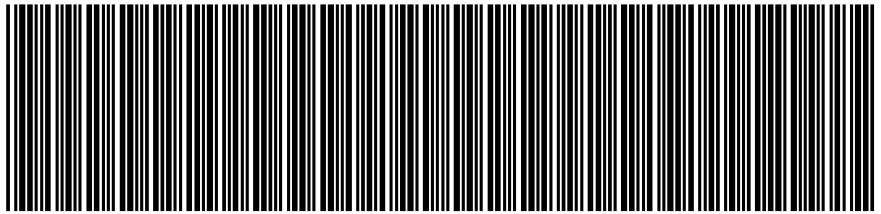


**NYC DEPARTMENT OF FINANCE
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2004010702254001002E845A

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 200

Document ID: 2004010702254001

Document Date: 12-01-2003

Preparation Date: 01-07-2004

Document Type: CONDO DECLARATION

Document Page Count: 198

PRESENTER:

ROYAL ABSTRACT OF NEW YORK LLC
AGENT FOR CHICAGO TITLE INSURANCE
500 5TH AVENUE- SUITE 1940
NEW YORK, NY 10110
212-376-0900
820163

RETURN TO:

ALAN L. KAZLOW, ESQ.
MANDEL RESNIK KAISER MOSKOWITZ &
GREENSTEIN
220 EAST 42ND STREET
NEW YORK, NY 10017
820163

PROPERTY DATA

Borough	Block	Lot	Unit	Address
MANHATTAN	1284	69	Entire Lot	609 5 AVENUE

Property Type: OFFICE BUILDING

Borough	Block	Lot	Unit	Address
MANHATTAN	1284	1001	Entire Lot	LOWER 609 5TH AVE

Property Type: COMMERCIAL CONDO UNIT(S)

CROSS REFERENCE DATA

CRFN _____ or Document ID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

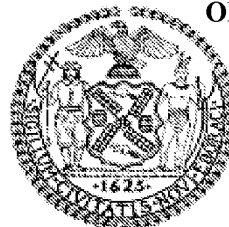
PARTIES

PARTY 1:

609 FIFTH CONDOMINIUM
609 FIFTH AVENUE
NEW YORK, NY 10017

FEES AND TAXES

Mortgage			Recording Fee: \$	1,033.00
Mortgage Amount:	\$	0.00	Affidavit Fee: \$	0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax Filing Fee:	
Exemption:			\$	0.00
TAXES:			NYS Real Estate Transfer Tax:	
County (Basic):	\$	0.00	\$	0.00
City (Additional):	\$	0.00		
Spec (Additional):	\$	0.00		
TASE:	\$	0.00		
MTA:	\$	0.00		
NYCTA:	\$	0.00		
TOTAL:	\$	0.00		



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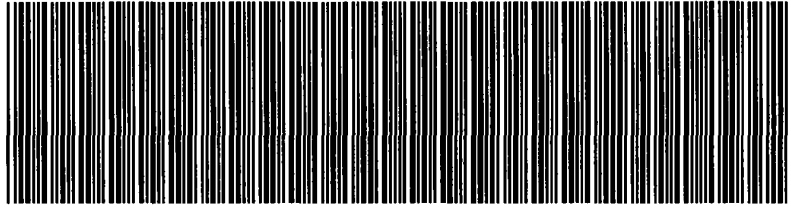
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Rochelle Patricia

City Register Official Signature

**NYC DEPARTMENT OF FINANCE
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2004010702254001002C86DA

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 200

Document ID: 2004010702254001

Document Date: 12-01-2003

Preparation Date: 01-07-2004

Document Type: CONDO DECLARATION

PROPERTY DATA

Borough	Block	Lot	Unit	Address
MANHATTAN	1284	1002	Entire Lot	UPPER 609 5TH AVE
Property Type: COMMERCIAL CONDO UNIT(S)				

DECLARATION OF CONDOMINIUM
Establishing a Plan for Condominium Ownership of the Premises
known as and by the street number

609 FIFTH AVENUE
(a/k/a 2-6 East 49th Street)
NEW YORK, NEW YORK 10017

Pursuant to Article 9-B of the Real Property Law
of the State of New York

Name of Condominium: 609/FIFTH CONDOMINIUM

Declarant: 609 OWNERS LLC

Declarant's Address: c/o Wharton Realty
20 East 46th Street
New York, New York 10017

Date of Declaration: December 1, 2003

Location of Land: The Land affected by the within instrument
lies in Section 5, Block 1284 on the Tax Map
of the Real Property Assessment Department
of New York County in the borough of Manhattan,
State of New York
in Lots: F/K/A Lot 69, N/K/A Lots 1001 and 1002

RECORD AND RETURN TO:

MANDEL RESNIK KAISER MOSKOWITZ & GREENSTEIN P.C.
220 EAST 42ND STREET
NEW YORK, NEW YORK 10017
ATTENTION: ALAN L. KAZLOW, ESQ.

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TABLE OF CONTENTS TO DECLARATION

<u>Caption</u>	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	1
Section 1.1 Glossary.....	1
Section 1.2 General.....	1
Section 1.3 Condominium and Condominium Association.....	1
ARTICLE 2 SUBMISSION OF THE PROPERTY	2
Section 2.1 Submission	2
Section 2.2 Filing	2
ARTICLE 3 NAME OF CONDOMINIUM.....	2
Section 3.1 Name	2
Section 3.2 Use by Unit Owners and Others	2
ARTICLE 4 THE LAND.....	2
Section 4.1 Location	2
Section 4.2 Area	3
ARTICLE 5 THE BUILDING	4
Section 5.1 Location	4
Section 5.2 Building and Floors.....	4
Section 5.3 Units and Common Elements.....	4
Section 5.4 Development Rights.....	4
Section 5.5 Construction Materials.....	4
ARTICLE 6 THE UNITS.....	6
Section 6.1 Unit Designations	6
Section 6.2 Unit Locations.....	6
Section 6.3 Unit Information.....	6
Section 6.4 Floor Plans and Diagrams.....	6
Section 6.5 Borders	6
Section 6.6 Floor Area.....	6
Section 6.7 Certain Areas Excluded or Included in Floor Area	7
Section 6.8 Height	7
Section 6.9 Items Included in Unit.....	7
Section 6.10 Attachment to Perimeters.....	9
ARTICLE 7 THE COMMON ELEMENTS AND ASSOCIATION'S PROPERTIES.....	9
Section 7.1 Common Elements.....	9
Section 7.2 Items of Common Elements.....	9
Section 7.3 Association's Properties.....	11
Section 7.4 Items of Association's Properties.....	11
Section 7.5 No Partition.....	12
Section 7.6 Decision As To The Common Elements and Association's Properties	12
Section 7.7 Declaration Governs.....	12
ARTICLE 8 THE COMMON INTERESTS.....	12
Section 8.1 Statutory Method Chosen	12
Section 8.2 Common Interests.....	12
ARTICLE 9 THE COMMON PROFITS AND COMMON EXPENSES.....	13
Section 9.1 Special Allocation and Apportionment.....	13

TABLE OF CONTENTS
(Continued)

<u>Caption</u>	<u>Page</u>
Section 9.2 Budget of Condominium Operation.....	15
Section 9.3 Budget Requirement	15
Section 9.4 Budget Adoption Procedure.....	15
Section 9.5 Allocation or Apportionment Change.....	16
Section 9.6 Increase in Common Charges	16
Section 9.7 Budget Reserves.....	17
Section 9.8 Budget Surplus.....	18
Section 9.9 Prohibition.....	18
Section 9.10 Special Assessment.....	18
Section 9.11 Real Estate Taxes.....	18
ARTICLE 10 USES OF COMMON ELEMENTS, SIDEWALKS, VAULTS AND UNITS.....	19
Section 10.1 General Requirements	19
Section 10.2 General Prohibitions.....	19
Section 10.3 Common Use of Common Elements.....	19
Section 10.4 New Installations in Common Elements and Sidewalks.....	20
Section 10.5 New Connections to Common Elements.....	20
Section 10.6 Use of Common Elements and Immediately Adjacent Sidewalks.....	20
Section 10.7 Permitted Uses of Common Elements and Immediately Adjacent Sidewalks.....	21
Section 10.8 Permitted Uses of Vaults.....	21
Section 10.9 Intentionally Omitted.....	21
Section 10.10 Intentionally Omitted.....	21
Section 10.11 Intentionally Omitted.....	22
Section 10.12 Permitted Uses of Each Unit.....	22
Section 10.13 Compliance with Laws.....	22
Section 10.14 Changes in Uses of Unit	22
Section 10.15 Signs.....	22
Section 10.16 Limited Power of Attorney.....	23
Section 10.17 Cooperation of Board.....	23
ARTICLE 11 EASEMENTS, RIGHTS AND RESTRICTIONS AFFECTING THE COMMON ELEMENTS.....	24
Section 11.1 Common Elements.....	24
Section 11.2 Mutual Rights.....	24
Section 11.3 Subordination	24
Section 11.4 Easements Affecting the Common Elements for Access and Use.....	25
Section 11.5 Emergency	25
Section 11.6 Existing Services	25
Section 11.7 Additional Utility Easements and Rights.....	26
Section 11.8 Access by Utility	27
Section 11.9 Requirements for Utility's Access	27
Section 11.10 Each Unit's Communications and Other Installation Easements and Rights.	27
ARTICLE 12 EASEMENTS, RIGHTS AND RESTRICTIONS AFFECTING UNITS AND COMMON ELEMENTS.....	29
Section 12.1 Easements Affecting Units and Common Elements.....	29
Section 12.2 Reciprocal Easement Affecting Each Unit.....	31
Section 12.3 Reciprocal Easement Affecting the Common Elements and Each Unit.....	32

TABLE OF CONTENTS (Continued)

<u>Caption</u>	<u>Page</u>
Section 12.4 Easements of Support, Necessity, Utilities and Services.....	33
Section 12.5 Easements Allowing Encroachments.....	33
Section 12.6 Statutory Easements.....	34
Section 12.7 Promotional and Operational Easements.....	34
Section 12.8 Specific Easements Affecting the Upper Unit.....	35
ARTICLE 13 CHANGES IN UNITS AND COMMON ELEMENTS.....	35
Section 13.1 Changes	35
Section 13.2 Rights, Restrictions and Requirements	36
ARTICLE 14 MAINTENANCE, REPAIRS, ALTERATIONS AND OTHER WORK TO UNITS, COMMON ELEMENTS AND ADJACENT SIDEWALKS AND VAULTS.....	40
Section 14.1 Duty to Maintain and Repair the Units and Limited Common Elements.....	40
Section 14.2 Duty to Maintain and Repair the Common Elements.....	40
Section 14.3 Maintenance, Repairs, Alterations and Work to Units and Limited Common Elements.....	40
Section 14.4 Maintenance, Repairs, Alterations and Work to Common Elements.....	40
Section 14.5 Requisite Approvals for Board Repairs and Alterations.....	41
Section 14.6 Floors, Ceilings, Roofs and Building Walls.....	41
Section 14.7 Negligence, Misuse, Abuse or Neglect.....	41
Section 14.8 Cooperation	41
Section 14.9 Sidewalks.....	42
Section 14.10 Vaults.....	42
ARTICLE 15 WORK REQUIREMENTS.....	43
Section 15.1 Application	43
Section 15.2 Work Requirements.....	43
Section 15.3 Procedure to Obtain Approval.....	51
Section 15.4 Period to Approve or to Deny.....	51
Section 15.5 No Assumption of Liability.....	51
Section 15.6 Remedies.....	52
Section 15.7 Correction of Defects.....	52
ARTICLE 16 ACQUISITION OF UNITS BY CONDOMINIUM BOARD.....	53
Section 16.1 Authority for Acquisition.....	53
Section 16.2 Acquisition By Nominee or Designee of Board.....	53
Section 16.3 Authority for Dispositions	53
Section 16.4 Included in Association's Properties	53
ARTICLE 17 POWER OF ATTORNEY FROM EACH UNIT OWNER.....	54
Section 17.1 Grant of Limited Power of Attorney.....	54
Section 17.2 Power of Substitution	56
Section 17.3 Durability.....	56
Section 17.4 Unit Owner's Confirmatory Power of Attorney.....	56
Section 17.5 Limited Power of Attorney Unimpaired	56
ARTICLE 18 PRIORITY OF LIEN FOR COMMON CHARGES.....	57
Section 18.1 Priority of Lien for Common Charges.....	57
Section 18.2 Subordination	57
ARTICLE 19 TERMINATION OF CONDOMINIUM.....	58

