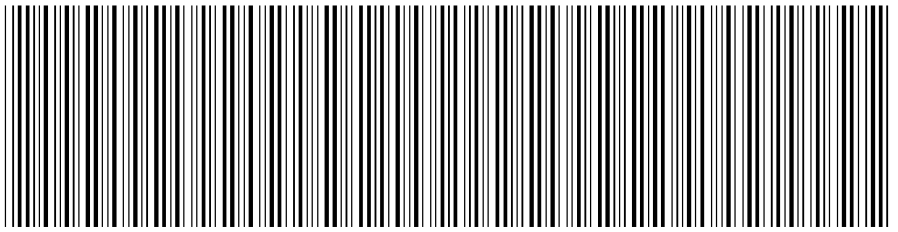


**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 68

Document ID: 2020102800512001

Document Date: 06-19-2020

Preparation Date: 11-04-2020

Document Type: CONDO DECLARATION

Document Page Count: 65

PRESENTER:

MARANS WEISZ TSOLIS & NAZINITSKY LLC
29 BROADWAY
SUITE 2400
NEW YORK, NY 10006
646-568-6149
SMEDRANO@MNTNLAW.COM

RETURN TO:

MARANS WEISZ TSOLIS & NAZINITSKY LLC
29 BROADWAY
SUITE 2400
NEW YORK, NY 10006
646-568-6149
SMEDRANO@MNTNLAW.COM

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	958	4	Entire Lot	245 4TH AVENUE

Property Type: APARTMENT BUILDING

Borough	Block	Lot	Unit	Address
BROOKLYN	958	1401	Entire Lot	CF 243 4TH AVENUE

Property Type: OTHER

☒ Additional Properties on Continuation Page

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

PARTY 1:

243 DEVELOPMENT LLC
478 ALBANY AVENUE
BROOKLYN, NY 11203

FEES AND TAXES

Mortgage :

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 425.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

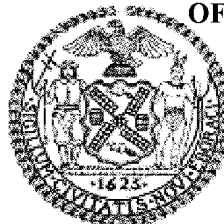
**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE**

CITY OF NEW YORK

Recorded/Filed 11-06-2020 08:37

City Register File No.(CRFN):

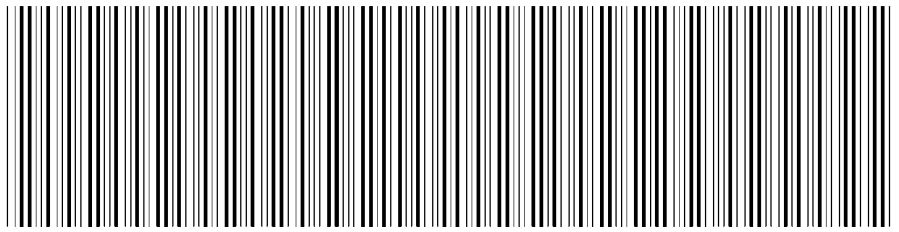
2020000309548



Annette McMill

City Register Official Signature

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**



2020102800512001003CBA27

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 68

Document ID: 2020102800512001

Document Date: 06-19-2020

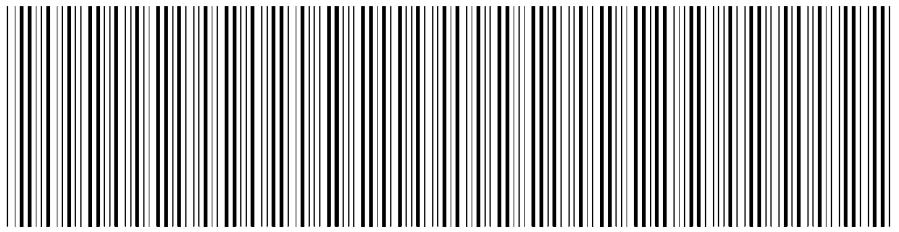
Preparation Date: 11-04-2020

Document Type: CONDO DECLARATION

PROPERTY DATA

Borough	Block Lot	Unit	Address
BROOKLYN	958 1402 Entire Lot	RTL	243 4TH AVENUE
Property Type: COMMERCIAL CONDO UNIT(S)			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1403 Entire Lot	2A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1404 Entire Lot	2B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1405 Entire Lot	3A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1406 Entire Lot	3B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1407 Entire Lot	4A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1408 Entire Lot	4B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1409 Entire Lot	5A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1410 Entire Lot	5B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1411 Entire Lot	6A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1412 Entire Lot	6B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1413 Entire Lot	7A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1414 Entire Lot	7B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1415 Entire Lot	8A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2020102800512001003CBA27

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 3 OF 68

Document ID: 2020102800512001

Document Date: 06-19-2020

Preparation Date: 11-04-2020

Document Type: CONDO DECLARATION

PROPERTY DATA

Borough	Block Lot	Unit	Address
BROOKLYN	958 1416 Entire Lot	8B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1417 Entire Lot	9A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1418 Entire Lot	9B	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1419 Entire Lot	10A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1420 Entire Lot	11A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			
Borough	Block Lot	Unit	Address
BROOKLYN	958 1421 Entire Lot	12A	243 4TH AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT			



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

BARBARA D. UNDERWOOD
ATTORNEY GENERAL

(212) 416-8959

DIVISION OF ECONOMIC JUSTICE
REAL ESTATE FINANCE BUREAU

243 Development LLC
c/o Marans, Weisz & Newman LLC
Attention: Jonathan Pivovarov, Esq.
29 Broadway, Suite 2400
New York, NY 10006

November 19, 2018

RE: 243 4th Avenue Condominium (The)
File Number: CD180131 Amount Offering \$54,557,000.00
Filing Fee: \$15,000 & \$15,000 Receipt Number: 145745 & 149150
Acceptance Date: 11/19/2018

Dear Sponsor:

The offering literature submitted for the subject premises is hereby accepted and filed. Unless extended by duly filed amendment, the effectiveness of the filing shall expire twelve months from this date. All advertising and solicitation material must be consistent with the contents of the filed offering literature. Any material change of facts or circumstances affecting the property or the offering requires an immediate amendment.

Any misstatement or concealment of material fact in the literature filed renders this filing void ab initio. This office has relied on the truth of the certification of sponsor, sponsor's principals and sponsor's experts, as well as the transmittal letter of sponsor's attorney.

The issuance of this letter is conditioned upon the faithful performance of all of the obligations of the sponsor, its agents and instrumentalities, which are required by law or set forth in the offering literature. If there is a failure or neglect to perform any such obligations when required, the effectiveness of this letter shall be suspended, and all offering and sales shall cease, pending further action by this office. Issuance of this letter is further conditioned on the collection of all fees imposed by law. This letter is your receipt for the above filing fee.

The filing of the offering literature shall not in any way be construed as approval of the contents or terms thereof by the Attorney General of the State of New York. Nor does it waive or limit the Attorney General's authority to take enforcement action for violation of Article 23-A of the General Business Law or other applicable provisions of law.

Very truly yours,
Judith Kaufman

Judith Kaufman
Assistant Attorney General

DECLARATION ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP OF
PREMISES LOCATED AT 243 4TH AVENUE, IN THE BOROUGH OF BROOKLYN,
COUNTY OF KINGS, CITY AND STATE OF NEW YORK, PURSUANT TO ARTICLE 9-B
OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK

THE 243 4TH AVENUE CONDOMINIUM

243 4TH AVENUE
BROOKLYN, NEW YORK

SPONSOR

243 DEVELOPMENT LLC
478 ALBANY AVENUE
BROOKLYN, NEW YORK 11203

DATE OF DECLARATION

JUNE 19, 2020

The Land affected by the within instrument lies in Block 958, F/K/A Lot 4 and 5, N/K/A Lots
1401 - 1421 on the Tax Map of the Borough of Brooklyn, County of Kings, State of New York.

MARANS WEISZ TSOLIS & NAZINITSKY LLC

Attorney(s) for Sponsor
29 Broadway Suite 2400
New York, New York 10006

DECLARATION OF THE 243 4TH AVENUE CONDOMINIUM
PURSUANT TO ARTICLE 9-B OF THE
REAL PROPERTY LAW OF THE STATE OF NEW YORK

In the Borough of Brooklyn, County of Kings, and City and State of New York on this 19th day of June 2020, 243 DEVELOPMENT LLC (the "Owner" or the "Declarant"), a limited liability company existing under the laws of the State of New York, whose office is situated at 478 Albany Avenue, Brooklyn, NY 11203 does hereby declare as follows:

ARTICLE 1 SUBMISSION OF PROPERTY

1.1. Submission of Property. Declarant hereby submits the Land and the Building (each as hereinafter defined), and all other improvements erected and to be erected thereon, all easements, rights and appurtenances belonging thereto and all other property, real, personal or mixed, intended for use in connection therewith (collectively, the "Property"), to the provisions of Article 9-B of the Real Property Law of the State of New York (as the same may be amended from time to time, the "Condominium Act") and pursuant thereto does hereby establish a condominium to be known (subject to the provisions of this Declaration) as the "Condominium").

1.2. The Land. Included in the Property described above is all Declarant's fee interest in that certain tract, plot, piece and parcel of land (the "Land") situate, lying and being in the County of Kings, City and State of New York, and more particularly described in Schedule A annexed hereto and made a part hereof.

1.3. Condominium By-Laws. Annexed to this Declaration as Schedule C and made a part hereof are the by-laws of the entire Condominium which shall govern the general operation, use and occupancy of the entire Condominium (said by-laws, as the same may be amended from time to time in accordance with the provisions hereof and thereof, the "Condominium By-Laws").

1.4. Property Subject to Certain Development Rights. The Property is not subject to development rights or restrictions.

1.5. Development Rights. Any portion of the unused floor area development rights that are now owned, subsequently acquired or that may become available under the Zoning Resolution of the City of New York (the "Development Rights") shall be owned by the Declarant, may be utilized by Declarant or any party acquiring the same from the Declarant (the "Development Rights Purchaser") and merged into a zoning lot pursuant to the terms of a zoning lot development agreement or similar agreement or instrument (a "ZLDA").

1.6. Defined Terms: Conflicting Provisions. All capitalized terms used but which are not separately defined in this Declaration shall have the meanings given to such terms in the Condominium By-Laws. In the event of a conflict between: (i) the terms and provisions of this Declaration and the terms and provisions of the Condominium By-Laws, the terms of this Declaration shall in all events govern.

ARTICLE 2 DEFINITIONS

Affiliate: with respect to any person or entity, means a person or entity which directly or indirectly

(through one or more intermediaries) controls, is controlled by, or is under common control with, such person or entity. For purposes hereof, the term "control" (including the related terms "controlled by" and "under common control with") mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity (whether through the ownership of voting securities or other ownership interest, by contract or otherwise); and the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the legal or beneficial interest in such entity.

Board of Managers (also "Board"): The governing body of the Condominium.

Budget Allocations: The allocation of Common Expenses among the Unit Owners set forth in Schedule D to the Declaration.

Building: The twelve (12) story with cellar, roof, and bulkhead structure containing the Units and the Common Elements of the Condominium (other than the land under the Building).

By-Laws (including all amendments thereto): One of the documents governing the operation of the Condominium, the form of which is annexed hereto as Exhibit C.

City Register's Office: Office of the City Register of The City of New York.

Commercial Common Element: All parts of the Building other than the Units, General Common Elements and Residential Common Elements for the common use of all of the Non-Residential Units and the Non-Residential Unit Owners.

Commercial Unit: Any areas of the Building designated as such on the Floor Plans, and intended to be used for commercial purposes, together with its percentage of Common Interest.

Commercial Unit Owner: An owner of a Commercial Unit.

Community Facility Unit: Any areas of the Building designated as such on the Floor Plans, and intended to be used for community facility purposes, together with its percentage of Common Interest.

Community Facility Unit Owner: An owner of a Community Facility Unit.

Common Charges: Assessments payable to the Board of Managers by each Unit Owner for the purpose of meeting Common Expenses.

Common Expenses: The costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the Common Elements, including any reserve established in anticipation of the aforesaid costs and expenses.

Common Elements (also "General Common Elements"): The Land, all parts of the Building other than the Units, including the foundation, roof and supports of the Building, and all areas or facilities for the common use of the Units and the Unit Owners.

Common Interest (also "Percentage of Interest in Common Elements"): The proportionate,

undivided interest in fee simple absolute in the Common Elements pertaining to each Unit set forth in the Declaration. Such interest is expressed as a numerical percentage. The total of all Common Interest percentages pertaining to all Units equals 100%. The Common Interest of the Unit is the basis for determining, among other things, a Unit Owner's (a) proportionate share of the Common Expenses and (b) proportionate share of any distributions upon termination of the Condominium.

Condominium: The Units and Common Elements comprising the Property to be called The 243 4th Avenue Condominium.

Condominium Act: Article 9-B of the New York State Real Property Law.

Declarant: 243 DEVELOPMENT LLC, its successors in interest, assigns, and/or, and/or designees, including any Persons designated as having the rights of Declarant by Declarant or a designee of Declarant. The words "Declarant" and "Sponsor" are used interchangeably in this Declaration.

Declaration (including all amendments thereto): The recorded instrument by which the Property is submitted to the provisions of the Condominium Act, as such instrument may be amended from time to time, consistent with law and the By-Laws. The By-Laws, which govern the operation of the Condominium, are part of the Declaration.

Department of Buildings: The Department of Buildings of the City of New York.

Department of Law: The New York State Department of Law.

Insurance Trustee: A bank or trust company in the State of New York from time to time appointed to serve as such by the Board. The Sponsor Mortgagee shall serve as the initial Insurance Trustee for so long as Sponsor Mortgagee shall have a lien against one or more Unsold Units.

Law: The laws and ordinances of any or all of the Federal, New York State, New York City, County and Borough governments, including, without limitation the New York City Department of Buildings, the rules, regulations, orders and directives of any or all departments, subdivisions, bureaus, agencies or offices thereof, or of any governmental, public or quasi-public authorities having jurisdiction over the Property and/or the Condominium and/or the direction of any public officer pursuant to Law which are applicable at the time in questions.

Licensee: A purchaser or holder of a license to Licensed Space.

License Fee: Fees payable to the Board of Managers by each licensee of Licensed Space.

Licensed Space: Any portion of Common Elements restricted in use and subject to exclusive license agreements such as (but not limited to) Parking Spaces and Storage Spaces.

Limited Common Elements: Those Common Elements for which a Unit Owner will have the exclusive right to use. Examples of Limited Common Elements are rear yards, terraces, and balconies accessed through particular Units.

Non-Residential Common Interest: The proportionate undivided interest, expressed as a numerical percentage, of each Non-Residential Unit Owner in the Common Elements. The total of all Non-

Residential Common Interest percentages appurtenant to all Non-Residential Units equals to 100%.

Non-Residential Unit: Any Unit not designated for residential use in the Floor Plans such as (but not limited to) Community Facility Units or Commercial Units.

Non-Residential Unit Owner: An owner of a Non-Residential Unit.

Offering Plan (also referred to as "Plan"): The documents submitted by the Sponsor to the Department of Law required in order to be able to sell Units in the Condominium.

Parking Space: Any space designated as a Parking Space in the Floor Plans.

Parking Space Licensee: The licensee of a Parking Space.

Permitted Mortgage (also referred to as a "Registered Mortgage" if such Permitted Mortgage qualifies as a Registered Mortgage): A mortgage of a Unit or Units permitted to be placed thereon pursuant to the provisions of the By-Laws, the Construction Loan, and/or any mezzanine finance loan or preferred equity loan provided to Sponsor and/or Declarant.

Permitted Mortgagee (also referred to as a "Registered Mortgagee" if such Permitted Mortgage qualifies as a Registered Mortgage):: The holder of a Registered Mortgage and shall include, without limitation, banks, financial institutions, and/or other lenders such as the Construction Lender, its successors, assigns and/or affiliates, as well as any Sponsor Mortgagee.

Plans and Specifications: The plans and specifications for the Building which (to the extent required by law) are filed with, and approved by, the Department of Buildings and which plans and specifications may, from time to time, have been amended or changed, or may hereafter be amended or changed in accordance with the provisions of this Plan.

Property: The Land, the Building and other improvements thereon, and all easements, rights and appurtenances belonging thereto.

Registered Guarantor: A guarantor on a Permitted Mortgage who has registered with the Board of Managers by supplying the Board with the name and address of the guarantor.

Registered Mortgage: A mortgage held by a Registered Mortgagee.

Registered Mortgagee: A mortgagee that holds a mortgage on a Unit that has provided notice to the Board indicating they hold a mortgage on a Unit, which notice contains a copy of the mortgage along with the contact information for the mortgagee.

Residential Common Elements: Those portions of the Common Element intended to be devoted to the common use and enjoyment of the Residential Unit Owners. The term "Residential Limited Common Elements" may be used when describing or referring to a Residential Common Element that is restricted in its use to only a portion of the Residential Units and Residential Unit Owners.

Residential Common Expenses: All costs and expenses to be incurred generally by Residential Unit Owners pursuant to the Declaration and/or the By-Laws in connection with: (i) the repair,

maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the Residential Common Elements; or (ii) the establishment and/or maintenance of an operating reserve fund for working capital and replacements to the Residential Common Elements.

Residential Common Interest: The proportionate undivided interest, expressed as a numerical percentage, of each Residential Unit Owner in the Residential Common Elements. The total of all Residential Common Interest percentages appurtenant to all Residential Units equals to 100%.

Residential Unit: Any areas of the Building designated as such on the Floor Plans, and intended to be used for residential purposes, together with its percentage of Common Interest.

Residential Unit Owner: The owner of a Residential Unit.

Rules and Regulations: The rules and regulations of the Condominium made in accordance with the By-Laws. The rules and regulations, which will apply unless and until amended by the Board of Managers, are set forth as an addendum to the By-Laws.

Sponsor: The person, partnership, joint venture, corporation, company, trust, association or other entity which is offering the Units in this Condominium to the public at the given time in question.

Successor Sponsor: An affiliate of Sponsor, a designee or assignee of Sponsor, or a Purchaser of 10 units or 20 percent of the total number of Units in the Condominium, whichever is less, which are not purchased for occupancy by the owner or one or more members of their immediate family. A Successor Sponsor has the same rights and obligations of a Sponsor, but only in relationship to the Units which such Successor Sponsor owns. Successor Sponsors have the same right to assign or designate a person or entity, whether related or unrelated to Sponsor, to succeed to their rights and obligations and any such assignee or designee shall also be deemed a Successor Sponsor.

Sponsor's Mortgagee (or "Sponsor's Registered Mortgagee"): Any Registered Mortgagee holding a Registered Mortgage encumbering Unsold Units owned by Sponsor and/or any other lender that has provided mezzanine financing or preferred equity financing to the Sponsor and/or Declarant. For the avoidance of doubt, the Construction Lender shall be deemed to be a Sponsor's Registered Mortgagee.

Storage Space: Any space designated as a Storage Space in the Floor Plans.

Tax Lot Drawings (also referred to as "Floor Plans"): Tax lot drawings filed simultaneously with the recording of this Declaration in the New York City Register's Office, which drawings set forth a description of the Building, and stating the number of stories, the number of Units and their layout, and the Common Elements, and any amendments thereto.

Unit: a part of the Property intended for any type of use or uses, and with an exit to a public street or highway or to Common Elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace and patio. Each Unit is designated by number, letter or combination thereof or other official designations conforming to the tax lot number designating the Unit in the Declaration and on the Floor Plans.

Unit Owner: An owner of any Unit. Two or more of such owners are collectively referred to as

“Unit Owners”.

Unsold Units: Any Units owned by Sponsor or its designee, other than any Unit purchased by and for the use of Sponsor, Affiliate of Sponsor, or its designee, until such time as the same have been sold. The Unsold Units shall include any Residential Unit as well as any Non-Residential Unit for so long as a Unit remain unsold.

ARTICLE 3 DESCRIPTION OF PROPERTY AND IMPROVEMENTS

The Declarant has constructed a building on the parcel of land described above, to be converted to a condominium known as The 243 4th Avenue Condominium according to Tax Lot Drawings certified by Fariba Makooi, R.A. filed simultaneously with the recording of this Declaration.

