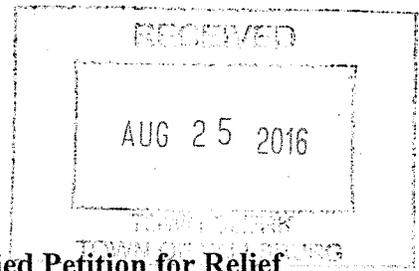


State of New York - County of Sullivan  
Town of Fallsburg - Town Board



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In the Matter of the Application of /  
**1613 EAST 29 LLC** /  
**(Willow Woods Condominium)** /  
for a Hardship Variance from the Town's /  
Residential Moratorium Local Law /

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**Verified Petition for Relief  
from Moratorium**

The Petitioner, 1613 EAST 29 LLC, by its attorneys, KALTER, KAPLAN, ZEIGER & FORMAN, hereby submits this Petition for a hardship variance from the application of the Town's Residential Moratorium Local Law (the "Moratorium Law"), and in furtherance thereof, respectfully alleges as follows:

1. The Petitioner is the sponsor of the condominium offering plan (the "Sponsor") applicable to the Willow Woods Condominium (the "Condominium"), and is the owner of the remaining development rights applicable to the Property where the Condominium now exists, that being Town of Fallsburg tax parcel, Section 28, Block 1, Lot 50 (the "Property").

2. The Petitioner received site plan approval from the Town of Fallsburg Planning Board in the year 2008, or prior thereto, which site plan allowed the Petitioner to develop the Property as a residential condominium association. In furtherance of said approval, to date, the Petitioner has constructed 118 residential condominium units, all of which have been sold to homeowners who now occupy the homes within the development. The Petitioner also developed much of the common areas, including the community building, swimming pools and other items.

3. Of interest is that there is a discrepancy between the number of houses that were included on the final, approved site plan, and the number of the houses that the Petitioner thought had been approved, and that was the subject of the Condominium offering plan filed with the New York State Attorney General. The approved site plan, which was signed by the Town Planning Board Chairman, reflects that the site would consist of 118 residential dwelling units. The Condominium offering plan, as filed with the New York State Attorney General, reflects that the Condominium association would include 134 residential condominium units. A full copy of the Condominium association offering plan is available upon request. Annexed hereto as Exhibit "A" is selected pages from the approved Condominium association offering plan which reflects that the Condominium association would consist of 134 residential condominium units.

### **THE PROJECT**

4. As previously stated, the Petitioner has completed the construction of the 118 residential dwellings that were the subject of the approved site plan, and each of those homes were sold by the Petitioner. Currently, the Petitioner owns the remaining development rights applicable to the Property, which, based upon the New York State Attorney General approval, consists of an additional 16 residential condominium units.

5. Approximately one year ago, the Petitioner, through its engineer, Kirk Rother, submitted an amended site plan to the Town of Fallsburg Planning Board, in order to expand the number of residential dwellings from the 118 that had been approved by the Town Planning Board, to 134 residential dwellings, as approved by the New York State Attorney General.

6. In response to the submission by the Petitioner to increase the number of residential dwellings on the site plan from 118 to 134, the Town of Fallsburg Code Enforcement Officer informed the Petitioner that before the Petitioner would be allowed to obtain approval to increase the number of residential dwelling units to 134, several items would need to be attended to, including the following: submit an as-built site plan of the entire development; redesign the storm water management system, which had not been built according to the approved plans, and reconstruct the storm water management system in accordance with the approved redesign; install landscaping throughout the development; install water meters on each of the homes that have already been built (apparently, the original approval did not require that water meters be installed with respect to the individual homes; the Town now imposes this requirement with respect to all developments, and is making this a requirement for this development); install grinder sewer pumps and holding tanks with respect to the sewage distribution system that services the Property; and close out all open building permits and correct several violations that exist applicable to the Property.

7. In response to the above request, the Petitioner has performed some of the work that the Town Code Enforcement Officer has required, and the Petitioner has committed to complete the additional items. Among the work performed and completed to date has been the removal of speed bumps which were installed without Planning Board approval, installation of the grinder and holding tanks applicable to the sewage distribution system, and submission of the redesigned storm water management system to the Town Engineer for review. An as-built site plan for the entire project is at or near completion, and has been submitted to the Town Engineer for review. In addition, several of the additional items are in progress, including installation of water meters applicable to all of the units, and review and determination by the Project Engineer as to what may be required in order to close out the open building permits.