TABLE OF CONTENTS
(Continued)

<u>Caption</u>	<u>Page</u>
Section 19.1 Condominium Termination Events.....	58
Section 19.2 Partition.....	58
ARTICLE 20 COOPERATION AND FURTHER ASSURANCES.....	58
Section 20.1 Covenant to Cooperate.....	58
Section 20.2 Actions and Documents.....	59
Section 20.3 Rights and Obligations of Requesting Party.....	59
Section 20.4 Giving Assurances.....	60
Section 20.5 Giving Instruments and Documents.....	60
Section 20.6 Limited Power of Attorney.....	60
ARTICLE 21 COVENANTS TO RUN WITH THE LAND; COMPLIANCE WITH CONDOMINIUM ACT.....	60
Section 21.1 Covenants Run with Land.....	60
Section 21.2 Binding Effect.....	61
Section 21.3 Acceptance, Adoption and Ratification.....	61
Section 21.4 Invalidity and Reformation.....	61
Section 21.5 Deemed Inclusion of Necessary Provisions.....	61
Section 21.6 Correction Declaration.....	62
ARTICLE 22 AMENDMENTS TO DECLARATION.....	62
Section 22.1 Application to Declaration and By-Laws.....	62
Section 22.2 Requirements.....	62
Section 22.3 Illustration.....	63
Section 22.4 Restrictions.....	63
Section 22.5 Acknowledgment and Recording.....	64
Section 22.6 Signatories.....	64
Section 22.7 Floor Plans.....	64
Section 22.8 Limited Power of Attorney.....	64
Section 22.9 Filing of Conformed Copy with Secretary.....	65
Section 22.10 Filing with Secretary of State.....	65
ARTICLE 23 CONSENT OF DECLARANT.....	65
Section 23.1 Consent of Declarant.....	65
ARTICLE 24 SERVICE OF PROCESS.....	66
Section 24.1 Designation of Secretary of State.....	66
Section 24.2 Person and Address to Whom Process is To Be Sent.....	66
Section 24.3 Foreign Entity.....	66
ARTICLE 25 INCORPORATION IN DECLARATION.....	68
Section 25.1 Incorporation of Exhibits and Floor Plans.....	68
ARTICLE 26 CHANGES AND WAIVER.....	68
Section 26.1 Changes.....	68
Section 26.2 No Waiver of Consent.....	68
Section 26.3 Waiver in Writing.....	68
Section 26.4 No Inference of Waiver.....	68
ARTICLE 27 SEVERABILITY.....	69
Section 27.1 Valid and Enforceable.....	69
Section 27.2 Condominium Act is Paramount.....	69
ARTICLE 28 DECLARANT'S RIGHTS.....	69
Section 28.1 Who May Exercise.....	69

TABLE OF CONTENTS
(Continued)

<u>Caption</u>	<u>Page</u>
Section 28.2 New Unit Owner	63
Section 28.3 Covenants with Land Supplemented	64
ARTICLE 29 INDEMNIFICATION	64
Section 29.1 Indemnification Generally	64
Section 29.2 Contribution	64
Section 29.3 Application	64
Section 29.4 Notice of Claims	64
Section 29.5 Selection of Attorneys and Settlement	64
Section 29.6 Cooperation of Indemnified Party	64
Section 29.7 Participation of Indemnified Party	64
Section 29.8 Allocation of Liabilities and Expenses	65
ARTICLE 30 MISCELLANEOUS: USAGES AND GRAMMAR	65
Section 30.1 Table of Contents and Captions	65
Section 30.2 References	65
Section 30.3 Grammar	65
Section 30.4 Notices	65
Section 30.5 Governing Law	65
Section 30.6 Day	65
ARTICLE 31 COMPLIANCE WITH ARTICLE 23-A OF GENERAL BUSINESS LAW	65
Section 31.1 Restriction on Subdivision and Sale	65
ARTICLE 32 COMPLIANCE WITH EXISTING UNIT MORTGAGE	66
Section 32.1 Existing Unit Mortgage	66
Section 32.2 Rights of Existing Unit Mortgagee	66
EXHIBIT A DESCRIPTION OF LAND	EXH A-1
EXHIBIT B DESCRIPTION OF UNITS	EXH B-1
EXHIBIT C GLOSSARY	EXH C-1
EXHIBIT D BY-LAWS	EXH D-1
EXHIBIT E UNIT OWNER'S POWER OF ATTORNEY	EXH E-1

**DECLARATION
OF
CONDOMINIUM**

(Pursuant to Article 9-B of the Real
Property Law of the State of New York)

609 Owners LLC, having a business address (and for notices) at c/o Wharton Realty, 20 East 46th Street, New York, New York 10017 (hereinafter referred to as "**Declarant**"), does hereby declare, reserve and grant as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Glossary. The words frequently used in this Declaration (whether uppercase or lowercase) are defined in EXHIBIT C to this Declaration and apply wherever these words appear in this Declaration or the EXHIBITS to this Declaration (that is, the Description of the Land (EXHIBIT A), the Description of the Units (EXHIBIT B), the By-Laws (EXHIBIT D), the Rules and Regulations appended to the By-Laws and the Unit Owner's Power of Attorney (EXHIBIT E)), unless the context in which such words are used shall otherwise require. All numbers and designations of shafts, elevators, vaults, exit stairs, bulkheads, rooms and other elements correspond to those set forth on the Floor Plans of the Building.

Section 1.2 General. The meanings stated for the words within quotation marks in any provision of this Declaration or the EXHIBITS to this Declaration apply wherever these words appear in this Declaration or such EXHIBITS, unless the context in which they are used shall otherwise require. All references in this Declaration or the EXHIBITS hereto to the Declarant or a Unit Owner shall mean and include: (a) an "Involuntary Transferee" to such Party; and (b) a "successor-in-interest" to such Party, as such quoted terms are referred to in Article 28, Section 28.1 below. A reference to a Unit Owner shall mean only the Person who owns a Unit at the time in question and only while such Persons own the Unit.

Section 1.3 Condominium and Condominium Association. The term "Condominium" means the Property submitted to the provisions of the Condominium Act (Article 9-B of the Real Property Law of the State of New York). The term "**Condominium Association**" or "**Association**" refers to the unincorporated association of Unit Owners. The membership of the Association at all times shall consist exclusively of all the Unit Owners or, following the withdrawal or termination of the Condominium, all former Unit Owners entitled to share the net proceeds of any partition sale or award in a taking by a Governmental Authority in condemnation or by eminent domain, as applicable.

ARTICLE 2

SUBMISSION OF THE PROPERTY

Section 2.1 Submission. The Land that is the subject of this Declaration is identified on the first (cover) page of this Declaration and is more particularly identified in EXHIBIT A hereto. The Land together with the Building and other improvements erected on and under the Land known as and by the street address 609 Fifth Avenue, in the Borough of Manhattan, in the City, County and State of New York are herein collectively called the "**Property**". Declarant hereby submits the Property to the provisions of Article 9-B of the Real Property Law of the State of New York (a/k/a the Condominium Act) and, pursuant thereto, does hereby establish a regime for condominium ownership of the Property as more particularly set forth herein and in the By-Laws. The Property being submitted hereby to condominium ownership also includes all easements, rights and appurtenances belonging thereto, and all other property (real, personal or mixed) used or intended for use in connection with the Land or Building.

Section 2.2 Filing. Declarant shall, at its sole Cost and Expense and with reasonable promptness following the recording hereof, file this Declaration with the Department of State of the State of New York in accordance with Section 339-s of the Condominium Act and the rules, regulations and requirements of said Department of State.

ARTICLE 3

NAME OF CONDOMINIUM

Section 3.1 Name. The Condominium shall be known as 609/Fifth Condominium and shall not be changed or modified without the written consent or approval of Declarant for so long as Declarant owns any Unit.

Section 3.2 Use by Unit Owners and Others. Each Unit Owner, and those tenants and occupants of such Owner's Unit who are so authorized in writing by said Owner, shall have the right, Freely and Without Consent, Payment or Restriction, to use the name of the Condominium in connection with the Use and Enjoyment of said Owner's Unit.

ARTICLE 4

THE LAND

Section 4.1 Location. The Land is located in the Borough of Manhattan, New York County, in the City and State of New York and is more particularly described in EXHIBIT A annexed hereto.

Section 4.2 Area. The Land is owned by Declarant in fee simple absolute and has an area of approximately 12,831 square feet.

ARTICLE 5

THE BUILDING

Section 5.1 Location. The Building is located on the Land, which lies in Section 5, Block 1284, in Lot F/K/A Lot 69 and N/K/A Lots 1001 and 1002 on the Tax Map of the Real Property Assessment Department of the City and State of New York, New York County.

Section 5.2 Building and Floors. The Building contains a total of sixteen (16) construction levels (excluding bulkhead Roofs), consisting of a cellar level, fourteen (14) construction levels above the cellar and the main Roof. The floors are called and numbered, and shall be referred to in the Condominium Documents (unless the context otherwise requires) as follows: cellar, and floors 1 (i.e., ground floor) through 14.

Section 5.3 Units and Common Elements. Initially, the Building contains: two (2) Units and most of the Common Elements of the Property. Those Common Elements not in or on the Building include portions of the Land, apart from: (a) the portions of the Land occupied by the Units, which are included in the Units, and (b) the unimproved air space, which is included in the Lower Unit as provided in the following Section 5.4.

Section 5.4 Development Rights. The Lower Unit includes all unimproved air space above the existing heights of the Roofs enclosing the Building. Declarant hereby reserves to the Owner of the Lower Unit, all development rights of the Property associated with such unimproved air space ("**Development Rights**"), whether now existing or hereafter available, excluding any space occupied by Equipment (e.g., domestic and sprinkler water tanks, and communications equipment) existing at the date hereof or expressly permitted to be erected by the Condominium Board or the Upper Unit Owner, and all replacements thereof within the confines of their existing or permitted areas. The Lower Unit Owner shall have the exclusive right, Freely and Without Consent, Payment or Restriction, other than any restriction contained in the Existing Unit Mortgage encumbering the Lower Unit, to utilize and make any Disposition of the Development Rights, including constructing one or more additional floors above the Building and/or selling, transferring and conveying all or a portion of the Development Rights to an adjacent or nearby property owner under a so-called "zoning lot merger agreement", or otherwise. The Upper Unit Owner has no interest in the Development Rights, shall not be entitled to share in any proceeds realized on the use, sale, assignment, transfer or other Disposition of the Development Rights, and shall not be regarded as a "party in interest", as such quoted term is defined under the definition "Zoning Lot" in Section 12-10 of the Zoning Resolution of The City of New York.

Section 5.5 Construction Materials. The Building construction is classified as Class IB, fireproof. The principal construction materials of the Building are as follows. The structural foundation walls are made of concrete. The main Building structure is composed of structural steel. The floor slabs are composed of concrete. The main façade on Fifth Avenue and East 49th Street is composed of limestone and glass.

ARTICLE 6

THE UNITS

Section 6.1 Unit Designations. Initially, the Condominium consists of a total of two (2) Units, of which one is designated the Upper Unit and the other is designated the Lower Unit.

Section 6.2 Unit Locations. The Lower Unit is located on the following floors/construction levels: (a) a portion of the cellar; (b) a major portion of floor 1; (c) most portions of floors 2 and 3; and (d) a portion of floor 5.