The Condominium will consist of one building containing a total of nineteen (19) Residential Units, nineteen (19) licensed Storage Spaces, one (1) Commercial Unit, and one (1) Community Facility Unit as set forth on the Floor Plans filed simultaneously with this Declaration in the Office of the City Register of the City of New York. Each Unit has access to the other Unit or to any other portion of the Condominium by means of hallways and stairways which form a part of the Common Elements of the Condominium. For the purposes of describing the location of the Building, approximate area, type and number of rooms of each Unit and the Common Elements to which each Unit has immediate access, the Units are described in the Floor Plans and on Schedule B hereto. Each Unit will be sold to one or more Owners, each Owner obtaining fee ownership in, and exclusive right of occupancy and possession of the Unit, together with an undivided interest in the Common Elements of the Condominium, as hereinafter set forth in this Declaration, and referred to as “the Common Elements,” all in accordance with Article 9-B of the Real Property Law of the State of New York. The designation of the number of rooms, interior partitions and kitchen and bathroom facilities in a Unit may be changed by mutual consent of the Sponsor (which for the purposes herein is the Declarant) and a Unit Owner and reflected in an amendment to the Declaration.

The Condominium has a total land area of 5,460 square feet.

ARTICLE 4 DIMENSIONS OF UNITS

Each Unit is Measured horizontally, the unit sizes are calculated from the exterior face of the exterior walls adjacent to the unit, to the centerline of the demising wall between units, corridors, elevator, stairs and other mechanical equipment spaces or any common elements not within a unit (or to the exterior face of the opposite exterior wall). columns, mechanical pipes, shafts, shaftways, chases, chaseways and conduits are included in the measurement of each such unit. where the residential unit encompasses a full floor, garbage chutes and elevator shafts are also included in the calculation of size. measured vertically, each unit will consist of the volume from the top of the floor slab (located under the finished flooring and sub floor materials, if any) to the underside of the concrete ceiling above. the size of common elements which fall within the boundaries of a unit are included in the square foot area of the unit, even though they are not part of the unit.

ARTICLE 5 COMMON ELEMENTS

5.1 General Common Elements. The General Common Elements include those portions of the Building that are designated as “General Common Elements” or “Common Elements” on the Tax Lot Drawings, and to the extent not specifically identified as such, all other parts of the Property (other than those areas and items specifically identified as part of a Unit, a Residential Common Element or a Limited Common Element) the common use of which is necessary or convenient for the existence, maintenance, operation or safety of the Property. Without intending to limit the generality of the foregoing in any respect, the General Common Elements include:

- (a) the Land, together with all easements, rights and privileges appurtenant thereto (except as otherwise expressly provided in this Declaration);
- (b) all sidewalks, fences, and landscaped areas benefiting any General Common Element, or not otherwise designated as a Residential Common Element or Limited Common Element, or a part of a Unit;
- (c) all structural elements, foundations, foundation walls, footings, columns, girders, beams, supports, interior load-bearing walls, floor slabs (but not flooring material), and ceilings and floors separating the Units from one another, and from exterior walls and facades (but not including windows);
- (d) any ventilation system consisting of pumps, motors, ductwork, fans and controls, steam and condensate return piping, serving or benefiting all of the Units;
- (e) all electrical risers, feeders, lines and equipment, including incoming service, main switchgear and distribution panelboards, conduits, wires, meters, and transformers serving or benefiting any General Common Element, or all of the Units;
- (f) all storm and sanitary sewer equipment and pipes (including vent lines, ejectors, interceptors, filters and valves) downspouts, and roof drainage systems, excluding, however, all such items located within a Unit and serving only that Unit;
- (g) all electric service rooms, gas, steam and water meter rooms, telephone rooms, and other service, mechanical and utility rooms serving or benefiting any General Common Element, or all of the Units;
- (h) all other facilities of the Building (including shafts, pipes, wires, ducts, vents, flues, cables, conduits and lines) which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the General Common Elements, or all of the Units;
- (i) enclosing walls and doors surrounding mechanical equipment;
- (j) all utilities and mechanical and electrical transfers and equipment, and vaults for such utilities used for the General Common Elements, or all of the Units;
- (k) portions of the Building housing equipment servicing all the Units and not allocated

as a Residential or Limited Common Element;

(l) portions of the roof housing equipment servicing all the Units (but not including the equipment), or shown on the Tax Lot Drawings as General Common Elements, or not allocated to the Residential Common Elements;

(m) Licensed Space; and

(n) whether or not specifically identified as part of the General Common Elements (or identified at all) on the Tax Lot Drawings, all other parts of the Property either existing for the common use of all of the Units, or that are necessary or convenient for the existence, maintenance, operation or safety of the Property.

5.2 Residential Common Elements. The Residential Common Elements consist of those portions of the property designated on the Tax Lot Drawings as Residential Common Elements, and also those Common Elements (other than vertical shaftways and penetrations) which exclusively serve or benefit only the Residential Units or the Residential Unit Owners whether or not designated as Residential Common Elements (or designated at all) on the Tax Lot Drawings (but excluding any items therein or in the Building which are not part of the Property, including, without limitation, any equipment, wiring and devices owned by telecom providers, and those areas and items specifically identified as part of a Unit or a Residential Limited Common Element). The Residential Common Elements include, without limitation, the following:

(a) entrances, exits, and lobby which exclusively serve or benefit the Residential Units;

(b) all stairs, stairways and fire stairways, halls, passages, corridors, storage rooms, housekeeping areas, mechanical and other rooms, areas and spaces (including their respective floors, ceilings and enclosing walls) which exclusively serve or benefit the Residential Units and are not part of any other Common Element or Unit;

(c) all security monitors and equipment and other security facilities, virtual doorman, or other low voltage system which serve or benefit only the Residential Units;

(d) all passenger elevators and elevator shafts and equipment which exclusively serve or benefit the Residential Units and are not part of any other Common Element or Unit;

(e) any landscaped areas of the Property, and any fences surrounding such area, which serve or benefit only the Residential Units or the Residential Unit Owners;

(f) all areas where plumbing, pipes, vents, flues and/or risers and equipment exclusively serving the Residential Units is located, but not including areas located within a Unit and all HVAC systems, pipes, flues, risers, vents and ducts, which are part of the Units they serve;

(g) any portions of the Building designated on the Tax Lot Drawings as Residential Common Elements; and

(h) whether or not specifically identified as part of the Residential Common Elements (or at all) on the Tax Lot Drawings, all other parts of the Property and all

telecommunications equipment and all other systems, installations and facilities (including shafts, pipes, wires, ducts, vents, flues, cables, conduits and lines) and equipment on the Property (other than those areas and/or items specifically identified on the Tax Lot Drawings or herein as part of a Unit and/or to the General Common Elements) which serve or benefit or are necessary or convenient or existing for the common use, existence, maintenance, operation or safety of the Residential Units or the Residential Unit Owners.

5.3 Limited Common Elements. Limited Common Elements consist of the portions of the Property (other than the Units and the Common Elements) existing for the sole use and enjoyment of certain Unit Owners to the exclusion of all other Unit Owners. Limited Common Elements include any terraces or balconies that are allocated for the exclusive use of an appurtenant Unit, as set forth in the Floor Plans. No structures of any kind may be erected on Limited Common Elements without the express written permission of the Board of Managers, except for temporary structures. Each Unit Owner of a Unit to which a Limited Common Element is appurtenant shall be responsible for the cost and performance of all painting, decorating and non-structural ordinary maintenance, repairs, cleaning and replacements to such Limited Common Element. However, the costs and expenses of any structural or extraordinary repairs or replacements to any Limited Common Element, unless the need for such repair or replacement was caused by the negligent act or omission of the Unit Owner of the Unit to which it is appurtenant, shall be allocated to all Unit Owners as a Common Expense. The repair and replacement of the exterior surface of any terrace shall be performed by the Board and charged to the Unit Owner. Any structural or non-ordinary repairs (non-recurring repair which requires more than the usual annual expense for ordinary wear, including leaks that are not the result of a Unit Owner's negligence) or replacements to such terrace shall be made by the Board, and the cost and expense thereof shall be charged to all Residential Unit Owners as a Common Expense; provided, however, that any repairs or replacements that are necessitated or deemed advisable by the Board and result from the negligence or wrongful acts of the Owner of a Unit to which such Limited Common Element is appurtenant, or its tenants, guests and/or invitees, shall be performed by the Board at the cost of such Unit Owner. The Board of Managers shall have the right of access in and through these areas for the purpose of doing building maintenance inspections. Notwithstanding anything herein to the contrary, a Unit Owner who wishes to paint, decorate or make any other changes to a Limited Common Element appurtenant to their Unit, and which change deviates from the Limited Common Element as it was originally delivered by Sponsor, must first obtain express written permission from the Board of Managers.

5. No Division of Common Elements. The Common Elements shall remain undivided and no Unit Owner shall bring any action for partition or division unless otherwise provided by law. Each Unit Owner shall have the right to use the Common Elements, other than such portion, if any, which are by the terms of this Declaration or the annexed By-Laws irrevocably restricted in use to other Unit Owners, in accordance with the purpose for which such elements are intended, without hindering the exercise of or encroaching upon the rights or other Unit Owners. The undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with that Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

ARTICLE 6 USE OF UNITS AND COMMON ELEMENTS

6.1. Use of Residential Units. The Residential Units may only be used for residential purposes, home occupations to the extent permitted by law, and/or as a sales office by Declarant, except in

no event may all or any portion of the Unit be used for: (i) hostel, hotel, short term hotel type use or other transient purposes; (ii) any sex-related commercial establishment or massage parlor, or establishment where pornographic material is displayed or distributed, or obscene, nude or semi-nude performances are shown live or in a videotaped or other recorded format; (iii) any club, tavern or bar, restaurant or reception hall use; (iv) any betting parlor, casino or gambling type establishment; or (v) any drug rehabilitation clinic or treatment center.

6.2. Intentionally Omitted.

6.3. Use of Storage Spaces. Storage Spaces shall be used solely as auxiliary space by Storage Space Licensees, in compliance with the certificate of occupancy for such space and any applicable zoning regulations. Storage Spaces may be licensed to members of the public, including Non-Residential Unit Owners.

6.4. Use of Community Facility Units. Subject to compliance with all Laws, including, without limitation, the certificate of occupancy for such Unit and any applicable zoning regulations, and except as otherwise provided herein and in the By-Laws, Community Facility Units may be used for any purpose consistent with the Certificate of Occupancy, or for any lawful purposes, including but not limited to, an outpatient clinic, synagogue or other religious gathering place, school or community meeting room, museum, or non-Community Facility art gallery. The Community Facility may not be used for (i) any illegal or pornographic purposes; (ii) any establishment which provides sex related activities consisting of nude or semi-nude live performances, sex club, massage parlor, adult bookstore, peep shows; (iii) homeless shelter, or (iv) a drug or alcohol rehabilitation facility. A Community Facility Unit Owner may not amend the Certificate of Occupancy for such Unit without the prior written consent of the Board. The Sponsor, while in control of the Board, may consent to an amendment to the Certificate of Occupancy that changes the currently permitted lawful purposes and uses; however, the Sponsor, while in control of the Board, will not consent to any amendment of the Certificate of Occupancy that would make the currently impermissible uses, as set forth above, permissible.

6.4.1 No income derived from any use of the Community Facility Unit will constitute income to the Board or any Unit Owner except the Community Facility Unit Owner. The Community Facility Unit Owner may lease or license all or any portion of its Unit to one or more lessees (or may permit occupants or permittees to use all or any portion of its Unit) so long as the uses thereof are legally permitted, and comply with this Declaration and the By-Laws.

6.4.2 A Community Facility Unit Owner shall have the right to install and maintain signage, storefronts, and security devices upon the exterior of the Building, and to determine the content and nature of the signage, provided such signage relates solely to an occupant of the Unit or the sale or leasing of such Unit, and is consistent with the design and aesthetic of the Building façade without the consent of the Board. No “sandwich” style advertising board composed of two boards set up in a triangle shape or sound equipment to promote or advertise functions or events in the Community Facility Unit will be permitted at the street entrance to the Community Facility Unit or an adjacent sidewalk.

6.4.3 Except to the extent inconsistent with the By-Laws or prohibited by Law, and unless there shall be a material adverse effect on the Residential Unit Owners, each Community Facility Unit Owner shall have the right, without the vote or consent of the Board of Managers to: (1) make alterations, additions or improvements, whether structural or non-structural, interior or

exterior, ordinary or extraordinary, in, to and upon their Community Facility Unit; (2) change the layout or number of rooms in the Community Facility Unit from time to time; (3) change the Community Facility Unit, by subdividing the same, into any desired number of Condominium Units, combining any of the Community Facility Units or combining any units resulting from a subdivision, altering the boundary walls between the Community Facility Unit, or otherwise; (4) designate all or part of a Community Facility Unit as a newly created Commercial Common Element; (5) reapportion among the newly created Community Facility Units resulting from any subdivision, combination or otherwise their percentage interests in the Common Elements which shall be based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Unit; provided that in no case may such reapportionment result in a greater percentage of Common Interest for the total of the new Community Facility Unit than existed for the original Community Facility Unit; and (6) amend the Certificate of Occupancy with respect to the Community Facility Unit (any such amendment to be at the sole cost and expense of the Unit Owner of the Community Facility Unit in question) to provide that such Community Facility Unit may be used for any purpose which is lawful at the time that such amendment is made. The Community Facility Unit Owner may not file an amendment to this Declaration with respect to the Community Facility Unit authorized by this paragraph without notice to the Board of Managers, and any amendment that shall have a material impact on any Residential Unit or any other Community Facility Unit shall require the consent of the Board of Managers.

6.5. Use of Commercial Units. Subject to compliance with all Laws, including, without limitation, the certificate of occupancy for such Unit and any applicable zoning regulations, and except as otherwise provided herein and in the By-Laws, Commercial Units may be used for any purpose consistent with the Certificate of Occupancy, or for any lawful purposes. A Commercial Unit may not be used for (i) any illegal or pornographic purposes; (ii) any establishment which provides sex related activities consisting of nude or semi-nude live performances, sex club, massage parlor, adult bookstore, peep shows; (iii) homeless shelter, or (iv) a drug or alcohol rehabilitation facility.

6.5.1. No income derived from any use of the Commercial Unit will constitute income to the Board or any Unit Owner except the Commercial Unit Owner. The Commercial Unit Owner may lease or license all or any portion of its Unit to one or more lessees (or may permit occupants or permittees to use all or any portion of its Unit) so long as the uses thereof are legally permitted, and comply with this Declaration and the By-Laws.

6.5.2. A Commercial Unit Owner shall have the right to install and maintain signage and storefronts upon the exterior of the Building, and to determine the content and nature of the signage, provided such signage relates solely to an occupant of the Unit or the sale or leasing of such Unit, and is consistent with the design and aesthetic of the Building façade without the consent of the Board.

6.5.3. Except to the extent inconsistent with the By-Laws or prohibited by Law, and unless there shall be a material adverse effect on the Residential Unit Owners, each Commercial Unit Owner shall have the right, without the vote or consent of the Board of Managers to: (1) make alterations, additions or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon their Commercial Unit; (2) change the layout or number of rooms in the Commercial Unit from time to time; (3) change the Commercial Unit, by

subdividing the same, into any desired number of Condominium Units, combining any of the Commercial Unit or combining any units resulting from a subdivision, altering the boundary walls between the Commercial Unit, or otherwise; (4) designate all or part of a Commercial Unit as a newly created Commercial Common Element; (5) reapportion among the newly created Commercial Unit or Commercial Units resulting from any subdivision, combination or otherwise their percentage interests in the Common Elements which shall be based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Unit; provided that in no case may such reapportionment result in a greater percentage of Common Interest for the total of the new Commercial Unit than existed for the original Commercial Unit; and (6) amend the Certificate of Occupancy with respect to the Commercial Unit (any such amendment to be at the sole cost and expense of the Unit Owner of the Commercial Unit in question) to provide that such Commercial Unit may be used for any purpose which is lawful at the time that such amendment is made. The Commercial Unit Owner may not file an amendment to this Declaration with respect to the Commercial Unit authorized by this paragraph without notice to the Board of Managers, and any amendment that shall have a material impact on any Residential Unit or any other Commercial Unit shall require the consent of the Board of Managers

6.6. Use of the Common Elements. Except as otherwise provided herein or in the By-Laws, the Common Elements may be used only for the furnishing of services and facilities to the Unit Owners, their guests, invitees and licensees as permitted under this Declaration and the By-Laws, and for the other uses for which they are reasonably suited. Access to any General Common Elements on the roof is only permitted for the repair or maintenance of such areas, or to maintain or repair any equipment located in such areas. Subject to any easements (exclusive or otherwise) and/or rights of access or as otherwise provided in this Declaration, neither the Board nor any Unit Owner shall impede the exercise of or encroach upon the rights of Unit Owners or others claiming, by, through or under them, including but not limited to, the occupants of the Units and their respective invitees, to use the General Common Elements as permitted under this Declaration and the By-Laws.

6.6.1. A Non-Residential Unit Owner, its tenants, employees, agents, guests, invitees, and licensees are permitted to access the Common Elements, but only for their intended purposes. Furthermore, in no event shall any guest, invitee or licensee of a Non-Residential Unit Owner be permitted access any area designated as a Residential Common Element, a Limited Common Element or part of a Residential Unit. Any access to the Residential Common Elements, Limited Common Elements, or Residential Units by a Non-Residential Unit Owner, its tenants, or employees shall only be permitted pursuant to the terms of this Declaration and the By-Laws.

6.6.2. Subject to the consent of a Non-Residential Unit Owner, which shall not be unreasonably withheld, and provided it does not impede or encroach upon the rights of a Non-Residential Unit Owner, Declarant may place appropriate directional and identification signs on the exterior of the Building and signs relating to the marketing of Residential Units for sale or lease by Declarant.

6.7. Violation of Use Restrictions. Each Unit Owner shall be responsible for any violations, fines, and fees imposed as a result of such Unit Owner's failure to comply with the terms of this Article with respect to the use of the Units, and shall indemnify and hold harmless the Condominium, the Board and all other Unit Owners against any claim or costs in connection with

such failure.

6.8. Nuisance. No nuisance shall be allowed in the Property nor shall any use or practice be allowed in the Property which interferes with the peaceful possession or proper use thereof by the Unit Owners or the occupants of their respective Units. No improper, offensive or unlawful use shall be made of the Property or any portion thereof. All applicable Laws relating to any portion of the Property shall be complied with at the sole expense of whichever of the Unit Owner(s) shall have such obligation pursuant to the Declaration and the By-Laws to maintain or repair such portion of the Property.

6.9. Prohibited Acts. Unit Owners may not take any of the following actions without the prior written consent of the Board: (i) take any action which would materially diminish the visibility or prominence of another Unit or any signage installed by another Unit Owner in accordance with the terms of this Declaration, or (ii) use or conduct any activities on the sidewalks appurtenant to the Property that materially adversely affects another Unit Owner, except as otherwise permitted by this Declaration and/or the By-Laws.

ARTICLE 7 CHANGES TO THE UNITS

7.1. General.

7.1.1. Any alterations or changes to the Building or the Units other than those changes set forth in the Tax Lot Drawings and the Plans ("Alterations") shall be subject to the restrictions set forth in this Declaration and the By-Laws. All work must be performed pursuant to applicable law, and by licensed and insured contractors. A Non-Residential Unit Owner shall have the right to veto any proposed Alteration that would have a material and adverse effect on their Non-Residential Unit. The Residential Board Members shall have the right to veto any proposed Alteration that would have a material and adverse effect on the Residential Units or the Residential Common Elements. The Board shall have the right to veto any Alteration that materially and adversely affects any structural elements of the Building, any Building systems that serve other Units, or the Common Elements.

7.1.2. Any Alterations to be made by any Unit Owner that affects, in any material aspect, the façade of the Building (other than signage and storefronts on the ground floor of the Building) or the structural elements of the Building, or require approval from the Landmarks Preservation Commission, shall be subject to the prior consent and approval of the Board, which shall not be unreasonably withheld, conditioned or delayed.

7.1.3. Whenever a Unit Owner is permitted, pursuant to the terms of this Article, to make Alterations or other changes to its Unit, or to apply to a government agency with respect to the use or Alteration of its Unit without the prior written consent of the other Unit Owners or the Board, such Unit Owner shall provide the Board and the other Unit Owners with written notice at least ten (10) business days prior to commencing such Alteration or submitting such application, and include in such notice all documents submitted as part of such application and a full description of the proposed Alteration.