8. Subsequent to submission of the sketch of the amended site plan to add the additional 16 residential dwelling units, the Petitioner and its representatives have met with the Town Planning Board and the Town Planning Board consultants on several occasions and have attended several Town Planning Board meetings. The last meeting attended was during the month of June, 2016. At that meeting, the Petitioner represented that it would complete the remaining items required by the Town Code Enforce Officer, and that, if necessary, the Petitioner would post a bond with the Town in order to insure compliance. In addition, at that Planning Board meeting, the Planning Board indicated that if the requirements of the Town Engineer and the Town Code Enforcement Officer were satisfied, then the Planning Board, in theory, had no objection to amending the site plan to include the additional 16 residential dwelling units.

9. Of interest, the increase of the size of the development from 118 residential dwelling units to 134 residential dwelling units will not involve any significant land disturbance aside from what already exists. The development as it now exists and has been built, consists of 118 residential dwelling units, with common facilities, including a community building and several swimming pools. All of the infrastructure for the foregoing has been installed--roads, water, sewer, gas, and electric. Accordingly, the land disturbance for the additional residential dwelling units will be limited to the land where the new houses will be constructed, and no material land disturbance beyond the foregoing. For this reason among others, the Town Planning Board determined that a new Public Hearing for the increased size of the development would not be needed, and, of even more significance, that SEQRA would not need to be revisited.

### **HARDSHIP**

10. It is obvious that the Petitioner has invested substantial money into this Project, including obtaining all applicable approvals to construct the 118 residential dwelling units that now exist, and all of the infrastructure and common facilities that also now exist. Additional funds were expended in obtaining approval of the project by the Town Planning Board and other Town departments, and all third party approvals necessary for this Project. In addition, significant costs and expenses were paid to obtain approval from the New York State Attorney General for this Project. In connection with the construction by the Petitioner, the Petitioner experienced substantial finance charges and costs in excess of that which had been budgeted

11. Over the past year the Petitioner has invested significant additional funds in connection with this Project. The Petitioner retained Kirk Rother, engineer, to prepare the required as-built site plan and to redesign the retention ponds for the development. The Petitioner has also paid for the Town Engineer to review the foregoing. The Petitioner has performed work in response to the requirements of the Town Code Enforcement Officer, including installation of grinder pumps for the sewage distribution system, and site development work, including removal of speed bumps, and additional work around the Property. Moreover, the Petitioner has committed to perform additional work in connection with this Project, including expanding the retention pond, as redesigned by the Project Engineer, the installation of landscaping, the installation of water meters, and correction of open violations and obtaining certificates of occupancy for open building permits. The Petitioner has agreed with the Planning Board that, if required, the Petitioner would post a bond with the Town to secure the foregoing obligations of the Petitioner for the additional work.

12. During the past year, for the work performed thus far, the Petitioner has invested approximately \$100,000.00, and the Petitioner expects to invest additional funds to satisfy the requirements of the Town Code Enforcement Officer. These funds will be required to be expended in addition to the costs and expenses that the Petitioner would incur to construct the additional residential dwelling units.

## RELIEF REQUESTED

13. For the reasons heretofore set forth, the Petitioner is requesting relief from the Moratorium Law and requesting authority to complete the development of the Project.

14. As set forth in this Petition, the Petitioner has already constructed 118 residential dwelling units and the common facilities applicable to this development, including the community building and several swimming pools. Approximately one year ago, the Petitioner submitted plans to construct an additional 16 residential dwelling units at the Property, the construction of which has been included as part of the Condominium association offering plan and approved for filing by the New York State Attorney General.

15. In connection with the submission to expand the development from 118 dwelling units to 136 dwelling units, the Town Planning Board determined that no new public hearing would be needed and that the SEQRA determinations previously made for this Project would not need to be revisited.

16. Upon submission of the proposed amendment to the site plan, the Town Code Enforcement Officer imposed several requirements upon the Petitioner, including submission of the amended site plan and a redesign of the retention pond, and the Petitioner has responded to those requests and others. The Petitioner has also demonstrated its willingness to correct the remaining items required by the Town Code Enforcement Officer and the Petitioner has expressed a willingness to post a bond with the Town in order to secure that obligation, if requested by the Town Planning Board.

17. The Petitioner has also demonstrated a substantial financial hardship mandating that this Project be allowed to proceed, notwithstanding the Moratorium Law. Over the past year, the Petitioner has invested in excess of \$100,000.00 towards obtaining approval of the amended site plan to expand the site to 134 residential dwelling units, and to correct the conditions that the Town Code Enforcement has required be corrected. It would certainly be unfair to withhold approval for this Project after the Petitioner has done what was asked of it and is at the final stages of approval.