The Upper Unit is located on the following floors/construction levels: (a) a portion of the cellar; (b) a portion of floor 1; and (c) a portion of floor 5 and most portions of floors 4 and 6 through 13. All or certain floors also house pipes, electrical lines, conduits, chases and similar Equipment and Installations that serve and are part of the Common Elements or a Unit.

Section 6.3 Unit Information. EXHIBIT B annexed hereto sets forth the following data with respect to each Unit necessary for its proper identification: (a) its Unit designation; (b) its tax lot number; (c) its approximate location in the Building; (d) its approximate floor area and height; (e) the portions of the Common Elements to which the Unit has immediate access; and (f) its appurtenant Common Interest.

Section 6.4 Floor Plans and Diagrams. The more precise location of each Unit within the Building is shown on the Floor Plans.

Section 6.5 Borders. The floor area of each Unit consists of the area bordered by the Building's façade or exterior walls ("**Building Walls**"), the interior boundary walls or partitions separating a Unit from the other Unit or a portion of the Common Elements ("**Party Walls**"), and the structural floors and ceilings consisting of concrete slab or other construction material that enclose the Unit ("**Perimeter Base Floors**" and "**Perimeter Base Ceilings**", respectively). The term "Building Walls" includes all heads, exterior sills and jambs. The Building Walls and Party Walls are part of the Common Elements and not part of such Unit, except that: (a) the half portion of a Party Wall that encloses and is nearest to a Unit, is part of such Unit; (b) the portion of the Building Walls that enclose floor 1 of the Lower Unit are part of such Unit; and (c) the windows and Storefronts of a Unit are part of the Unit. The Perimeter Base Floors and Perimeter Base Ceilings separating a Unit from the Common Elements are part of the Common Elements, except that the half-portion of such floors and ceilings nearest to the Unit is part of such Unit. With respect to any Perimeter Base Floors or Perimeter Base Ceilings separating the two Units, the half-portion thereof nearest to each Unit is part of such Unit. All other structural floors and ceilings ("**Base Floors**" and "**Base Ceilings**", respectively) separating the floors and ceilings within a Unit are part of such Unit.

Section 6.6 Floor Area. The approximate floor area of each Unit has been measured from the exterior side of the Building Walls or glass windows at the Building line and/or Property line enclosing the Unit, or from the midpoint of the interior Party Walls separating the Unit from the other Unit, or from the public side or exit stair side of the interior Party Walls separating the Unit from Common Elements consisting of public corridors or exit stairs, respectively, or from the mechanical space or interior side of interior Party Walls separating the Unit from other portions of the Common Elements. Columns and mechanical pipes and chases (whether along the perimeter or within the Unit) are not deducted from the square foot area of the Unit.

Section 6.7 Certain Areas Excluded or Included in Floor Area. The floor area occupied by any exit stairs and large shafts comprising part of the Common Elements have been excluded from the computation of the floor area of the Unit. The floor area occupied by all other Common Elements bordering or within a Unit (such as the Building Walls, vents, chase walls or areas, conduits, small shafts, pipes and any Structural Components) have been included in the computation of the floor area of the Unit. However, all such Common Elements are not part of the Unit. The floor area occupied by those elevator shafts that are part of a Unit also have been included in the floor area of the Unit.

Section 6.8 Height. Measured vertically, each Unit consists of the volume of space measured from the top of the Perimeter Base Floor (located under the finished flooring and sub-flooring materials) to the underside of the Perimeter Base Ceiling above (located above the finished ceiling material).

Section 6.9 Items Included in Unit The following items are part of, and for the exclusive use of, each Unit and the property of the Unit Owner to the extent applicable, whether existing at the date of recording of this Declaration or installed hereafter in the Unit or elsewhere in, on, under or adjacent to the Building (and replacements thereof):

- (a) Land: the portions of the Land occupied by such Unit are part of such Unit and the portions of the Land consisting of all unimproved air space, together with the Development Rights associated therewith, are part of the Lower Unit;
- (b) Windows, Skylights and Storefronts: all windows, skylights (if any) and Storefronts, including their frames, panes, glass, latches, mechanisms and interior sills, serving only one Unit are part of such Unit;
- (c) Building Walls: the portions of Building Walls enclosing floor 1 of the Lower Unit, including the Storefront now existing or hereafter installed, are part of such Unit (all other portions of the Building Walls are part of the Common Elements);
- (d) Interior Walls and Partitions: all interior walls and partitions (including insulation, studs, furring, masonry, sheetrock and other construction items relating thereto) serving only one Unit are part of such Unit;
- (e) Doors: all street entrance and interior doors (including their frames, hardware (e.g., hinges, knobs and locks) and saddles) serving only one Unit are part of such Unit;
- (f) Floors and Ceilings: all Base Floors and Base Ceilings serving only one Unit are part of such Unit; the half-portion of a Perimeter Base Floor and Perimeter Base Ceiling enclosing and nearest to a Unit is part of such Unit (the remaining half-portion thereof is part of the Common Elements or the other Unit, as applicable);
- (g) Interior Stairs: the interior stairs located within and serving only one are part of such Unit;
- (h) Elevators and Escalators: the elevators, together with their respective pits, shafts, cabs and related Equipment and Installations, and the escalators (if any), are part of such Unit;

- (i) Bathrooms: the bathrooms (including all plumbing fixtures, cabinets, counters and mirrors) serving only one Unit or portions thereof are part of such Unit;
- (j) Street Entrances: the street entrances to a Unit are part of such Unit (the entrance to each Unit includes the Building Walls immediately abutting the entrance and, to the extent existing now or permitted hereafter, its doors, canopies, awnings, security gates, security alarms, security cameras and other security devices, lighting and all Installations and Systems relating thereto);
- (k) Vault: the license or right to use a vault that houses Equipment and Installations serving exclusively or primarily one Unit are part of such Unit;
- (l) Appliances: all appliances, including cooktops, ovens, dishwashers, clothes washers and dryers, refrigerators, freezers, refuse compactors, laundry washers and dryers and other appliances serving only one Unit or portions thereof are part of such Unit;
- (m) Finishes and Coverings: the finishes and coverings of the Unit's walls, Base Floors and Base Ceilings are part of such Unit and include: (m-1) (as to walls or Base Ceilings) plaster, paint, tiles, wood, fabric or other finish as well as baseboards and moldings; and (m-2) (as to floors) wood, marble, limestone, ceramic, vinyl or other tile, carpet or other covering;
- (n) Independent Systems and Equipment: the independent or individual Systems (including the components of a Building-wide System that serve exclusively or primarily one Unit) and the Equipment serving exclusively or primarily one Unit are part of such Unit and include, if and where applicable: all individual electric, gas, heating, ventilation, air conditioning, hot water, intercom, lighting, sprinkler, standpipe, plumbing, mechanical and any and all other independent Systems, or the portions of any HVAC/Mechanical/Utility Building Systems that serve only the Unit, whether exposed or concealed behind walls or partitions or located elsewhere in or on the Building, including (if and as applicable); (n-1) individual electric and/or gas meters or submeters serving only the Unit; (n-2) electrical fixtures, chandeliers, lamps, wires, outlets and panel and circuit breakers and/or fuses and related electrical Installations; (n-3) pipes, valves, faucets, spouts and related plumbing Installations; (n-4) sprinkler heads, distribution pipes and related sprinkler Installations; (n-5) ducts, exhaust fans and other related ventilation Installations; (n-6) telephone, cable television and intercom Installations, including all lines, wires, jacks, outlets and related Equipment; (n-7) smoke detectors; (n-8) mail boxes and chutes; (n-9) compactors, chutes and all other portions of a refuse disposal System; (n-10) individual chiller or heat pump units; and (n-11) individual hot water heaters; but any meters (including for electric, gas or water), risers, distribution lines, ducts, conduits, pipes or wires or other Installations, or portions of a System that serve both Units or any portion of the Common Elements are part of the Common Elements and not part of a Unit; and
- (o) General: all other Equipment, Installations, Decorations, business and trade fixtures and Equipment (to the extent existing now or permitted hereafter) that for the exclusive use, service or benefit of a Unit are part of the Unit, unless expressly stated herein to be part of the Common Elements.

The independent or individual Systems and Equipment that are part of the Upper Unit under clauses (n) and (o) above include the Systems and Equipment that serve both the Upper Unit

and the portion of the Lower Unit located on floor 5, but not any other portion of the Lower Unit.

Section 6.10 Attachment to Perimeters. All Equipment and Installations now or hereafter permitted to be installed in a Unit may be secured to the walls, floors and ceilings within or enclosing such Unit by nails, screws, bolts or other devices, provided: (a) the structural integrity of the Unit or another Unit or the Building are not impaired or compromised by reason thereof; (b) any visible, rentable or commercially useable space of another Unit is not penetrated; and (c) the applicable Work Requirements set forth in Section 15.2 below and all other requirements of the Declaration and the By-Laws are followed (if and to the extent applicable).

ARTICLE 7

THE COMMON ELEMENTS AND ASSOCIATION'S PROPERTIES

Section 7.1 Common Elements. The portions of the Property for the common use, service or benefit of all or a portion of both Units or their respective Owners and their respective Permitted Tenants/Occupants/Invitees are called the "**Common Elements**" and generally consist of the following: (a) the portions of the Land occupied by the Common Elements are part of the Common Elements; and (b) all spaces or areas of the Property, and the Equipment and Installations in, on, above, under or adjacent thereto, which serve or benefit both Units or the Common Elements, or necessary or convenient to their existence, Maintenance or safety, or normally in common use, unless expressly stated to be part of a Unit. The Unit Owners own, in common, a proportionate undivided interest in fee simple absolute in the Common Elements ("**Common Interest**"). The Common Elements are for the use in common by both Unit Owners and their respective Permitted Tenants/Occupants/Invitees. However, such common use of the Common Elements are subject and subordinate to: (a) compliance with this Declaration and the By-Laws; (b) the right of the Condominium Board to establish and amend from time to time (without recording an Amendment to the Declaration or By-Laws) Rules and Regulations governing the use of the Common Elements by the Unit Owners and Permitted Tenants/Occupants/Invitees of Units (each Unit Owner shall cause the Board Member(s) appointed and designated by it to comply with any requirements contained in the Existing Unit Mortgage for so long as the Existing Unit Mortgage encumbers such Owner's Unit before implementing an Amendment to the Rules and Regulations); and (c) certain restrictions, as well as certain easements and rights reserved and granted to the Condominium Board, Declarant, the Upper Unit Owner and other Persons, all as and to the extent set forth elsewhere in this Declaration, the By-Laws and the Condominium Act.