7.2. Alterations by the Declarant and a Non-Residential Unit Owner.

7.2.1. Subject to the provisions of Section 7.1 herein, except to the extent prohibited by Law, the Declarant and a Non-Residential Unit Owner shall have the right, without the consent or

approval of the Board or other Unit Owners, to:

- (a) make Alterations, additions, or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon its Non-Residential Unit(s);
- (b) change the layout of, or number of rooms therein;
- (c) change the size of the Unit(s) by (i) subdividing its Unit into two or more separate Units, (ii) combining two or more Units resulting from such subdivision or otherwise into one or more units, (iii) altering the boundary walls between any two or more separate Units resulting from such subdivision or combination, or (iv) with respect to the Residential Units only, otherwise including and incorporating Residential Common Elements into such Residential Unit;
- (d) Intentionally Omitted
- (e) if appropriate, reapportion among the Units affected by such change in size or number pursuant to the preceding sub-paragraph (b) their respective Common Interests; provided, however, that with respect to any such Alteration:
 - (i) no physical modification shall be made to any other Unit, and the Common Interest or interior dimensions of any other Unit shall not be changed by reason thereof, unless the Owner of such other affected Unit shall consent thereto;
 - (ii) any such Alteration or change shall comply with all applicable Law;
 - (iii) the Unit Owner making any such Alteration or change shall agree to hold the Board and all other Unit Owners harmless from any liability arising therefrom; and
 - (iv) such Alteration, shall not jeopardize the soundness or structural integrity of the Building.
- (f) penetrate walls, or, if a Unit consists of multiple floors, penetrate any concrete floor slab within the Unit, provided same does not jeopardize the structural integrity of the Building.

7.2.2. Any Alteration may not affect the Common Interests of other Units unless the owners of each Unit affected shall consent thereto.

7.2.3. A Non-Residential Unit Owner may not perform any work in, or apply for any permits to perform work in its Unit before a Permanent Certificate of Occupancy covering the entire Building is issued by the Department of Buildings without the prior written consent of the Declarant.

7.2.4. In the event a Non-Residential Unit is leased, the tenant(s) of such Unit shall have the same rights as the Non-Residential Unit Owner to make alterations, additions or improvements as set forth in this Article, subject to such Unit Owner's consent.

7.3. Alterations to Residential Units. Residential Unit Owners (other than Declarant) may not

make any Alterations to their Unit without the prior written consent of the Board. Furthermore, Residential Unit Owners (other than Declarant) may not apply for any permits for construction work in a Residential Unit until after the Permanent Certificate of Occupancy has been issued for the Building by DOB.

7.4. Changes to Boundaries and Tax Lot Drawings. Boundaries and components of each Unit are described in detail in this Declaration, and depicted graphically on the Tax Lot Drawings. The boundaries of the Units in the Tax Lot Drawings shall be substantially the same as those in the Plans. Any differences between the Plans and the Tax Lot Drawings shall be subject to the approval of a Non-Residential Unit Owner, provided that such approval shall not be unreasonably withheld if such changes are de minimis. Prior to any de minimis change in the boundaries or change to the Tax Lot Drawings, the party proposing such change shall provide the other party with ten (10) business days' notice of such change, and thereafter the parties may attempt to resolve the issue or in the alternative, the parties may commence Arbitration as set forth in Article 32 of this Declaration to resolve any disagreement. In the event of Arbitration, such change shall not be made until the Arbiter has issued his or her decision, and thereafter the parties will cooperate to effectuate such decision.

ARTICLE 8 EASEMENTS

8.1. Board Easement to Operate and Maintain the General Common Elements. The Board shall have, and each Unit shall be subject to, an easement and a right of access:

- (a) to operate, maintain, repair, alter, rebuild, prevent or minimize damage to, and cause to be in compliance with any applicable laws and insurance requirements, the General Common Elements;
- (b) to install, operate, maintain, repair, alter and rebuild the General Common Elements located in, over, under, through or upon any Unit or elsewhere on the Property; and
- (c) to maintain any encroachment on any Unit, resulting from the repair, alteration or rebuilding of the General Common Elements.

Access to any Unit or Common Elements in furtherance of such easement shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business of the tenants and occupants of a Non-Residential Unit, or with the use of the Residential Units for their permitted purposes. Such entry shall be permitted on not less than two (2) days' notice to the Board, except that no notice will be necessary in the case of an emergency.

8.2. Ingress and Egress. Each Unit Owner, permitted tenants and occupants of the Building, the Building managing agent, the sales agent employed by the Declarant, and all other officers, partners, employees, agents, guests, invitees and licensees of the foregoing shall have, to the extent reasonably necessary, in common with all other Unit Owners, an easement for ingress to and egress from their Unit. Notwithstanding the foregoing, however, no person shall use or enjoy the General or the Residential Common Elements except in accordance with the reasonable purposes for which they are intended, and without encroaching upon the rights of other persons to do so.

8.3. Utilities.

8.3.1. The Declarant shall have the absolute right (without any obligation to obtain the consent of the Board or any other Unit Owner or other part except as required by law) to grant such additional electric, gas, steam or other utility easements or relocate any existing utility easements in any portion of the Property as Declarant shall deem necessary or desirable for the proper operation and maintenance of the Building or any portion thereof, or for the general health or welfare of the owners, tenants, and occupants of the applicable Units, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the normal conduct of business of the tenants and occupants of Non-Residential Units or the permitted use of the Residential Units. Any utility company and its employees and agents shall have the right of access to any Unit or the Common Elements in furtherance of such easement, provided such right of access shall be exercised in such a manner as shall not reduce the usable square footage of the any Unit nor unreasonably interfere with the normal conduct of business of the tenants and occupants of a Non-Residential Unit, or with the permitted use of a Residential Unit.

8.3.2. Each Unit Owner, for its benefit, shall have an easement to, and may, without the prior consent of the Board, the Declarant or other Unit Owners but subject to the provisions of this Declaration pertaining to Alterations: (i) install, operate, maintain, repair, alter, rebuild, restore and replace Units, and any pipes, wires, ducts, flues, vents, cables, conduits or other lines, equipment or facilities forming a part of or relating to the Unit, located in, over, under, through or upon the General Common Elements; and (ii) install pipes, wires, ducts, flues, vents, cables, conduits or other lines, equipment or facilities in connection with the design, construction, use, operation and/or occupancy of such Unit in, over, under, through or upon the General Common Elements, including but not limited to, penetrating floor slabs; provided that access to the General Common Elements or other portions of the Property in furtherance of such easement shall be exercised in such a manner as will not unreasonably interfere with the use of the General Common Elements and such other portions of the Property for their permitted purposes or affect the structural integrity of the Building. A Unit Owner shall provide the Board with prior written notice at least fifteen (15) days prior to filing any applications with the applicable government authorities to perform such work, including the Department of Buildings. The relocation of any pipes, wires, ducts, flues, vents, cables, conduits, or other lines, equipment or facilities after the Building obtains a TCO shall require the prior written consent of the Board.

8.3.2. To the extent any filings with the New York City Department of Buildings or other municipal agency is necessary for the foregoing or the consent or signature of the Board is required on any documents, the Board shall cooperate with respect to the same by timely executing the same, provided all associated expenses are paid by the Declarant.

8.4. Repairs and Maintenance.

8.4.1 Provided the Unit Owners are in compliance with all other requirements set forth in this Declaration and the By-Laws, and any regulations promulgated by the Board of Managers, all Unit Owners shall have access through all General Common Elements to make repairs and installations, provided that in non-emergency situations the Unit Owners shall notify the Board of their intent to work on equipment servicing these units and conduct such work in a manner designed to cause the minimum amount of disturbance to other Unit Owners.

8.4.2 A Non-Residential Unit Owner, and their employees, contractors and invitees, shall have access to Residential Common Elements, including the elevators, and the Residential Units

for the purpose of maintaining, replacing or effecting repairs to their respective Units or any systems servicing such Unit. In the event of a non-emergency, the party seeking such access shall notify the Board and the Residential Unit Owners if applicable of their intent to work on equipment servicing such Unit and conduct such work in a manner designed to cause the minimum amount of disturbance to the Residential Unit Owners.

8.4.3. Access shall be permitted through any portion of the Building in the event of an emergency.

8.4.4. All work to be performed pursuant to this Section must be performed by licensed and insured contractors, and in accordance with applicable Law.

8.5. Storefront and Signage. Subject to the terms of this Declaration, the Declarant shall have an easement to erect and maintain signage as set forth herein.

8.5.1 A Non-Residential Unit Owner shall have an easement, to the extent permitted by Law, to erect, maintain, repair and replace, from time to time, one or more signs, on the storefront to its Unit provided the same relate solely to the operation of the Unit or for the purpose of advertising the sale or lease of all or any portion of the Non-Residential Unit. The Non-Residential Unit Owner shall not have the right to place or install any sign or other advertisement on any part of the Building other than the storefront without the prior written consent of the Board.

8.5.2 The Declarant shall have an easement, to the extent permitted by Law, to erect, maintain, repair and replace, from time to time, one or more signs on the Building for the purpose of advertising the sale or lease of any Unit in the Condominium, provided such signage does not obstruct permitted signage placed a Non-Residential Unit Owner, and does not unreasonably obstruct any Residential Unit (other than an Unsold Unit).

8.6. Ventilation Ducts. Each Unit Owner shall have in common with all other Unit Owners, and each Unit shall be subject to, an easement to access, operate and maintain ventilation ducts for the purpose of providing fresh air serving the Units located in, over, under, through or upon any Unit and the General Common Elements.

8.7. Subjacency, Support and Necessity. Each Unit and the Common Elements shall have easements of subjacency, support and necessity, and the same shall be subject to such easements in favor of all the other Units and the Common Elements.

8.8. Perpetual and Irrevocable. Except as may otherwise be set forth in this Declaration, any easement created or granted hereunder shall be perpetual and irrevocable for so long as the Condominium shall remain in existence.

ARTICLE 9 SERVICE OF PROCESS AND BUILDING CODE VIOLATIONS

The Secretary of State of the State of New York is hereby designated to receive service of process in any action which may be brought against the Condominium. Service of process on Unit Owners with regard to any violation of local building codes, zoning ordinances and other related building and zoning laws pertaining to the Common Elements or one or more of the Units shall be made upon the Board of Managers of THE 243 4th AVENUE CONDOMINIUM at 243 4th

Avenue, Brooklyn, NY 11215, or such other address to be designated by the Board. Subject to conditions stated in the By-Laws, the Board shall have the principal responsibility for curing any violations of such building or zoning laws and service upon the Board shall be deemed service upon the Declarant or Owners of the Condominium Unit or Units in which any such violations exist.

ARTICLE 10 COMMON INTEREST

Each Unit Owner shall have such percentage interest in the General Common Elements and Residential Common Elements as is set forth on Schedule B attached hereto. Each Unit Owner shall be entitled to cast one vote for each .0001% of Common Interest attributable to such Unit Owner's Unit. Whenever a particular percentage of Common Interest must be reached for voting purposes and such required percentage is in terms of the Unit Owners as a group, (as proposed to all Unit Owners as a whole), such required percentage shall mean a percentage in terms of total Common Interests attributable to that particular group and not the percentage of Common Interests attributable to all Unit Owners unless otherwise mandated by law or expressly provided for herein or in the By-Laws. The percentage of interest of each Unit in the Common Elements has been determined by the Declarant based upon the floor area subject to the location of such space and the additional factors of relative value to other spaces in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit pursuant to § 339-i(1)(iv) of the Real Property Law. The percentage interest of all of the Units in the Condominium totals one hundred percent (100%).

ARTICLE 11 ADMINISTRATION

The Condominium shall be governed by a five (5) member Board of Managers. The principal officers of the Condominium shall be a President, Secretary and Treasurer, all of whom shall be elected by the Board.

The President shall be the chief executive officer of the Condominium and shall preside at all meetings of the Board of Managers and of Unit Owners.

The Secretary shall be empowered to take and keep minutes and of all meetings and to keep the books and records of the Condominium.

The Treasurer shall be responsible for overseeing the finances of the Condominium and for keeping the financial records and books of the Condominium.

The Board of Managers, in its discretion shall delegate such powers to the officers as it sees fit to execute agreements, contracts, deeds, leases and checks etc. on behalf of the Condominium.

ARTICLE 12 AMENDMENT AND WITHDRAWAL

12.1. Amendments to the Declaration. Except as otherwise set forth herein, the provisions of this Declaration may only be amended by an instrument executed by the Board of Managers upon the affirmative vote of all Non-Residential Unit Owners and sixty-seven percent (67%) of the Residential Unit Owners in number, except as set forth below. Any amendment to this Declaration

shall not take effect until it is recorded in the City Register's Office.

12.1.1. Any amendment altering the Common Interest percentage of a Unit Owner or altering any rights or obligations respecting the Common Elements shall require the consent of the affected Unit Owner(s).

12.1.2. Any amendment adding any parcel of land or divesting any parcel of land from the Property shall require the unanimous consent of all the Unit Owners.

12.1.3 Any amendment to the Declaration or By-Laws that would materially and adversely impact the rights and obligations of a Non-Residential Unit Owner, the calculation of Common Charges to be paid by a Non-Residential Unit Owner, or the permitted use of a Non-Residential Unit shall require the consent of the Non-Residential Unit Owner.

12.1.4 Any provision of the Declaration or By-Laws benefiting, protecting or otherwise affecting only the Non-Residential Units or Non-Residential Unit Owners, except for those provisions relating to actions that require Board consent, may be amended by such Unit Owner, including the subdivision or combining of such Unit, without the consent of the Board or the other Unit Owners. However, such Unit Owner shall provide the Board and all other Unit Owners with written notice of any such modification at least fifteen (15) days prior to making any such change. The Board shall cooperate with such Unit Owner's efforts to amend such provision, including executing, acknowledging and delivering any document required to effectuate such amendment.

12.1.5 Any provision of the Declaration or By-Laws benefiting, protecting or otherwise affecting only the Residential Units (including but not limited to the subdivision or combining of Residential Units), the Declarant and/or the Residential Unit Owners may be amended, modified or deleted by the Declarant or the Residential Unit Owners as applicable without the consent of the Board or the other Unit Owners. However, the Declarant or the Residential Unit Owners shall provide the Board and all other Unit Owners with written notice of any such modification at least fifteen (15) days prior to making any such change. The Board shall cooperate with the Declarant's or the Residential Unit Owners' efforts to amend such provision, including executing, acknowledging and delivering any document required to effectuate such amendment.

12.2. Consent of Registered Mortgagees. Registered Mortgagees holding mortgages on Units that constitute a majority of the common interests (except where noted otherwise) of the Units that are subject to Registered Mortgages must consent to: (i) any restoration or repair of the Building after a partial condemnation or damage due to an insurable hazard which is not done in accordance with the Documents (ii) any election to terminate the condominium after substantial destruction or substantial taking in a condemnation; and (iii) any reallocation of Common Interests resulting from a partial condemnation or destruction provided however that the consent of any Registered Mortgagee of a Residential Unit shall not be required for any restoration and or repair under (i) or reallocation under (iii) above with respect to a Non-Residential Unit. Wherever in this section the consent of a Registered Mortgagee or a majority of Mortgagee representatives is required, the written consent of the Sponsor Mortgagee must be given, provided that such Sponsor's Registered Mortgage has not yet been satisfied.

12.2.1. A written notice will be sent certified or registered mail with a "return receipt" requested to Registered Mortgagees and Registered Guarantors notifying them of any material change to the Documents listed in this Article. Approval or consent to any change to the

Documents by a Registered Mortgagee will be implied if the Registered Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Notwithstanding the foregoing, wherever in this section the consent of a Registered Mortgagee or a majority of Mortgagee representatives is required, the written consent of the Sponsor Mortgagee must be given, provided that such Sponsor's Registered Mortgage has not yet been satisfied.

12.3. Withdrawal from Condominium Ownership. The Property shall not be withdrawn from Condominium ownership unless at least eighty percent (80%) of the Unit Owners in Common Interest and a least fifty-one percent (51%) of the Registered Mortgagees. Such withdrawal of the property from Condominium ownership shall not take effect until it is duly recorded in the City Register's Office. Notwithstanding the foregoing, wherever in this section the consent of a Registered Mortgagee or a majority of Mortgagee representatives is required, the written consent of the Sponsor Mortgagee must be given, provided that such Sponsor's Registered Mortgage has not yet been satisfied.

ARTICLE 13 SUBJECT TO DECLARATION, BY-LAWS, etc.

All present or future Unit Owners, tenants, future tenants, or any other person that might use the facilities of the Condominium in any manner, are subject to the provisions of this Declaration and the By-Laws, and the mere acquisition or rental of any of the Units shall signify that the provisions of the Declaration and the By-Laws of the Condominium are accepted and ratified and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

ARTICLE 14 COMMON CHARGES

14.1. Assessment of Common Charges. The Board of Managers shall have the authority, pursuant to the By-Laws, to fix and determine Common Expenses, and allocate and assess Common Expenses amongst the Unit Owners. Common Expenses may be allocated in a manner different from the allocation by Common Interest, as permitted by 339-m of the Condominium Act, the Declaration and the By-Laws, provided that such allocation is based on the proportion of expenses and charges fairly attributable to such Units, based on actual usage of particular services and based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. The allocations of Common Expenses between Residential Units and Non-Residential Units in the Proposed Budget for the First Year of Condominium Operation, annexed hereto as Schedule D are presumptive evidence of reasonableness. The Board may not modify the allocations set forth in Schedule D without the unanimous consent of Non-Residential Unit Owners.

14.2. Lien Against Units. All sums assessed as Common Charges by the Board of Managers of the Condominium but unpaid, together with interest at the maximum legal rate thereon, chargeable to any Unit Owner shall constitute a lien on his/her/its Unit prior to all other liens except: (a) tax or assessment liens on the Unit by any governmental taxing authority, including but not limited to, State, County, and City taxing agencies, if any; and (b) all sums unpaid on any mortgage of record encumbering any Unit. Such lien may be foreclosed when past due in accordance with the laws of

the State of New York by the Condominium in like manner as a mortgage on real property, and costs incurred including reasonable attorney's fees (but such right shall not be a lien against the Unit). In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid Common Charges, the unpaid balance shall be charged to all Unit Owners as a Common Expense. However, the holder of an institutional mortgage of record or other purchaser of a Unit at a foreclosure sale, his successors or assigns, shall not be liable and the Unit shall not be subject to a lien for the payment of Common Charges chargeable to such Unit which were assessed and became due prior to the acquisition of title to such Unit by such acquirer. In such event, the unpaid balance of Common Charges shall be charges to all Unit Owners as a Common Expense. The term "institutional mortgage" used herein shall mean a mortgage granted by a federal or state savings and loan association, savings or commercial bank, life insurance company, pension fund, trust company, real estate investment trust, real estate mortgage investment conduit, agency of the United States Government or of the City or State of New York, or other similar institutional lender or a purchase money mortgage granted by the Seller or any entity not included within any of the foregoing that is regularly engaged in the business of making, owning or servicing mortgage loans.

14.3. Unit Owners' Obligation to Pay Common Charges. Every Unit Owner shall pay the Common Charges assessed against his Unit when due and no Unit Owner may exempt themselves from liability for the payment of his Common Charges by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit. However, no Unit Owner shall be liable for the payment of any Common Charges accruing subsequent to a sale, transfer or other conveyance by themselves of such Unit made in accordance with Section 339-x of the Real Property law or in accordance with the provisions of this Declaration and the By-Laws.

14.4. License Fees. Licensees will be required to pay a monthly License Fee to the Board. The Board of Managers shall have the authority, pursuant to the By-Laws, to fix and determine License Fees.

14.4.1. Every Licensee shall pay the License Fees when due and no Licensee may exempt themselves from liability for the payment of License Fees by waiver of the use or enjoyment of any of the Licensed Space. However, a Licensee may abandon the use and enjoyment of the Licensed Space by terminating their license as prescribed by the By-Laws.

14.4.2. The Board of Managers shall have the authority, pursuant to the By-Laws, to terminate a license with no reimbursement for any consideration paid to acquire the license, in the event of a default in the payment of any monthly License Fee.

