

160 MADISON AVENUE JOINT VENTURE

AGREEMENT

ALTES, SEGAL & MELTZER
COUNSELORS AT LAW
225 BROADWAY
NEW YORK, N.Y. 10007

AGREEMENT made May 23^d 1983, by and between the subscribers signatory to this agreement (collectively the "subscribers").

The parties agree as follows:

1. VENTURE. The subscribers hereby create a joint venture to be known as "160 MADISON AVENUE JOINT VENTURE", for the purchase of a parcel of land, together with all buildings and improvements thereon (hereinafter collectively called the "property"), commonly described as 160 Madison Avenue, New York, New York. No representations are made by or to any subscriber with respect to the physical condition, prospective income, prospective selling price, cost of operation, or any other matters relating to or affecting the property.

2. PURCHASE PRICE AND CONTRACT OF PURCHASE. The purchase price pursuant to the proposed contract of sale for the property is \$1,000,000.00, of which \$300,000.00 will be paid in cash as follows: \$100,000.00 on signing of contracts; \$200,000.00 on closing of title. The balance of the purchase price is to be paid by purchase money mortgage for twenty years, to bear interest at 12% per annum, self liquidating, and the contract of sale shall contain such other provisions as the joint venturers deem appropriate.

3. CONTRIBUTION. The subscribers shall contribute to the joint venture the amounts set opposite their signatures at the foot hereof and shall be entitled to share in the profits and losses in the percentage or proportions set opposite their names. Such contributions shall be paid as follows:

one third (1/3) of the respective capital contribution on the signing of this agreement, and the balance on or before July ¹ ~~25~~, 1983..

*AB/RL
MMA*

Time is of the essence with respect to the payment by each subscriber of the installments of his contribution. All installments of contributions shall be paid by checks drawn on a ~~New York City~~ bank to the order of Altes, Segal & Meltzer, as attorneys, 225 Broadway, New York, New York, on or before the dates specified. No notice or demand for payment of the installments of each subscriber's contribution to the capital of the joint venture need be given.

*AB/RL
MMA*

4. RISK OF DEFAULT. None of the parties are desirous of subscribing for a greater portion of the joint venture than they have obligated themselves to take under the terms of this agreement. The successful conclusion of the joint venture requires that each of the parties shall pay his contribution into the joint venture in cash at the times and in the amounts set forth in this agreement in order to

prevent the forfeiture by the joint venture of the moneys otherwise paid to the seller. The subscribers understand that if, after executing the contract of sale and paying the initial installment on the purchase price due on the signing of the contract, the joint venture should fail to take title to the property in accordance with the terms of the contract, such installment would be forfeited, and that in the event of failure to pay the purchase money mortgage, the holder of the mortgage will be in a position to declare the mortgage in default. Each of the parties acknowledges that a failure to pay any installment of the contributions agreed to be made by him will cause substantial damage to all the other parties.

5. DEFAULT.

(a) Forfeiture. If default shall be made by any subscriber in the payment of any installment of his subscription as required by this agreement, all previous payments made by the defaulting subscriber on his account and his share in the joint venture shall be completely forfeited. The share in the joint venture so forfeited may be reoffered for subscription to the remaining subscribers, without any obligation on the part of the remaining subscribers to account to or pay over to the defaulting subscriber any portion of the profits of the joint venture or any part of the capital of the joint venture. The defaulting subscriber

hereby acknowledges that by reason of the nature of the venture upon which the joint venture is about to embark, the amount paid on account of his subscription by the defaulting subscriber shall constitute liquidated damages for the failure of the defaulting subscriber to complete payment of his subscription. In consideration of the foregoing, there shall be no liability upon the defaulting subscriber for the payment of the unpaid balance of his subscription.

(b) Subscribers' purchase option. Upon the failure of any one or more subscribers to pay an installment of a subscription becoming due, the remaining subscribers or any one or more of them may elect to subscribe for the defaulted share of the joint venture at a meeting called for that purpose which shall be set by the joint venturers upon ~~five~~ fifteen days notice to all parties, ⁽¹⁵⁾ during which time the default may be cured. The remaining subscribers or any one or more of them may elect to subscribe to the share of the defaulting subscriber. In the event that more than one of the remaining subscribers elects to subscribe to such share, the defaulted share shall be apportioned among the subscribers desiring to subscribe, in accordance with their respective proportions of the total joint venture. A subscriber who acquires any interest in the share of a defaulting subscriber shall be required to pay his proportionate share of the defaulted contribution immediately upon his acquisition of such interest.

NO/10/10/10

4/10/10/10

(c) Power of attorney. To implement the mechanics of this paragraph 5, each of the parties to this agreement and any party who may subsequently acquire an interest in the joint venture hereby grants an irrevocable power of attorney to *Michael Irwin McLellan*, New York, New York, empowering him to execute, in the name of the defaulting party, an assignment of the defaulting party's entire interest in the joint venture and in all property if the joint venture, which assignment shall run to the other parties who may acquire the defaulting party's interest. In the event of the death of *Michael Irwin McLellan*, the power granted to him by this subparagraph shall vest in Mark S. Friedlander, 225 Broadway, New York, New York, as successor attorney-in-fact. This power of attorney shall not be affected by the subsequent disability or incompetence of any principal. Notwithstanding the foregoing, the joint venturers may, upon their majority vote, resolve and direct the said attorney-in-fact to forbear from executing the powers herein granted upon such terms as the joint venturers may in writing provide.