Section 7.2 Items of Common Elements. Subject and subordinate to a "Description Change" of a Unit (as said quoted term is defined in, and as provided in, Section 13.1 below), the Common Elements consist of all portions of the Property designated on the Floor Plans and EXHIBIT F to this Declaration as Common Elements and include the following areas, Equipment and Installations (existing now or hereafter, including replacements thereof), whether or not so designated on the Floor Plans and regardless of their location in, bordering or adjacent to a Unit:

- (a) Land: the Common Elements include those portions of the Land occupied by the Common Elements;
- (b) Certain Structural Components: the Common Elements include the following portions of the Building's Structural Components (if and to the extent existing): (b-1) the foundation, foundation walls, footings, pilings and structural columns, beams, supports, girders, load-bearing walls and related or similar structural members of the Building; (b-2) the Building Walls, other than (i) the portions thereof enclosing only floor 1 of the Lower Unit,

which are included in, and are part of, the Lower Unit and (ii) the street entrances, Storefronts and windows serving each Unit, which are included in, and are part of, such Unit; (b-3) the half-portion of Party Walls enclosing portions of, and nearest to, the space constituting part of the Common Elements; (b-4) the half-portion of Perimeter Base Floors and Perimeter Base Ceilings enclosing portions of, and nearest to, the space constituting part of the Common Elements; (b-5) all Roofs, including the Roofs at Building setbacks and the main Roof above floor 14, and their respective Roof Structures, which include all bulkheads (if any) thereon, but exclude any Equipment and Installations on a Roof that serve only one Unit (which are part of such Unit);

- (c) Exit Stairs and Public Corridor: the Common Elements include: (c-1) all exit stairs, together with their enclosing walls, landings, railings, lighting Systems, exit doors and hardware, exit Signage and related Installations within such enclosing walls; and (c-2) the public corridor on floor 5 from the entrance to the Lower Unit office to exit stair B;
- (d) Equipment: the Common Elements include all Equipment and related Installations serving all or most portions of both the Units and are not expressly stated to be part of a Unit, or a portion of the Common Elements, including the following to the extent existing in the Building now or hereafter, and all replacements thereof: (d-1) all risers for plumbing (including for hot and cold water, sprinklers, storm drainage and sewerage) and electricity, together with all switches, valves, alarms and related apparatus, that serve all or most portions of both Units, or a portion of the Common Elements; (d-2) all main feeder lines for utilities (e.g., water, steam and sanitary sewerage) that serve all or most portions of both Units, or a portion of the Common Elements; and (d-3) fire and sump pumps that serve all or most portions of both the Upper Unit and the Lower Unit, or a portion of the Common Elements; (d-4) the HVAC/Mechanical/Utility Building Systems that serve all or most portions of both the Upper Unit and the Lower Unit or the Common Elements (e.g., the heating, hot water, sprinkler, standpipe and water and sewerage Systems); and (d-5) the freight elevator and its pit, shaft and related Equipment and Installations; together with all Installations related to the foregoing Equipment, but exclude those portions of the foregoing that serve exclusively or primarily one Unit (such as: all branch and distribution pipes and conduits, sprinkler heads, switches, valves, alarms and related apparatus that serve exclusively or primarily one Unit, which are included in, and part of, such Unit) or are expressly stated to be a part of a Unit;
- (e) Equipment Rooms and Areas: the Common Elements include rooms and areas housing or occupied by Equipment and Installations that serve all or a portion of both Units or the Common Elements;
- (f) Shafts: the Common Elements include all shafts that enclose Equipment or Installations that serve all or most portions of both Units or the Common Elements;
- (g) Street Entrance and Lobby: the Common Elements include: (h-1) the 6 East 49th Street entrance (such street entrance includes (to the extent existing now or hereafter) its doors, canopies, awnings, security gates, security cameras and other security devices, the said lobby, the portions of the corridor between such street entrance and said applicable exit stair and all lighting and other Installations and Systems relating thereto;
- (h) Vault: the license or right to use a vault (if any) that houses Equipment or Installations that serve all or most portions of both Units, or the Common Elements, are part of the Common Elements;

- (i) **Decorations and Systems:** generally, the Common Elements include all Decorations and System or portions of Systems (including HVAC/Mechanical/Utility Building Systems) wherever located, if and to the extent same serve exclusively or primarily the rooms, areas, spaces and Equipment comprising the Common Elements or all or most portions of both Units, but exclude the portions thereof serving exclusively or primarily one Unit, which are included in and part of such Unit as provided in clause (e) above, or are expressly stated to be part of a Unit; and
- (j) **Omnibus:** overall, the Common Elements include all portions of the Building and its Equipment, Installations and Systems in, under, above or adjacent to the Building or the Land (other than those portions expressly stated to be part of a Unit) that are either: (j-1) for the common use, service or benefit of all or most portions of both Units, or the respective Owners and Permitted Tenants/Occupants, Invitees thereof, and are not expressly stated to be part of a Unit; or (j-2) necessary or convenient for the Use and Enjoyment of the Property as a whole or all or most portions of both the Upper Unit and the Lower Unit, or the respective Owners and Permitted Tenants/Occupants/Invitees of both the Upper Unit and the Lower Unit, and are not expressly stated to be part of a Unit.

All Equipment, Installations and Systems that serve both the Upper Unit and the portion of the Lower Unit located on floor 5, but not any other portion of the Lower Unit, are part of the Upper Unit.

Section 7.3 Association's Properties. All assets owned, leased, licensed or otherwise held from time to time by the Condominium Board on behalf of the Condominium Association, whether real or personal property, chattel real, intangibles or otherwise, constitute, and are herein called the "**Association's Properties**".

Section 7.4 Items of Association's Properties. The items comprising the Association's Properties include: (a) all amounts received and collected in payment of Common Charges and Special Assessments from the Unit Owners; (b) all interest and investment income earned on funds held by the Board; (c) all amounts borrowed by the Board; and (d) any Unit or other property (real, personal or mixed) acquired or leased by the Board, including a Unit acquired following a foreclosure of the Board's lien for unpaid Common Charges or by deed given in lieu of such foreclosure, or otherwise. All references herein to the Condominium Board shall include any nominee or designee of the Board.

Section 7.5 No Partition. The Common Elements and Association's Properties shall remain undivided and no Unit Owner or any other Person shall bring, or shall have the right to bring, any action for partition or division of either thereof, except as is expressly permitted pursuant to the terms of Article 19 hereof and the By-Laws.

Section 7.6 Decision As To The Common Elements and Association's Properties. Subject and subordinate to the easements and rights reserved to Declarant and granted to a Unit Owner and other Persons in the Condominium Documents and the Condominium Act (which are superior and paramount over those granted to the Condominium Board), all decisions and determinations to be made by the Condominium Board, and all transactions to be conducted by the Board, pursuant to this Declaration or the By-Laws (including the Rules and Regulations) shall be made and conducted by a majority of those Board Members attending a duly constituted Board meeting for which notice thereof was given to each Unit Owner pursuant to Section 2.11 or 2.12 (as applicable) of the By-Laws and at which a quorum is present, whether or not expressly stated in the Condominium Documents,

unless otherwise expressly provided. Each Board Member shall have one (1) vote on all such decisions, determinations and transactions. Any dispute under this Section 7.6 shall be resolved by arbitration pursuant to the By-Laws.

Section 7.7 Declaration Governs. In the event of any conflict between the description of the Common Elements set forth above and the Floor Plans, the description set forth in this Declaration shall be paramount, govern and prevail, except the Floor Plans shall be paramount, govern and prevail with respect to any Common Elements shown thereon and omitted from the description set forth herein.

ARTICLE 8

THE COMMON INTERESTS

Section 8.1 Statutory Method Chosen. The Common Interest of each Unit is 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, in accordance with Section 339-i(1)(iv) of the Condominium Act.

Section 8.2 Common Interests. The Common Interest of the Upper Unit is 69% and the Common Interest of the Lower Unit is 31%. The Common Interest of each Unit constitutes the proportionate undivided interest of the Owner of such Unit in the Common Elements and the Association's Properties. The Common Interest appurtenant to each Unit cannot be separated from the Unit. Accordingly, the conveyance, mortgage or similar Disposition of the fee title interest in a Unit shall include and (in the absence thereof) shall be deemed to include, the Unit's Common Interest.

ARTICLE 9

THE COMMON PROFITS AND COMMON EXPENSES

Section 9.1 Special Allocation and Apportionment.

9.1.1 Definitions. The "**Common Profits**" are the excess of: (a) all receipts of rents, profits and revenues from the Common Elements and the Association's Properties;over (b) the Common Expenses. The "**Common Expenses**" consist of the Cost and Expenses paid or incurred by the Condominium in connection with the following: (a) the Operation and any other Disposition of the Common Elements and the Association's Properties; (b) the general services furnished by the Condominium Board to all or a portion of both the Upper Unit and the Lower Unit or the Association's Properties; and (c) the affairs of the entire Property or the Association's Properties or the Condominium Association, including real estate taxes (until the Units are separately assessed and billed by the taxing authority), the collection of the Common Charges, and Claims and Lawsuits relating to: (c-1) the non-payment of the Common Charges, (c-2) the Common Expenses, (c-3) the Common Elements, (c-4) the affairs of the entire Property or the Condominium Association, or (c-5) enforcing, upholding, protecting and defending the provisions of this Declaration and the By-Laws.

9.1.2 Special Allocation and Apportionment Rule. The Common Expenses allocated to the Units shall generally be apportioned and assessed among them Pro Rata to their respective Common Interests unless the amount of a projected Common Expense item fairly and properly attributable to a particular Unit would otherwise require, in which case such fair and proper apportionment shall be used. These latter Common Expenses shall be specially allocated and apportioned by the Condominium Board, in a manner different from "common expenses" in the Condominium Act, to only the applicable Unit Owner based on the special or exclusive use or availability or exclusive control of such Owner's particular Unit or Common Elements by such particular Unit Owner (collectively, "**Usage**") in accordance with Section 339-m of the Condominium Act, this Article 9 and the By-Laws. Such special allocation and apportionment of certain Common Expenses to a particular Unit Owner based on Usage is called the "**Special Allocation and Apportionment Rule**".

9.1.3 Specially Apportioned Common Expenses. The Common Expenses set forth below will be apportioned and assessed to the Upper Unit or the Lower Unit (as applicable) based on the amount fairly and properly attributable to such Unit as determined in accordance with the following, and shall not be based on the Common Interest of the Unit (these Common Expenses are called collectively the "**Specially Apportioned Common Expenses**");

- (a) Water and Sewer Charges: If and to the extent water and sewer services provided to a Unit are not separately metered and are included in the bill for water and sewer services provided to the Building, then at the option and absolute discretion of the Condominium Board, a portion of the Budget item for projected water and sewer services shall either be charged to both Unit Owners Pro Rata to their respective Common Interests or specially allocated, apportioned and assessed to each Unit in accordance with the amount fairly and properly attributable to such Unit based on the ratio that the amount of water consumed by such Unit (as measured by a separate submeter or (if none) as estimated in accordance with a water Usage survey conducted by an independent licensed consulting or mechanical engineer or other qualified expert chosen by the Board) bears to the total amount of water consumed by the entire Building, including both Units and the Common Elements (as measured by the Building's water meter) for the period in question.
- (b) Insurance: If the Property's insurance premium is increased due solely to the use of a Unit or a portion of a Unit, the amount of such increase in the insurance premium shall be specially allocated, apportioned and assessed exclusively to such Unit.
- (c) Legal: The legal fees and disbursements, court costs and other litigation expenses paid or incurred by the Condominium Board in connection with Claims and Lawsuits between the Condominium Board and a Unit Owner, whether for non-payment of Common Charges or to enjoin a violation of this Declaration or the By-Laws (which include the Rules and Regulations) or otherwise, shall be specially allocated, apportioned and assessed to only such Unit Owner.
- (d) Real Estate Taxes: Until the Units are separately assessed and billed for real estate taxes, unless paid to the Existing Unit Mortgagee for forwarding to the taxing authority, the real estate taxes assessed to the Property will be included in the Common Expenses and allocated and assessed to each Unit Pro Rata to its Common Interest, subject, however, to adjustment for any overpayment or underpayment of real estate taxes as provided in Section 9.11 below and Article 9, subsection 9.1.7 of the By-Laws.

- (e) Fire Safety Director and/or Engineer: If and to the extent the Building staff includes a fire safety director and/or an engineer, the wages and related payroll charges and benefits of the fire safety director and/or engineer (as applicable) shall be a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests. If a Unit Owner requests or the Board determines that the Law requires the fire safety director and/or engineer (as applicable) to work any additional time or day beyond such employee's regular work schedule, whether due to the nature of the operation of such Owner's Unit or otherwise, the additional wages and related payroll charges and benefits of such employee caused thereby shall be specially allocated, apportioned and assessed to such Unit Owner as additional Common Charges of such Unit Owner in accordance with the Special Allocation and Apportionment Rule.

Any dispute with respect to the Specially Apportioned Common Expenses shall be resolved by arbitration pursuant to Article 19 of the By-Laws.