ARTICLE 15 UNITS ACQUIRED BY THE BOARD

In the event any Unit Owner shall convey his Unit to the Board of Managers in accordance with Section 339-x of the Real Property Law or in the event the Board of Managers shall purchase any Unit at a foreclosure sale in accordance with the By-Laws, title to such Unit or the rights to the lease of such Unit shall be held by the Board of Managers or its designee on behalf of all of the other Unit Owners.

In order to carry out the provisions of this paragraph, each Unit Owner shall, upon taking title to his/her/its Unit, grant an irrevocable power of attorney coupled with an interest, to the Board of Managers and their successors to acquire title or lease any such Unit under whatever terms the Board may, in its sole discretion, deem proper and to sell, lease, sublease, mortgage, vote or

otherwise deal with such Unit under such terms as the Board, in its sole discretion, shall deem proper.

ARTICLE 16 ENCROACHMENTS

The Unit Owners agree that if any portion of a Unit or the Common Elements (whether restricted in use to an individual Unit Owner or not) encroaches upon another or shall hereafter encroach upon another as a result of original construction or settling of the Building, a valid easement for the encroachment and the maintenance of the same, so long as it stands, shall and does exist. In the event the Building is partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and is rebuilt, the Unit Owners agree that encroachments of any portion of the Unit or the Common Elements as aforedescribed due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist as long as the Building or reconstructed building shall stand.

ARTICLE 17 UNIT OWNERSHIP

17.1. Upon the closing of title to a Unit, a purchaser shall automatically become a Unit Owner in the Condominium and shall remain a Unit Owner until such time as the purchaser ceases to own the Unit for any reason.

17.2 A license to Licensed Space does not create ownership in the space. A purchaser of a license for Licensed Space shall automatically become a Licensee in the Condominium and shall remain a Licensee until such time as the purchaser ceases to own the license for any reason.

ARTICLE 18 CONVEYANCE OF A UNIT

Upon any conveyance of a Unit, either by voluntary instrument, operation of law or judicial proceedings in accordance with this Declaration or the By-Laws, the grantee of the Unit shall be jointly and severally liable with the grantor for any unpaid Common Charges against the latter assessed and due up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the Board of Managers setting forth the amount of the unpaid Common Charge against the grantor and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien, for any unpaid Common Charge against the grantor in excess of the amount set forth in such statement. Grantee as used herein shall not include either the holder of an institutional mortgage of record or other purchaser of a Unit at a foreclosure sale of an institutional mortgage.

ARTICLE 19 COVENANTS AND RESTRICTIONS

The use of a Unit by the Unit Owner or other occupant shall be subject to the rules, regulations, and provisions of this Declaration and the By-Laws and the following covenants and restrictions:

- (a) The Unit and Common Elements exclusively servicing or benefitting such Unit shall be maintained in good repair, and Non-Residential Units shall be kept neat and presentable.

- (b) No Alterations to the inside of a Unit that would impair the structural soundness of the Building may be made without the prior written consent of the Board of Managers.
- (c) Any Unit Owner who mortgages or sells his Unit shall notify the Board of Managers and provide the name and address of his mortgagee or purchaser.
- (d) The Board of Managers shall, at the request of a Registered Mortgagee, report any unpaid Common Charges due from the Unit Owner of such Unit.
- (e) No nuisances shall be allowed upon the Property and no use or practice shall be allowed which interfere with the peaceful possession and proper use of the Property by its residents.
- (f) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (g) The Common Charges shall be paid when due.

ARTICLE 20 UTILITIES

Each Unit Owner shall be responsible for paying for the costs of separately sub-metered utilities for their Unit. Commonly metered utilities will be paid by the Board as a Common Expense, and the costs allocated among the Unit Owners as Common Charges according to the provisions of Article 14.

ARTICLE 21 INVALIDITY

Invalidation of any of the covenants, limitations or provisions of the Declaration by judgment or court order shall in no way affect any remaining part or parts hereof, and the same shall continue in full force and effect.

ARTICLE 22 WAIVER

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

ARTICLE 23 CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

ARTICLE 24 CERTAIN REFERENCES

24.1. A reference in this Declaration to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural and vice versa, unless the context otherwise requires.

24.2. The terms "herein", "hereof", or "hereunder" or similar terms in this Declaration refer to this entire Declaration and not to the particular provision in which the terms are used, unless the context otherwise requires.

24.3. Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of this Declaration.

ARTICLE 25 SEVERABILITY

If any provision of this Declaration or the application thereof to any person, entity or circumstance, is determined to be invalid or unenforceable to any extent, the remainder of this Declaration, and the application of such provision to persons, entities or circumstances other than those as to which it is specifically determined to be invalid or unenforceable, shall not be affected thereby, and each provision of this Declaration shall be valid and enforced to the fullest extent permitted by law, provided that under all circumstances, the provisions hereof are required to be interpreted and applied so that there will be no adverse effect on Declarant or any other person governed by or otherwise affected by this Declaration in any material respect as a result of any invalidity or unenforceability referred to above in this Article.

ARTICLE 26 COVENANT OF FURTHER ASSURANCES

26.1. General. Any party which is subject to the terms of this Declaration, whether such party is a Unit Owner, a lessee or sublessee of a Unit Owner, an occupant of a Unit, a member or officer of the Board or otherwise, shall upon prior reasonable written request at the expense of any such other party requesting the same, execute, acknowledge and deliver to such other party such instruments, in addition to those specifically provided for herein, and take such other action as such other party may reasonably request to effectuate the provisions of this Declaration or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

26.1.1. If any Unit Owner or any other party which is subject to the terms of this Declaration, except for Sponsor's Mortgagee, fails, within sixty (60) days after request therefor, to execute, acknowledge or deliver any instrument, or to take any action which Unit Owner or party is required to execute, acknowledge and deliver or to take pursuant to this Declaration, then the Board is hereby authorized as attorney in fact for such Unit Owner or other party, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action in the name of such Unit Owner or other party and such document or action shall be binding on such Unit Owner or other party.

26.1.2. If any Unit Owner, the Board or any other party which is subject to the terms of this Declaration fails, within sixty (60) days after request therefor, to execute, acknowledge or deliver any instrument, or to take any action which such Unit Owner, the Board or party is required to perform, execute, acknowledge and deliver pursuant to this Declaration at the request of Declarant or its designee, then Declarant or its designee is hereby authorized, as attorney in fact for such Unit Owner, the Board or other party, coupled with an interest, to execute, acknowledge and deliver such instrument or take such instrument or to take such action in the name of such Unit Owner, the Board or other party and such document or action shall be binding on such Unit Owner, the Board or other party, as the case may be.

26.2. Estoppel and Agreement. Upon the request of a Unit Owner, the Board will enter into an estoppel and agreement with such Unit Owner or an existing or proposed lender in form reasonably acceptable to such Unit Owner or existing or proposed lender, and which by its terms may be relied on by the Unit Owner's existing or proposed lender. The estoppel and agreement shall contain all or any of the following representations and statements to the extent requested by the Unit Owner:

- (a) confirmation that the Declaration and By-Laws, as amended to date, are complete, correct and in full force and effect;
- (b) a statement as to the amount of Common Charges and assessments and all other amounts due to the Condominium by the Unit Owner at the time specified by the Unit Owner, and confirmation of all payments made to that date and a statement as to the monthly Common Charges and special assessments payable following a closing;
- (c) confirmation of the then current budget of the Condominium and the amounts payable by the applicable Unit Owner, and an agreement that the calculation of payments due from the Unit Owner or services provided to the Unit Owner will not be changed without its consent;
- (d) an agreement to deliver all notices that are sent to the Unit Owner to its lender or lender's designee at the address provided;
- (e) confirmation that any lender to a Unit Owner shall be deemed a "Permitted Mortgagee" or "Registered Mortgagee" if they perform the actions set forth in Article 2 hereof by the Condominium;
- (f) confirmation that the current use of the Unit does not violate the terms of the Declaration and By-Laws;
- (g) agreement that the tenant of a Unit Owner is a third-party beneficiary of the obligations of the Condominium to the Unit Owner;
- (h) confirmation to the lender of the provisions of the Declaration allowing the applicable Unit Owner to make alterations to the Unit with or without any consent, as the case may be, and an agreement to permit the tenant of the Unit Owner to undertake such alterations if designated by the Unit Owner to do so;
- (i) agreement that the Condominium shall have the same rights to consent to the actions of the tenant of a Unit Owner as it does to an action of the Unit Owner;
- (j) agreement to provide the lender of a Unit Owner ten (10) days' prior notice of any action or sanction that the Board has determined to take against the Unit Owner; and
- (k) a confirmation to the lender of a Unit Owner that it knows of no posted violations against the Unit or pending bankruptcy with respect to the Unit Owner other than those set forth in the estoppel and agreement.

26.3. Further Assurances Requested by Declarant. Without intending to limit the generality of the foregoing, the Board and each Unit Owner shall be required, upon the request of Declarant, to execute and deliver any or applications reasonably required in connection with any merger, any declaration of zoning lot restrictions or any zoning lot development agreement.

ARTICLE 27 SUCCESSORS AND ASSIGNS

Except as set forth herein or in the By-Laws to the contrary, the rights and/or obligations of Declarant or its designee as set forth herein shall inure to the benefit of and be binding upon any successor or assign of Declarant or its designee, or with the consent of Declarant or its designee, any transferee of some or all of the Unsold Units then owned by Declarant or its designee, as the case may be. Subject to the foregoing, Declarant and its designee shall have the right, at any time, in their sole discretion, to assign or otherwise transfer their respective interests herein, whether by sale, merger, consolidation, lease, assignment or otherwise.

ARTICLE 28 NOTICE AND CONSENTS

Whenever a Unit Owner is permitted, pursuant to the terms of this Declaration, to make Alterations or other changes to its Unit, the Declaration or the By-Laws, or to apply to a government agency with respect to the use or Alteration of its Unit without the prior written consent of the other Unit Owners or the Board, such Unit Owner shall provide the Board and the other Unit Owners written notice at least fifteen (15) days prior to commencing any such alteration or submitting such application.

Whenever the consent, approval, satisfaction or permission of Declarant or its designee is required under this Declaration or the By-Laws, such consent, approval, satisfaction or permission will not be required when Declarant or such designee no longer owns any Unsold Units.

ARTICLE 29 INCORPORATION BY REFERENCE

The terms, covenants, conditions, descriptions and other information contained in (i) the property description annexed hereto as Schedule A; (ii) the description of the Units annexed hereto as Schedule B; (iii) the By-Laws annexed hereto as Schedule C; (iv) the schedule providing allocation of Common Expenses among the Units annexed hereto as Schedule D; and (v) the Tax Lot Drawings, are each incorporated herein by this reference and made a part of this Declaration as if set forth at length in the text hereof.

ARTICLE 30 AUTHORIZATION TO BORROW

The Board is authorized, subject to the restrictions set forth in the By-Laws, to incur debt on behalf of Unit Owners to provide for major and minor maintenance, repairs, additions, improvements, replacements, working capital, bad debts and unpaid Common Expenses, insurance, depreciation, obsolescence and similar purposes. The repayment of any and all such debt may be secured and paid as provided in Section 339-jj of the New York Real Property Law.

ARTICLE 31 POWER OF ATTORNEY

31.1 Each Unit Owner shall grant to the Board of Managers an irrevocable limited power of attorney, coupled with an interest (in such form and content as the Board of Managers shall

determine) following due authorization (if required) from the Unit Owners (a) to acquire or lease any Unit, together with its Appurtenant Interest (as defined hereinafter) whose owner desires to sell, convey, transfer, assign, lease or surrender the same, or which becomes the subject of a foreclosure or other similar sale, on such terms and at such price or rental, as the case may be, as the attorneys-in-fact deem proper, in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Residential Unit Owners, and after any such acquisition or leasing, to convey, sell lease, sublease, mortgage or otherwise deal with (but not vote the interest appurtenant thereto) any such Unit so acquired, or to sublease any Unit so leased, without the necessity of further authorization by the Unit Owners, on such terms as the attorneys-in-fact may determine; and (b) to commence, pursue, appeal, settle and/or terminate administrative and certiorari proceedings to obtain reduced real estate tax assessments with respect to the Units, including retaining counsel and taking any other action which the Board deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution or requirement of the Department of Buildings, the City Planning Commission, the Board of Standards and Appeals, or any other public authority, applicable to the Maintenance of the Building or the Property, respectively or any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting the Property which the Board deems necessary or appropriate.

31.2 Each Unit Owner shall also grant to Declarant a power of attorney to amend the Condominium Declaration and to effectuate the rights granted to Declarant and Unit Owners under the Declaration as set forth herein.

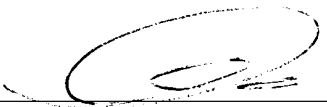
ARTICLE 32 ARBITRATION

Any disputes between Non-Residential Unit Owners, and the Board, one or more Residential Unit Owners, and/or the Declarant, including a dispute over whether any matter under consideration is material or adverse, shall be subject to expedited arbitration before JAMS at the request of any Unit Owner as set forth in the By-Laws. By contrast, any disputes between the Declarant and Residential Unit Owners not involving the Non-Residential Unit Owner shall not be submitted to arbitration but shall be settled in accordance with applicable law.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the 19th day of June 2020.

DECLARANT:

243 DEVELOPMENT LLC

By: 
Name: Vadem Brodsky
Title: Authorized Signatory

STATE OF NEW YORK);
SS.:
COUNTY OF NEW YORK);

On the 19th day of June, 2020, before me, the undersigned, personally appeared, VADEM BRODSKY personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual acted, executed the instrument.

Jason Ian Nazinitsky
Notary Public, State of New York
No. 02NA6314612
Qualified in New York County
Commission Expires Feb. 11, 2023
NOTARY PUBLIC



SCHEDULE A TO THE DECLARATION OF THE CONDOMINIUM

THE 243 4TH AVENUE CONDOMINIUM

243 4TH AVENUE
BROOKLYN, NEW YORK 11215

BLOCK 958

DESCRIPTION OF THE LAND

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of 4th Avenue distant 60 feet northerly from the corner formed by the intersection of the easterly side of 4th Avenue with the northerly side of Carroll Street;

RUNNING THENCE northerly along the easterly side of 4th Avenue, 59 feet 5-1/2 inches;

THENCE easterly parallel with Carroll Street, 91 feet 10 inches;

THENCE southerly parallel with 4th Avenue, 59 feet 5-1/2 inches;

THENCE westerly parallel with Carroll Street, 91 feet 10 inches to the point or place of BEGINNING.

SCHEDULE B TO THE DECLARATION OF THE CONDOMINIUM

THE 243 4TH AVENUE CONDOMINIUM

243 4TH AVENUE
BROOKLYN, NEW YORK 11215

BLOCK 958

UNIT SCHEDULE

RESIDENTIAL UNITS	TAX LOT	COMMON INTEREST PERCENTAGE	BDRMS BATHS		LOCATION	APPROX. SQUARE FOOTAGE	LIMITED COMMON ELEMENT ("LCE")	APPROX. SQUARE FOOTAGE OF LCE
2A	1403	4.8738%	4	3.5	2 nd Floor	1912	Terrace	595
2B	1404	4.1595%	3	2.5	2 nd Floor	1609	Terrace	599
3A	1405	3.4400%	2	2	3 rd Floor	1438	Balcony	62
3B	1406	3.1774%	2	2	3 rd Floor	1329	Balcony	55
4A	1407	4.5610%	4	3.5	4 th Floor	1912	Balcony	62
4B	1408	3.9106%	3	2.5	4 th Floor	1639	Balcony	55
5A	1409	4.5397%	4	3.5	5 th Floor	1903	Balcony	62
5B	1410	3.9319%	3	3.5	5 th Floor	1648	Balcony	55
6A	1411	4.5397%	4	3.5	6 th Floor	1903	Balcony	62
6B	1412	3.9319%	3	3.5	6 th Floor	1648	Balcony	55
7A	1413	4.6857%	4	3.5	7 th Floor	1903	Balcony	62
							Roof Terrace	247
7B	1414	3.9319%	3	3.5	7 th Floor	1648	Balcony	55
8A	1415	4.6857%	4	3.5	8 th Floor	1903	Balcony	62
							Roof Terrace	247
8B	1416	3.9319%	3	3.5	8 th Floor	1648	Balcony	55
9A	1417	4.6875%	4	3.5	9 th Floor	1903	Balcony	62
							Roof Terrace	247
9B	1418	3.9319%	3	3.5	9 th Floor	1648	Balcony	55
10A	1419	8.1884%	5	4.5	10 th Floor	3235	Balcony	135
							Terrace	627
11A	1420	7.9720%	5	4.5	11 th Floor	3235	Balcony	135
							Roof Terrace	285
12A	1421	8.0033%	5	4.5	12 th Floor	3235	Balcony	135
							Roof Terrace	338

NON- RESIDENTIAL UNITS	TAX LOT	COMMON INTEREST PERCENTAGE	LOCATION	APPROX. SQUARE FOOTAGE	LIMITED COMMON ELEMENT ("LCE")	APPROX. SQUARE FOOTAGE OF LCE
CF	1401	1.3693%	1 st Floor	578	-----	-----
RTL	1402	7.5469%	1 st Floor	3212	-----	-----

SCHEDULE C TO THE DECLARATION OF THE CONDOMINIUM

THE 243 4TH AVENUE CONDOMINIUM

243 4TH AVENUE
BROOKLYN, NEW YORK 11215

BLOCK 958

BY-LAWS

ARTICLE I

GENERAL

1.1 Purpose. The purpose of these By-Laws is to set forth the rules and procedures concerning the conduct of the affairs of The 243 4th Avenue Condominium (the "Condominium"). The Condominium covers the fee interests in the property (the "Property") consisting of approximately 5,460 square feet of land (the "Land") formerly designated as Block 958, Lot 4 on the Tax Map of the Borough of Brooklyn, Kings County, City and State of New York, the Building and other improvements now or hereafter to be constructed thereon or therein, as the case may be (hereinafter collectively called the "Building"), including, without limitation, the Units and the Common Elements, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, all of which have been submitted to the provisions of Article 9 B of the Real Property Law of the State of New York by the recording of the Declaration (which, as the same may be amended from time to time, is herein called the "Declaration") by 243 DEVELOPMENT LLC ("Sponsor" or "Declarant") in the Office of the City Register of the City of New York ("City Register's Office"), together with these By-Laws.

1.2. By-Laws Applicability. The provisions of these By-Laws are applicable to the Condominium and the Common Elements, and the use and occupancy thereof.

1.3. Personal Application. All present and future Unit Owners, mortgagees, lessees, or their employees, guests, invitees or any other person that might use the facilities of the Condominium in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations established by the Board of Managers. The mere acquisition or rental of any of the Units or the mere act of occupancy of any of said Units will signify that these By-Laws, the Declaration and the Rules and Regulations are accepted, ratified, and will be complied with. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, by the Board of Managers or in a proper case, an aggrieved Unit Owner. In the case of flagrant or repeated violation the Board of Managers may ask the offending Unit Owner for sufficient surety for future compliance.

1.4. Definitions. Any capitalized words herein that are undefined in these By-Laws shall have the same definitions as listed in the Declaration.

1.5. Principal Office of the Condominium. The principal office of the Condominium shall be located within the Property or at such other place within the City of New York reasonably convenient thereto, as may be designated from time to time by the Board.

ARTICLE II

BOARD OF MANAGERS

2.1. General Description of Board of Managers. The affairs of the Condominium shall be managed by a five (5) member Board of Managers. The principal officers shall be a President, Secretary and Treasurer, all of whom shall be elected by the Board of Managers.

The President shall be the chief executive officer of the Condominium and shall preside at all meetings of the Board of Managers and of Unit Owners.

The Secretary shall be empowered to take and keep minutes and of all meetings and to keep the books and records of the Condominium.

The Treasurer shall be responsible for overseeing the finances of the Condominium and for keeping the financial records and books of the Condominium.

The Board of Managers, in its discretion shall delegate such powers to the officers as it sees fit to execute agreements, contracts, deeds, leases and checks etc. on behalf of the Condominium.