(d) Dispute arbitration. Any dispute existing as to the rights of a defaulting party shall in no wise impede the execution of the assignment by the attorney-in-fact named hereinabove or by his successor. A dispute, if any, shall be resolved by arbitration under the provisions of this

agreement. A defaulting subscriber shall not have any right to question the party to whom the assignment of his share in the joint venture is made.

(e) No release. The failure of any subscriber to perform any part of his obligation hereunder shall not release any other subscriber.

6. TRANSFERABILITY. No new person shall be admitted to this joint venture, after the execution of this agreement, without the unanimous written consent of the subscribers hereto. No subscriber shall transfer any right to or portion of his or her interest in the joint venture, other than his or her interest in profits and surplus.

7. MANAGEMENT OF THE VENTURE. Control of the joint venture and of all its affairs shall be in the subscribers. Meetings of the subscribers shall be held at any place in New York City designated in the notice of meeting, upon five day's notice to the subscribers sent by any subscriber or subscribers. At such meetings all matters relating to the joint venture shall be decided by a vote of those subscribers who have a majority interest in the profits and losses of the joint venture, but no action shall be taken to modify the rights or obligations of the subscribers as set forth in this

agreement except upon the unanimous vote of all the subscribers.

8. POWERS OF MANAGER. To implement the provisions of paragraph 7, but subject to the reservation of control in the subscribers as stated in paragraph 7, the subscribers appoint Henry Traiman as their first manager, to serve at the will of the joint venturers and to do the following, in the name of the joint venture:

(a) Contract: To enter into the contract of purchase with Erika Magid. It is, however, acknowledged that the contract may be entered into in the name of the holder of the option to purchase, ~~to~~ ^{which shall} be assigned to the joint venture or a nominee thereof, or in the name of a nominee, with the approval of the joint venturers.

(b) Collection: To ask, collect, and receive any rents, issues, profits, or income of any property of the joint venture or any part or parts thereof.

(c) Taxes: To pay any and all taxes, charges, and assessments that may be levied, assessed, or imposed upon any of the property of the joint venture.

(d) Maintenance: To manage and repair, as necessary, the building or property belonging to the joint venture.

(e) Insurance: To obtain title, liability, fire and other insurance for the land or property belonging to the joint venture, and to make, execute, and to file proof or proofs of all loss or losses sustained or claimable thereunder.

(f) Commercial paper: To make, execute, endorse, accept collect, and deliver any and all bills of exchange, checks, drafts, notes, and trade acceptances, and open and pay into and draw from a bank account or accounts of the joint venture for its business. *All instruments must be counter-signed by any one other joint venturer.*

(g) Debt payment: To pay all sums of money at any time or times that may subsequently be owing by the joint venture in the regular and ordinary course of its business.

(h) Disability: The powers of the manager shall not be affected by the subsequent disability or incompetence of any subscriber.

9. SERVICES OF MANAGER. The joint venture manager shall render his personal services to the joint venture and devote thereto only such time as he, in his judgment, deems

necessary, which judgment shall not be subject to review in any court or place. The joint venture manager may engage in other businesses, including the ownership, operation, and management of real estate, and the practice of any profession.

10. ARBITRATION. In the event any controversy or dispute arises with respect to this agreement or any of its terms or conditions, or with respect to any rights arising from or under this agreement, the parties agree that the controversy or dispute shall be settled by arbitration in New York City in accordance with the rules then obtaining of the American Arbitration Association and judgment upon the award rendered may be entered in any court having jurisdiction.

11. NOTICES. All notices required to be given hereunder shall be sent by certified mail, return receipt requested, addressed to the parties at the respective addresses set forth in this agreement or at such other place or places as the parties may in writing designate.

12. BENEFIT. Except as otherwise herein specifically provided, this agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, distributees, legal representatives, transferees, and assigns. This agreement may not be changed orally and no modifications

thereof shall be valid unless in writing, signed by all the parties hereto.

IN WITNESS WHEREOF the undersigned subscribers have duly executed this agreement the day and year first above written.

Subscriber & Address	Amount to be contributed to the Joint Venture	Share of Profit and Losses
	\$ 90,000.00	25%
<u>EDITH KLEIN</u>	\$ 45,000.00	12 1/2%
<u>MANN</u> Steve Abrams & Linda Tepper - as joint tenants	\$ 75,000.00	20.8333%
<u>HENRY TRAUMAN</u> Henry Trauman	\$ 75,000.00	20.8333%
<u>John Mc Sizor</u> John Mc Sizor	\$ 75,000.00	20.8333
<u>ROLF KARI</u>		

Business Certificate for Partners

The undersigned do hereby certify that they are conducting or transacting business as members of a partnership under the name or designation of 160 Madison Avenue Joint Venture

at c/o Altes, Segal & Meltzer, 225 Broadway, New York, New York,
in the County of New York, State of New York, and do further certify that the full names of all the persons conducting or transacting such partnership including the full names of all the partners with the residence address of each such person, and the age of any who may be infants, are as follows:

NAME Specify which are infants and state ages.

RESIDENCE

Rolf Karl	245 Henry Street, Brooklyn, New York
John M. Simon	6 Edwards Lane, Glen Cove, New York
Steven Abrams	67 East 11th Street, New York, New York
Linda Tepper	67 East 11th Street, New York, New York
Henry Traiman	160 Middle Neck Road, Great Neck, New York
Edith Klein	3755 Henry Hudson Parkway, Riverdale, New York

WE DO FURTHER CERTIFY that we are the successors in interest to

the person or persons heretofore using such name or names to carry on or conduct or transact business.

In Witness Whereof, We have this
and signed this certificate.

23rd day of May,

1983 made

Rolf Karl
John M. Simon as POA for John M. Simon
Henry Traiman AS P.O.A. FOR
Henry Traiman LINDA TEPPER
Edith Klein

State of New York, County of NEW YORK

ss.:

INDIVIDUAL ACKNOWLEDGMENT

On this day of May, 1983, before me personally appeared Rolf Karl, John M. Simon, Steven Abrams, Linda Tepper, Henry Traiman and Edith Klein, to me known and known to me to be the individuals described in, and who executed the foregoing certificate, and they thereupon each duly acknowledged to me that they executed the same.

State of New York, County of

55.:

CORPORATE ACKNOWLEDGMENT

On this *day of*

19 , before me personally appeared

to me known, who being by me duly sworn, did depose and say, that he resides in

that he is the of

the corporation described in and which executed the foregoing certificate; that he knows the seal of said corporation; that the seal affixed to said certificate is such corporate seal; that it was so affixed by order of the Board of of said corporation, and that he signed his name thereto by like order.

INDEX No.

Certificate of Partners

ROLF KARL
JOHN M. SIMON
STEVEN ABRAMS
LINDA TEPPER
HENRY TRAINMAN
EDITH KLEIN

CONDUCTING BUSINESS UNDER
THE NAME OF
160 MADISON AVENUE
JOINT VENTURE

ALTES, SEGAL & MELTZER
225 Broadway
New York, New York 10007
(212) 962-2670

State of New York, County of

55.

INDIVIDUAL ACKNOWLEDGMENT

On this *day of*

19 , before me personally appeared

to me known and known to me to be the individual described in, and who executed the foregoing certificate, and he thereupon duly acknowledged to me that he executed the same.

RETAINER AGREEMENT

THE UNDERSIGNED, hereby retain ALTES, SEGAL & MELTZER as our attorneys, to act on our behalf with respect to the acquisition of the property and improvements commonly described as 160 Madison Avenue, New York, New York, and the formation of a management and ownership organization as the undersigned may deem appropriate.

The services to be rendered by ALTES, SEGAL & MELTZER shall include the preparation and execution of a joint venture agreement, the organization of incorporation of such other entities or partnerships as may be necessary and appropriate, the filing of any and all documents, certificates or other writings required by law to be filed with respect to the acquisition of the said property and the organization of an ownership and management vehicle, but excluding tax returns required to be filed by the undersigned, representation before and with respect to any proceedings with the New York State Attorney General relating to the offering for sale of the property or proprietary interests therein, and general counseling with respect to the matters set forth herein above but ALTES, SEGAL & MELTZER shall not be required to counsel any individual joint venturer with respect to his or her tax situations. The services to be so rendered shall include the representation

c. \$2,000.00 upon final closing.

3. In the event the undersigned do not elect to convert ownership of the said property into a cooperative or condominium form, or, in the event it is determined that such conversion may take place without the prior filing of a public offering prospectus with the Attorney Generals office:

- a. \$2,000.00 in July 1, 1983,
- b. \$2,000.00 on August 1, 1983.
- c. \$2,000.00 upon the completion of the project.

d. The fees to be paid are exclusive of all costs and disbursements. Any costs and disbursements advanced by ALTES, SEGAL & MELTZER shall be billed to and paid by the undersigned on a monthly basis.

This retainer agreement shall inure to the benefit of and shall bind the successors in interest of the undersigned and of ALTES, SEGAL & MELTZER.

Dated: May 20, 1983

Rolf Karl
ROLF KARL

John M. Simon
JOHN M. SIMON
Manhattan
& P.O.A. Linda Tepper
STEVEN ABRAMS & LINDA TEPPER
(acting jointly)

Henry Traiman
HENRY TRAIMAN

Edith Klein
EDITH KLEIN

RETAINER ACCEPTED

Altes, Segal & Meltzer
ALTES, SEGAL & MELTZER