
FIFTH AMENDMENT

TO

OFFERING PLAN OF

COOPERATIVE CONVERSION OF

PREMISES KNOWN AS

121-123 East 88th Street
New York, New York

Dated: November 18, 1987

File No. C850134

THIS AMENDMENT MODIFIES AND SUPPLEMENTS THE TERMS OF THE ORIGINAL OFFERING PLAN DATED JANUARY 2, 1986 AND THE FOUR PRIOR AMENDMENTS THERETO, AND SHOULD BE READ IN CONJUNCTION WITH SAID PLAN AND PRIOR AMENDMENTS.

121-123 East 88th Street
New York, New York

Holder of Unsold Shares:
Aval Company

Apartment Corporation:
121-123 East 88th Street Apartments, Inc..

**FIFTH AMENDMENT TO OFFERING PLAN
OF COOPERATIVE OWNERSHIP**

This Amendment modifies and supplements the terms of the Offering Plan dated January 2, 1986 and the four prior amendments thereto and should be read in conjunction with said Plan and prior amendments. The Plan and said prior amendments are hereinafter collectively called the "Plan".

The terms of this Fifth Amendment are as follows:

1. Status of Sales at Closing

At the time of closing, Subscription Agreements were consummated for an aggregate of 1,130 shares allocated to 4 apartments. In addition, at the time of closing there were outstanding Subscription Agreements for 1,115 shares allocated to 4 apartments.

2. The Closing

The Closing was held on June 9, 1987 at the offices of Snow Becker Krauss P.C., 605 Third Avenue, New York, New York 10158. At Closing, the Sponsor transferred to the Apartment Corporation title to the Property in exchange for (i) 7,630 shares of the Apartment Corporation (constituting all "Unsold Shares", including those shares for which Subscription Agreements were not consummated at closing), (ii) the net proceeds realized from the shares then sold after deducting the Reserve Fund and all costs and expenses incurred by the Apartment Corporation in connection with the promulgation and consummation of the Plan as set forth below, and (iii) the Wraparound Mortgage and Note in the principal amount of \$550,000 representing the balance of the net proceeds realized on the sale of the shares, was paid to Sponsor.

All apartments subscribed for as of the closing have closed. A list of the Unsold Apartments is set forth as Exhibit A annexed hereto.

The Apartment Corporation realized a total of \$343,025 from the sale of its shares, which money was used as follows: (i) \$91,656.75 was used to pay the Offering Expenses; (ii) \$64,386 was retained as the Reserve Fund (see Paragraph 3 below); (iii) \$5,000 Working Capital Fund (see paragraph 4 below); and (iv) \$181,982.25 representing the balance of the net proceeds realized on the sale of the shares was paid to Sponsor.

The basis for the Property as of the closing date was \$808,517.59.

At Closing, the Apartment Corporation executed the Note and Wraparound Mortgage in the principal amount of \$550,000.

3. Reserve Fund

The Reserve Fund was fully funded under Local Law 10 at \$64,386. Said monies were deposited on June 12, 1987, in a special interest bearing money market account at Irving Trust Company, located at 65th Street and Third Avenue, New York, New York.

4. Working Capital Fund

In accordance with the Plan, the Apartment Corporation received a \$5,000 Working Capital Fund, of which amount \$5,000 was paid to Sponsor on account of closing adjustments (see paragraph 5 below), leaving the Apartment Corporation a net Working Capital Fund of \$0.

5. Net Closing Adjustments

At Closing, Sponsor and the Apartment Corporation apportioned various items of income and expense in accordance with the period that each owned the Property. The apportionments resulted in a net credit of \$23,666.45 in favor of Sponsor. In accordance with the terms of the Plan, of the amount due Sponsor, \$5,000 was paid from the Working Capital Fund and the balance of \$18,666.45 was represented by 12 serial promissory notes made by the Apartment Corporation to Sponsor, each in the amount of \$1,555.54 (except the final note in the amount of \$1,555.51), bearing interest at the rate of 10% per annum. The first serial note is due on September 1, 1987 and each succeeding note will mature monthly thereafter until the maturity of the 12th note on August 1, 1988.

6. New Contract of Sale

Appended to this Amendment as Exhibit B is the form of contract of sale to be used for reselling the Unsold Shares.

7. Addendum to Asbestos Statement and Report.

Appended to this Amendment as Exhibit C is an addendum to the Asbestos Statement and Report, which Report was originally included in the Third Amendment to the Plan.

8. Certified Financials

Appended to this Amendment as Exhibit D is a copy of the certified financials for the years ended 1985 and 1986 prepared by Yohalen Gillman and Company.