2.2. Control by Declarant. Declarant reserves the right to control the Board of Managers for a period of time until the earlier to occur of (a) sixty (60) days after the date by which one hundred percent (100%) of the Units have been conveyed to Unit Purchasers; or (b) five (5) years after the date the first Unit has been conveyed to a Unit Purchaser (the "Declarant Control Period" or "Sponsor Control Period"). Sponsor reserves the right to relinquish control of the Board prior to the expiration of the Sponsor Control Period. During the Declarant Control Period, the Condominium shall be managed by a three (3) member Board of Managers.

2.3. Eligibility Requirements for Board Members. With the exception of those members elected or designated by the Declarant, only a Unit Owner, the principal or officer of a Unit Owner, or the spouse of a Unit Owner are eligible for election to the Board of Managers. This eligibility requirement does not apply to the Non-Residential Board Members.

2.4. Election of Residential Board Members; Designation of Non-Residential Board Members; Change in Number of Board Members.

2.4.1. All elections of Residential Board Members shall be determined by plurality vote. When voting for Residential Members of the Board, the voting shall be by ballot and each ballot shall state the name of the Residential Unit Owner voting and the percentage of Residential Common Interests owned by such Unit Owner, and in addition, the name of the proxy if such ballot is cast by a proxy. Each Residential Unit Owner shall be entitled to cast the number of votes determined in accordance with Article III, Section 3.3 for each member to be elected by the Unit Owners. Nothing contained in these By-Laws shall be deemed to permit cumulative voting.

2.4.2. Notwithstanding any other provisions of this Article or any other provisions of these By-Laws to the contrary, commencing with the first annual meeting of the Unit Owners, the Declarant shall have the right to vote all of the Common Interests attributable to Unsold Units owned by it until Declarant has closed title to all of the Unsold Units owned by it so that none of them remain Unsold Units. Declarant shall have the right to designate all of the Residential Board Members during the Declarant Control Period. Notwithstanding the foregoing, Declarant may, at

its discretion, relinquish voting control of the Board prior to the end of the Declarant Control Period. So long as Declarant owns at least one (1) Unsold Unit, Declarant shall have the right to designate one (1) Residential Board Member.

2.4.3 Intentionally omitted.

2.4.4 The number of members of the Board may not be changed without the consent of Residential Unit Owners representing fifty-one percent (51%) of the Residential Common Interests, all Non-Residential Unit Owners, and the Declarant for so long as Declarant owns at least one (1) Unsold Unit.

2.5. Duties of the Board of Managers. The Board shall have the duties necessary for or incidental to the administration of the affairs of the Condominium, and shall make all decisions and take all actions affecting the Condominium and the General Common Elements not otherwise delegated to the one or both of the Non-Residential Board Members or the Residential Board Members herein.

2.5.1 Notwithstanding anything to the contrary in these By-Laws, all determinations of the Board which affect only the:

- (a) Residential Units, do not materially and adversely affect the use and operation of the Non-Residential Units, and do not increase the obligations of the Non-Residential Unit Owners shall be made by the Residential Board Members, and the Residential Board Members may designate a committee comprised of Residential Unit Owners to make such determinations;
- (b) Commercial Units, do not materially and adversely affect the use and operation of Residential Units, and do not increase the obligations of the Residential Unit Owners shall be made by the Commercial Board Members.

Any dispute as to whether or not a determination materially and adversely affects any Units or Unit Owners shall be settled by arbitration in accordance with the provisions of these By-Laws. No dispute with respect to whether a determination materially and adversely affects a Unit shall be deemed to exist unless the objecting party specifies the grounds for its objection in writing to the Board within ten (10) business days of receipt by it of notice of such determination.

2.6. Removal or Replacement of Board Members. The Non-Residential Board Members may only be removed by the Non-Residential Unit Owners and may be replaced at any time by such Unit Owners. If the office of the Non-Residential Board Members becomes vacant by reason of death, resignation, disqualification, removal from office or otherwise, the Non-Residential Unit Owners shall have the sole right to choose such member's successor. The Residential Board Members may only be removed and replaced by a vote of the Residential Unit Owners pursuant to the terms of these By-Laws. If any office of the Residential Board Member becomes vacant by reason of death, resignation, disqualification, removal from office or otherwise, the Residential Unit Owners shall have the sole right to elect such member's successor.

2.7. Board Meetings. Regular meetings of the Board shall be held at least four (4) times annually. Board members may appear at meetings by telephone or other electronic transmission provided all members may hear and be heard by all other members in attendance.

2.8. Quorum. A quorum of the Board shall consist of at least one (1) Non-Residential Board Member and at least three (3) Residential Board Members. In the event a quorum is not reached at a Board meeting, the Board Members present shall adjourn the meeting in accordance with their rules and send a notice for an adjourned meeting to be held within fifteen (15) business days of the adjourned meeting. If at the adjourned meeting there is no quorum, the Board Members present at the meeting shall adjourn the meeting in accordance with their rules and again send a notice for a second adjourned meeting to be held within fifteen (15) business days of the adjourned meeting. If there is no quorum at such adjourned meeting, either one Non-Residential Board Member provided one Non-Residential Board Member has attended all three meetings, or three of the Residential Board Members provided three of the Residential Board Members have attended all three meetings, may then act for the Board at the third meeting even though there is no quorum present. Notwithstanding the foregoing, a quorum of three (3) Residential Board members shall be sufficient for a Board meeting provided (a) the topics to be addressed at such meeting relates solely to the Residential Units; and (b) the Non-Residential Board Members have been notified of the date, time, location and topics to be addressed at such meeting.

2.9. Vote Required to Transact Business. When a quorum is present at any meeting, all decisions and actions by the Board affecting: (i) the Residential Units, the Residential Unit Owners, the Residential Common Elements and/or Residential Limited Common Elements shall require the vote of a majority of the Residential Board Members; (ii) the Commercial Units and/or the Commercial Unit Owners shall require the vote of the Commercial Board Member. All decisions affecting only (i) the Residential Units, the Residential Common Elements, and/or Residential Limited Common Elements may be decided by the Residential Board Members; (ii) the Commercial Units and/or the Commercial Unit Owners may be decided by the Commercial Board Member.

2.10. Powers of the Board of Managers. Subject to the terms of the Declaration and these By-Laws, the Board shall have the powers necessary for or incidental to the administration of the affairs of the Condominium (except such powers and duties which by Law, the Declaration or these By-Laws may not be delegated to the Board by the Unit Owners). These powers shall specifically include, but are not limited to, the following:

- (a) To determine and levy monthly assessments ("Common Charges") to cover the cost of common expenses, payable in advance, and to allocate such Common Charges which may not necessarily be in accordance with each Unit's Common Interest, so long as it is in a way fairly attributable to all or a portion of the Units, based upon estimated usage of particular services, or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners;
- (b) To collect, use and expend the Common Charges and assessments collected, to maintain, care for and preserve the General Common Elements, and the Residential Common Elements. In no event shall Common Charges, Special Assessments or other funds received by the Board in connection with repairs of the General Common Elements or Residential Common Elements be utilized to defray any expenses other than those related to the maintenance, repair and preservation of the General Common Elements or Residential Common Elements respectively;
- (c) To make repairs, restore or alter any Units or the Common Elements after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain

proceedings;

- (d) To exercise the easements and access rights granted to the Board in the Declaration when necessary and with as little inconvenience to the Unit Owner as possible in connection with the maintenance, care and preservation of the property, including emergency repairs at all times whether or not the Unit Owner is present, provided that such utility or other easements shall not, to the extent commercially reasonable, interfere with the permitted use of the Non-Residential Units;
- (e) To open and maintain bank accounts on behalf of the Condominium and to designate the signatories to such bank accounts;
- (f) To insure and keep insured the Common Elements and Units in accordance with these By-Laws;
- (g) To collect delinquent Common Charges and/or assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from the Unit Owners of the property for violations of the house rules and regulations herein referred to;
- (h) To purchase any Unit at a foreclosure sale on behalf of all Unit Owners;
- (i) To employ and terminate the employment of employees and independent contractors and to purchase supplies and equipment, to enter into contracts, and generally to have the powers of manager in connection with the matters hereinabove set forth;
- (j) To bring and defend actions by or against more than one Unit Owner and pertinent to the operation of the Condominium. The Board may, in its discretion, fund the cost of any such litigation out of the Common Charge and/or assessments. The Board shall also have the right to engage in any litigation it deems necessary to carry out the provisions of the Declaration of Condominium and these By-Laws, and may fund the cost of any such litigation out of the Common Charge and/or assessments. The Community Facility Unit Owners shall not be responsible to fund, through the payment of Common Charges or otherwise, disputes among the Residential Unit Owners, or the Board and one or more Residential Unit Owners. Without limiting the foregoing, the Board may engage in litigation pertaining to the enforcement of the Sponsor's obligations, as such obligations are set forth in the Declaration of Condominium and these By-Laws, and to the maintenance and operation of the Common Elements;
- (k) To acquire Units in foreclosure or as a result of abandonment and to take any and all steps necessary to repair or renovate any Unit so acquired and to vote as Unit Owner, offer such Unit for sale or lease or take any other steps regarding such Unit as shall be deemed proper by the Board of Managers;
- (l) To grant utility or other easements as may, at any time, be required for the benefit of the Condominium and Unit Owners without the necessity of the consent thereto, or joinder therein, by the Unit Owners;
- (m) To borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements, provided, however,

that (i) the consent of at least one-hundred (100%) percent in number of all Unit Owners, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum in excess of Five Thousand (\$5,000.00) Dollars; (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the written consent of the Owner of said Unit; and (iii) such borrowing shall not modify the Budget Allocation or increase the obligations of the Non-Residential Unit Owners;

- (n) To act as an agent of each Unit Owner who has given his written authorization to complain or apply to the local and county Real Estate Tax Assessment Agency Board of Review by filing a single complaint on behalf of all such Unit Owners pursuant to the applicable sections of the Real Property Tax Law. The Board of Managers may retain legal counsel on behalf of all Unit Owners for which it is acting as agent and charge all such Unit Owners a pro rata share of expenses, disbursements and legal fees for which charges the Board of Managers shall have a lien pursuant to these By-Laws;
- (o) To sign any application or other document required to be filed with any governmental authority having or asserting jurisdiction in connection with any such structural addition, alteration or improvement made by Sponsor or its designee to any Unit, provided, however, that neither the Board of Managers nor the Unit Owners shall be subjected to any expense or liability by virtue of the signing of the application or such other document. A copy of any such application or other document will be furnished to the Board of Managers;
- (p) To collect funds from Unit Owners and accumulate reserves for capital replacements to the Units (the "Reserve Fund"). The Reserve Fund, if any, shall be used for the periodic maintenance, repair and replacement of the Residential Common Elements. Neither Community Facility Unit Owners nor Commercial Unit Owners shall be obligated to contribute to the Reserve Fund;
- (q) To collect monthly escrows from Unit Owners with their Common Charges for the payment of real estate taxes attributable to individual Units based upon the estimated tax bill for the entire Property and the then current tax rate until all of the Units are separately assessed, and deposit the same in a tax escrow account established by Declarant pursuant to an offering plan filed with the New York State Department of Law; and
- (r) To establish, enforce, amend and otherwise modify Rules and Regulations relating to the operation of the Condominium from time to time, and such Rules and Regulations, and any amendments thereto, shall be binding upon the Unit Owners thirty (30) days after the date the Board has approved them in writing and delivered a copy of the same to each Unit Owner. Such Rules and Regulations, and any amendments thereto, shall be applied uniformly to all Unit Owners, shall not be discriminatory, and shall not reduce the rights granted to the Community Facility Unit Owner or the Commercial Unit Owners in the Declaration or these By-Laws.

2.11. Compensation. Managers and officers shall receive no compensation from the Condominium for their services.

2.12. Fidelity Bonds. The Board of Managers shall obtain and maintain to the extent obtainable Fidelity Insurance covering all employees of the Condominium who handle Condominium funds

in an amount not less than \$5,000.00 for each loss. The premiums on such bonds shall be a Common Expense.

2.13. Annual Statement. The Board of Managers shall furnish to all Unit Owners and the Department of Law (if and when required by law), and shall present annually (at the annual meeting) and when called for by a vote of the Unit Owners at any special meeting of the Unit Owners, a full and clear statement of the business conditions and affairs of the Condominium, including a balance sheet and profit and loss statement verified by an independent public accountant and a statement regarding any taxable income attributable to the Unit Owners and a notice of the holding of the annual Unit Owners' meeting.

2.14. Liability of Board Members. Any contract, agreement or commitment made by the Board shall state that it is made by such Board Member as agent for the Board, and that no member of the Board, or individual Unit Owners shall be liable under such contract, agreement or commitment. The Board shall have no liability to the Unit Owners in the management of the Condominium except for gross negligence or willful misconduct or acts made in bad faith, and the Unit Owner shall jointly and severally indemnify all members of the Board against any liabilities or claims arising from acts taken by a Board member in accordance with his duties as such member, except as set forth herein.

2.15. Managing Agent. At its discretion, the Board of Managers may employ for the Condominium a managing agent under a term contract or otherwise at compensation established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, all of the delegable duties of the Board listed in this Article.

ARTICLE III

UNIT OWNERS

3.1. Annual Meetings. The first annual meeting of the Unit Owners shall be held within three hundred-sixty (360) days from the closing of title to the first Unit, or as soon thereafter as is practicable. At such meeting, the Non-Residential Unit Owners shall designate the Non-Residential Board Member, and the Declarant shall designate the two Residential Board Members. Thereafter, annual meetings of the Unit Owners shall be held on the anniversary of such date each succeeding year, and the Non-Residential Board Members, and, after the Declarant Control Period, the Residential Board Members shall be appointed and/or elected at such annual meetings pursuant to these By-Laws.

3.2. Special Meetings. The President shall call a special meeting of the Unit Owners as directed by a majority of the Board.

3.3. Voting. Except as otherwise set forth herein or in the Declaration, at all meetings of Unit Owners, each Unit Owner (or such Unit Owner's proxy) entitled to vote thereat (including Sponsor with respect to Units owned by Sponsor or its designee) shall be entitled to cast one vote for each .0001% of General Common Interest attributable to such Unit Owner's Unit. If only the vote of the Residential Unit Owners is required, the required percentage of votes shall mean a required percentage in terms of total Residential Common Interests, and not the General Common Interest.

3.4. Quorum. Except when the vote of more than a majority of Unit Owners is required, a quorum of all the Unit Owners shall consist of at least the Non-Residential Unit Owners, and

Residential Unit Owners representing fifty-one percent (51%) of the total Residential Common Interest, in person or by proxy. When a vote of more than fifty-one percent (51%) of Unit Owners is required, a quorum shall consist of the Non-Residential Unit Owners, and sufficient Residential Unit Owners representing the minimum percentage of votes required pursuant to the Declaration and By-Laws. In the event a quorum is not reached at the annual meeting or a special meeting, the Unit Owner present shall adjourn the meeting in and send a notice for an adjourned meeting to be held within fifteen (15) business days of the original meeting. If at the adjourned meeting there is no quorum, the Unit Owner present at the meeting shall adjourn the meeting and again send a notice for an adjourned meeting to be held within fifteen (15) business days of the adjourned meeting.

3.4.1 With respect to any meeting of solely the Residential Unit Owners, a quorum shall consist of Residential Unit Owners representing fifty-one percent (51%) of the Residential Common Interests.

3.5. Vote Required to Transact Business. The Non-Residential Unit Owners will make all decisions exclusively affecting the Non-Residential Units and the Non-Residential Unit Owners. The Residential Unit Owners will make all decisions exclusively affecting the Residential Units. All decisions and actions affecting the Residential Units shall require the vote of a Residential Unit Owners representing fifty-one percent (51%) of the total Residential Common Interest.

3.6. Proxies. All proxies shall be in writing, and shall be filed with the Secretary prior to the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

3.7. Right to Vote. At any meeting of the Unit Owners, every Unit Owner having the right to vote shall be entitled to vote in person or by proxy. Except as otherwise stated in the Declaration or these By-Laws, no Unit Owner may vote at any meeting if the Unit Owner is not current in payment of their Common Charges.

3.8. Waiver and Consent. Whenever the vote of Unit Owners at a meeting is required or permitted by any provision of the Declaration, the By-Laws or Article 9-B of the Real Property Law, such vote and meeting may be dispensed with if all Unit Owners who would have been entitled to vote at such meeting shall consent in writing to any action being taken.

3.9. Notice of Meetings. The Secretary shall deliver written notice of each annual or special meeting to each Unit Owner of record at least ten (10) but no more than twenty (20) days prior to such meeting stating the purpose thereof as well as the time and place where it is to be held. The delivery of a notice in the manner provided in these By-Laws shall be considered notice served.

3.10. Order of Business. The order of business shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Report of officers;
- (e) Election of Managers (in the event there is an election);
- (f) Unfinished business; and
- (g) New business.

ARTICLE IV

OFFICERS

4.1. Elective Officers. The officers of the Condominium shall be elected by the Board and shall be a President, Secretary, and Treasurer. All officers must be members of the Board of Managers. Two or more offices may be held by the same person so long as there are at least three (3) officers.

4.2. Election. The Board at its first meeting after each annual Unit Owners' meeting shall elect a President, Secretary, and Treasurer.

4.3. Intentionally omitted.

4.4. Term. The officers shall hold office until their successors are elected and qualify in their stead. Any officer elected or appointed by the Board of Managers may be removed with or without cause, at any time, by the affirmative vote of a majority of the whole Board of Managers. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Managers.

4.5. The President. The President shall be the chief executive officer of the Condominium; shall preside at all meetings of the Unit Owners and Managers, shall be an ex-officio member of all standing committees, shall have general and active management of the business of the Condominium, shall see that all orders and resolutions of the Board of Managers are carried into effect and shall have such other powers and duties as are usually vested in the office of President of a stock corporation organized under the Business Corporation Law of the State of New York.

4.6. Intentionally omitted.

4.7. The Secretary. The Secretary shall attend all sessions of the Board and all Unit Owners' meetings and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notices of all Unit Owners' meetings and special meetings of the Board of Managers, and shall perform such other duties as may be prescribed by the Board of Managers or by the President under whose supervision he shall be.

4.8. The Treasurer. The Treasurer shall have the custody of the Condominium funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Condominium including the vouchers for such disbursements, and shall deposit all moneys and other valuable effects in the name and to the credit of the Condominium in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Condominium as he may be ordered by the Board, making proper vouchers for such disbursements and shall render to the President and the Board, at the regular meeting of the Board or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Condominium. The Treasurer shall keep detailed financial records and books of account of the Condominium, including a separate account for each Unit which, among other things, shall contain the amount of each assessment of Common Charges against such Unit, the date when due, the amounts paid thereon and the balance remaining unpaid.

4.9. Agreements. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed on behalf of the Condominium by the President or such other

person as may be designated by the Board. However, the Board may, by resolution, determine that any instruments in excess of a specified amount be countersigned by the President and a second officer.

ARTICLE V

INDEMNIFICATION

The Condominium shall indemnify any person made, or threatened to be made, a party to an action by or in the right of the Condominium to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a member of the Board or officer of the Condominium, or is or was serving at the request of the Condominium as a member of the Board or officer against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such member of the Board or officer acted, in good faith, for a purpose which he reasonably believed to be in the best interest of the Condominium, except that no indemnification shall be made to or on behalf of any member of the Board or officer if a judgment or other final adjudication adverse to the member of the Board or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

ARTICLE VI

REPAIRS AND MAINTENANCE

6.1. General Common Elements.

6.1.1 The Board shall be responsible for all maintenance, repairs and replacement of the General Common Elements, except as otherwise set forth in these By-Laws or the Declaration. The Board of Managers and its agents, employees and contractors shall have a right of access to any Unit and to all portions of the Common Elements for the purpose of carrying out any of its obligations under these By-Laws or the Declaration.

6.1.2 The Board shall repair and replace any pipes, wires, conduits and public utility lines part of the General Common Elements, and shall make all necessary structural repairs to any such General Common Element, and the cost thereof shall be a Common Expense allocated among Unit Owners in the as set forth in the Budget Allocation, except where such repair or replacement is necessitated by the negligence, misuse or neglect of a Unit Owner, in which event such cost and expense shall be assessed to and paid for by such Unit Owner.

6.1.3 Each Non-Residential Unit Owner shall be responsible for the maintenance and repair of the portions of the sidewalk adjacent to its Unit, including all snow and ice removal. Such Unit Owners shall keep the sidewalks well lit, and free of all debris and hazards.