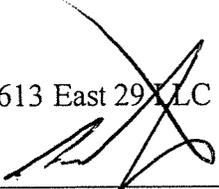
18. For all of the reasons set forth herein, it is respectfully submitted that the Petitioner has demonstrated that a significant hardship would be incurred, financially and otherwise, in the event that the Petitioner would not be allowed to proceed towards completion of this Project, and that in such event, the Petitioner would suffer irreparable injury.

\*\*\*END OF PAGE\*\*\*

WHEREFORE, it is respectfully requested that the Town of Fallsburg grant the Petitioner relief from the stay of development provided for by the Town of Fallsburg Residential Zoning Moratorium Law and that this Project be allowed to proceed through the approval process of the Town of Fallsburg Planning Board and any other Town Boards which may require approval for this Project, including the Architectural Review Board and the Building Department.

Dated: Woodbourne, New York  
August 17, 2016

1613 East 29<sup>th</sup> LC

By:   
\_\_\_\_\_  
Shraigy Schwartz, Managing Member



**EXHIBIT "A"**

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**CONDOMINIUM OFFERING PLAN**

**FOR**

**WILLOW WOODS CONDOMINIUM**

Total Purchase Price of the 134 Condominium Units  
Being Offered for Sale by this Plan: \$ 36,229,600

The Condominium will Consist of 134 Residential Units Located on  
Brickman Road, also known as County Route 52  
Town of Fallsburg, Sullivan County, New York

**SPONSOR/SELLING AGENT:**

1613 East 29 LLC  
342 Bedford Avenue  
Brooklyn, New York 11211

Date of Acceptance for Filing: August 27, 2008  
This plan may not be used after August 26, 2009  
unless extended by amendment to the offering plan.

**See page 5 for special risks to purchasers.**

**THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL THESE CONDOMINIUM UNITS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY CONDOMINIUM UNIT. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.**

**PURCHASERS FOR THEIR OWN OCCUPANCY MAY NEVER GAIN CONTROL OF THE BOARD OF MANAGERS UNDER THE TERMS OF THIS PLAN (SEE SPECIAL RISKS SECTION OF THIS PLAN).**

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## INTRODUCTION

1613 East 29 LLC (the "Sponsor" of this offering) is a New York limited liability company with its principal place of business at 342 Bedford Avenue, Brooklyn, NY 11211. The Sponsor acquired the real property (the "Property") upon which the Project is being constructed by deeds dated November 12, 2007, May 15, 2008, and June 12, 2008. Part II of this Plan contains a detailed description of the Property, a site plan showing the boundary lines of the Condominium Property and the proposed location of the Units and the improvements on the Common Elements, and the floor plans.

The Condominium will be created pursuant to and will be subject to the provisions of Article 9-B of the Real Property Law (New York Condominium Act). The property will become a Condominium upon the recording in the Sullivan County Clerk's office of the Condominium Declaration and By-Laws and the filing of the floor plans of the Units with the Sullivan County Clerk.

The Sponsor reserves the right to rent, rather than sell Units. The Sponsor will endeavor, in good faith, to sell in a reasonably timely manner, all Residential Units. However, in the event that there is a decline in market values of at least 10% from the prices set forth in the Purchase Agreements used to declare the Plan effective, the Sponsor reserves the right to rent, rather than sell, Units until the Sponsor receives offers equal to or greater than 10% below the prices in said Purchase Agreements. Sponsor's good faith efforts to sell to purchasers will include listing unsold Units with brokers, showing unsold Units to brokers and prospective purchasers or their representatives, filing update amendments to the Plan and otherwise engaging in customary sales activities. If Sponsor makes a bulk sale of all or some of its Unsold Units, the transferee successor sponsor will be bound by Sponsor's representations regarding its commitment to sell Units. Purchasers of previously occupied Units will purchase such Units in "as is" condition.

### The Condominium

ck Willow Woods Condominium is located on the southeast side of Brickman Road, also known as County Road 52, in the Town of Fallsburg, Sullivan County, New York, and consists of approximately 75 acres. The Condominium will consist of one hundred thirty four (134) newly constructed residential condominium units, one (1) community building and associated parking areas. Amenities will include two (2) full-size swimming pools, one (1) kiddie pool, two (2) tennis courts, two (2) handball courts, one (1) basketball court, one (1) baseball field and a two-thousand square foot children's playground. The Condominium will also include a caretaker's residence. Due to the nature of the development, it is anticipated that the use of the Units will be seasonal (*i.e.* from May through September, inclusive, in each year), and the projections and assumptions in this Plan are made on that basis.