe Rubio personally, deponent knew said law firm so served to be the law firm described, and knew said individual to be Legal Assistant thereof.
- ☐ **Suitable Person:** by delivering thereat, a true copy of each to \_\_\_\_\_ a person of suitable age and discretion.
- ☐ **Affixing to Door:** by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at \_\_\_\_\_
- ☐ **Mailing:** Deponent completed service by depositing a copy of same in a first class and certified mailing in two envelopes properly addressed at: \_\_\_\_\_, in an official depository under the exclusive care and custody of the United States Postal Service within New York State. The envelopes bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the respondent. A first class and certified mailing was effected on \_\_\_\_\_. (See attached receipt and certified mailing #: \_\_\_\_\_)
- ☐ **Military Service:** On \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_, deponent asked \_\_\_\_\_, whether respondent was in active military service of the United States or the State of New York in any capacity whatever or is a dependent of anyone in the military and received a negative reply and that the person so served wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the respondent so served is not in the military service in either New York State or the United States as that term is defined in either the New York statutes or the Federal statutes including the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and the New York "Soldiers' and Sailors' Civil Relief Act.

## Description:

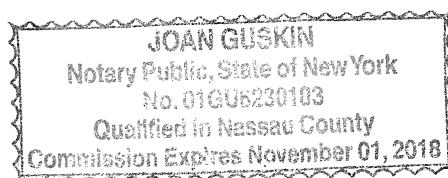
Age: 27 Ethnicity: Hispanic Gender: Male Weight: 170  
Height: 5'10" Hair: Black Eyes: \_\_\_\_\_ Relationship: Legal Assistant  
Other Brown skin. Felipe Rubio called Barry J. Friedberg to obtain authorization to accept the legal documents.

Sworn to before me on

24th day of March 2017

  
Corey Guskin  
1094475

Notary Public



SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

## Plaintiff / Petitioner:

F&amp;C 60 LLC

## Defendant / Respondent:

R. Donahue Peebles, The Peebles Corporation and  
Civic Center Community Group Broadway Mezzanine

## AFFIDAVIT OF SERVICE

Index No:


651533/2017

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 1802 Echo Place, Merrick, NY 11566. That on Fri, Mar 24, 2017 at 12:32 PM at 745 Fifth Avenue, Suite 1610, New York, NY 10151 deponent served the within Summons, Complaint, Exhibit 1, Request for Judicial Intervention - Commercial Division Addendum and Notice of Commencement of Action Subject to Mandatory Electronic Filing (Received Mar 24, 2017 at 10:11 am EDT) on Civic Center Community Group Broadway Mezzanine

- ☐ **Individual:** by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- ☒ **Business Entity:** Civic Center Community Group Broadway Mezzanine, a defendant, therein named, by delivering a true copy of each to Dikla Carmel, personally, deponent knew said business entity so served to be the business entity described, and knew said individual to be Chief Administrative Officer / Authorized thereof.
- ☐ **Suitable Person:** by delivering thereat, a true copy of each to \_\_\_\_\_ a person of suitable age and discretion.
- ☐ **Affixing to Door:** by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at \_\_\_\_\_
- ☐ **Mailing:** Deponent completed service by depositing a copy of same in a first class and certified mailing in two envelopes properly addressed at: \_\_\_\_\_, in an official depository under the exclusive care and custody of the United States Postal Service within New York State. The envelopes bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the respondent. A first class and certified mailing was effected on \_\_\_\_\_. (See attached receipt and certified mailing #: \_\_\_\_\_)
- ☐ **Military Service:** On \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_, deponent asked \_\_\_\_\_, whether respondent was in active military service of the United States or the State of New York in any capacity whatever or is a dependent of anyone in the military and received a negative reply and that the person so served wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the respondent so served is not in the military service in either New York State or the United States as that term is defined in either the New York statutes or the Federal statutes including the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and the New York "Soldiers' and Sailors' Civil Relief Act.

## Description:

Age: 35 Ethnicity: Caucasian Gender: Female Weight: 120  
 Height: 5'5" Hair: Black Eyes: \_\_\_\_\_ Relationship: Authorized  
 Other White skin and parents born in Israel

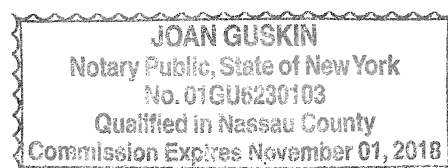
  
 Corey Guskin  
 1094475

Sworn to before me on

24th day of March 2017

Notary Public





SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

## Plaintiff / Petitioner:

F&amp;C 60 LLC

## Defendant / Respondent:

R. Donahue Peebles, The Peebles Corporation  
and Civic Center Community Group Broadway Mezzanine

## AFFIDAVIT OF SERVICE

Index No:

651533/2017

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 1802 Echo Place, Merrick, NY 11566. That on Fri, Mar 24, 2017 at 04:36 PM at 545 Fifth Avenue, New York, NY 10017 deponent served the within Summons, Complaint, Exhibit 1, Request for Judicial Intervention - Commercial Division Addendum and Notice of Commencement of Action Subject to Mandatory Electronic Filing (Received Mar 24, 2017 at 10:11 am EDT) on Civic Center Community Group Broadway Mezzanine c/o Barry J. Friedberg at Trachtenberg Rodes & Friedberg LLP

- ☐ **Individual:** by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- ☒ **Law Firm:** Civic Center Community Group Broadway Mezzanine c/o Barry J. Friedberg at Trachtenberg Rodes & Friedberg LLP, the defendant's attorney, therein named, by delivering a true copy of each to Felipe Rubio, personally, deponent knew said law firm so served to be the law firm described, and knew said individual to be Legal Assistant thereof.
- ☐ **Suitable Person:** by delivering thereat, a true copy of each to \_\_\_\_\_ a person of suitable age and discretion.
- ☐ **Affixing to Door:** by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at \_\_\_\_\_
- ☐ **Mailing:** Deponent completed service by depositing a copy of same in a first class and certified mailing in two envelopes properly addressed at: \_\_\_\_\_, in an official depository under the exclusive care and custody of the United States Postal Service within New York State. The envelopes bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the respondent. A first class and certified mailing was effected on \_\_\_\_\_. (See attached receipt and certified mailing #: \_\_\_\_\_)
- ☐ **Military Service:** On \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_, deponent asked \_\_\_\_\_, whether respondent was in active military service of the United States or the State of New York in any capacity whatever or is a dependent of anyone in the military and received a negative reply and that the person so served wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the respondent so served is not in the military service in either New York State or the United States as that term is defined in either the New York statutes or the Federal statutes including the Act of Congress known as the "Soldiers' and Sailors' Civil Relief Act of 1940" and the New York "Soldiers' and Sailors' Civil Relief Act.

## Description:

Age: 27 Ethnicity: Hispanic Gender: Male Weight: 170  
Height: 5'10" Hair: Black Eyes: \_\_\_\_\_ Relationship: Legal Assistant  
Other Brown skin. Felipe Rubio called Barry J. Friedberg to obtain authorization to accept the legal documents.

Corey Guskin  
1094475

Sworn to before me on

24th day of March 2017

Notary Public

