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NINTH AMENDMENT

TO

OFFERING PLAN OF

COOPERATIVE CONVERSION OF

PREMISES KNOWN AS

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

Dated: January 29, 1992

File No. C850134

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

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

Holder of Unsold Shares:  
Aval Company

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

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NINTH AMENDMENT TO OFFERING PLAN  
OF COOPERATIVE OWNERSHIP

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

The terms of this Ninth Amendment are as follows:

1. List of Unsold Apartments

A list of Unsold Apartments together with the share allocation of each is set forth as Exhibit A hereto. The current price for all Unsold Apartments is negotiable and subject to change in accordance with the terms of the Plan. The Unsold Apartments are owned by the Holder of Unsold Shares free and clear and are not pledged as collateral to secure any debt.

2. Monthly Maintenance Charges and Monthly Rental Receipts for Unsold Apartments

Set forth as Exhibit B hereto is a chart which lists the aggregate number of occupied Unsold Apartments, vacant Unsold Apartments and total Unsold Apartments, including, for each category, the number Unsold Shares, the monthly maintenance charges payable and approximately monthly rents receivable, all as of January 1, 1992. The aggregate monthly maintenance charges for the Unsold Apartments is \$8,006.80. The aggregate monthly rental income for the Unsold Apartments is \$7,789.75.

3. Other Financial Obligations of the Holder of Unsold Shares Under the Plan

Except for the payment of maintenance charges on the Unsold Apartments, the Holder of Unsold Shares has no remaining financial obligations to the Apartment Corporation under the Plan.

**4. Sources of Payment for Financial Obligations by Holder of Unsold Shares**

The Holder of Unsold Shares is paying its financial obligations to the Apartment Corporation from a combination of rental receipts, reserves from the sale of Unsold Apartments and its other capital reserves. As of January 1, 1992, the Holder of Unsold Shares was current on all its financial obligations to the Apartment Corporation and has been current for the 12 months preceding the filing of this Amendment.

**5. Status of Financial Obligations Under Offering Plans In Which the Holder of Unsold Shares' Principals Own More Than Ten Percent of the Shares or Units**

Set forth as Exhibit C hereto is a list of other buildings subject to offering plans in which the Holder of Unsold Shares' respective principals are also principals in a sponsoring entity which owns more than 10% of the shares or units. Copies of the offering plans for these buildings are on file with the Department of Law and are available for public inspection. The respective sponsors of each of the other offerings listed on Exhibit C are current on their financial obligations to the cooperative, condominium or homeowners association, as the case may be.

**6. Board of Directors**

The current members of the Board of Directors are:

Diane Kelder and Jeffrey R. Grayzel, both elected by the tenant-shareholders; Ed Cohen, Kamran Hakim and Mirtha Aguirre, all elected by the Holder of Unsold Shares. The Holder of Unsold Shares will lose control of the Board of Directors on the earlier of (i) June 9, 1992 or (ii) the date the Holder of Unsold Shares owns less than fifty (50%) percent of the outstanding shares.

**7. Financial Statements**

Set forth as Exhibit D hereto is a copy of the 1989 and 1990 certified financial statements for the Apartment Corporation prepared by Yohalem Gillman & Company.

**8. GBL Section 352-e(2-d) Amendment**

General Business Law ("GBL") Section 352-e(2-d), a copy of which is set forth in Exhibit E hereto, became law on July 23, 1991. It applies to all cooperative and condominium conversion plans except those where all shares or units have been sold. The law is intended to provide financial protection for a cooperative corporation or condominium association if a sponsor or investor fails to make monthly payments for its units.

In compliance with this new statute, the Holder of Unsold Shares represents that:

- a. In the event payment of the maintenance, assessments or late fees by the Holder of Unsold Shares who does not occupy the Unsold Apartments is more than thirty days late, rental payments from the tenant shall become directly payable to the Apartment Corporation. When the Holder of Unsold Shares resumes payment of maintenance charges on a current basis, non-purchasing tenants will be notified within three business days of such payments becoming current and their rental payments will once again be payable to the Holder of Unsold Shares.
- b. The Holder of Unsold Shares will provide each non-purchasing tenant with irrevocable notice of the provisions contained in GBL Section 352-e(2-d).
- c. Any rights existing under any other laws are not limited by this statutory requirement.
- d. Payment by the non-purchasing tenant to the Apartment Corporation pursuant to GBL Section 352-e(2-d) relieves the non-purchasing tenant from the obligation to pay that rent to the Holder of Unsold Shares.
- e. These requirements apply to the Holder of Unsold Shares, its successors or assigns and all purchasers of Unsold Shares allocated to Unsold Apartments.