9.1.4 Common Charges. Generally, the amounts assessed by the Condominium Board from time to time against both Unit Owners or a particular Unit Owner (in accordance with the Special Allocation and Apportionment Rule or the Specially Apportioned Common Expenses) to pay the projected Common Expenses or the projected Specially Apportioned Common Expenses are herein called the "**Common Charges**" and include the regular monthly payments (or such other periodic payments as the Board shall determine), all amounts stated herein or in the By-Laws to be additional Common Charges and Special Assessments (if any).

9.1.5 Apportioning Common Expenses. All references in this Article 9 or elsewhere in this Declaration and the By-Laws to apportioning and assessing the projected Common Expenses to the Units Pro Rata to their respective Common Interests (or words of similar import) shall mean in the ratio that the Common Interest appurtenant to each Unit bears to the total 100% Common Interests appurtenant to both Units.

Section 9.2 Budget of Condominium Operation. The Budget of Condominium Operation for each Budget Year shall consist of the projected Common Expenses and the Specially Apportioned Common Expenses (if any).

Section 9.3 Budget Requirement. In allocating and apportioning the projected Common Profits and projected Common Expenses and adopting a Budget of Condominium Operation each Budget Year, the principles, rules, requirements and procedures set forth in this Article 9 shall govern, apply and be observed.

Section 9.4 Budget Adoption Procedure. Before the start of each Budget Year, the Condominium Board shall prepare, adopt and distribute to both Unit Owners a Budget of Condominium Operation in accordance with the following procedure and requirements:

- (a) at least thirty (30) calendar days prior to the start of each Budget Year, a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present shall propose a Budget of Condominium Operation for the next ensuing Budget Year and shall give all Board Members and Unit Owners a copy of the proposed Budget of Condominium Operation;
- (b) all determinations with respect to the projected Common Expenses and projected Specially Apportioned Common Expenses and their allocation and apportionment to the

Unit Owners or a particular Unit Owner (in the case of the Specially Apportioned Common Expenses) for a Budget Year, and the adoption of such Budget, shall be made by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present, whose determination shall be final, conclusive and binding on the Unit Owners;

- (c) if a Budget of Condominium Operation is not timely adopted before the start of a Budget Year, the last duly adopted Budget shall remain in effect;
- (d) any failure to attain said majority of Board Members attending a Board meeting to agree upon the adoption of a proposed Budget of Condominium Operation or any dispute with respect thereto (collectively, “dispute”) shall be resolved by arbitration pursuant to the By-Laws;
- (e) in the case of arbitration, the determination of said majority of Board Members attending a Board meeting shall constitute the business judgment of the Condominium Board and shall be upheld by the arbitrator(s) pursuant to the “business judgment rule” set forth in Matter of Levandusky v. One Fifth Ave. Apt. Corp. (75 N.Y.2d 530, 1990), absence evidence demonstrating unlawful discrimination, self-dealing, bad faith or other misconduct by said majority of Board Members rendering the determinations at issue to be arbitrary and capricious or an abuse of discretion;
- (f) pending the final (non-appealable) resolution of the dispute, the new duly adopted Budget of Condominium Operation shall be implemented; however, if the final resolution awards a decrease in the Common Charges of a Unit Owner, then such decrease shall be retroactive to the date of implementation of such Budget and the overpayment in Common Charges shall promptly be refunded to the applicable Unit Owner;
- (g) each Unit Owner shall pay the Common Charges and any Special Assessment levied in accordance with a Budget adopted by said majority of Board Members attending a Board meeting, without prejudice to the right of such Unit Owner to contest (by arbitration) the Budget;
- (h) each Unit Owner is to be given a copy of the Budget of Condominium Operation adopted by the Board at least (10) calendar days before the start of the Budget Year to which it pertains; however, failure to timely receive such Budget shall not excuse a Unit Owner from the obligation to timely pay the full amount of the Common Charges (including any increase in Common Charges) and any Special Assessment set forth in such Budget;
- (i) the foregoing procedure and requirements shall apply to adopt a revision to a previously adopted Budget, except that any increase in Common Charges in such revised Budget shall not be applied retroactively and shall not be made for an expired Budget Year; however, this shall not prohibit an increase in Common Charges or an imposition of a Special Assessment to pay a deficit for a prior period; and
- (j) all approvals, decisions and actions with respect to a proposed revised Budget and instituting or defending an arbitration of a dispute or an appeal shall be determined by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present.

Section 9.5 Allocation or Apportionment Change. In the event of a change in the allocation ("**Allocation Change**") or in the apportionment ("**Apportionment Change**") in the projected Common Expenses or projected Specially Apportioned Common Expenses for a Budget Year resulting from a new or different use, service or benefit applicable to a particular Unit (other than an inconsequential or negligible change), the affected item(s) of projected Common Expense(s) or projected Specially Apportioned Common Expense(s), as applicable, shall be appropriately allocated or apportioned (as applicable) to the Owner of such Unit to reflect such change in use, service or benefit that is fairly and properly attributable to such Unit.

Section 9.6 Increase in Common Charges. To increase the Common Charges of a particular Unit ("**Affected Unit**") based on an Allocation Change or an Apportionment Change (hereinafter collectively, "**Allocation/Apportionment Change**"), the following procedure and requirements shall apply:

- (a) a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present is necessary to propose an Allocation/Apportionment Change in the projected Common Expenses or projected Specially Apportioned Common Expenses for a Budget Year;
- (b) said majority of Board Members proposing the Allocation/Apportionment Change ("**Proponent**") shall give to all Board Members and the Owner of the Affected Unit, a written opinion ("**Expert Opinion**") of a qualified expert selected and paid for by the Proponent (and included in the Common Expenses and charged to both Unit Owners Pro Rata to their respective Common Interest) setting forth: (b-1) a detailed explanation justifying the Allocation/Apportionment Change; (b-2) an express statement that, in the opinion of the expert, the proposed amount of increase in Common Charges of the Affected Unit reflects the amount of the Allocation/Apportionment Change that is fairly and properly attributable to the Affected Unit, together with a reasonably detailed explanation justifying such opinion; and (b-3) a statement of the qualifications of the expert;
- (c) a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present is necessary to increase the Common Charges of the Affected Unit based on an Allocation/Apportionment Change;
- (d) any dispute as to such proposed increase shall be resolved by arbitration pursuant to the By-laws;
- (e) in the case of arbitration, the determination of said majority of Board Members attending a Board meeting shall constitute the business judgment of the Condominium Board and shall be upheld by the arbitrator(s) pursuant to the "business judgment rule" set forth in Matter of Levandusky v. One Fifth Ave. Apt. Corp. (75 N.Y. 2d 530, 1990), absence evidence demonstrating unlawful discrimination, self-dealing, bad faith or other misconduct by said majority of Board Members rendering the determinations at issue to be arbitrary and capricious or an abuse of discretion.
- (f) pending the final (non-appealable) resolution of the dispute, the proposed increase in Common Charges resulting from an Allocation/Appointment Change shall be implemented; however, if the final resolution awards a decrease and refund in Common Charges, then such decrease shall be retroactive to the date of implementation of said

increase and the overpayment in Common Charges shall promptly be refunded to the Owner of the Affected Unit;

- (g) the Owner of the Affected Unit shall pay all of a disputed increase in Common Charges adopted by said majority of Board Members attending a Board meeting, without prejudice to the right of such Owner to contest (by arbitration) the proposed Allocation/Appportionment Change;
- (h) before the proposed increase is implemented, the Owner of the Affected Unit is to receive not less than ten (10) calendar days' prior written notice from the Board or an officer of the Board of the amount and implementation date of such increase; and
- (i) an increase in Common Charges of the Affected Unit based on an Allocation/Appportionment Change: (h-1) shall not be applied retroactively; and (h-2) shall not be made for an expired Budget Year.

Section 9.7 Budget Reserves. The Budget of Condominium Operation may include a reserve for unanticipated expenses, contingencies, alterations, additions improvements and capital replacements and repairs with respect to the Common Elements, the Association's Properties and/or the projected Common Expenses, as may be determined by the Condominium Board, in its sole and absolute discretion.

Section 9.8 Budget Surplus. If in any completed Budget Year, the revenues (including the Common Charges and Special Assessments) shall exceed the actual Common Expenses for such Budget Year, the Condominium Board shall determine whether to apply the surplus to defray the Common Expenses of the next immediately succeeding Budget Year, or to distribute the surplus to all then existing Unit Owners or to all then existing Unit Owners who were Unit Owners of record during such completed Budget Year (in either case, Pro Rata to their respective Common Interests), or to credit the surplus against the Common Charges next payable by the Unit Owners (the amount credited shall be Pro Rata to their respective Common Interests), or any combination of the foregoing. Such determination shall be made by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present. In the event the Board fails to make such determination within four (4) months after the end of such Budget Year, the surplus shall be credited against the Common Charges next payable by the Unit Owners (the amount credited shall be Pro Rata to their respective Common Interests), until otherwise determined by the Board.

Section 9.9 Prohibition. The Condominium Board shall not charge a Unit's Owner or its Permitted Tenants/Occupants/Invitees any separate fee, rental, charge, imposition or payment of any kind (apart from the regular Common Charges and Special Assessments imposed on both Unit Owners) for the mere customary Use and Enjoyment of the Common Elements (the foregoing shall not prohibit the imposition of Specially Apportioned Common Expenses in accordance with the Special Allocation and Apportionment Rule and Section 339-m of the Condominium Act).

Section 9.10 Special Assessment. The Condominium Board may levy a Special Assessment to pay the Common Expenses in accordance with Section 8.4 of the By-Laws, which are hereby incorporated herein with the same force and effect as though set forth at length herein.

Section 9.11 Real Estate Taxes. Until such time as each Unit is separately assessed and billed for real estate taxes, unless paid to the Existing Unit Mortgagee for forwarding to the taxing authority, the Condominium Board shall collect the real estate taxes payable for the Property in the form of a Special Assessment payable in one (1) lump sum or periodic installments (at the option and discretion of the Board) for forwarding same to the appropriate taxing authority on behalf of the Unit Owners in accordance with Section 9.1 of the By-Laws, which are hereby incorporated herein with the same force and effect as if set forth at length.

Unless paid to the Existing Unit Mortgagee as aforesaid, the Condominium Board and each Unit Owner shall have the right, for sixty (60) calendar days after the Units are separately assessed and billed for real estate taxes to determine any adjustment in Common Charges due to any overpayment or underpayment of real estate taxes included in the Common Charges so paid by such Unit Owner as part of the Common Charges, provided and on condition that notice of a proposed adjustment is sent no later than ten (10) calendar days after the expiration of such sixty (60) day period ("time being of the essence"), all as provided in said Section 9.1 of the By-Laws.

ARTICLE 10

USES OF COMMON ELEMENTS, SIDEWALKS, VAULTS AND UNITS

Section 10.1 General Requirements. The Common Elements, the sidewalks immediately adjacent to, and fronting, the Property ("**Immediately Adjacent Sidewalks**"), the vaults adjacent to the Property and the Units shall each be Used and Enjoyed only in accordance and compliance with the then applicable Laws (as they may change from time to time as a result of a statutory change, zoning variance, a new or amended Certificate of Occupancy for the Building or otherwise) and the purposes for which each is reasonably suited, capable, designed and intended, and as permitted or stated in this Declaration, the By-Laws or the Rules and Regulations (as each may be duly amended from time to time).

Section 10.2 General Prohibitions. The Common Elements, the Immediately Adjacent Sidewalks to the Building, the vaults adjacent to the Property and the Units shall be used:

- (a) in accordance and compliance with Section 10.1 above and the requirements, restrictions and prohibitions expressly stated in this Declaration or the By-Laws (including the "Installation Requirements" and applicable "Work Requirements", as those quoted terms are defined and set forth respectively in Sections 10.4 and 15.2 below), as each may be duly amended from time to time; and
- (b) for purposes permitted in the Condominium Documents, but shall not be used for: (b-1) any use that violates the permitted uses of the Unit as set forth in this Declaration or the By-Laws; or (b-2) any "Prohibited Uses" (defined below).