6.2. Residential Common Elements. The Board shall be responsible for the repair and maintenance of the Residential Common Elements. However, the costs of operating, repairing and maintaining the Residential Common Elements, and the Residential Limited Common Elements to the extent that it is the Board's obligation to effect such repairs, shall be a Residential Common Expense to be apportioned among the Residential Unit Owners according to their Residential Common Interests.

6.3. Repairs and Maintenance of Units.

6.3.1 Except as otherwise specifically provided in the Declaration or in these By-Laws, all maintenance to the Units, including electrical repairs, plumbing stoppages, window cleaning, painting and decorating in the Units, repairs and replacement to the Units including windows and doors (including all glass breakage), and repairs to pipes, wires and conduits located in and servicing the same Unit other than as set forth above, and a Limited Common Element appurtenant to its Unit shall be made by the respective Unit Owners at their own expense. The Unit Owners shall also be responsible for all maintenance, repairs and replacement of any and all HVAC equipment servicing its Unit.

6.3.2 In the event that a Unit Owner fails to make any maintenance or repair necessary to protect any of the General Common Elements, Residential Common Elements, Residential Limited Common Element appurtenant to its Unit or its own Unit, or, in the event of service of a Building Department violation notice covering the Unit upon the Board, the Board shall have the right to make such maintenance or repair (after the failure of the Unit Owner to do so after ten (10) days' written notice or written or oral notice of a shorter duration in the event of an emergency situation) and to charge the Unit Owner for the cost of all such repairs and/or maintenance. In the event that the Board charges a Unit Owner for repairs or maintenance to his Unit or for repairs to any General Common Elements, and the Unit Owner fails to make prompt payment, such charges shall be considered as additional Common Charges due from said Unit Owner, and the Board shall be entitled to bring suit thereon. In the event the Board brings such a suit, the Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with the interest on all sums due.

6.4. Repairs to Residential Limited Common Elements. Each Unit Owner with a Residential Limited Common Element appurtenant to his or her Unit shall be responsible for all ordinary repairs and maintenance of such Residential Limited Common Element at such Unit Owner's cost and expense. The repair and replacement of the exterior surface of any terrace shall be performed by the Board and charged to the Unit Owner. Any structural or non-ordinary repairs (non-recurring repair which requires more than the usual annual expense for ordinary wear, including leaks that are not the result of a Unit Owner's negligence) or replacements to such terrace shall be made by the Board, and the cost and expense thereof shall be charged to all Residential Unit Owners as a Common Expense; provided, however, that any repairs or replacements that are necessitated or deemed advisable by the Board and result from the negligence or wrongful acts of the Owner of a Unit to which such Residential Limited Common Element is appurtenant, or its tenants, guests and/or invitees, shall be performed by the Board at the cost of such Unit Owner.

6.5 Standard of Repairs. All repairs, painting or maintenance, whether made by the Unit Owner or by the Board to the doors, windows or the exterior surface of the Building or to any visible portion of the General Common Elements, shall be carried out in such a manner so as to conform to the materials, style and color initially provided by the Declarant.

ARTICLE VII

CHANGES AND ALTERATIONS

7.1. Changes and Alterations to Units.

7.1.1 The Declarant may make Alterations to Units owned by Declarant without the prior

approval and consent of the Board in any manner that does not materially and adversely affect any structural elements of the Building or any Building systems that serve other Units or the General Common Elements.

7.1.2 Except as otherwise provided in the Declaration, alterations to the Units other than by Declarant are subject to the approval of the Board in its sole discretion. The Unit Owner or tenant seeking to make such alterations shall provide the Board, and the Declarant if applicable, with copies of all plans and drawings related to the proposed alteration, and any information reasonably requested by the Board and the Declarant. Upon receipt of all requested information, the Board, and the Declarant if applicable, shall have ten (10) business days to issue a determination of whether such plans would have any material or adverse effect pursuant to subsection 2.2 above. The Board's failure to respond within such time shall be deemed a determination that the proposed alteration will not have any material or adverse effect.

7.2. Changes to the Common Elements. Alterations to the General, and/or Residential Common Elements must be approved by the Board.

7.3. Scaffolding and Other Temporary Structures. In the event the Board, or the Declarant erects scaffolding, "bridges" or other temporary structures to perform renovations, improvements or other work to or at the Building or any part thereof, the Board will use, or cause the Unit Owner performing the work to use commercially reasonable efforts to minimize interference with the use of the Non-Residential Units, including, but not limited to access and signage, and to minimize the period of time the same is erected. In the event exterior signage is obscured thereby, the party installing the temporary structures, subject to the requirements of the Declaration, the By-Laws and all applicable law, shall install or pay for the installation of temporary signage in place of the obscured signage on behalf of the Non-Residential Unit Owners or its tenant upon such temporary structures located directly in front of the applicable Non-Residential Unit in the maximum size that such structure can reasonably accommodate. No signage other than the Non-Residential Unit Owners' or its tenants' signage shall be erected or placed upon such temporary structures in the space which is located directly in front of such Unit.

7.4. Veto Rights. Unit Owners, and/or the Declarant, if the Declarant still owns any Units in the Condominium, shall have the right to veto any proposed alteration that would have a material and adverse impact on such Unit Owner's Unit.

7.5. Minimum Requirements. All changes and alterations to the Building, the General Common Elements and the Units must be performed in accordance with applicable law by licensed and insured contractors.

ARTICLE VIII

NOTICES

8.1. Definition. All notices required or desired to be given hereunder to the Board, shall be personally delivered or sent by registered or certified mail or overnight mail to the office of the Board or to such other address as the Board may designate from time to time, by notice in writing to all Unit Owners and to all Registered Mortgagees, if required, as the case may be, and if there is a managing agent of the Board, a duplicate shall be sent in like manner to such managing agent. All notices to any Unit Owner shall, except as otherwise provided herein, be personally delivered or sent by registered or certified mail or overnight mail to the Property address of such Unit or to

such other address as may have been designated by such Unit Owner from time to time, in writing, to the Board. All notices by Registered Mortgagees shall be personally delivered or sent by mail to their respective addresses, as designated by them from time to time, in writing to the Board. All notices shall be deemed to have been given when personally delivered, sent by overnight mail or mailed in a postage-prepaid sealed wrapper, except notices of change of address which shall be deemed to have been given when received.

8.2. Waiver of Service of Notice. Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

8.3. Notice to Registered Mortgagee or Registered Guarantor

The Board shall provide timely written notice to a Registered Mortgagee or Registered Guarantor for the following:

- A. Notice of unpaid Common Charges and default notice of any default or violation by the Unit Owner in the payment of Common Charges or the observance or performance of any of the provisions of the Condominium Documents as to which the Board has actual knowledge then exists which remains uncured for a period of sixty (60) days; and when giving notice of any default or violation to such mortgagor Unit Owner, the board shall also send a copy of such notice to such Owner's Registered Mortgagee and/or Registered Guarantor.
- B. Notice of any condemnation or casualty loss which affects a material portion of the Property or a Unit on which there is a Registered Mortgage held, insured or guaranteed by such Registered Mortgagee or Registered Guarantor, as applicable.
- C. Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Board.
- D. Notice of any proposed action under the Declaration or these By-Laws which would: (i) change the boundaries of any Unit; (ii) change the interests in the common elements pertaining to a Unit; (iii) change the number of votes pertaining to a Unit; (iv) change the use restrictions of any Unit; (iv) any proposed termination of the condominium.
- E. In no event, however, shall the Board (including its members, officers, agents, attorneys and employees) and Unit Owners be liable for any Claims or Liabilities and Expenses for any failure, through oversight or negligence, in giving a Registered Mortgagee or Registered Guarantor of any notice required under subsections (A) through (D) above. Nonetheless: (a) the Board shall give such missed notice with reasonable promptness after discovering such failure; and (b) if the Board shall foreclose its lien on such mortgagor's Unit hereof by reason of the mortgagor-Unit Owner's default or violation, the Board shall pay to such Registered Mortgagee the extent of any undistributed net proceeds of said foreclosure sale of such Unit then held by the Board (subject to an in accordance with the lien priority), but not more than the sum as shall be due and owing to such Registered Mortgagee.

ARTICLE IX

FINANCES

9.1. Checks. All checks or demands for money and notes of the Condominium shall be signed by the President and such other person or persons as the Board of Managers, may from time to time, designate.

9.2. Common Charges & Assessments.

9.2.1 From time to time, but not less frequently than once a year, the Board shall: (i) prepare and adopt a budget for the Condominium, subject, in all respects, to the strictures set forth in these By-Laws, except that the Board shall provide a copy of any proposed budget to Non-Residential Unit Owners prior to adoption of the same; (ii) determine the aggregate amount of Common Charges necessary to be charged to the Unit Owners in order to meet the Common Expenses; and (iii) allocate and assess such Common Charges amongst the Unit Owners in accordance with the Budget Allocation, which allocations are based on the proportion of expenses and charges fairly attributable to Units, based upon estimated usage of particular services, or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners as authorized by 339-m of the Condominium Act. The Board shall advise all Unit Owners promptly thereafter in writing of the amount of Common Charges payable by each of them, not later than ten (10) days prior to the date upon which the first installment of newly determined Common Charges is due, shall furnish copies of the budget (in a reasonably itemized form) upon which such Common Charges are based to all Unit Owners and to their respective Permitted Mortgagees whenever requested in writing by such Permitted Mortgagees. The Board may, at its sole discretion, from time to time increase or decrease the amount of Common Charges allocated to the Units and payable by the Unit Owners and may modify its prior determination of the Common Expenses for any fiscal year so as to increase or decrease the amount of Common Charges payable for such fiscal year or portion thereof; however, no such revised determination of Common Expenses shall have a retroactive effect on the amount of Common Charges payable by Unit Owners for any period prior to the date of such new determination.

9.2.2 In addition to the foregoing duty to determine the amount of and assess Common Charges, the Board shall have the right, subject to the strictures set forth in these By-Laws, to levy special assessments ("Special Assessments") to meet the Common Expenses. The Board shall give each Unit Owner not less than ten (10) days' written notice prior to the date upon which the Board shall meet to discuss levying Special Assessments, with reasonable detail of the nature and purpose of the Special Assessment. As applicable, Special Assessments shall be allocated and assessed amongst the Unit Owners in accordance with the allocations set forth in Schedule D to the Declaration. In the event the cost or expense resulting in the Special Assessment does not fall within one of the categories set forth in Schedule D, or if the expense is a major capital improvement funded by the Reserve Fund, then the Special Assessment shall be based on the proportion of expenses and charges fairly attributable to Units, based upon estimated usage of particular services, or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. Special Assessments levied against the Residential Unit Owners relative to (i) the General Common Elements, after the aforementioned allocation between the Residential Units and Non-Residential Units is affected, and (ii) the Residential Common Elements and/or the Limited Residential Common Elements shall be levied against all Residential Unit Owners in proportion to their respective Residential Common

Interests. Special Assessments may be payable either in one lump sum or in installments, as the Board shall determine, provided, however, that the Board shall give each Unit Owner not less than fifteen (15) days' written notice prior to the date upon which such Special Assessment, or the first installment thereof, shall be due and payable, which notice shall set forth, in reasonable detail, the nature and purpose thereof. The Board shall have all rights and remedies for the collection of Special Assessments as are provided herein for the collection of Common Charges.

9.2.3 Licensees, excluding Sponsor with respect to unsold licenses, will be required to pay a monthly License Fee to the Board as determined by the Board in the budget. License Fees are charged and paid independently of Common Charges and Special Assessments only to Licensees. A Licensee may abandon and terminate their license upon ten (10) day's notice written notice to the Board; the Licensee will not be required to pay the monthly License Fee after abandoning and terminating their license and will not be responsible for any unpaid License Fees. The Board will be authorized to locate a replacement Licensee, issue or sell a new license, and charge License Fees to the new Licensee with no reimbursement of the consideration paid by the Licensee that abandoned and terminated their license.

9.3. Failure to Pay Assessments.

9.3.1 Unit Owners shall pay promptly when Common Charges and Special Assessments assessed against their Unit. Any Unit Owner who fails to pay Common Charges shall be liable for any expenses incurred by the Board in collecting said monthly Common Charge assessment, including interest at the highest legal rate and reasonable attorneys' fees.

9.3.2 In the event of a default in the payment of any monthly Common Charge assessment by any Unit Owner, the Board, at its sole option, may declare the Common Charge assessment on said Unit Owner's Unit for the balance of the fiscal year immediately due and payable. Prior to making any such declaration following a default, the Board shall send notice to the delinquent Unit Owner and the Registered Mortgagee, if any, giving the Unit Owner a five (5) day grace period in which to make his payment. The Board may charge the delinquent Unit Owner a fee of not more than One Hundred Fifty (\$150.00) Dollars to cover the additional burden to the Board occasioned by the lack of timely payment, in addition to interest at the highest legal rate on the Common Charge assessment from its due date to the date payment is actually received from the Unit Owner. Special assessments, should such be required, shall be levied and paid in the same manner as hereinabove provided for regular assessments.

9.3.3 The Board shall take action to collect any Common Charges due from any Unit Owner which remain unpaid ninety (90) days from its due date by way of foreclosure of the lien on such Unit in accordance with Section 339 of the Real Property Law, or otherwise. Under Section 339-aa of the Condominium Act, a lien for non-payment of Common Charges will be subordinate only to liens for real estate taxes and to sums unpaid on a first mortgage of record on the Unit. Any lien for unpaid Common Charges against a Unit shall be effective from and after the filing of a notice thereof in the office of the County Clerk in County of Kings, and until all sums secured thereby, with the interest accrued thereon at twelve percent (12%) per annum shall have been fully paid or until six (6) years from the date of filing (unless foreclosure of such lien is started within such six-year period), whichever is earlier. The lien may be foreclosed by a suit brought in the name of the Board acting on behalf of the Unit Owners, similar to a foreclosure of a mortgage on real property, or an action may be brought by the Board to recover the unpaid Common Charges, without necessarily filing the lien

9.3.4 No Unit Owner shall be liable for any Common Charges that accrue against a Unit subsequent to a sale, transfer or other conveyance of the Unit in accordance with these By-Laws and the Declaration. A purchaser of a Unit (other than a mortgagee or a purchaser at a foreclosure sale) shall be liable for the payment of all Common Charges assessed against the Unit and unpaid at the time of the purchase.

9.3.5 If a Unit Owner rents any Unit to a rental tenant and then fails to make payments due for Common Charges, assessments or late fees for such Unit within sixty (60) days of the expiration of any grace period after they are due, upon notice in writing, all rent payments from the tenant shall attach to the Board and shall be directly payable to the Board.

9.3.6 If the Common Charges, assessments or late fees due for any Unit have not been paid in full, within sixty (60) days after the expiration of any grace period of the earliest due date, the Board shall provide written notice to the tenant and the Unit Owner providing that, commencing immediately and until such time as all payments for Common Charges, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the Board at the address listed on the notice. At such time as payments for common charges, assessments and late fees from the Unit Owner are once again current, notice of such fact shall be given within three (3) business days to the rental tenant and Unit Owner. Thereafter all rental payments shall be made payable to the Unit Owner or a designated agent. A Unit Owner who disputes the Board's claim to rental payments pursuant to this section shall be entitled to present facts supporting such owner's position at the next scheduled meeting of the Board, which must be held within thirty (30) days from the date the Board receives notice that such Unit Owner seeks to dispute such claim. Nothing in this section shall limit any rights of Unit Owners or of the Board existing under any other law or agreement. Payment by a rental tenant to the Board made in connection with this section shall relieve that rental tenant from the obligation to pay such rent to the Unit Owner and shall be an absolute defense in any non-payment proceeding commenced by such Unit Owner against such tenant for such rent.

9.3.7 Any first mortgagee who obtains title to a Condominium Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid common charges before acquisition of the title to the Unit by the mortgagee. The lender will be liable for any fees or costs related to the collection of the unpaid Common Charges.

9.4. Foreclosure of Liens for Unpaid Assessments. The Board shall have the power to purchase any Unit at a foreclosure sale resulting from any action brought by the Board to foreclose a lien on the Unit because of unpaid assessments. In the event of such purchase, the Board shall have the power to hold, lease, mortgage, sell, vote or otherwise deal with the Unit. A suit to recover a money judgment for unpaid assessments shall also be obtainable separately without waiving the lien on the Unit.

9.5. Statement of Assessments. Upon the written request of any Unit Owner or their mortgagee, the Board shall promptly furnish such Unit Owner or their mortgagee with a written statement of the unpaid assessments due from such Unit Owner.

9.6. Failure to Pay License Fees. In the event of a default in the payment of any monthly License Fee, the Board, at its sole option, may declare the license terminated. Prior to making any such declaration following a default, the Board shall send notice to the delinquent Licensee giving the

Licensee a ninety (90) day grace period in which to make a payment in full. The Board may charge the delinquent Licensee a fee of not more than One Hundred Fifty (\$150.00) Dollars to cover the additional burden to the Board occasioned by the lack of timely payment, in addition to interest at the highest legal rate on the License Fee from its due date to the date payment is actually received from the Licensee. Following the ninety (90) day grace period, the Board may terminate a license without reimbursement of the consideration paid to acquire the license.

9.7. Liability for Water, Sewage, Gas and Electricity. Each Unit Owner shall be responsible for paying for the costs of separately sub-metered utilities for their Unit. Commonly metered utilities will be paid by the Board as a Common Expense, and the costs allocated among the Unit Owners as Common Charges.

9.8. Operating Account. There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating portion of all monthly and special assessments as fixed and determined for all Units. Disbursements from said account shall be for the general needs of the operation including, but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the Common Elements and for the purchase, lease, sale or other expenses resulting from the purchase or lease of Units.

9.9. Other Accounts. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

ARTICLE X

INSURANCE AND INSURANCE TRUSTEE

10.1. Insurance to be Carried by the Board. Not later than the date the first Unit is conveyed, the Board shall obtain, and maintain to the extent obtainable, all risk or fire insurance with extended coverage, loss of business, income/extra expense, boiler and machinery, insuring the Condominium, including all of the Units and the bathrooms and fixtures initially installed therein, together with all heating, air conditioning and other service machinery contained therein, covering the interest of the Condominium, the Board and all Unit Owners and their Registered Mortgagees, as its interest may appear, in an amount equal to at least one hundred percent (100%) of the replacement value of the Building exclusive of the land, foundation, excavation and other items normally excluded from coverage. Each of such policies shall contain New York standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any thereunder, shall be payable to such mortgagee as its interest may appear, subject however, to the loss payment provisions in favor of the Board and the Insurance Trustee hereinafter set forth; and such other insurance as the Board may determine. The Board is hereby irrevocably appointed agent for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium property to adjust all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims. All of such policies shall provide that adjustment of loss shall be made by the Board and all policies of physical damage insurance shall provide that the proceeds thereof, if \$100,000 or less, shall be paid to the Board, and if in excess of \$100,000 shall be paid to the Insurance Trustee. The Board of Managers is hereby appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each owner of any interest in the Condominium property to adjust all claims arising under insurance policies purchased by the Board of Managers and to execute and deliver releases upon the payment of claims.

10.1.1 All policies of physical damage insurance shall contain waivers of subrogation and

of any reduction of pro rate liability of the insurer as a result of any insurance carried by Unit Owners or of the invalidity arising from acts of the insured or any Unit Owners, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including all mortgagees of Units. Duplicate originals of all policies of physical damage insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of Units at least ten (10) days prior to expiration of the then current policies.

10.1.2 The Board shall also be required to obtain and maintain, to the extent obtainable, general comprehensive liability insurance in such limits as the Board may from time to time determine, covering each member of the Board, managing agent, if any, and each Unit Owner. Such comprehensive general liability insurance shall also cover cross-liability claims of one insured against another and shall be in a single limit of not less than One Million Dollars (\$1,000,000) covering all claims for bodily injury and for property damage arising out of one occurrence. Such comprehensive general liability insurance shall commence on the closing of title to the first Unit. The Board shall also be required to carry workmen's compensation insurance should it be required by law.

10.1.3 Each Unit Owner shall be required to have in place as of the date they acquire title a policy insuring the improvements and betterments in its Unit, and naming the Condominium and the Board of Managers as the additional insured. In addition, the Non-Residential Unit Owners shall be required to carry commercial liability insurance effective as of the date they acquire title with liability coverage of not less than \$2,000,000.00 for each incident and \$4,000,000.00 in the aggregate. Residential Unit Owners shall be required to carry homeowner's liability insurance effective as of the date they acquire title in amounts acceptable to the Board. All Unit Owners must maintain current certificates of insurance with the Board, or the managing agent if any. All policies required pursuant to this subsection shall contain waivers of subrogation, and shall not affect or diminish for any reason any insurance procured by the Board.

10.2. The Insurance Trustee. The Insurance Trustee shall be a bank or trust company located in the State of New York designated by the Board. All fees and disbursements of the Insurance Trustee shall be paid by the Board and shall constitute a Common Expense of the Condominium. In the event the Insurance Trustee resigns or fails to qualify, the Board shall designate a new Insurance Trustee that shall be a bank or trust company located in the State of New York.

10.3. Restoration or Reconstruction After Fire or Other Casualty.

10.3.1 In the event of damage to or destruction of the Building as a result of fire or other casualty (unless 75% or more of the Units are destroyed or substantially damaged and 75% or more of the Unit Owners, inclusive of the Non-Residential Unit Owners, do not duly and promptly resolve to proceed with repair or restoration), subject to the provisions of any mortgage covering the Premises, the Board of Managers or the Insurance Trustee shall arrange for the prompt repair and restoration of the Building (including all kitchen or bathroom fixtures initially installed therein by the Sponsor, any heating, air conditioning or other service machinery which is covered by insurance, but not including any wall, ceiling or door decorations or coverings or other furniture, furnishings, fixtures or equipment installed by Unit Owners in the Units) and the Board, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a Common Expense

and the Board may assess all the Unit Owners for such deficit as part of the Common Charges.

10.3.2 If seventy-five percent (75%) or more of the building containing the Units is destroyed or substantially damaged (as determined the Board), and Unit Owners whose percentage of Common Interest totals seventy-five percent (75%) in the aggregate of the total Common Interest, inclusive of the Common Interest appurtenant to Non-Residential Units, do not duly and promptly resolve to proceed with repair or restoration, the Property shall be subject to an action for partition at the suit of any Unit Owner or lienor, as if owned in common, in which event the net proceeds of sale together with the net proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to these By-Laws, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds) shall be divided by the Board or the Insurance Trustee, as the case may be, among all the Unit Owners in proportion to their respective Common Interests, after first payment out of the share of each Unit Owner the amount of any unpaid liens on his or her Unit, the order of the priority of such liens.

10.3.3 "Prompt" and "promptly" as used in this section shall mean the later of (i) ninety (90) days from the date the Insurance Trustee or the Board receives the insurance proceeds, or (ii) sixty (60) days from the date the Insurance Trustee or the Board notifies the Unit Owners that the insurance proceeds are insufficient to pay the estimated costs of repair and/or restoration.

ARTICLE XI

OPERATION OF PROPERTY

11.1. General Restrictions on Use of Units.

11.1.1. No Unit Owner shall use, store, generate, treat, transport, handle or dispose of within its Unit or elsewhere in the Building any Hazardous Substances, other than ordinary cleaning fluids which are used, stored, generated, treated, transported, handled and disposed of by an Occupant in strict compliance with applicable law. "Hazardous Substances" means any pollutants, chemicals (including, without limitation, petroleum or any by-products or fractions thereof, any form of natural gas, lead, asbestos and asbestos containing materials, construction materials and debris, polychlorinated biphenyls ("PCBs") and PCB-containing equipment, radon and other radioactive elements, ionizing radiation, electromagnetic field radiation and other non-ionizing radiation, infectious, carcinogenic, mutagenic, or etiologic agents, pesticides, defoliants, explosives, flammables, corrosives and urea formaldehyde foam insulation) that are regulated by, or may now or in the future form the basis of liability under, any Law.

11.1.2. Unit Owners may not take any of the following actions without the prior consent of the Board:

- (a) Take any action which would materially diminish the visibility or prominence of another Unit or any signage installed by another Unit Owner; or
- (b) Use or conduct any activities on the sidewalks appurtenant to the Condominium that materially or adversely affects another Unit Owner.

11.1.3. Notwithstanding the foregoing or anything contained in the By-Laws or the Rules and Regulations to the contrary, no Unit can be used for any unlawful, illegal, or extra hazardous

business, use or purpose or in such a manner as to constitute a nuisance of any kind (private or public).

11.2. Restrictions on Use of Community Facility Units. Subject to compliance with all Laws, including, without limitation, the certificate of occupancy for such Unit and any applicable zoning regulations, and except as otherwise provided herein and in the By-Laws, a Community Facility Unit may be used for any purpose consistent with the Certificate of Occupancy, or for any lawful purposes, including but not limited to, an outpatient clinic, synagogue or other religious gathering place, school or community meeting room, museum, or non-Community Facility art gallery. A Community Facility Unit may not be used for (i) any illegal or pornographic purposes; (ii) any establishment which provides sex related activities consisting of nude or semi-nude live performances, sex club, massage parlor, adult bookstore, peep shows; (iii) homeless shelter, or (iv) a drug or alcohol rehabilitation facility. A Community Facility Unit Owner may not amend the Certificate of Occupancy for such Unit without the prior written consent of the Board.

11.3. Restrictions on Use of Commercial Units. Subject to compliance with all Laws, including, without limitation, the certificate of occupancy for such Unit and any applicable zoning regulations, and except as otherwise provided herein and in the By-Laws, Commercial Units may be used for any purpose consistent with the Certificate of Occupancy, or for any lawful purposes. A Commercial Unit may not be used for (i) any illegal or pornographic purposes; (ii) any establishment which provides sex related activities consisting of nude or semi-nude live performances, sex club, massage parlor, adult bookstore, peep shows; (iii) homeless shelter, or (iv) a drug or alcohol rehabilitation facility.

11.4. Restrictions on Use of the Residential Units.

11.4.1 The Residential Unit may only be used for residential purposes, home occupations to the extent permitted by law, and/or as a sales office by Declarant, except in no event may all or any portion of the Unit be used for hostel, hotel or other transient purposes.

11.4.2 The Board, may, in its discretion, grant permission for the use of a subdivided unit as a professional office or for any other purpose, provided such use (i) is permitted by Law, (ii) does not violate then existing Certificate of Occupancy for such Unit, (iii) does not adversely affect the use and enjoyment of neighboring or adjacent Units for residential purposes, and (iv) complies with all applicable governmental regulations. Such permission by the Board shall be in writing and shall be personal to the Unit Owner. Any successor in title to such Unit shall be required to obtain the prior written approval of the Board before using such Unit as professional office or for any other purpose.

11.5. Use of General Common Elements

11.5.1 General Common Elements may be used only for the furnishing of the services and facilities and for the other uses for which they are reasonably suited.

11.5.2 No furniture, packages or objects of any kind shall be placed in the lobbies, vestibules, public halls, stairways, or any other part of the General Common Elements or in the areas designated as storage areas with the prior consent of the Board. The lobbies, vestibules, public halls, and stairways shall be used only for ingress and egress from the Units.

11.5.3 Intentionally Omitted.

11.6. Other Provisions as to Use. All valid Laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof, relating to any portion of the Property shall be complied with at the full expense of the respective Unit Owners or the Board, whoever shall have the obligation to maintain such part of the Property.

11.7. Right of Access.

11.7.1 Each Unit Owner grants a right of access as set forth in the Declaration to such Unit Owner's Unit to the Board, the managing agents, managers, and/or any other person authorized by any of the foregoing. In case of an emergency, such right of entry shall be immediate, without advance notice, whether or not the Unit Owner is present.

11.7.2 Each Unit Owner grants a right of access as set forth in the Declaration to such Unit Owner's Unit, and the Board shall grant rights of access to the Common Elements to Declarant and its contractors, subcontractors, architects, engineers, agents and employees, for the completion of the Building and any punch list work therein, provided that access thereto shall be exercised upon reasonable notice during reasonable hours in such a manner as will not unreasonably interfere with the use of the Units for their permitted purposes.

11.8. Abatement and Enjoinment of Violations by Unit Owners

11.8.1 The breach of any provisions contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to such other rights set forth in these By-Laws, (i) to enter any Unit or Common Element in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition resulting in such violation or breach and the Board shall not thereby be deemed guilty or liable in any manner of trespass; or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at Law or in equity, the continuance of any such violation or breach.

11.8.2 The violation or breach of any of the provisions of these By-Laws or the Declaration with respect to any rights, easements, privileges or licenses granted to Declarant or its designee shall give to Declarant and its designee the right, in addition to any other rights set forth in these By-Laws or the Declaration, to enjoin, abate or remedy by appropriate legal proceedings, either at Law or in equity, the continuance of any such violation or breach.

11.8.3 In the event the Board and/or the Declarant (hereinafter the "Creditor Party") takes any action or brings any proceeding against a Unit Owner (excluding Declarant) (hereinafter the "Defaulting Unit Owner") pursuant to the provisions of the Declaration or these By-Laws, the Defaulting Unit Owner shall reimburse the Creditor Party for all reasonable costs and charges incurred by the Creditor Party in connection therewith, including without limitation, attorney's fees, together with all reasonable out of pocket costs and expenses incurred by the Creditor Party, together with interest on all of the foregoing at the rate of interest of 1.5% per month (but in no event in excess of the maximum rate permitted by Law) from the date of the payment or performance of the service by the Creditor Party may bill the Defaulting Unit Owner therefor at any time. Such funds expended by the Creditor Party plus interest earned thereon, as aforesaid, shall be deemed a charge assessed against the Defaulting Unit Owners Unit and the failure to make

such reimbursement shall be deemed a default in the payment of Common Charges subject to the provisions governing such defaults as set forth in the Condominium Act and the By-Laws and the Board, upon receipt of such funds from the Defaulting Party shall promptly reimburse the Creditor Party, provided that the Creditor Party is the successful party in such action or proceeding.

ARTICLE XII

SALE, LEASE AND MORTGAGING OF UNITS

12.1. Sale and Lease of the Non-Residential Units. Non-Residential Unit Owners may sell, lease, and/or mortgage their Units without the prior approval or consent of the Board, subject to the use restrictions set forth in the Declaration and these By-Laws, and such sale or lease shall not be subject to the Board's right of first refusal.

12.1.1 Subordination, Non-Disturbance and Attornment. Any lease of the Non-Residential Units shall be subordinate to the terms of the Declaration and these By-Laws, and any conflict between the terms of any such lease, and the Declaration and/or the By-Laws shall be resolved in favor of the latter. At the request of a Non-Residential Unit Owner, the Board will enter into a non-disturbance agreement (the "Non-Disturbance Agreement") in a form reasonably satisfactory to the Non-Residential Unit Owner, on commercially reasonable terms customary for similar mixed use buildings in the New York City metropolitan area, with any tenant of the Non-Residential Unit, which provides that, provided that the lease is in full force and effect, (i) unless required by law to preserve any claims on behalf of the Board against the Non-Residential Unit Owner, procedural or otherwise, the Board will not name or join the tenant as a party defendant in any action or proceeding to foreclose upon the Board's lien for Common Charges or other amounts against the Non-Residential Unit, (ii) it will recognize the tenant's rights pursuant to the lease, (iii) it will not disturb the tenant's possession or diminish the tenant's rights and privileges under the lease, (iv) it will not increase the tenant's obligations pursuant to the lease, (v) provided such tenant is not in default under the terms of such lease beyond all applicable notice and grace periods, it will not interfere with the tenant's use, possession or enjoyment of the Non-Residential Unit, and (vi) subject to the provisions of the Non-Disturbance Agreement and provided such tenant is not in default under the terms of such lease beyond all applicable notice and grace periods, the rights of the tenant granted pursuant to the lease will not be disturbed. In the event that the Board or any other party succeeds to the interests of a Non-Residential Unit Owner in a Non-Residential Unit by reason of the foreclosure of the Non-Residential Unit or the delivery of a deed to the Non-Residential Unit, the tenant will agree to be bound to the Board or other party under all of the terms, covenants and conditions of the Lease and the tenant will attorn to the Board or other party as its landlord, and the Board of Managers will recognize the tenant as the direct tenant of the Board or its successor on the same terms and conditions as are contained in the lease. The Board, at the request of a Non-Residential Unit, shall promptly execute and deliver the Non-Disturbance Agreement in confirmation of the foregoing. The Non-Residential Unit Owner, as applicable, shall pay all reasonable costs and expenses of the Board in connection therewith. During the Sponsor Control Period, Sponsor may execute any Non-Disturbance Agreement to be provided pursuant to the terms of this Article.

12.2. Sale and Lease of the Residential Units. No Residential Unit Owner, other than the Declarant, may convey his Unit or any interest therein by sale or lease except in the manner set forth in this Section. Any sale or lease of any Residential Unit in violation of this Section shall be voidable at the election of the Board.

12.2.1 Right of First Refusal. Other than a sale or lease by Declarant, a successor of Declarant, a registered mortgagee or their assignee, a sale or lease from a Unit Owner to an immediate family member, or a sale or lease from an ownership entity to an affiliate of said ownership entity, any lease or sale of a Residential Unit shall be subject to the Board's right of first refusal.

- (a) Any contract to sell a Residential Unit, together with the Appurtenant Interests, and any lease of any Residential Unit ("Sale Agreement" or "Lease Agreement") shall contain the following language: "THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER ARE HEREBY MADE EXPRESSLY SUBJECT TO THE RIGHTS IF ANY, OF THE BOARD OF MANAGERS OF THE CONDOMINIUM WITH RESPECT TO THE TRANSACTION EMBODIED HEREIN PURSUANT TO THE TERMS OF THE BY-LAWS OF THE CONDOMINIUM, AS THE SAME MAY HAVE BEEN AMENDED." Promptly after such bona fide Sale Agreement or Lease Agreement shall be fully executed, the Unit Owner executing the same ("Offeree Unit Owner") shall send written notice thereof to the Board by certified or registered mail, or overnight mail, which notice shall be accompanied by a copy of the fully executed Sale Agreement or Lease Agreement, as the case may be, containing all of the terms offered in good faith by the prospective purchaser or tenant ("Outside Offeror"). The sending of this notice shall constitute an offer by the Offeree Unit Owner to sell the Unit, together with its appurtenant interests, or to lease the Unit, as the case may be, to the Board or to its designee, corporate or otherwise, on behalf of all Unit Owners. The giving of such notice shall further constitute a representation and warranty by the Offeree Unit Owner to the Board, on behalf of all Unit Owners, that such Offeree Unit Owner believes the Sale Agreement or Lease Agreement to be bona fide in all respects. Thereafter, upon the written demand, the Offeree Unit Owner shall submit to the Board, in writing, such further information with respect to the Outside Offeror and the Sale Agreement or Lease Agreement as the Board may reasonably request.
- (b) The Board may elect, by sending written notice thereof to the Offeree Unit Owner by certified or registered mail, or overnight mail, not later than thirty (30) days (in the event of a proposed sale) and fifteen (15) business days (in the event of a proposed lease) after receipt of (i) the notice referred to in subparagraph (a) hereof, or (ii) all other information reasonably required by the Board, whichever is later, to purchase or lease the Offeree Unit, as the case may be, on behalf of all Residential Unit Owners upon the same terms and conditions as were contained in the Sale Agreement or Lease Agreement. Notwithstanding anything to the contrary contained herein, however, the Board shall not exercise any option set forth in this Article to purchase or lease any Residential Unit without the prior approval of a Majority of Residential Unit Owners by number. The Board may use the Unit for any use permitted under the Declaration or these By-Laws.
- (c) In the event the Board fails to exercise its right of first refusal within the time period set forth in subparagraph (b) above, the Offeree Unit Owner shall be free to consummate the transaction embodied in the Sale Agreement or Lease Agreement within sixty (60) days after (i) notice of refusal is sent to the Offeree Unit Owner by the Board, or (ii) the expiration of the period in which the Board might have accepted such offer, as the case may be. If the Offeree Unit Owner shall fail to consummate the transaction embodied in the Sale Agreement or Lease Agreement within such sixty (60) day period, then, should the Offeree Unit Owner thereafter elect to sell such Residential Unit or to lease such Unit,

the Offeree Unit Owner shall be required again to comply with all of the terms and provisions of subparagraphs (a) and (b) hereof, but not more often than once in any twelve (12) month period. The Board shall have the right to waive this requirement for good cause shown, in its sole discretion.

- (d) The Board shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, disability, marital status, or other grounds prohibited by law in exercising its right of first refusal set forth herein.
- (e) In the event the Board does exercise its right of first refusal with respect to the sale of a Residential Unit, the acquisition of the Unit may be made from the working capital and Common Charges, or, if such funds are insufficient, the Board of Managers may assess each Residential Unit Owner, other than the offering Unit Owner, in proportion to each Residential Unit Owner's percentage of Residential Common Interest, or may borrow money to finance such acquisition. The sole security which may be given for any funds so borrowed is the Unit to be acquired. The Board may also assess each Residential Unit Owner, as provided above, for Common Charges for the Unit, or the rent due pursuant to the Lease, and for the cost of maintenance and repairs to such Unit. Neither the Board nor any Residential Unit Owner shall be entitled to cast any votes attributable to such Residential Unit.
- (f) Notwithstanding the above, the right of first refusal held by the Board shall not adversely impact the rights of a mortgagee or its assignee to:
 - a. foreclosure or take title to a unit pursuant to the remedies in the mortgage;
 - b. accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
 - c. sell or lease a unit acquired by the mortgagee or its assignee.

In the event any provision in this section conflicts with (a) through (c) above, the rights of the registered mortgagee as set forth herein shall control.

12.2.2. Leasing. All leases of Residential Units must be for a minimum period of one (1) year (with each such lease being to a specific named tenant and with no right to substitute any other tenant during the term of the lease). All such leases shall be consistent with the By-Laws and shall contain such reasonable conditions as the Board may impose in order to protect the physical and financial security and continuity of the Condominium, including (but not limited to) the following provisions:

- (a) the lease may not be modified, amended, extended or assigned, without the prior consent in writing of the Board;
- (b) the tenant may not sublet the demised premises, or any part thereof, without the prior consent in writing of the Board;
- (c) the Board shall have the right to terminate the lease on not less than thirty (30) days prior written notice upon foreclosure of the lien granted by Section 339-z of the New York State Real Property Law; and
- (d) the lease must contain an attornment provision that conforms with the provisions Section 339-kk of the Real Property Law.

The Board may establish other reasonable regulations governing leases of Residential Units from time to time. Except as set forth above, the form of any such lease shall be substantially in the then current form of apartment lease recommended by The Real Estate Board of New York, Inc. or New York City Bar Association with such modifications as may be approved in writing by the Board of Managers. The foregoing restrictions on leasing and the contents of leases contained herein shall not apply to a Residential Unit owned by Declarant, or a designee or successor of Declarant, or a Residential Unit owned by a mortgagee who took title for its own account in foreclosure or by deed in lieu of foreclosure.

12.2.3. Mortgages. No Residential Unit Owner may mortgage his Unit except by a mortgage loan granted by a federal or state savings and loan association, savings or commercial bank, life insurance company, pension fund, trust company, agency of the United States Government or of the City or State of New York or other similar institutional lender provided that (i) the Board is notified in writing of the making of the mortgage and receives a conformed copy of the mortgage and note; (ii) the mortgage states that if consent by the mortgagee is required to any amendment to the Condominium Declaration and By-Laws such consent will not be unreasonably withheld or delayed; and (iii) the Unit Owner making such mortgage first pays all assessments and Common Charges previously assessed by the Board against the Unit, and satisfies all unpaid liens against the Unit, except for the lien of a permitted mortgage. Notwithstanding the foregoing, the Declarant and Non-Residential Unit Owners shall have the right to mortgage their Units without restrictions or limitation, but any such mortgage shall contain the representations in clauses (ii) and (iii) of this paragraph (if applicable).

12.3. Waiver of Partition Rights. The Unit Owners waive all rights to partition their Unit except as otherwise set forth herein.

12.4. Power of Attorney. At the time of acquiring title to a Unit and as a condition thereof, the new Unit Owner shall duly execute, acknowledge and make arrangements for recording in the City Register's Office, the Unit Power of Attorney required under the Declaration.

12.5. Payment of Assessments. No Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until all unpaid Common Charges assessed against his Unit shall have been paid to the Board Managers. However, such unpaid Common Charges can be paid out of the proceeds from the sale of a Unit or by the grantee. Further, a Unit Owner may convey his Unit and his Common Interest appurtenant thereto, to the Board of Managers on behalf of all Unit Owners free of any cost to the Board or the Unit Owners and upon such conveyance such Unit Owner shall not be liable for any Common Charges thereafter accruing against such Unit. The provisions of this Section shall not apply to the acquisition or sale of a Unit by a mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. Such provisions shall, however, apply to any purchaser from such mortgagee.

12.6. Gifts, etc. Any Unit Owner may convey or transfer his/her/its Unit by gift during his lifetime or devise his Unit by will or pass same by intestacy without restriction.

ARTICLE XIII

AMENDMENTS

13.1. General. Except as otherwise stated in the Declaration and this Article XIV, these By-Laws may be altered, amended or added to at any duly called Unit Owners' meeting provided that: (1) the notice of the meeting shall contain a full statement of the proposed amendment; (2) the

amendment shall be approved by Unit Owners representing sixty-seven percent (67%) by number, including Non-Residential Unit Owners, and if material in nature by fifty one (51%) percent of the Registered Mortgagees; and (3) said amendment shall be set forth in a duly recorded amendment to the Declaration. Approval or consent to any change to the Declaration or these By-Laws by a Registered Mortgagee will be implied if the Registered Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. However, no amendment shall affect or impair the validity or priority of the Unit Owner's interests and the interests of holders of a mortgage encumbering a Unit or Units, or adversely affect Declarant's rights. Notwithstanding the foregoing, wherever in this section the consent of a Registered Mortgagee or a majority of Mortgagee representatives is required, the written consent of the Sponsor Mortgagee must be given, provided that such Sponsor's Registered Mortgage has not yet been satisfied.

13.2. Amendments Affecting Solely the Non-Residential Units or the Residential Units.

13.2.1 Any provision of the Declaration or By-Laws benefiting, protecting or otherwise affecting only Non-Residential Units, and/or Non-Residential Unit Owners, other than provisions restricting the use of such Unit, may be amended, modified or deleted by Non-Residential Unit Owners

13.2.2 Any provision of these By-Laws benefiting, protecting or otherwise affecting only the Residential Units, the Declarant or the Residential Unit Owners may be amended, modified or deleted by the Declarant or by a vote of sixty-seven percent (67%) of the Residential Unit Owners by number as applicable without the consent of the Board or the other Unit Owners. However, the Board shall cooperate with the Declarant's or Residential Unit Owner's efforts to amend such provision, including executing, acknowledging and delivering any document required to effectuate such amendment.

13.3. Amendments Requiring Additional Consent.

13.3.1 Any amendment to these By-Laws that would materially and adversely impact the rights and obligations of a Non-Residential Unit Owner, or the permitted use of a Non-Residential Unit shall require the consent of the Non-Residential Unit Owners

ARTICLE XIV

CONDEMNATION

14.1. General. In the event all or part of the General Common Elements are taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Insurance Trustee if the award is more than \$100,000.00, and to the Board if the award is \$100,000.00 or less.

14.1.1. Except as otherwise set forth herein, any award from such proceedings shall be distributed as follows:

- (a) So much of the award as is applicable to General Common Elements, to the Unit Owners pro rata according to their respective Common Interests appurtenant to the Units owned by such Unit Owners.

- (b) So much of the award as is applicable to irrevocably General Common Elements, to the Unit Owners having general use of such General Common Elements. Any change in the provisions of this Article shall not be valid unless a majority of the Registered Mortgagees approves such a change. Notwithstanding the foregoing, wherever in this section the consent of a Registered Mortgagee or a majority of Mortgagee representatives is required, the written consent of the Sponsor Mortgagee must be given, provided that such Sponsor's Registered Mortgage has not yet been satisfied.

14.1.2 For so long as Declarant remains the owner of a Residential Unit, in the event ten percent (10%) or less of the General Common Elements are taken in such condemnation or eminent domain proceedings, the distribution of any award shall be determined by the Declarant in its sole discretion.

14.1.3 In such eminent domain or condemnation proceeding, the Board shall request that the award shall set forth the amount allocated to General Common Elements. In the event the award does not set forth such allocation, then the question of such allocation shall be submitted to arbitration in accordance with these By-Laws.

ARTICLE XV

RECORDS AND AUDITS

15.1. Records. The Board or the Managing Agent shall keep detailed records of the actions of the Board, minutes of the meetings of the Board, minutes of the meetings of the Units Owners for whom the Board serves and financial records and books of account with respect to the activities of the Board, including a listing of all receipts and expenditures. In addition, the Board of Managers shall keep a separate account for each Unit, which among other things, shall contain the amount of each assessment of Common Charges made by the Board of Managers against each such Unit, the date when due, the amounts paid thereon and the balance, if any, remaining unpaid.

15.2. Audits. Within four months after the end of each fiscal year, an annual report of receipts and expenditures prepared and certified by an independent certified public accountant shall be submitted by the Board of Managers to all Unit Owners and, if so requested, to any Registered Mortgagee. The cost of such report submitted by the Board of Managers shall be paid by the Unit Owners as a Common Charge.

15.3. Availability of Documents. Copies of the Declaration, these By-Laws, the Rules and Regulations and the Floor Plans, as the same may be amended from time to time, shall be maintained at the office of the Board and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours.

ARTICLE XVI

ARBITRATION

16.1. Expedited Arbitration Procedure. Any disputes between a Non-Residential Unit Owner, and the Board, one or more Residential Unit Owners, and/or the Declarant, including a dispute over whether any matter under consideration is material or adverse, shall be subject to expedited arbitration before JAMS at the request of any Unit Owner as set forth in the By-Laws. By contrast, any disputes between the Declarant and Residential Unit Owners not involving a Non-Residential

Unit shall not be submitted to arbitration but shall be settled in accordance with applicable law.

16.1.1 The parties to such dispute shall present the dispute to a single arbitrator (the “Arbiter”) acceptable to both the disputing parties in their reasonable judgment in accordance with the rules of Judicial Arbitration and Mediation Services (“JAMS”); provided, however, that if the parties fail to agree on an Arbiter within five (5) days following the commencement of such discussions, then either party may request JAMS to designate an Arbiter. In the event that JAMS is not then in existence and has no successor, any arbitration hereunder shall be conducted in New York City before one Arbiter appointed, on application of any party, by any justice of the highest appellate court located in the County of New York having jurisdiction over the matter. Such Arbiter shall be a lawyer or real estate owner, developer, or manager familiar who is impartial and has no existing or historical personal or professional relationship with the parties or their affiliates, and has at least ten (10) years of experience with mixed-use condominium projects in New York.

16.1.2 A party (“Disputing Party”) may submit a request for resolution of a dispute (a “Dispute”) pursuant to the provisions of this Article by giving notice (a “Dispute Notice”) of the Dispute to the other party to the Dispute (the “Other Disputing Party”) and to the Arbiter, which Dispute Notice shall identify the provision of the Agreement at issue and shall specify in reasonable detail: (i) the nature of the dispute and the interpretation or decision requested; (ii) the party’s proposal to resolve the dispute; and (iii) a written explanation of its position, together with any materials that it deems relevant for such purpose. Within five (5) business days after receiving the Dispute Notice, the Other Disputing Party may deliver to the Arbiter, with a copy of the Disputing Party, a written statement setting forth in reasonable detail: (i) its position with respect to the Dispute, together with any materials that it deems relevant for such purpose; and (ii) its proposal to resolve the Dispute. The Disputing Party and the Other Disputing Party shall each be entitled to present additional evidence and arguments to the Arbiter (in addition to the initial written statements described above) in accordance with procedures, if any, determined by the Arbiter, which procedures shall be implemented by the Arbiter so as to cause the time deadlines set forth below to be met.

16.1.3 All evidence and arguments must be presented to the Arbiter within five (5) business days after the expiration of the five (5) business day period (the “Dispute Deadline”). The Arbiter shall coordinate among the Disputing Party and the Other Disputing Party in order to arrange for a time or times to meet and present positions within the Dispute Deadline. The Disputing Party and the Other Disputing Party shall each make themselves available during such time, and if no mutually convenient time is agreed upon, each party shall be available during business hours on the day of the Dispute Deadline.

16.1.4 The Arbiter shall, in all events, render its decision by the later of (i) ten (10) business days after delivery of the written statement by the Other Disputing Party, or (ii) seven (7) business days after all evidence and arguments have been presented. The Arbiter shall issue a single written decision stating, in reasonable detail, the basis for its decision. The Arbiter shall allocate the costs related to the Dispute (including, without limitation, the costs of the arbitration, any expert witnesses and reasonable attorney’s fees) between the Disputing Parties as it deems appropriate, and shall set forth such cost allocation in its decision. The Arbiter may not vary the terms of the Declaration or these By-Laws, and any decisions shall be subject to the limitations on liability and remedies as set forth in the Declaration and these By-Laws. The Arbiter’s decision shall be conclusive and binding on all parties to the Dispute, and shall be confirmable in a court of competent jurisdiction.

16.2. Agreement by Parties. The parties to any dispute required or permitted to arbitration hereunder may, by mutual agreement between them, vary any of the provisions of this Article with respect to the arbitration of such dispute, or may agree to resolve their dispute in any other manner, including, without limitation, the manner set forth in Section 3031 of the New York Civil Practice Law and Rules and known as the "New York Simplified Procedure for Court Determination of Disputes."

ARTICLE XVII

MISCELLANEOUS

17.1. Insurance. Under no circumstances shall a Unit Owner permit or suffer anything to be done or left in his Unit that will increase the insurance rates on his Unit or any other Unit or on the Common Elements.

17.2. Severability. Should any of the covenants, terms or provisions herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.

17.3. Notice to Condominium. A Unit Owner who mortgages his Unit shall notify the Condominium through the Managing Agent, if any, or the President of the Board of Managers in the event there is no Managing Agent, of the name and address of his mortgagee; and the Board of Managers shall maintain such information in a book entitled "Mortgagees of Units."

17.4. Notice of Unpaid Assessments. The Board of Managers shall, at the request of a Registered Mortgagee or a Unit Owner, report any unpaid assessments due from the Unit Owner of such Unit.

17.5. Construction. Wherever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires.

17.6. Compliance with Article 9-B. These By-Laws are set forth to comply with the requirements of Article 9-B of the Real Property Laws of the State of New York. In case any of these By-Laws conflict with the provisions of said Statute or the Declaration, the provisions of the Statute or of the Declaration, whichever the case may be, shall control.

17.7. Depository. The Depository shall be a savings bank, a savings and loan association or a commercial bank or trust company designated by the Board to serve as Depository, provided all funds held by such Depository shall be held in New York City. In the event the Depository resigns or the Board wishes to replace it, the Board shall promptly appoint a new Depository in accordance with the terms of this Section. The Board shall pay the fees and disbursements of any Depository and such fees and disbursements shall constitute a Common Charge. The Depository shall hold all such proceeds in accordance with Section 254(4) of the Real Property Law of the State of New York. If required by Declarant's construction or permanent lender, and subject to the foregoing requirements, such lender shall be the Depository until its release of all Units from the lien of its mortgage.

17.8. Successors and Assigns. Except as set forth herein or in the Declaration to the contrary, the rights and/or obligations of Declarant or its designee as set forth herein shall inure to the benefit of and be binding upon any successor or assign of Declarant or its designee or, with the consent of

Declarant or its designee, any transferee of some or all then Unsold Units then owned by Declarant or its designee as the case may be. Subject to the foregoing, Declarant and its designee shall have the right, at any time in their sole discretion, to assign or otherwise transfer their respective interests herein, whether by sale, merger, consolidation, lease, assignment or otherwise.

17.9. Covenant of Further Assurances.

17.9.1 Any party which is subject to the terms of these By-Laws, whether such party is a Unit Owner, a lessee or sublessee of a Unit Owner, an occupant of a Unit, a member or officer of the Board, or otherwise, shall, upon prior reasonable written request at the expense of any such other party requesting the same, execute, acknowledge and deliver to such other party such instruments, in addition to those specifically provided for herein, and take such other action, as such other party may reasonably request to effectuate the provisions of these By- Laws or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

17.9.2 If any Unit Owner, Board or other party which is subject to the terms of these By-Laws fails, within ten days after request therefor, either (i) to execute, acknowledge or deliver any instrument, or to take any action which such Unit Owner, Board or party is required to execute, acknowledge and deliver or to take pursuant to these By-Laws, or (ii) to deliver a written notice to the party requesting such execution, acknowledgement or delivery, and to the Board, stating the reasons why such Unit Owner, Board or other party refuses to execute, acknowledge or deliver such instruments or take such action, then the Board which represents such Unit Owner, Board or other party, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action in the name of such Unit Owner, Board or other party and such document or action shall be binding on such Unit Owner, Board or other party.

17.9.3 If any Unit Owner, Board or other party which is subject to the terms of these By-Laws fails, within ten days after request therefor, either (i) to execute, acknowledge or deliver any instrument, or to take any action which such Unit Owner, Board or party is required to execute, acknowledge and deliver or to take pursuant to these By-Laws at the request of Declarant or its designee, or (ii) to deliver a written notice to Declarant or its designee, as applicable, and to the Board stating the reasons why such Unit Owner, the Board or other party refuses to execute, acknowledge or deliver such instrument or take such action, then Declarant or its designee is hereby authorized, as attorney-in-fact for such Unit Owner, the Board or other party, coupled with an interest, to execute, acknowledge and deliver such instrument, or take such action, in the name of such Unit Owner, the board or other party and such document or action shall be binding on such Unit Owner, the Board or other party, as the case may be.

17.10. First Mortgagee's Rights Confirmed. No provision of the Declaration or these By-Laws gives a Unit Owner or any other party priority over any rights of the first mortgagee of the Condominium Unit pursuant to its mortgage in the case of payment to the Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

CONDOMINIUM
HOUSE RULES AND REGULATIONS

In addition to the other provisions of these By-Laws, the following House Rules and Regulations, together with such additional Rules and Regulations as may hereafter be adopted by the Board of Managers, shall govern the use of the Residential Units and the conduct of all residents thereof:

1. Owners of a Unit, their employees, licensees and guests shall not use or permit the use of the premises in any manner which would be illegal or disturbing or a nuisance to other said Owners, or in such a way as to be injurious to the reputation of the Condominium.

2. The Common Elements and the Limited Common Elements shall not be obstructed, littered, defaced or misused in any manner, except as may be provided for herein.

3. Every Unit Owner shall be liable for any and all damage to the Common Elements and the property of the Condominium, which shall be caused by said Unit Owner or such other person for whose conduct he is legally responsible.

4. Every Unit Owner must perform promptly all maintenance and repair work to its own Unit, which, if omitted, would affect the Condominium in its entirety or in a part belonging to other Unit Owners, or the Building of which its Unit forms a part, such Unit Owner being expressly responsible for the damages and liabilities that its failure to do so may engender. All the repairs to internal installations of the Unit located in and servicing only that Unit, such as telephones and sanitary installations, shall be at the Unit Owner's expense.

5. No Unit Owner shall paint the exterior surfaces of the windows and doors opening out of his Unit.

6. Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness, and shall not sweep or throw or permit to be swept or thrown therefrom or from the doors or windows thereof, any dirt or other substance.

7. Nothing shall be installed in or be projected from any window, balcony or wall of the Building by a Unit Owner without similar approval.

8. No Unit Owner or any of his agents, servants, employees, licensees or visitors shall at any time bring into or keep in his Unit any inflammable, combustible or explosive fluid, material, chemical or substance, except for normal household use.

9. No Unit Owner shall make or permit any disturbing noises in his Unit or do or permit anything to be done therein which will interfere with the rights, comforts or conveniences of other Units Owners. No Unit Owner shall play upon or suffer to be played upon any musical instrument or operate or permit to be operated a CD player, radio or television set or other loud speaker in such Owner's Unit between the hours of 12:00 midnight and the following 7:00 A.M. if the same shall disturb or annoy other occupants of the Building and in no event shall practice or suffer to be practiced either vocal or instrumental music between the hours of 10:00 P.M. and the follow 9:00 A.M.

10. No garments, rugs or similar items shall be hung from the windows or from any other part of the Building or balconies or terraces or clotheslines strung on or over the Common Elements (including any irrevocably restricted areas).

11. No sign of any kind shall be displayed to the public view on or in any Unit.

12. No birds, animals or reptiles, except dogs or cats, shall be permitted in any Unit unless the same shall have been expressly permitted in writing by the Board of Managers or the Managing Agent, and such permission shall be revocable at any time by the Board of Managers or Managing Agent in their sole discretion. No pet shall be permitted in the Common Elements, including dogs and cats, unless carried or on a leash.

13. No Unit Owner shall leave any personal property (i.e., bicycles, carriages, etc.) to be left in the hallways, corridors, lobby or other common areas.

14. No one shall ride bicycles, mopeds or skateboards on any portion of the Common Elements.

15. Every Unit Owner shall comply with the recycling laws of the City of New York or any other governmental entity having jurisdiction thereof.

16. Smoking and using electronic cigarettes is prohibited at all times in all enclosed common areas of the buildings, as required by law. Enclosed common areas of the building includes, but is not limited to, indoor Common Elements such as a lobby, hallway, vestibule, stairway, and basement. Smoking and using electronic cigarettes is permitted at all times in all dwelling units and outdoor areas, unless otherwise restricted by law. This policy applies to any person on the premises. Complaints about violations shall be made promptly to the Board of Managers. Complaints should be made in writing and should be as specific as possible, including the date, approximate time, location where smoke was observed, description of incident, and apparent source of smoke. Unit Owners shall provide to prospective buyers or renters of their apartment units a copy of this Smoking Policy including by annexing it to any contract of sale or lease of their apartment unit.

17. The public areas of the Condominium and those residential areas exposed to public view or other Unit Owners shall be kept in good appearance, in conformity with the dignity and character of the Building, as determined by the Board of Managers in its sole discretion, by (i) the Board of Managers, with respect to such parts of the Building required to be maintained by the Board of Managers, and (ii) each Unit Owner with respect to interior surfaces of windows and shades, venetian or other blinds, drapes, curtains, or other window decorations in or appurtenant to such Unit Owner's Unit. No color of blinds or window treatment will be permitted by the Board of Managers other than the color of white, unless the Board of Managers explicitly provides written permission to deviate from same. To promote a consistent appearance of the Building from the outside, no Residential Unit Owner shall be permitted to enclose, erect a greenhouse, and/or alter a terrace or balcony appurtenant to a Unit in such a way that will alter the conformity of the Building, without the prior written approval of the Board of Managers. The Board of Managers may issue regulations concerning the size, type, and color of window treatments to be installed on the windows of Units in order to provide a visually harmonious appearance. The Board of Managers may limit the types of personal items, furnishings, and plantings that may be placed on terraces or balconies appurtenant to a Unit.

SCHEDULE D TO THE DECLARATION OF THE CONDOMINIUM

THE 243 4TH AVENUE CONDOMINIUM

243 4TH AVENUE
BROOKLYN, NEW YORK 11215

BLOCK 958

BUDGET ALLOCATION

ESTIMATED EXPENSES	TOTAL	RESIDENTIAL	NON- RESIDENTIAL
LABOR AND RELATED EXPENSES	100.0000%	100.0000%	N/A
GAS	100.0000%	100.0000%	N/A
ELECTRICITY	100.0000%	100.0000%	N/A
WATER AND SEWER CHARGES	100.0000%	100.0000%	N/A
REPAIRS, MAINTENANCE AND SUPPLIES	100.0000%	100.0000%	N/A
SERVICE CONTRACTS	100.0000%	91.0838%	8.9162%
INSURANCE	100.0000%	91.0838%	8.9162%
MANAGEMENT FEE	100.0000%	91.0838%	8.9162%
LEGAL AND AUDIT FEE	100.0000%	91.0838%	8.9162%
RESERVE FUND	100.0000%	95.5419%	4.4581%
TOTAL OPERATING EXPENSES	100.0000%	97.4659%	2.5341%
ESTIMATED SPECIAL ASSESSMENT RE: THE CF UNIT	\$ 5,230.68		