9. Effective Period for Using Plan is Extended

The Plan may be used for six (6) months from the date this Amendment is duly accepted for filing and thereafter said period is to be extended by a further amendment to the Plan.

10. Incorporation of Plan

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

11. Definitions

All terms used in this Fifth Amendment not otherwise defined herein shall have the same meaning ascribed to them in the Plan.

12. No Material Changes

Except as set forth in this Fifth Amendment, there have been no material changes in the Plan.

Dated: New York, New York
November 18, 1987

Holder of Unsold Shares:
Aval Company

Apartment Corporation:
121-123 East 88th Street Apartments, Inc.

(#1229G)

EXHIBIT A

LIST OF UNSOLD APARTMENTS

121 East 88th Street

<u>Apartment</u>	<u>Shares</u>
1A	250
2A	250
3A	240
1B	310
2B	315
4B	305
5B	300
1C	230
2C	330
3C	325
4C	320
5C	315

123 East 88th Street

2A	300
3A	295
4A	290
2B	305
3B	300
5B	290
1C	315
3C	315
4C	310
<u>5C</u>	<u>305</u>
22	6515

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT
Exhibit B
CONTRACT OF SALE — COOPERATIVE APARTMENT

Agreement

made as of the _____ day of _____ 19____
between AVAL COMPANY

~~residing at~~ having an office at 425 East 61st Street, New York, NY 10128

and hereinafter called "Seller"

residing at _____

hereinafter called "Purchaser"

WITNESSETH:

SHARES 1. Seller agrees to sell and transfer and Purchaser agrees to buy (i) _____ shares (the "Shares") of 121-123 East 88th Street Apartments, Inc.

(the "Corporation") allocated to Apartment _____ (the "Apartment") in the cooperative apartment building located at _____ East 88th Street, New York, NY

LEASE and (ii) the Seller's interest, as tenant, in the proprietary lease, as amended (the "Lease"), for the Apartment, which Lease is appurtenant to the Shares.

PERSONAL PROPERTY 2. (a) Subject to the rights of the landlord under the Lease and any holder of a mortgage to which the Lease is subordinate, this sale includes all of the Seller's right, title and interest, if any, in and to:

- (i) the refrigerators, ranges, dishwashers, kitchen cabinets and counters, lighting and plumbing fixtures, ~~and other fixtures and articles of property attached to or appurtenant to the Apartment, except those listed in subparagraph (b) of this Paragraph 2;~~ and other fixtures and articles of property attached to or appurtenant to the Apartment, except those listed in subparagraph (b) of this Paragraph 2;
- (ii)

- (b) Excluded from this sale are:
 - (i) furniture and furnishings, and
 - (ii) if the Apartment is presently occupied, all lighting fixtures, installations, built-ins and other personal property and equipment owned by such occupant and/or the Seller.

The property referred to in Paragraph 2(a)(i) and 2(a)(ii) may not be purchased if title to the Shares and the Lease is not closed hereunder.

PRICE 3. The purchase price is \$ _____ payable as follows: \$ _____ * by check, subject to collection, on the execution and delivery of this agreement; \$ _____ in cash, cashier's check or by unendorsed certified check of Purchaser drawn on a local bank or trust company, to the order of Seller, to be delivered at the closing.

WARRANTIES 4. Seller represents, warrants and covenants that: a) Seller is the sole owner of the Shares; the Lease ~~is the property of the Seller and the same are and will at closing be free and clear of liens, encumbrances and adverse interests, subject to the matters, if any, affecting the title to the real property of which the Apartment is a part; and Seller has the full right and power to sell and transfer the same;~~ the same are and will at closing be free and clear of liens, encumbrances and adverse interests, subject to the matters, if any, affecting the title to the real property of which the Apartment is a part; and Seller has the full right and power to sell and transfer the same; (b) the Shares were duly issued and fully paid for and are non-assessable; (c) the maintenance (rent) payable on the date hereof is at the rate of \$ _____ a month and at the date of closing will be fully paid to said date; (d) Seller has not received any written notice of any intended assessment or increase in said maintenance (rent) not reflected in the figure set forth in subparagraph (c); (e) the Lease is and will at closing be in full force and effect; (f) Seller is not and will not become indebted for labor or material which might give rise to the filing of a notice of mechanic's lien against the building in which the Apartment is located; (g) there are and will at closing be no violations of record which the tenant would be obligated to remedy under the terms of the Lease; ~~the Seller is not a Sponsor, and no other person is a Sponsor, of the Corporation.~~ See Rider

The representations and warranties contained in this Paragraph 4 and in Paragraph 14 shall survive the closing but any action based thereon must be instituted within one year from the date of closing.

NO OTHER REPRESENTATIONS 5. Purchaser has examined and is satisfied with the certificate of incorporation, the by-laws of the Corporation and the form of the Lease, or has waived the examination thereof. Purchaser has inspected the Apartment, its fixtures, appliances and equipment and the personal property, if any, included in the sale, and knows the condition thereof, and agrees to accept the same "as is", i.e., in the condition they are in on the date hereof subject to normal wear and tear. Purchaser has examined or waived examination of the last audited financial statement of the Corporation, and has considered or waived consideration of all other matters pertaining to this agreement and to the purchase to be made hereunder, and does not rely on any representations made by any broker or by Seller or anyone acting or purporting to act on behalf of Seller as to any matters which might influence or affect the decision to execute this agreement or to buy the Shares, the Lease, or said personal property except those representations and warranties which are specifically set forth in this agreement.

* Downpayment is payable to B.J. Gottesman Company Inc., Escrowee

BROKER 14. Purchaser represents to Seller that Purchaser has not dealt with any brokers in connection with this transaction other than
B.J. Gottesman Company, Inc.

and Seller agrees to pay said broker a commission, pursuant to a separate agreement.
See Rider

DEFAULT, REMEDIES 15. If Purchaser defaults hereunder, Seller's sole remedy shall be to retain as liquidated damages the down payment mentioned in Paragraph 3, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the down payment constitutes a fair and reasonable amount of damages in the circumstances. If Seller willfully defaults, Purchaser shall have such remedies as he is entitled to at law or in equity, including but not limited to specific performance because the Apartment and possession thereof cannot be duplicated.

ENTIRE AGREEMENT 16. All representations, understandings and agreements had between the parties with respect to the subject matter of this agreement are merged in this agreement which alone fully and completely expresses their agreement.

NO ASSIGNMENT BY PURCHASER 17. This agreement cannot be changed, discharged or terminated orally. Purchaser may not assign this agreement or any of his rights hereunder.

Note:
Either strike this paragraph because there is no financing condition to the transaction or complete the paragraph as required.

FINANCING CONDITION

21. A. The obligations of Purchaser hereunder are subject:

(a) to the issuance of a commitment letter by _____ a commercial bank, savings bank, savings and loan association or insurance company doing business in the State of New York to Purchaser, on or before _____ 19____ (a copy of which letter shall be furnished to Seller promptly after receipt thereof), pursuant to which the institution agrees to lend not less than \$ _____ prevailing rate of interest _____ upon the security of a pledge, security interest or assignment of, and/or mortgage on, the Shares and the Lease, in order to enable Purchaser to consummate the transaction provided herein;

(b) to the consent of the Corporation to the loan if such consent is required by the terms of the Lease or the by-laws of the Corporation and to the execution by the Corporation of an agreement, in form and substance satisfactory to the institution and the Corporation, for the protection of the institution's rights as a lender; and

(c) to the closing of the loan on or before the date fixed in Paragraph 10 for the closing.

B. Purchaser shall apply for the loan, shall furnish to the institution, within five (5) days of the date hereof, accurate and complete information on Purchaser and members of Purchaser's family, as required, shall advise Seller of the name and address of the institution to which such application has been made and the date upon which it was made and shall cause to be furnished to the Corporation, for its consideration, as soon as practicable, the agreement proposed to be made by the institution with the Corporation. Purchaser shall pay or reimburse Seller the fees charged by the Corporation and its counsel for reviewing and negotiating the aforesaid agreement.

C. Purchaser shall accept any commitment letter complying with the terms of subparagraph A(a) hereof, if issued, shall pay any application, appraisal, commitment or other fees in respect of the loan, and shall comply with the requirements of the commitment letter other than those relating to the Corporation.

D. Provided that Purchaser shall have fulfilled all of Purchaser's obligations under subparagraph B hereof, if the aforementioned commitment letter is not issued by the date provided for in subparagraph A(a) hereof, Purchaser shall have the right to terminate this agreement on Notice given not more than five (5) days thereafter, or if the other conditions provided for in subparagraph A hereof are not met, Purchaser shall have the right to terminate this agreement on Notice to Seller, and in either such event all sums theretofore paid on account of the purchase price shall be returned without delay and without interest to Purchaser, and all parties hereto shall be relieved of and from any further liability hereunder.

E. If purchaser fails to exercise such right of termination within said five (5) day period, or if purchaser shall fail to comply with the conditions set forth in paragraphs B and C above, then in either event, this contract shall remain in full force and effect, and purchaser shall no longer have the right to terminate this agreement in accordance with this paragraph 21.

SELLER'S EXCULPATION 18. Notwithstanding any contrary provisions of this agreement, express or implied, or any contrary rule of law or custom, if Seller shall be unable to transfer the Lease and the Shares in accordance with this agreement and any conditions hereof, then the sole obligation and liability of Seller shall be to refund to Purchaser, without interest, all sums theretofore paid on account of the purchase price, and upon the making of such refund this agreement shall be deemed cancelled and shall wholly cease and terminate, and neither party shall have any further claim against the other by reason of this agreement. However, nothing contained in this paragraph shall be construed to relieve Seller from liability due to a misrepresentation or wilful default.

NOTICES 19. All notices or demands ("Notice") that must or may be given or made hereunder shall be in writing and sent by certified or registered mail, return receipt requested, to the address above set forth for the party to whom the Notice is given, or to such other address for such party as said party shall hereafter designate by Notice given to the other party pursuant to this paragraph. Each Notice shall be deemed given on the next business day following the date of mailing the same.

MARGIN HEADINGS 20. The margin headings are intended only for convenience in finding the subject matter and do not constitute part of the text of this agreement and shall not be considered in the interpretation of this agreement or any of its provisions.

CONTINUED ON RIDER 22 AND 38 ATTACHED HERETO AND FORMING A PART HEREOF.

27. Supplementing and modifying Paragraphs 10 and 12, if through no fault of Seller, Purchaser, for any reason, fails to close on the date scheduled for closing in Paragraph 10 (the "Scheduled Closing Date"), then the apportionments for rent and utility charges due the Corporation shall be as of the midnight of the day preceding said Schedule Closing Date and not as of midnight of the day preceding the actual closing date. If Purchaser fails to complete payment of the Purchase Price and perform all his other obligations within thirty (30) days of the Scheduled Closing Date, Seller shall have the right (at Seller's sole option) to cancel this contract and retain the downpayment as liquidated damages (but in no event to exceed 10% of the Purchase Price).

28. Supplementing Paragraph 12(b), a letter from the Corporation or its managing agent as to the status of the rent, utility charges and assessments shall be sufficient for determining the apportionments.

29. Supplementing Paragraph 14, Purchaser agrees to indemnify and hold Seller harmless from and against any claim, judgment, liability, cost and expense (including without limitations, reasonable attorney's fees) resulting from any breach of Purchaser's representations set forth in Paragraph 14. The provisions of Paragraph 14 and this Paragraph shall survive closing.

30. All monies received under this Contract by Seller will be deposited and held in trust in a non-interest bearing account entitled "B.J. Gottesman Company, Inc., Special Account" at the Bank of New York, 51 W. 52nd Street, New York. The funds so deposited will be disbursed only at the closing hereunder or in the event this Contract is terminated or cancelled, same shall be paid, without interest, to the party entitled hereto, as provided elsewhere in this Contract. All monies received hereunder will be handled in accordance with the provisions of Sections 352-e(2)(b) and 352-h of the New York General Business Law.

31. Purchaser acknowledges having received and read the Plan to convert the Building to cooperative ownership, together with the Amendments thereto, at least three (3) full business days prior to signing this Contract of Sale.

32. The term "Purchaser" should be read as "Purchasers" if more than one person is purchasing the Apartment, in which case their obligations shall be deemed joint and several. The use of the masculine gender shall be deemed to refer to the feminine or neuter gender and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

33. Purchaser represents to Seller and to the Corporation that Purchaser is not less than 18 years of age and is purchasing the Apartment for his own account (beneficial and of record) and no corporation, partnership, association, estate or trust has or will have any equity interest, direct or indirect, in the Shares and Lease. Purchaser agrees to indemnify and hold harmless the Seller and the Corporation from all claims, judgments, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorney's fees and disbursements) that Seller and/or the Corporation may suffer or incur as a result of the breach, inaccuracy or untruthfulness or any of the foregoing representations. The provisions of this Paragraph shall inure to the benefit of both Seller and the Corporation and shall survive the closing.

INITIALS:

Seller

Purchaser

C. Purchaser agrees to forego any right he may have pursuant to Section 54(a) of the Code (which allows a proprietary lessee to recover possession in good faith) to evict a non-purchasing tenant and to abide by the requirements of Section 352-eeee of the General Business Law regarding the rights of such non-purchasing tenant and, in addition, to likewise bind his successors and assigns. The provisions of this subparagraph C shall survive the closing of title to the shares.

D. Purchaser agrees to appoint the managing agent employed by the Apartment Corporation as his agent to provide all services and facilities required by law to be provided to the non-purchasing tenant and to expend such reasonable monies on his behalf in connection therewith to the extent such services exceed the services which the Apartment Corporation is required to provide to tenant-shareholders under the Proprietary Lease and to likewise bind all his successors and assigns until such time as the non-purchasing tenant vacates the Apartment. The provisions of this subparagraph D shall survive the closing of title to the shares.

38. Real Property Transfer Gains Tax

Each Purchaser, at the time he submits his Contract of Sale, will be required to sign and execute and have notarized the "Transferee Form" in the form set forth as Exhibit A hereto. It will be the responsibility of Seller to pay the New York State Real Property Gains Tax in connection with the sale of the Apartment. The provisions this Paragraph 38 shall survive the closing.

39. Lender's Recognition Agreement

Purchasers receiving financing will be required to pay to the Apartment Corporation's designated counsel or agent at closing, a fee of \$150.00 for review and processing of the lender's recognition agreement.

40. Closing Fee

Each Purchaser will be required at closing to pay to the Apartment Corporation's designated counsel or agent a fee of \$200 for preparation of the Closing Documents, including the stock certificate, proprietary lease (or assignment of proprietary lease and acceptance and assumption of proprietary lease) and real property transfer tax returns. In addition, in the event the closing occurs at other than the office designated in paragraph 10 above, then there will be an additional attendance fee as follows:

- (a) \$150 in the event the closing occurs in the Borough of Manhattan;
- (b) \$250 in the event the closing occurs in the City of New York, outside the Borough of Manhattan;
- (c) \$400 in the event the closing occurs outside the City of New York.

INITIALS:

Seller

Purchaser

(#0752G)

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement the day and year first above written.

.....
Seller

.....
Seller

.....
Purchaser

.....
Purchaser

Seller

AVAL COMPANY

to

Purchaser

**CONTRACT OF SALE OF
COOPERATIVE APARTMENT
Form Approved by
The Cooperative Housing
Lawyers Group**

Apartment Number:

Address of Premises:
East 88th Street
New York, New York

Name of Cooperative Corporation:
121-123 East 88th Street
Apartments, Inc.

Exhibit D

AVAL COMPANY

PROPERTY AT 121-123 EAST 88TH STREET

STATEMENTS OF OPERATING REVENUES AND SPECIFIED EXPENSES

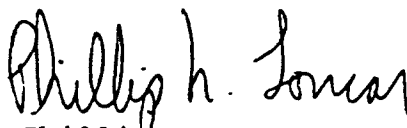
YEARS ENDED DECEMBER 31, 1986 AND 1985

contractor shall report the condition, verify it, and abate it as per the EPA regulations and the New York City and/or State Laws.

Please do not hesitate to contact our office if we may be of further assistance to you regarding this matter.

Very truly yours,

SUMRAY CONSTRUCTION CO., INC.

A handwritten signature in cursive script that reads "Phillip N. Loncar". The signature is written in dark ink and is positioned above the printed name and title.

Phillip N. Loncar
President

PNL/lk

YOHALEM GILLMAN & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

477 MADISON AVENUE, NEW YORK, NY 10022

(212) 371-2100

To the Partners of
Aval Company

We have examined the statements of operating revenues and specified expenses for the property at 121-123 East 88th Street, New York, N. Y. for the years ended December 31, 1986 and 1985. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In accordance with the terms of our engagement, the statements of operating revenues and specified expenses do not include as an expense, depreciation, mortgage financing costs or a provision for income taxes.

In our opinion, except as described above, the aforementioned financial statements present fairly the results of operations of the property at 121-123 East 88th Street, New York, N. Y. for the years ended December 31, 1986 and 1985, in conformity with generally accepted accounting principles applied on a consistent basis.

Yohalem Gillman & Company

New York, New York
April 15, 1987

AVAL COMPANY

PROPERTY AT 121-123 EAST 88TH STREET

NOTES TO STATEMENTS OF OPERATING REVENUES AND SPECIFIED EXPENSES

DECEMBER 31, 1986 AND 1985

Note 1 - Basis of Presentation

The financial statements include only operating revenues and those expenses which would be applicable to the operations of the property at 121-123 East 88th Street, New York as a cooperative housing corporation. Excluded items include depreciation, expenses for work done on specific apartments and a provision for income taxes.

Note 2 - Excluded Expenses

Repairs and painting on specific apartments amounted to \$14,698 in 1986 and \$1,068 in 1985 and have been excluded from total expenses. In addition, repairs and maintenance in 1986 include approximately \$18,700 of non-recurring repairs and painting.