**9. Maintenance Increase**

Effective February 1991, the monthly maintenance charges increased 6-1/2 percent from \$1.39 to \$1.48 per share per month.

**10. Real Estate Tax Reduction**

The actual assessed valuation for the Property for the 1990/91 and 1991/92 tax years were reduced as follows:

121 East 88th Street

The 1990/1991 actual total assessed value for 121 East 88th Street was reduced from \$315,000 to \$285,000; the 1991/92 actual total assessed value for 121 East 88th Street was reduced from \$315,000 to \$255,000.

123 East 88th Street

The 1990/1991 actual total assessed value for 123 East 88th Street was reduced from \$315,000 to \$285,000; the 1991/92 actual total assessed value for 123 East 88th Street was reduced from \$315,000 to \$255,000.

**11. Escrow Account**

Contract deposits will be held in an escrow account entitled Snow Becker Krauss P.C. IOLA Ominbus Escrow Account at Chase Manhattan Bank, 60 East 42nd Street, New York, New York. The escrow agent is Snow Becker Krauss P.C., 605 Third Avenue, New York, New York 10158. The escrow account is an IOLA account. An IOLA account in an interest bearing account pursuant to New York State law whereby the interest income is deposited into an Interest On Lawyers Account Fund which New York State uses to provide additional funds for civil legal services programs and programs for the administration of justice. In no event will a purchaser be entitled to the interest income earned on this IOLA account.

**12. 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.

**13. 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.

**14. Definitions**

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

**15. No Material Changes**

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

Dated: New York, New York  
January 29, 1992

Holder of Unsold Shares:  
Aval Company

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

EXHIBIT A

AVAL COMPANY  
 Unsold Units - 121/123 E. 88th Street Apts., Inc.

	<u>Number of Shares</u>	<u>Monthly Maintenance</u>
<u>121 East 88th Street</u>		
1A	250	\$ 370.00
1B	310	458.80
1C	230	340.40
2B	315	466.20
2C	330	488.40
3C	325	481.00
4B	305	451.40
4C	320	473.60

<u>123 East 88th Street</u>		
1C	315	466.20
2A	300	444.00
2B	305	451.40
3A	295	436.60
3B	300	444.00
3C	315	466.20
4A	290	429.20
4C	310	458.80
5B	290	429.20
5C	305	451.40
		<u>\$8,006.80</u>

(2791C)

**EXHIBIT B**

**Unsold Apartments  
Financial Obligation Chart  
as of January 1, 1992**

	<u>Occupied</u>	<u>Vacant</u>	<u>Total</u>
Unsold Apartments:	18	0	18
Unsold Shares:	5,410	0	5,410
Monthly Maintenance Charges Payable:	\$8,006.80	\$0	\$8,006.80
Approximated Rental Income Receivable:	\$7,789.75	\$0	\$7,789.75
Net Monthly Income (Loss):	(\$217.05)	\$0	(\$217.05)

(2791C)

EXHIBIT C

Other Offering Plans in Which the Holder of Unsold Shares'  
Principals are Also Principals in a Sponsoring Entity  
which Owns More Than 10% of the Units or Shares

Offering Plan of Cooperative or  
Condominium Ownership of Premises

Holder of Unsold Shares' Principals

6485/6495 Broadway  
Bronx, New York

Edward Cohen

531 East 88th Street  
New York, New York

Kamran Hakim

(2791C)



121-123 EAST 88TH STREET APARTMENTS, INC.

FINANCIAL STATEMENTS

AND

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

DECEMBER 31, 1990 AND 1989

CONTENTS

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	P a g e s
Report of Independent Certified Public Accountants	1
Balance Sheets	2
Statements of Loss and Accumulated Deficit	3
Statements of Cash Flows	4
Notes to Financial Statements	5 - 6
Report of Independent Certified Public Accountants on Supplemental Information	7
Supporting Schedules	8

YOHALEM GILLMAN & COMPANY  
CERTIFIED PUBLIC ACCOUNTANTS

477 MADISON AVENUE, NEW YORK, NY 10022  
(212) 371-2100

Report of Independent Certified Public Accountants

To the Shareholders  
121-123 East 88th Street Apartments, Inc.

We have audited the accompanying balance sheets of 121-123 East 88th Street Apartments, Inc. as of December 31, 1990 and 1989, and the related statements of loss and accumulated deficit and cash flows for the years then ended. These financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of 121-123 East 88th Street Apartments, Inc. as of December 31, 1990 and 1989, and the results of its operations and its cash flows for the years then ended, in conformity with generally accepted accounting principles.

*Yohalem Gillman & Company*

New York, New York  
April 3, 1991

121-123 EAST 88TH STREET APARTMENTS, INC.

BALANCE SHEETS

DECEMBER 31, 1990 AND 1989

ASSETS

	<u>1990</u>	<u>1989</u>
Property, at cost		
Land	\$277,937	\$277,937
Building and improvements	<u>627,406</u>	<u>618,206</u>
	905,343	896,143
Less accumulated depreciation	<u>134,171</u>	<u>96,330</u>
	<u>771,172</u>	<u>799,813</u>
Other assets		
Cash and cash equivalents	14,926	23,937
Maintenance receivable	9,558	7,505
Escrow deposits	6,721	18,937
Prepaid expenses	14,039	5,461
Security deposits and other assets	3,370	3,529
Due from sponsor	496	-.-
	<u>49,110</u>	<u>59,369</u>
	<u>\$820,282</u>	<u>\$859,182</u>

LIABILITIES AND SHAREHOLDERS' EQUITY

Mortgage note payable	<u>\$550,000</u>	<u>\$550,000</u>
Other liabilities		
Note payable and other obligations to sponsor	-.-	4,038
Accounts payable and accrued expenses	<u>2,394</u>	<u>5,951</u>
	<u>2,394</u>	<u>9,989</u>
Shareholders' equity		
Common stock, \$1 par value; 8,760 shares authorized, issued and outstanding	8,760	8,760
Additional paid-in capital	349,510	349,510
Accumulated deficit	<u>(90,382)</u>	<u>(59,077)</u>
Total shareholders' equity	<u>267,888</u>	<u>299,193</u>
	<u>\$820,282</u>	<u>\$859,182</u>

The accompanying notes are an integral part of these statements.

121-123 EAST 88TH STREET APARTMENTS, INC.  
STATEMENTS OF LOSS AND ACCUMULATED DEFICIT  
YEARS ENDED DECEMBER 31, 1990 AND 1989

	<u>1990</u>	<u>1989</u>
Revenue		
Maintenance income from tenant/shareholders	\$146,116	\$146,116
Special assessment	<u>4,380</u>	<u>-.-</u>
	<u>150,496</u>	<u>146,116</u>
Costs and expenses		
Fixed costs and other charges		
Operating	97,635	88,826
General and administrative	<u>32,147</u>	<u>37,029</u>
	<u>15,283</u>	<u>11,637</u>
	<u>145,065</u>	<u>137,492</u>
Income before depreciation	5,431	8,624
Depreciation	<u>37,841</u>	<u>37,640</u>
Loss from operations before other income	(32,410)	(29,016)
Other income	<u>1,105</u>	<u>-.-</u>
Net loss	(31,305)	(29,016)
Accumulated deficit - beginning balance	<u>(59,077)</u>	<u>(30,061)</u>
Accumulated deficit - ending balance	<u>\$(90,382)</u>	<u>\$(59,077)</u>

The accompanying notes are an integral part of these statements.

121-123 EAST 88TH STREET APARTMENTS, INC.

STATEMENTS OF CASH FLOWS

YEARS ENDED DECEMBER 31, 1990 AND 1989

	<u>1990</u>	<u>1989</u>
Cash flows from operating activities		
Net loss	\$ (31,305)	\$ (29,016)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities		
Depreciation	37,841	37,640
Increase in maintenance receivable	(2,053)	(7,505)
Decrease (increase) in escrow deposits	12,216	(5,577)
(Increase) decrease in prepaid expenses	(8,578)	6,355
Increase in due from sponsor	(496)	--
Decrease in accounts payable and accrued expenses	(3,557)	(2,017)
Decrease in due to sponsor	(4,038)	(338)
Decrease in security deposits	159	--
	<u>189</u>	<u>(458)</u>
Net cash provided by (used in) operating activities		
Cash flows from investing activities		
Additions to property	<u>(9,200)</u>	<u>(8,340)</u>
Cash flows from financing activities		
Proceeds from transfer fees	<u>--</u>	<u>4,840</u>
Decrease in cash and cash equivalents	(9,011)	(3,958)
Cash and cash equivalents - beginning of year	<u>23,937</u>	<u>27,895</u>
Cash and cash equivalents - end of year	<u>\$ 14,926</u>	<u>\$ 23,937</u>
 <u>Supplemental Disclosure of Cash Flow Information</u>		
Cash paid during the year for		
Interest	\$ 49,500	\$ 49,500
Income taxes	2,313	2,112

The accompanying notes are an integral part of these statements.

121-123 EAST 88TH STREET APARTMENTS, INC.

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 1990 AND 1989

Note 1 - Summary of Significant Accounting Policies

(a) Property and Depreciation

Property is recorded and carried at cost less an appropriate allowance for depreciation. Property transferred to the Corporation was recorded at the transferor's adjusted basis in accordance with Section 351 of the Internal Revenue Code (IRC). Expenditures for betterments and renewals are capitalized. Expenditures for repairs and maintenance are charged to expense as incurred. Upon retirement or disposition of depreciable property, the cost and related accumulated depreciation are removed from the accounts and any gain or loss is recognized in income. Depreciation is computed by the straight-line method over the useful life of the property.

(b) Income Taxes

The Corporation is subject to federal income tax on income derived from non-tenant/shareholder sources under IRC Section 277.

The Internal Revenue Service permits net operating losses which have not been applied to be carried forward to future years for the purpose of reducing taxes on those years. The Corporation has net operating loss carryforwards of approximately \$78,000, which expire through the year 2005.

(c) Cash and Cash Equivalents

For purposes of the statements of cash flows, the Company considers all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents.

(d) Transfer Fees

The Corporation receives an \$8 per share special transfer fee for each apartment resold and such amounts are treated as capital contributions to the reserve fund.

Note 2 - Escrow Deposits

Under the terms of the mortgage, the Corporation is required to deposit each month with the mortgagee an amount equal to 1/12th of the annual real estate taxes and water and sewer charges. The Corporation is currently depositing \$3,821 monthly.

121-123 EAST 88TH STREET APARTMENTS, INC.

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 1990 AND 1989

Note 3 - Mortgage Note Payable

The mortgage note of \$550,000 is payable to the sponsor and provides for monthly payments, interest only, at the rate of 9 percent per annum through June 30, 1992. Commencing July 1, 1992, the annual interest rate shall increase to the greater of 9 percent or 2-1/2 percentage points above the then Federal Home Loan Bank five-year advance rate. The entire unpaid principal balance is due on June 9, 1997.

Note 4 - Related Party Transactions

For the periods ended December 31, 1990 and 1989, the sponsor had been retained by the Corporation to manage the building and received fees totalling \$3,000 each year. Fixed costs and other charges include \$49,500 during both 1990 and 1989 for interest paid to the sponsor.

In August of 1990, the offering plan was amended, changing the managing agent to Aval Trading Corp., which is owned by a related party.

Note 5 - Special Assessment Income

During November 1990, a special assessment billing of \$1 per share was levied by the co-op board. This assessment, which will be used for improvements and repairs to the buildings, is being billed in two equal installments, one in December 1990 and one in January 1991.

Note 6 - Subsequent Events

Effective February 1991, monthly maintenance charges will increase 6-1/2 percent from \$1.39 to \$1.48 per share. This is the first increase of maintenance charges since the conversion to a cooperative housing corporation and will be used to pay for the increased expenses of the buildings.

Note 7 - Additional Paid-in Capital

The financial statements have been adjusted to reflect \$4,840 of transfer fees collected in 1989 as reserve fund contributions rather than as other income.



REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS  
ON SUPPLEMENTAL INFORMATION

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole of 121-123 East 88th Street Apartments, Inc. for the years ended December 31, 1990 and 1989 which are presented in the preceding section of this report. The supplemental information presented hereinafter is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the audit procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

*Yohalem Gillman & Company*

New York, New York  
April 3, 1991

121-123 EAST 88TH STREET APARTMENTS, INC.

SUPPORTING SCHEDULES

YEARS ENDED DECEMBER 31, 1990 AND 1989

	<u>1990</u>	<u>1989</u>
Fixed costs and other charges		
Interest	\$ 49,500	\$ 49,500
Real estate taxes	36,606	30,972
Water and sewer	6,366	4,521
Insurance	5,163	3,833
Total	<u>\$ 97,635</u>	<u>\$ 88,826</u>
Operating expenses		
Fuel and utilities	\$ 15,857	\$ 19,254
Payroll and fringes	4,306	3,765
Supplies	478	1,327
Repairs and maintenance	11,506	12,683
Total	<u>\$ 32,147</u>	<u>\$ 37,029</u>
General and administrative expenses		
Professional fees	\$ 8,214	\$ 7,144
Management fees	3,000	3,000
State and local taxes	2,271	495
Miscellaneous	1,798	998
Total	<u>\$ 15,283</u>	<u>\$ 11,637</u>

## STATE OF NEW YORK

~~7503~~  
Chapter 594, Laws 1991 Cal. No. 650

1991-1992 Regular Sessions

IN ASSEMBLY

~~March 26, 1991~~  
effective July 23, 1991

Introduced by M. of A. ZALESKI, GRANNIS, MAYERSOHN, CLARK, SILVER —  
Multi-Sponsored by — M. of A. BOYLAND, CATAPANO, COOK, CROWLEY,  
DANIELS, DAVIS, HAREMBERG, HIKIND, HILLMAN, JOHN, KAUFMAN, MORELLE,  
NOLAN, RAMIREZ, SANDERS, WEISBERG — (at request of the Department  
of Law) — read once and referred to the Committee on Housing —  
reported from committee, advanced to a third reading, amended and or-  
dered reprinted, retaining its place on the order of third reading

AN ACT to amend the general business law, in relation to real estate  
syndication offerings

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Section 352-e of the general business law is amended by  
2 adding a new subdivision 2-d to read as follows:

3 2-d. (a) "Non-occupying owner" shall mean the owner of shares in a  
4 cooperative corporation who does not reside in the apartment assigned to  
5 its shares, when the apartment is occupied by a non-purchasing tenant;  
6 or the owner of a unit in a condominium who does not reside in the unit,  
7 when the unit is occupied by a non-purchasing tenant. "Non-purchasing  
8 tenant" shall have the same meaning as that term is defined in paragraph  
9 (e) of subdivision one of sections three hundred fifty-two-ee and three  
10 hundred fifty-two-eee of this chapter.

11 (b) The attorney general shall also refuse to issue a letter stating  
12 that the offering has been filed, or in the case of a plan already ac-  
13 cepted for filing, shall refuse to accept an amendment to the plan un-  
14 less the offering statement, prospectus, plan or amendment provides that  
15 when a non-occupying owner fails to make all payments due on such shares  
16 or units, including but not limited to maintenance payments, common  
17 charges, assessments or late fees, within thirty days after they are

EXPLANATION—Matter in *italics* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LE001812-04-1

1 due, upon notice in accordance with paragraph (c) of this subdivision,  
2 all rental payments from the non-purchasing tenant residing in such  
3 apartment or unit shall be directly payable to the apartment corporation  
4 or condominium association. The offeror shall provide each non-  
5 purchasing tenant with irrevocable notice of the provisions of this  
6 subdivision.

7 (c) If maintenance payments, common charges or other fees due from a  
8 non-occupying owner have not been paid in full, the cooperative corpora-  
9 tion board of directors or condominium board of managers shall provide  
10 written notice within forty-five days after the earliest due date to the  
11 non-purchasing tenant and the non-occupying owner providing that, com-  
12 encing immediately and until such time as payments are made current,  
13 all rental payments due are to be made payable to the cooperative cor-  
14 poration or condominium association at the address listed on the notice.  
15 Where a majority of the board of directors or managers has been elected  
16 by and from among the shareholders or unit owners who are in occupancy,  
17 the board may elect not to require that rental payments be made payable  
18 to the cooperative corporation or condominium association. At such time  
19 as payments from the non-occupying owner are once again current, notice  
20 of such fact shall be given within three business days to the non-  
21 purchasing tenant and non-occupying owner. Thereafter all rental  
22 payments shall be made payable to the non-occupying owner. A non-  
23 occupying owner who disputes the corporation's or association's right to  
24 receive rental payments pursuant to this section shall be entitled to  
25 present facts supporting its position at the next scheduled meeting of  
26 the board of directors or board of managers, which must be held within  
27 thirty days.

28 (d) Nothing in this subdivision shall limit any rights existing under  
29 any other law.

30 (e) Payment by a non-purchasing tenant to the cooperative corporation  
31 or condominium association made in accordance with this subdivision  
32 shall relieve that non-purchasing tenant from the obligation to pay that  
33 rent to the non-occupying owner.

34 § 2. This act shall take effect immediately and shall apply to all of-  
35 fering plans not yet accepted for filing and to all plans already ac-  
36 cepted for filing except those plans where all of the shares or units  
37 have been sold.

EXHIBIT B

Unsold Apartments  
Financial Obligation Chart  
as of January 1, 1992

	Occupied	Vacant	Total
Unsold Apartments:	18	0	18
Unsold Shares:	5,410	0	5,410
Monthly Maintenance Charges Payable:	\$8,006.80	\$0	\$8,006.80
Approximated Rental Income Receivable:	\$7,789.75	\$0	\$7,789.75
Net Monthly Income (Loss):	(\$217.05)	\$0	(\$217.05)

(2791C)