The term "**Prohibited Uses**" means any of the following uses: (a) any use that impairs or unreasonably threatens the Structural Components or structural integrity of the Building or the life, health or safety of Owners or permitted tenants or occupants of Units; (b) any use that violates applicable Laws or the Building's Certificate of Occupancy; (c) any use that is an unreasonable annoyance or nuisance to the Owners and permitted tenants or occupants of

Units or an unreasonable interference with the peaceful possession or proper use of the Units or the Common Elements as permitted or stated in the Condominium Documents (as each may be duly amended from time to time); or (d) any use that results in the cancellation or a notice of cancellation of insurance maintained by the Condominium Board.

Section 10.3 Common Use of Common Elements. The Common Elements shall be for the common Use and Enjoyment of the Owners and Permitted Tenants/Occupants/Invitees of both Units in accordance and compliance with Section 10.1 above, but without hindering the exercise of, or encroaching upon, the right of the other Unit Owner, and subject and subordinate to: (a) the provisions of this Article 10 and Articles 11, 12 and 13 below; and (b) the rights of Declarant and a specified Unit Owner set forth in the Condominium Documents, which are superior, paramount and take preference over the rights of the Condominium Board and the other Unit Owner to Use and Enjoy the Common Elements.

The uses and changes in uses of the Common Elements shall be determined by the Condominium Board in accordance with applicable Laws and the provisions of this Declaration, the By-Laws and the Rules and Regulations, as each may be amended from time to time; but all such uses shall be subject and subordinate, however, to the easements and rights reserved and granted herein and in the By-Laws to Declarant and a specified Unit Owner, which are superior, paramount and take preference over the easements and rights of the Condominium Board and the other Unit Owner to use the Common Elements. Any dispute as to the uses or changes in uses of the Common Elements shall be resolved by arbitration pursuant to the By-Laws.

Section 10.4 New Installations in Common Elements and Sidewalks. Subject to the proviso set forth hereinbelow, the Condominium Board and each Unit Owner shall have the right at any time, Freely and Without Consent, Payment or Restriction, to install in, on and along (a) the areas and space comprising the Common Elements (including the Building's Roofs and their respective related Roof Structures and the Building Walls) and (b) the Immediately Adjacent Sidewalks to the Property, new, different or substitute Equipment and related Installations (including Communications Equipment and Other Installations) that are for the use, service or benefit of the Owner and Permitted Tenants/Occupants/Invitees of either or both Units (in the case of installation by the Board) or only a particular Unit (in the case of installation by the Owner of such Unit); provided only that the following requirements ("**Installations Requirements**") are met: (a) such Equipment and Installations shall be erected and installed in compliance with the applicable Work Requirements set forth in Section 15.2 below; and (b) such Equipment and Installations shall not prevent access to, nor overload or materially impair the proper and efficient performance, function, capacity or utility of, the Equipment and Installations then comprising the Common Elements or a Unit, unless the prior written Discretionary Approval or Consent of the Condominium Board (with respect to the Common Elements) or the Owner of such affected Unit is obtained, respectively.

Section 10.5 New Connections to Common Elements. Each Unit Owner and its authorized Agents, Employees and Contractors shall have the right, Freely and Without Consent, Payment or Restriction (other than compliance with the Installation Requirements set forth in Section 10.4 above), at any time and from time to time: (a) to connect Equipment and related Installations now or hereafter part of such Owner's Unit to the Equipment and Installations comprising at any time the Common Elements; (b) to thereafter Maintain, Repair, Alter and otherwise Operate such newly connected Equipment and Installations; and (c) to reasonably access the Common Elements in order to perform the Work in connection with the foregoing.

Section 10.6 Use of Common Elements and Immediately Adjacent Sidewalks.

Declarant hereby reserves and grants to each Unit Owner and the tenants and occupants of such Owner's Unit who are expressly so authorized in writing by said Unit Owner, and the respective Agents, Employees and Contractors of each of the foregoing, the easement and right to use the Common Elements (including in particular, but not limited to, the Building Walls (other than the portions of the Building Walls enclosing the portion of the Lower Unit located on floor 1, which are part of the Lower Unit) and the Roofs and their respective appurtenant Roof Structures), and the portions of the Immediately Adjacent Sidewalks to the Property that abut such Owner's Unit (e.g., the street entrance of the Unit and the Storefronts of the Lower Unit), for all lawful purposes in connection with the permitted Use and Enjoyment (including Promotion and Operation) of said Owner's Unit or any portion thereof in accordance with this Declaration and the By-Laws. The foregoing easement and right reserved and granted to each Unit Owner shall be superior, paramount and take preference over the easements and rights for the use thereof by the Condominium Board and the other Unit Owner. Each Unit Owner may exercise and perform the foregoing easement and right in this Section 10.6 Freely and Without Consent, Payment or Restriction (other than compliance with Section 10.2 above). Nothing herein shall prevent a Unit Owner or such Owner's Permitted Tenants/Occupants/Invitees from using the Property's Immediately Adjacent Sidewalks for ordinary pedestrian passage and for ordinary ingress and egress to and from such Owner's Unit.

Section 10.7 Permitted Uses of Common Elements and Immediately Adjacent Sidewalks.

The foregoing easement and right in Section 10.6 above of a Unit Owner to use the Common Elements and such Immediately Adjacent Sidewalks abutting such Owner's Unit include the easement and right to erect, install, Maintain, Repair, Alter and otherwise Operate, at the sole Cost and Expense of such Unit Owner, any kind of one (1) or more Signs (of any size, content, composition, material, color, design, illumination, character and appearance), including objects, structures, extensions and enclosures thereon or therein. Each Unit Owner and said authorized tenant or occupant of said Owner's Unit may exercise and perform such easement and right Freely and Without Consent, Payment or Restriction, other than compliance with Section 10.2 above.

Section 10.8 Permitted Uses of Vaults. Each of the vaults adjacent to the Property shall be used for all lawful purposes in connection with the permitted Use and Enjoyment of the Unit having exclusive use thereof. A vault serving both Units shall be used to house Equipment and Installations that serve both Units or the Common Elements and for such other purposes for the benefit of the Condominium Association or a Unit Owner as shall be determined by the Condominium Board, in its sole and absolute judgment. Any Equipment, Facilities or Installations (collectively, "**Vault Installations**") located in a vault on the date of recording this Declaration that serve one Unit or the Common Elements, or are thereafter erected or installed therein to serve one Unit or the Common Elements pursuant to this Declaration, and replacements thereof, shall continue to be used for such purpose and shall belong to, and be a part of, respectively, such Unit or the Common Elements.

Section 10.9 Intentionally Omitted.

Section 10.10 Intentionally Omitted.

Section 10.11 Intentionally Omitted.

Section 10.12 Permitted Uses of Each Unit. Each Unit ("**Applicable Unit**") may be used, and changed from time to time to be used, for any one or more lawful purposes ("**Permitted Unit Uses**"), other than Prohibited Uses. The Permitted Unit Uses may be noisy,

involve heavy traffic and cause other effects that need not be compatible with the use, occupancy or Operation of the other Unit or the businesses conducted therein or any portion thereof. The Condominium Board and the other Unit Owner will not have the right to approve or consent to the use or any changes in use, or the tenants or occupants or Operation of, or the businesses conducted in, the Applicable Unit or any portion thereof. The Owner of the Applicable Unit ("**Applicable Unit Owner**") shall have the exclusive right to make all determinations concerning the use, appearance, occupancy, rental, Operation of, and Unit Changes to the Applicable Unit, and all portions thereof, Freely and Without Consent, Payment as Restriction, other than the requirement comply with Section 10.2 above and to pay the Common Charges and Special Assessments in accordance with the Condominium Documents.

Section 10.13 Compliance with Laws. Each Unit Owner shall, at its sole Cost and Expense: (a) procure any amendment to the Building's Certificate of Occupancy that may be required to use the Owner's Unit for any of the Permitted Unit Uses of the Unit pursuant to this Declaration; (b) maintain such Certificate of Occupancy in full force and effect throughout the continuance of such Permitted Unit Uses; (c) procure any and all permits, licenses, variances, sign-offs and all other Government Documents of Governmental Authorities having jurisdiction that may be required to use Owner's Unit for any of the Permitted Unit Uses of the Unit; (d) maintain all such Government Documents in full force and effect throughout the continuance of such Permitted Unit Uses; (e) install such Equipment and Installations as may be required by Governmental Authorities having jurisdiction to obtain and maintain any of the foregoing; (f) comply with the terms and conditions of any license, permit or other Government Documents required for the proper and lawful conduct of business in the Owner's Unit or any portion thereof; and (g) and otherwise comply with all Laws governing the use, occupancy, Maintenance, Repair, Alteration, Operation and violations noted or issued with respect to the Owner's Unit and conditions constituting such violations, whether or not noted or issued, other than violations or conditions expressly stated in this Declaration or the By-Laws to be Maintained, Repaired or corrected by the Condominium Board.

Section 10.14 Changes in Uses of Unit. Each Unit Owner shall have the right, Freely and Without Consent, Payment or Restriction, other than the restrictions contained in the Existing Unit Mortgage or any subsequent Unit Mortgage on such Owner's Unit, the requirement to comply with Sections 10.2 and 10.13 above, to change the uses of its Unit or any portion thereof from time to time. The foregoing right to change the uses of the Unit or portions thereof includes the right to obtain an alteration permit or an amended or new Certificate of Occupancy for the Building or other appropriate Government Document required to change a use of all or a portion of such Unit and a zoning variance to authorize such change in use.

Section 10.15 Signs. Each Unit Owner and the tenants of the Unit who are so expressly authorized in writing by such Owner shall have the right, Freely and Without Consent, Payment or Restriction (other than compliance with Section 10.2 above), to erect and install in, on and along the Common Elements (including the Building Walls and the Roofs), the street entrance to said Owner's Unit, and the Immediately Adjacent Sidewalks to the entrances to said Owner's Unit and the Common Elements, and (in the case of the Lower Unit) on the outdoor and indoor sides of the Unit's Storefronts, and thereafter to Maintain, Repair, Alter and otherwise Operate, one (1) or more Signs of any size, content, composition, material, color, design, illumination, character and appearance considered appropriate by such Unit Owner in connection with the sale, rental, Promotion, Operation, management, use, business, identity or other Disposition of its Unit or any portion thereof, provided same does not unreasonably interfere with or block any permitted Sign of the other Unit Owner then existing on the Common Elements.

Section 10.16 Limited Power of Attorney. The signatures of the other Unit Owner and/or the Condominium Board shall not be required in connection with any application or other document necessary or convenient to the exercise by the Applicable Unit Owner of such Owner's rights to obtain an alteration permit or an amended or new Certificate of Occupancy for the Building or other appropriate Government Document to change a use of the Applicable Unit pursuant to Section 10.14 above, or the erection, installation, Repair, Alteration or Operation of Signs pursuant to Section 10.15 above. Nonetheless, the Condominium Board shall execute any such application or other document as provided in the following Section 10.17 and the Applicable Unit Owner is hereby granted an irrevocable, durable power of attorney, "coupled with an interest" and granted for valuable consideration, with full power of substitution, to execute and deliver on behalf of the Condominium Board and the other Owner any such application or other document. Such execution and delivery thereof by the Applicable Unit Owner shall not require the consent of the Condominium Board and/or the other Unit Owner. If the Applicable Unit Owner makes use of the Common Elements or such Immediately Adjacent Sidewalks the Property, or submits any application or document pursuant to the foregoing: (a) the Applicable Unit Owner shall indemnify the Condominium Board and its officers, Board Members, employees and agents, and the other Unit Owner from and against any Claims and Liabilities and Expenses arising out of, or in connection with, such use and/or such application or document, as the case may be; and (b) the Applicable Unit Owner, at its sole Cost and Expense, shall Repair any damage caused by such use of the Common Elements or Immediately Adjacent Sidewalks and (when such use ends) shall restore the affected areas (but not any Decorations thereon) and any affected Equipment and Installations to as near as reasonable and economically practical to their condition existing immediately before said use began.

Section 10.17 Cooperation of Board. The Condominium Board shall fully cooperate with the Applicable Unit Owner in connection with its right to change the use of the Applicable Unit pursuant to Section 10.14 above and to erect, install, Repair, Alter and Operate Signs pursuant to Section 10.15 above. In furtherance of such cooperation, the Condominium Board shall properly complete, sign, notarize (if required) and return to the Applicable Unit Owner, and the Applicable Unit Owner shall receive within ten (10) calendar days after written request therefor is hand delivered or mailed to the Condominium Board or Managing Agent (if any), any Government Document required in connection with such change in use (including any Government Document to obtain an alteration permit or notice or an amended or new Certificate of Occupancy for the Building or a zoning variance) or Sign. The Applicable Unit Owner: (a) shall pay or reimburse the Condominium Board for any governmental fees and charges in connection with such Government Documents; and (b) shall indemnify (with attorneys selected by the Applicable Unit Owner) the Condominium Board, and its officers, Board Members, employees and agents, and the other Unit Owner from and against all Claims and Liabilities and Expenses resulting from the execution of the Government Documents, other than any fees or charges of any attorney, architect, engineer or other professional or consultant engaged by the Board to review such Government Documents or to render advice with respect thereto (which shall be borne by the Condominium Board as part of the Common Expense and charged to both Unit Owners Pro Rata to their respective Common Interests).

ARTICLE 11

EASEMENTS, RIGHTS AND RESTRICTIONS AFFECTING THE COMMON ELEMENTS

Section 11.1 Common Elements. The following Persons are hereby granted easements and rights, in common, of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on the public and common areas of the Common Elements and for the general Use and Enjoyment of the Common Elements in accordance and compliance with Articles 10, 11 and 12 of this Declaration (collectively, "**Common Elements Easements**"), and the Common Elements shall be subject to such Common Elements Easements: (a) each and every Unit Owner and Permitted Tenants/Occupants/ Invitees of each Unit; (b) all Board Members and officers of the Condominium Board; and (c) all Persons authorized by the Condominium Board, including (to the extent authorized) their respective Agents, Employees and Contractors and invitees.

Section 11.2 Mutual Rights. Each of the Persons granted Common Elements Easements shall mutually Use and Enjoy the Common Elements in a manner that does not unreasonably exclude, prevent, interfere with, hinder or encroach upon the easements and rights of fellow Persons to whom such easements have been granted.

Section 11.3 Subordination. The easements and rights reserved or granted to Declarant and each Unit Owner for the permitted Use and Enjoyment (including access or otherwise) of the Common Elements, as stated in this Declaration in Article 10, elsewhere in this Article 11 and Articles 12 and 13 below, are paramount, superior and take preference over all of the easements and rights granted in Section 11.1 above (the latter Sections being subject and subordinate to such easements and rights in favor of Declarant and each Unit Owner as set forth therein). In addition, the Common Elements are subject to, and the Common Elements Easements are subject and subordinate to:

- (a) the requirements and prohibitions as to the Use and Enjoyment of the Common Elements set forth in Section 10.2 above;
- (b) the rights and obligations of the Condominium Board to properly Maintain, Repair, Alter, Operate and manage the Common Elements and the Property in accordance and compliance with this Declaration, the By-Laws and the Rules and Regulations as each may be duly amended from time to time;
- (c) the easements and rights reserved and granted to the Condominium Board, Declarant, each Unit Owner and others elsewhere in this Article 11 and in Article 12 below;
- (d) the encroachments set forth in Article 12 below; and
- (e) an easement hereby reserved and granted to each Unit Owner for the exclusive use of that portion of the Common Elements that may hereafter be incorporated in and made part of such Owner's Unit pursuant to Article 13 below.

Section 11.4 Easements Affecting the Common Elements for Access and Use. Declarant hereby reserves and grants to each Unit Owner and those tenants of such Owner's Unit who are expressly so authorized in writing by such Unit Owner, as well as their respective Agents/Employees/Contractors and licensees who are so expressly authorized in writing by such Owner or authorized tenant (as applicable), easements and rights of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on, and use of, the Common Elements for all lawful purposes in connection with the "Tenant Obligations" defined and provided in Section 12.7 below, as well as the use, occupancy, Maintenance, Repair, Alteration, Operation or other Disposition of such Owner's Unit or any portion thereof. These easements and rights in this Section 11.4:

- (a) may be exercised and performed Freely and Without Consent, Payment or Restriction, other than the requirements: (a-1) to comply with Section 10.2 above and the applicable requirements of Article 15 below; (a-2) to not prevent, except temporarily, nor unreasonably interrupt or interfere with, the permitted Use and Enjoyment of the other Unit or the Common Elements by the other Unit Owner; and (a-3) to Repair any damage caused by the exercise and performance of such easements and rights so as to restore the damaged area (but not any Decorations thereon) and any affected Equipment and Installations to as near as reasonable and economically practical to the condition existing immediately prior to such exercise and performance; and
- (b) are superior, paramount and take preference over the easements and rights of the Condominium Board and the other Unit Owner to use the Common Elements.

Section 11.5 Emergency. The Condominium Board and each Unit Owner, such Owner's Permitted Tenants/Occupants/Invitees, and the Agents, Employees and Contractors of each of the foregoing, shall have an easement and right of emergency access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on the public and common areas of the Common Elements, and such areas of the Common Elements shall be subject thereto.

Section 11.6 Existing Services. Notwithstanding any other provision of this Declaration or the By-Laws to the contrary, the Condominium Board on behalf of both Unit Owners (with respect to the Common Elements) and each Unit Owner (with respect to the Equipment and related Installations exclusively serving and part of such Owner's Unit) shall have the following easements and rights: (a) an easement and right for the continued Use and Enjoyment in their current locations of any and all Equipment and Installations (including pipes, wires, ducts, cables, conduits, chases, utilities and other Building Systems) which, at the date of recording this Declaration, serve or benefit all or a portion of the Common Elements or an Owner's Unit (as applicable), wherever located in, on, along or under the Property or the Building or the vaults; and (b) an easement and right of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on the Common Elements and (to the extent necessary) the Units (or the other Owner's Unit) and vaults in order to Maintain, Repair, Alter and otherwise Operate such Equipment and Installations, and the Common Elements and Units shall be subject thereto. All such easements and rights shall be subject to compliance with the applicable provisions of Article 12 (including in particular, but not limited to, the applicable provisions of subsection 12.1.2 and Sections 12.2 and 12.3) and the applicable Work Requirement set forth in Section 15.2 below.

Such easements and rights include an easement and right of reasonable access ("**Access Easement**") for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on: (a) a Unit and the vaults by the Condominium Board and its authorized Agents, Employees Contractors in order to Maintain, Repair, Alter and otherwise Operate any and all Equipment and Installations comprising the Common Elements existing now or hereafter; and (b) the Common Elements by a Unit Owner and such Owner's authorized Agents, Employees and Contractors in order to erect, install, Maintain, Repair, Alter and otherwise Operate any and all permitted Equipment and Installations serving and part of such Owner's Unit. Similarly, all Equipment and Installations of the Lower Unit (including replacements thereof) that serve or benefit the Upper Unit, and vice versa, shall continue to be provided until such time as either Unit Owner, at such Owner's sole Cost and Expense, shall provide and install independent Equipment and Installations serving or benefiting the recipient Unit, which shall be substantially comparable (in efficiency, performance, function, capacity and

utility) to those being discontinued (unless waived in writing by the Owner of the recipient Unit). In the meantime, all Costs and Expenses incurred to Maintain, Repair, Alter and otherwise Operate said Equipment and Installations shall be payable by the Owner of the recipient Unit (if such Equipment and Installations serve or benefit only the recipient Unit) or by both Unit Owners Pro Rata to their respective Common Interests or Usage, whichever approximates the fair and proper apportionment thereof (if such Equipment and Installations serve or benefit both Units or both the recipient Unit and the Common Elements).

The foregoing easements and rights that affect the Upper Unit include: (a) said Access Easement in order to erect, install, Maintain, Repair, Alter and otherwise Operate all Equipment and Installations serving the portion of the Lower Unit located on floor 5 of the Building ("**Lower Unit Office**"); and (b) an easement and right of access on, through and across the elevators and other public portions of the Upper Unit for ingress to and egress from the Lower Unit Office (see Section 12.8 below for additional provisions).

Section 11.7 Additional Utility Easements and Rights. Declarant hereby reserves and grants to each Unit Owner and to the Condominium Board on behalf and as agent of the Unit Owners, the right to grant such additional, new and substitute easements, licenses, leases, concessions and rights for "utility services" (defined below), and to relocate then existing utility services, with respect to such Owner's Unit or the Common Elements, respectively (collectively, "**Additional Utility Easements/Rights**" and individually, "**Additional Utility Easement/Right**") as such Unit Owner or the Condominium Board (as applicable) shall determine to be necessary or desirable for the permitted Use and Enjoyment of such Owner's Unit or (in the case of the Board) both Units and/or the Common Elements, and each Unit shall be subject thereto. The term "**utility services**" includes: electric; gas; cable or wireless television; telephone, cellular phone, computer, media or other communication service; water; sewer; storm drainage; and other utilities. The term "**utility service**" includes any one (1) of the utility services.

Declarant hereby reserves and grants to each Unit Owner and the tenants of such Owner's Unit and other Persons who are so expressly authorized in writing by such Unit Owner the easements and rights with respect to Communications Equipment and Other Installation as provided in Section 11.10 below. All easements and rights provided in this Section 11.7 are subject to compliance with Sections 11.8 and 11.9 below.

Section 11.8 Access by Utility. Each existing and future provider (including the grantee of an Additional Utility Easement/Right) of a utility service to the Building or any portion thereof or to any Unit, and such provider's Agents, Employees and Contractors, shall have (and shall be given) an easement and right of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on the Property, including the Building and any portion thereof and the Units, to the extent reasonably necessary to erect, install, use, Maintain, Repair, Alter and otherwise Operate all Equipment and Installations related to such utility service (including reading meters), subject to compliance with the following Section 11.9.

Section 11.9 Requirements for Utility's Access. Each utility service easement and right of access granted by the Upper Unit Owner or the Condominium Board pursuant to Section 11.7 above may be exercised and performed by the provider of a utility service and its Agents, Employees and Contractors, Freely and Without Consent, Payment or Restriction, other than the following, which shall also apply to each easement and right of access in favor of each Unit Owner and the Condominium Board under Section 11.7 above (each Unit Owner or

Condominium Board granting or exercising such easement and right of access is herein called "**Grantor**"):

- (a) the requirement to comply with all applicable Laws;
- (b) the requirement to comply with Article 15 below, including the applicable Work Requirements set forth in Section 15.2;
- (c) the requirement and restriction to not permanently prevent, nor unreasonably interrupt or interfere with, the permitted Use and Enjoyment of any Unit or its Owner or Permitted Tenants/Occupants/Invitees; and
- (d) the obligation to Repair, at the sole Cost and Expense of such provider (or the Grantor, if the provider fails to so do or is exercising such easement and right of access) any damage caused by the exercise and performance of such easement and right of access so as to restore the damaged area (but not any Decorations thereon) and any affected Equipment and Installations to as near as reasonable and economically practical to the condition existing immediately prior to such exercise and performance.

Section 11.10 Each Unit's Communications and Other Installation Easements and Rights.

11.10.1 Easements and Rights. Declarant hereby reserves and grants to each Unit Owner and to those tenants of such Owner's Unit and other Persons who are so expressly authorized in writing by such Unit Owner, the exclusive and paramount easements and rights, Freely and Without Consent, Payment or Restriction (other than those provided in subsection 11.10.2 below), to do the following and to grant leases, licenses and rights to utility providers to do the following:

- (a) to erect and install Communications Equipment and Other Installations in any one or more locations that is not then being occupied by Building Equipment and Installations: (a-1) on and along the Building Walls and on and along the Building's Roofs (including bulkheads and other Roof Structures); (a-2) on any outdoor Equipment (such as a water tank and elevator machine room) or their enclosures comprising the Common Elements and in any Equipment rooms or space comprising the Common Elements on the cellar level; and (a-3) in any non-public or non-habitable portions of the Common Elements;
- (b) to thereafter co-locate, lease, license, Maintain, Repair, Alter and otherwise Operate such Communications Equipment and Other Installations thereon and therein; and
- (c) to erect and install partitions separating such Communications Equipment and Other Installations from their surroundings,

and the Property (including the Common Elements and the Units) shall be subject thereto and subject to an easement and right of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on the Common Elements by such Unit Owner and said authorized tenants and other Persons, and their respective authorized Agents, Employees and Contractors and licensees, for all purposes in connection with the exercise and performance of the foregoing easements and rights. All Communications Equipment and Other Installations shall remain the property of the Party installing same (i.e., the Applicable Unit Owner or a provider of a utility service, as applicable).

11.10.2 Procedure, Rights and Obligations. The Applicable Unit Owner shall follow the procedure and shall have the rights and obligations set forth below with respect to any leases, licenses and rights granted to utility providers under subsection 11.10.1 above:

- (a) the Applicable Unit Owner shall give reasonable advance written notice to the Condominium Board of the type and proposed location of any Communications Equipment and Other Installations before same are erected or installed;
- (b) the Applicable Unit Owner shall receive and retain (without participation by the Board or the other Unit Owner) all rents, fees and other consideration payable under such lease, license or right of use;
- (c) the Applicable Unit Owner shall be solely obligated to pay and perform all obligations under such lease, license or right of use (other than obligations of the Board to Maintain and Repair the Common Elements as provided elsewhere in this Declaration or the By-Laws);
- (d) the Applicable Unit Owner shall comply with, or shall cause the utility provider to comply with, Section 10.2 above, including the applicable requirements of Article 15 below (except that this Section 11.10 shall govern and supersede any inconsistency between the provisions hereof and said Article 15);
- (e) the Applicable Unit Owner and said utility provider shall not invade, penetrate or disturb a substantial portion of any rentable, exposed public indoor areas of the Common Elements, other than for a reasonably temporary period;
- (f) the Applicable Unit Owner and said utility provider shall not prevent, except temporarily, nor unreasonably interrupt or interfere with, the permitted Use and Enjoyment of the other Unit, or the proper and efficient performance, function, capacity or utility of the Equipment and Installations serving the other Unit, or the permitted use or occupancy of the other Unit;
- (g) the Applicable Unit Owner shall Repair, or shall cause the utility provider to Repair, at the sole Cost and Expense of the Party exercising such easements and rights, any damage to the Common Elements or the other Unit caused by the exercise and performance of such easements and rights so as to restore the damaged area (but not any Decorations thereon) and any affected Equipment and Installations to as near as reasonable and economically practical to the condition existing immediately prior to such exercise and performance;
- (h) the Applicable Unit Owner shall indemnify the Condominium Board, and the Board's officers, Board Members, agents (including any Managing Agent), employees and attorneys, and the other Unit Owner, from and against all Claims and Liabilities and Expenses arising in connection with the exercise and performance of such easements and rights;
- (i) the Applicable Unit Owner and said utility provider, and their respective Agents, Employees and Contractors, shall have access to, from, through and across and on, and may enter, any public or non-public portions of the Common Elements at such times as shall be reasonably convenient and on giving reasonable prior written notice to the Condominium Board, which shall have the right to have a representative present at all times during such entry; and

- (j) the Applicable Unit Owner and said utility provider shall comply with any reasonable security and protection procedures and requirements as may reasonably be required by the Condominium Board, whenever entering any commercially rentable, exposed public portion of the Common Elements, provided such procedures and requirements shall not preclude such entry.

ARTICLE 12

EASEMENTS, RIGHTS AND RESTRICTIONS AFFECTING UNITS AND COMMON ELEMENTS

Section 12.1 Easements Affecting Units and Common Elements.

12.1.1 The Condominium Board. The Condominium Board and its Agents, Employees and Contractors are hereby granted an easement and right of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on the Units and Common Elements for the following purposes, and the Units and Common Elements shall be subject thereto:

- (a) to conduct inspections;
- (b) to read, Maintain and Repair utility meters relating to the Common Elements or the services provided by the Condominium Board to any Unit;
- (c) to Maintain, Repair, Alter and otherwise Operate all areas, Equipment, Installations and other Facilities now on hereafter compromising the Common Elements and provide services to either or both Units in accordance with this Declaration or the By-Laws; and
- (d) to perform Maintenance, Repairs, Alterations and other Work necessary: (d-1) to fulfill the obligations of the Board under the Condominium Documents or applicable Laws, including to Maintain and Repair the Common Elements in accordance with the Building's Maintenance Standard; (d-2) to prevent damage to a Unit or the Common Elements or any portion thereof; (d-3) to remedy violations noted or issued against the Property by any Governmental Authority that are caused by a condition in the Common Elements or a Unit and to remedy any conditions that would constitute such violations even though not yet noted or issued (any such violation or condition applicable to only a Unit shall be remedied at the expense of the Owner of such Unit if such Owner fails to timely do so within the period provided elsewhere herein or in the By-Laws, if any); (d-4) to remedy at the expense of the Applicable Unit Owner any default or violation by such Unit Owner under the Condominium Documents that shall have continued beyond the cure period, if any, provided for therein; or (d-5) to remedy at the expense of the Applicable Unit Owner any condition in such Owner's Unit that is a threat or danger to another Unit or the Common Elements or to avoid the suspension of any necessary service.

12.1.2 Standard Requirements. Such easement and right of access in the preceding subsection 12.1.1 may be exercised and performed by the Condominium Board and its Agents, Employees and Contractors Freely and Without Consent, Payment or Restriction, other than the following:

- (a) the requirement to comply with Section 10.2 above, including the applicable requirements of Article 15 below (except that said subsection 12.1.1 shall govern and supersede any inconsistency between the provisions thereof and such Article 15);
- (b) in the case of access pursuant to clauses (a), (b), (c) and (d) in the preceding subsection 12.1.1, other than clauses (d-4) and (d-5) thereof: (b-1) if not involving an emergency (i.e., a condition which threatens the life, health or safety of any persons or damage to property or the suspension of any necessary service), the requirement to give the Applicable Unit Owner at least three (3) business days (if served by mail) or one (1) business day (if served by hand delivery) advance written notice of the date and time scheduled by the Condominium Board to enter the Unit; or (b-2) if involving an emergency, access to a Unit may be immediate without advance notice;
- (c) in the case of access pursuant to clauses (d-4) or (d-5) in the preceding subsection 12.1.1: (c-1) if not involving an emergency, the requirement of the Board to give the Applicable Unit Owner reasonable advance written notice of the proposed Maintenance, Repairs, Alterations or other Work and an opportunity to perform and complete same within ten (10) calendar days of giving such notice or (if same cannot be performed and completed with due diligence and continuity within such ten (10) calendar day period) such longer period as shall be required to perform and complete same with due diligence and continuity (but not longer than 90 calendar days), provided such Unit Owner shall commence to perform the Maintenance, Repairs, Alterations or other Work within five (5) calendar days following the giving of said notice and shall continue to prosecute same with due diligence and continuity until completion; or (c-2) if involving an emergency, access may be immediate, without advance notice and without giving the Applicable Unit Owner an opportunity to perform the Maintenance, Repairs, Alterations or other Work;
- (d) the obligation of the Condominium Board, as a Common Expense (and charged to the Unit Owners Pro Rata to their respective Common Interests), to Repair any damage caused by the exercise and performance of such easement and right of access so as to restore the damaged area (but not any Decorations thereon) and any affected Equipment and Installations to as near as reasonable and economically practical to the condition existing immediately prior to such exercise and performance; and
- (e) the obligation of the Condominium Board, as a Common Expense (and charged to the Unit Owners Pro Rata to their respective Common Interests), to indemnify the affected Unit Owner from and against all Claims and Liabilities and Expenses arising from the exercise and performance of this easement and right of access by the Board or its Agents, Employees and Contractors.

12.1.3 Communications Equipment and Other Installations. The Common Elements are also subject to the easements and rights in favor of each Unit Owner and other Persons to erect and install, or to grant leases, licenses and rights to utility providers to erect and install, Communications Equipment and Other Installations, and thereafter to Maintain, Repair, Alter and otherwise Operate same and replacements thereof and additions thereto, as set forth in Section 11.10 above.

Section 12.2 Reciprocal Easement Affecting Each Unit. If and to the extent only any Equipment and/or other Installations comprising the Common Elements are located in, adjacent to or bordering the Lower Unit or the Upper Unit now or hereafter, the Condominium

Board, and those Agents, Employees and Contractors who are so expressly authorized in writing by the Condominium Board, are hereby granted an easement and right of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on such Unit in order to erect, install, Maintain, Repair, Alter and otherwise Operate any and all such Equipment and Installations (including replacements of then existing Equipment and Installations, if any, with new Equipment and Installations) substantially within the confines of their then current spaces and locations. Such easement and right may be exercised and performed Freely and Without Consent, Payment or Restriction, other than the following:

- (a) the requirement to comply with Section 10.2 above, including the applicable requirements of Article 15 below (except this Section 12.2 shall govern and supersede any inconsistency between the provisions hereof and said Article 15);
- (b) the restrictions and limitations: (b-1) not to unreasonably invade, penetrate or disturb any commercially rentable, exposed indoor public areas of such Unit other than for a reasonably temporary period; and (b-2) not to permanently prevent, nor unreasonably interrupt or interfere with, the permitted Use and Enjoyment of such Unit (or any portion thereof), or the proper and efficient performance, function, capacity or utility of such Unit's Equipment and Installations, or the Operation of or business conducted in such Unit or the tenants or occupants of such Unit or any portion thereof;
- (c) the obligation to Repair any damage to such Unit caused by the exercise and performance of such easement and right so as to restore the damaged area (but not any Decorations thereon) and any affected Equipment and Installations to as near as reasonable and economically practical to the condition existing immediately prior to such exercise and performance (the Costs and Expenses of such Repair shall be part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests);
- (d) the further obligation of the Condominium Board, as a Common Expense (and charged to the Unit Owners Pro Rata to their respective Common Interests), to indemnify such Unit Owner, and such Owner's agents and employees, from and against all Claims and Costs and Expenses arising in connection with the exercise and performance of such easement and right; and
- (e) in the event access and entry to any commercially rentable area of the such Unit is required: (e-1) such access and entry shall be at such times reasonably convenient and on giving reasonable prior written notice to such Unit Owner, who shall have the right to have a representative present at all times during such entry; and (e-2) such access and entry shall comply with any security and protection procedures and requirements as may be reasonably required by such Unit Owner or an affected tenant or occupant of such Unit, provided such procedures and requirements shall not preclude such entry.

Section 12.3 Reciprocal Easement Affecting the Common Elements and Each Unit. If and to the extent only that any Equipment and Installations comprising part of the Lower Unit or the Upper Unit are: (a) located in, adjacent to or bordering the Common Elements or the other Unit now or hereafter erected or installed pursuant to this Declaration or the By-Laws; or (b) are permitted to be erected or installed in, on and along the Common Elements by a Unit Owner in accordance with Section 10.4 above, the Declarant hereby grants to the Owner of such Unit and the tenants and other Persons who are expressly so authorized in writing by such

Unit Owner, and the respective authorized Agents, Employees and Contractors of each of the foregoing, an easement and right of reasonable access for ingress and egress, and to transport materials, supplies and Equipment, to, from, through, across and on the Common Elements and the other Unit in order to erect, install, Maintain, Repair, Alter and otherwise Operate any and all such Unit Equipment and Installations (including replacements of then existing Unit Equipment and Installations, if any, with new Unit Equipment and/or Installations) substantially within the confines of their then current or permitted new spaces and locations. Such easement and right may be exercised and performed Freely and Without Consent, