

RESOLUTION AND WAIVER OF MEETING OF THE BOARD OF 534 WEST 42<sup>ND</sup> STREET CONDOMINIUM (The Board)

Dated: June 11, 2014

RESOLVED:

Whereas the Board is desirous of contracting building management services to replace the existing building management services of 534 West 42<sup>nd</sup> Street (the building) which expire July 6, 2014;

The Board members have waived notice of meeting and meeting requirements under the bylaws of the condominium and hereby agree to contract Livingstone Management Services, LLC to manage the building effective July 7, 2014 in form attached hereto.

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Adam Hausman, President

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Claude Simon, Vice-President

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Aimee Drouin, Secretary

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John Riccardi, Treasurer

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David Speiser



225 West 35<sup>th</sup> Street, 15<sup>th</sup> Floor, New York, NY 10001

## PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement (the "Agreement") is entered into by and between:

**534 West 42<sup>nd</sup> Street Condominium**, a New York Condominium Corporation ("Corporation" or "Owner") with an address at 534 West 42<sup>nd</sup> Street, New York, NY 10036 and Livingston Management Services, LLC ("Manager"), a New York State Limited Liability Company with an address at 225 West 35<sup>th</sup> Street, 15<sup>th</sup> floor New York, NY 10001.

### RECITALS

**WHEREAS**, the Corporation is a Condominium Corporation which owns the building and land located at 534 West 42<sup>nd</sup> Street, New York, NY 10036 (the "Property" or "Building"); and

WHEREAS, the Board of Directors (the "Board") of the Corporation is authorized to manage and oversee the operations of the Property; and

WHEREAS, the Property is a residential condominium consisting of **10** residential apartments and **1** commercial space; and

**WHEREAS**, the Board is desirous of engaging Livingston Management Services as Manager of the Property on the terms and conditions set forth herein; and

**WHEREAS**, the Manager is desirous of providing the management services (as defined below) in accordance with the terms of this Agreement; and

**WHEREAS**, each Party is duly authorized and capable of entering into this Agreement.

**NOW THEREFORE**, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

### 1. ENGAGEMENT; ACCEPTANCE.

(a) Engagement. The Board hereby engages the Manager, and the Manager accepts the engagement, on the terms and conditions provided below, as its exclusive management Manager of the Property. The Manager shall oversee the operation, common charges, and repair of the Property, all in a professional manner.

(b) Manager's Representative. The Manager acknowledges that its principal, Joel Krieger, shall be regularly involved in the management of the Property and that in the event the Manager seeks to make any other appointment, such appointment is subject to the prior approval of the board.

### 2. MANAGER'S AUTHORITY; OBLIGATIONS.

(a) Authority. The Board expressly authorizes and empowers the Manager, in consultation with the Board and at the Board's direction, to take such actions and engage in such lawful practices and activities that are necessary for the fulfillment of this Agreement including, but not limited to, the following:

- (1) Bill, cause to be billed, and collect all common charges, rents, and additional charges and fees due and payable to the Corporation as they become due and to disburse funds as instructed by the Board;
- (2) Deposit all funds collected on the Board's behalf in one or more accounts that are approved by the Board, (the "Trust Accounts"). One or more representatives of Manager, as approved by the Board, shall be added as a signer on the Trust Account(s) and shall be authorized to sign checks for recurring payments and other expenses authorized by the Board;
- (3) Provide all property accounting and maintain balance sheet information in Yardi Voyager;
- (4) Provide for automated payment of common charges and other charges due from shareholders and other occupants;
- (5) Provide and maintain a platform for electronic communications among the residential community and the Manager;
- (6) On or about the 15<sup>th</sup> day following the end of each month, send a monthly financial report to the Board, which shall include a schedule of charges and collections, shareholder arrears, financial highlights, check register, and invoices paid and received. As further set forth below, the Manager shall also deliver all bank statements for all funds of Owner;
- (7) Maintain separate reserve fund;
- (8) Make disbursements from reserve fund as authorized by the Board;
- (9) Execute and serve, as authorized by the board, such notices and demands for meetings, common charges demands, notices to delinquent owners, and such other notices and demands as specified in the Corporation's governing documents, including the by-laws, proprietary leases, house rules, and such other applicable governing documents;
- (10) Attend regular Board meetings, the annual meeting of the Corporation, and assist with the election held at the annual meeting;
- (11) On or about 60 days prior to the end of each fiscal year of the Corporation, prepare and deliver to the Treasurer a proposed preliminary annual budget and thereafter, assist the Treasurer with respect to finalizing such budget for its presentation and consideration by the Board;
- (12) No later than 30 days prior to the end of each fiscal year of the Corporation, and in consultation with the Treasurer, prepare and deliver to the Corporation the proposed annual budget for consideration by the Board;
- (13) Cooperate and assist the Board and legal counsel to the Corporation in connection with all legal actions and proceedings in which the Corporation is a party, including proceedings involving delinquent parties as may be necessary to enforce the collection of common charges or other sums due to the Corporation;
- (14) Subject to the monetary limitation contained herein, purchase all necessary supplies, establish and maintain accounts for electricity, gas, fuel, water, telephone, window cleaning, garbage collection, pest control, and any other utilities and services required for the Property's operation as directed by the Board;
- (15) Make or cause to be made and supervise necessary repairs and alterations of the interior, exterior, and landscaping of the Property as directed by the Board. Such prior direction from the Board is required except (i) in case of emergency, (ii) if the Manager in good faith determines that such expenditures are necessary to protect the Property from damage, to prevent injury to persons or loss of life, or to maintain services to tenants, or (iii) if the expenses, having been previously approved by the Board, are monthly or recurring;
- (16) Provide recommendations for vendors and service providers to the building; obtain and present vendor estimates and quotations to the Board for review and approval; help develop and review contract specifics regarding the service; monitor and enforce the contracts to secure satisfactory completion of the service.
- (17) In accordance with policies and procedures established by the Owner, and on behalf of the Owner, supervise all building service employees in order to properly maintain and operate the Building. In each and every case, such persons shall be the Owner's employees and as such, Owner shall, subject to

law, make all decisions as to hiring, firing, disciplinary actions and the terms and conditions of employment. It is expressly understood and agreed that all such employees are in the employ of Owner exclusively, and that, except for Manager's willful acts or omissions, Manager shall, in no way, be liable to such employees for wages or compensation or to Owner or third parties for any act or omission on the part of such employees. Notwithstanding the foregoing, at Owner's option and direction, Manager shall process payroll, including withholding for building employees.

(18) Process Board applications for sublet rentals, including credit check, references, and supporting documents according to the condominium by-laws and house rules;

(19) Process Board applications for sales, including board packages, credit checks, references, and supporting documents, and arrange and act as closing Manager for Board approved sales.

(20) Collect all required information for condominium unit sales transactions as required by the Corporation's governing documents, including the house rules;

(21) Pay any fees, fines, and taxes to New York City as directed by the Board and when applicable, appear before any administrative agencies as the Corporation's representative with respect to any violations imposed against the Corporation;

(22) If applicable, abstract and maintain records of key dates and lease terms relating to the commercial lease of the ground floor tenant. Review and calculate annually the additional rent to be charged to the tenant. Validate additional rent charge calculations with a CPA.

(23) Upon request by the Owner, secure bids for, place and/or maintain, in such amounts and through such carriers as the Owner shall designate or approve, such insurance as the Owner may elect to carry with respect to the Building including, but not limited to fire, rent, plate glass, boiler, water damage, liability, worker's compensation, employer's liability, director's errors and omissions and disability benefits. The Manager shall immediately report any and all such accidents or other claims for damage relating to the management, operation and common charges of the Building, of which it becomes aware, to the insurance company's representative, Owner and Owner's attorneys and shall cooperate and make any and all reports required by the insurance company in connection with each claim. Any insurance policies procured by Manager on behalf of Owner shall be subject to the prior approval of Owner. Manager shall procure and maintain such insurance in such amounts as Owner shall direct. Owner shall have no obligation to pay insurance commissions to Manager. A comprehensive schedule of Owner's insurance coverage shall be prepared by Manager and submitted to Owner's Board of Directors for its review annually.

(24) Review all bills received for services, work and supplies ordered, mortgage interest, mortgage amortization, mortgage escrows, electric charges, fuel charges, water charges, sewer rent, assessments, real estate taxes and corporate franchises and other taxes assessed against the Owner or the Building, and pay or cause to be paid (with the Owner's approval), all such bills as and when the same shall become due and payable. The foregoing shall be subject to the availability of current funds of the Owner from which such payments can be made.

(b) Obligations. During the term of the Agreement, the Manager shall:

- (1) Use due diligence in the performance of its services under this Agreement;
- (2) Use best efforts to ensure that the Property is maintained in an attractive condition and a good state of repair, and use its best skills and efforts to serve the Board, the Corporation, and the Corporation's shareholders;
- (3) Notify the Board of needed common charges and repairs of the Property and its systems;
- (4) Cause repairs (and alterations in the Building, with prior approval of the Owner) to be made, subject to the limitations contained in this Agreement, proprietary lease or the by-laws or in any other agreement with any shareholder, tenant or other lawful occupant. Ordinary repairs or alterations

involving an expenditure of over Five Hundred Dollars (\$500.00) for any one item shall be made only with prior approval of Owner, except for emergency repairs. Emergency repairs, i.e., those deemed immediately necessary by the Manager for the preservation or safety of the Building or for the safety of the shareholders, or other persons, or required to avoid the suspension of any necessary service in the Building, may be made by the Manager irrespective of the cost thereof, without the prior approval of Owner, but to the extent practical the Manager will consult with the President, Secretary or Treasurer of Owner (in the order given) prior to making any such emergency repairs.

(5) Recommend and, with the approval of Owner, cause all such acts and things to be done in or about the Building as shall be necessary or desirable to comply with or cure any and all orders or violations affecting the Building, placed thereon by any Federal, State or Municipal Authorities having jurisdiction there over, and orders of the New York Board of Fire

Underwriters, the New York Fire Insurance Exchange or other similar body. If the failure to promptly comply with any such order or to cure any such violation would expose Owner or the Manager to civil or criminal liability, the Manager shall give the Owner no less than three (3) business days written notice of same and, unless Owner objects in writing, Manager may thereafter cause such order or violation to be complied with, provided that, to the extent practical, the Manager will consult with the President, Secretary or Treasurer of the Owner (in the order given), or if no such officer is available, with the Owner's attorney, with respect to the manner and cost of the action the Manager intends to undertake to comply with the order or to cure the violation, as the case may be.

(6) Cooperate on a timely basis with the Owner's accountant in the preparation of the annual audit of the books of account and of Federal, State and City income tax returns, and any other income and other tax returns required by any governmental authority. Upon receipt from the Owner's accountant, Manager shall, at the Owner's expense, send to each shareholder a statement of the annual report and a copy of the statement. Send to all shareholders of Owner each year copies of a statement furnished by Owner's accountants which sets forth the deductions available to tenant-shareholders for income tax purposes by reason of their ownership of shares of stock of Owner and other relevant tax data with respect thereto.

(7) Cause to be prepared and filed the necessary forms for unemployment insurance, withholding and social security taxes and all other tax and other forms relating to employment of Building employees as required by law.

(8) Maintain, and provide to tenants Owner documented procedures for prospective tenants, tenant property alterations, tenant moves, and subletting.

(9) Supervise the moving in and out of tenant-shareholders, tenants and subtenants, and the dates and times of such moves, to minimize disturbance to the operation of the Building and inconvenience to other tenant-shareholders and occupants.

(10) Consider and, when reasonable, attend to complaints of tenant-shareholders and tenants promptly. If the Manager shall deem any such complaint unreasonable, it shall promptly advise the Owner of the complaint and the reason the Manager deems the complaint unreasonable.

(11) When the books of tentatively assessed valuations of the City of New York are open for public inspection each year, obtain the assessment of the land on which the Building is located and the assessment of the Building and report the amounts thereof to the Owner. The Manager will, if requested by the Owner, cooperate with the Owner's attorneys in the preparation of the application for correction of the assessed valuation to be filed with the Tax Commission of the City of New York to institute tax certiorari proceedings.

(12) Generally, do all things deemed reasonably necessary or desirable by the Board of Directors of the Owner for the proper management of the Building. The Owner authorizes Manager, for the Owner's account and on its behalf, to perform any act or do anything necessary or desirable in order to carry out the Manager's duties contained in Articles 2 and 3 herein and which is consistent with the provisions of this Agreement.

(13) Maintain accurate records of receipts, expenses, and accruals to the Board in connection with managing the Property;

- (14) Provide the Board with a monthly report showing all income and expenses and reconciled bank statements;
- (15) Remit all income and accruals for future expenses, or amounts otherwise deposited in the Trust Accounts, to the Board's accounts;
- (16) Continuously maintain a New York State Broker's license required by law to perform property management services;
- (17) Manager shall be responsible for and indemnify Board for any damages caused by its acts and for any violations of law or acts of omission and /or negligence;
- (18) Manager shall maintain a liability policy in the amount of \$2,000,000, an umbrella policy of not less than \$5,000,000, and a crime bond of \$1,000,000. At all times, the Corporation, its Board of Directors and its shareholders shall be additional insureds and certificate holders. Manager also maintains Worker's Compensation and Disability insurance for employees of Livingston Management Services;
- (19) Manager shall keep the paper and electronic records and information pertaining to the Property, its residents, and its shareholders confidential and return the records and information to the Board on demand or at the end of this Agreement;
- (20) Manager shall provide a secure repository for all paper and electronic records of the Corporation including all documentation and electronic records carried forward from prior managing agents; except those records deemed by the board to be disposable.
- (21) Manager shall provide the Board with access on reasonable notice to the financial books and paper records of the condominium kept in the Manager's office.
- (22) Manager will coordinate the maintenance of the building signage.
- (23) Manager will coordinate the management transition from Silverstone Property Group and will be ready to assume all management responsibilities on July 6, 2014.
- (24) Manager will assist the board in identifying sources of project funding for future capital improvements.

### **3. BOARD'S OBLIGATIONS.**

The Board shall:

- (a) Give copies of the following to the Manager: condominium offering plan, previous meeting minutes, prior audited financials, current by-laws, proprietary leases, house rules, and all amendments to the governing documents.
- (b) Provide information necessary to update mailing address information with the NYC Department of Finance, NYC Water Board, and HPD.
- (c) Provide to the Manager copies of all building insurance policies, vendor contracts, and all service provider information necessary for the operation of the building.
- (d) Provide all documentation and records required by the Manager to manage and operate the Property, including providing all known facts that materially affect the management of the Property.
- (e) The Board agrees to add Manager as an additionally-named insured the building's insurance policy.
- (f) Cooperate with the Manager in carrying out the purposes of this Agreement.
- (g) Provide Manager with copies of keys to access the common areas, basement, roof, and mechanical areas of the building.

(h) The Board shall, from time to time, and at its option, provide the Manager with an assessment of its performance against the Agreement; and will note specific achievements, areas needing attention.

#### **4. TERM.**

Primary Term. This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with the provisions of Section 9 of this Agreement, will continue for an initial period of 1 year (the "Initial Term"). After the expiration of the initial term, this Agreement shall continue on an annual basis upon the same terms and conditions as provided for herein.

#### **5. COMPENSATION.**

<u>Recurring Monthly Management Fee:</u>	\$1,100
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Note: The recurring monthly fee does not include the cost of common charges expenses, building staff salaries, legal advice, representation before public agencies, engineering and architectural fees, and permit filing.

<u>Monthly cost of super:</u>	\$1,150
Super to perform cleaning and trash duties as a W2 employee of the management company. The monthly reimbursed super expense includes the cost of Workman's Compensation and all applicable employee wage taxes. Does not include the cost of materials or cleaning supplies.	

Non-Recurring Fees from unit owners:

Board package processing - Sale (paid by shareholder):	\$ 300
Board package processing – Rental (paid by applicant)	\$ 300
Shareholder refinancing fee (paid by shareholder)	\$ 300

#### **6. LIABILITY AND INDEMNIFICATION.**

- (a). Manager hereby agrees to hold the Corporation, the Board, and the shareholders of the Corporation harmless from, and to defend against, claims, charges, debts, demands, and lawsuits as it pertains to the management scope contained in this Agreement.
- (b). As applicable, the Board shall maintain liability insurance naming the Manager as an additional insured.

#### **7. REPRESENTATIONS.**

- (a) The Parties each represents as follows:

- (1) Each Party has full power, authority, and right to perform its obligations under the Agreement.
  - (2) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
  - (3) Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.
  - (4) The Parties shall comply with all obligations, duties, and responsibilities under state property law, fair housing and anti-discrimination laws, and any

other statutes, administrative rules, ordinances, or restrictive covenants applicable to the use, leasing, management or care of the Property.

(b) To the best of its knowledge, the Board hereby represents as follows:

- (1) There are no recorded easements, restrictions, reservations, or rights of way that adversely affect the use of the Property for the purposes intended under this Agreement.
- (2) The Property is zoned for the intended use.
- (3) All permits for the Property's operation have been secured and are current.
- (4) Except as set forth in Appendix "A" annexed hereto, to the best of the board's knowledge, the building and its construction and operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the like.
- (5) The Board is unaware of any condition concerning the Property that materially affects the health or safety of a resident.
- (6) All information related to the Property that the Board provides to the Manager is true and correct to the best of the Board's knowledge.
- (7) All loans, notes, mortgages, or dues are current without defaults.

## **8. TERMINATION.**

### **(a) Termination Procedures:**

This contract may be terminated under the following terms:

- (1) Either by the Corporation or the Manager, when without cause on the part of the other, the terminating party may, on provision of Ninety (90) days prior written notice to the other, terminate this Agreement.
- (2) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within thirty (30) days of receipt of written notice thereof.
- (3) By the Corporation at any time and without prior notice, if the Manager is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of the Board, or is guilty of serious misconduct in connection with performance under this Agreement.
- (4) In the event of termination, within 48 hours of such termination, Manager agrees to return to the Board all records, accounts, data, files, and financial information belonging or relating to the Corporation and provide a report to the Board within 30 days.

(b) **Management Fees After Termination.** Following the termination of this Agreement for any reason, after deduction for any sums due the Corporation, the Board shall promptly pay the Manager any fees owed for services rendered before the effective date of the termination until the last day of the contract term based on the date the notice of termination is presented to the Manager.

## **9. ASSIGNMENT.**

The Manager may not, without the written consent of the Board, assign, subcontract, or delegate its obligations under this Agreement.

## **10. NO IMPLIED WAIVER.**

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

## **11. SEVERABILITY.**

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

## **12. ENTIRE AGREEMENT.**

This Agreement, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties. With respect to the terms set forth herein, this Agreement shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement.

## **13. HEADINGS.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

## **14. MISCELLANEOUS.**

(a) Notices: Any notice required to be given under this Agreement shall be in writing and delivered by email to the other party (for the Corporation, this requires email notification to all officers of the Corporation) and by a recognized national overnight courier service. Either party may change the address to which notice or payment is to be sent by written notice to the other party. A copy of all notices to the Corporation shall be sent to Darryl M. Vernon, 26th Floor, 261 Madison Avenue, New York, NY 10016

(b) Choice of Law/Jurisdiction: This Agreement shall be governed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York without regard to any conflict of law principles. All disputes under this Agreement shall be resolved in the courts located in the State, City, and County of New York, and the parties hereby consent to the exclusive and continuing jurisdiction and venue of such courts, and hereby waive any jurisdiction or venue defenses otherwise available.

(c) Agreement Binding on Successors: The provisions of this Agreement shall be binding on and shall inure to the benefit of the parties hereto, their heirs, assigns and successors.

(d) Counterparts: This Agreement may be executed in one or more counterparts, by facsimile or pdf, each of which shall constitute an original and all of which taken together shall constitute one and the same.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

**BOARD**

**534 West 42<sup>nd</sup> Street Condominium**

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

Name:

Title:

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

Effective Start Date:

Month \_\_\_\_\_ Day \_\_\_\_\_ 2014

**MANAGER**

**Livingston Management Services, LLC**

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

Name: Joel N. Krieger

Title: CEO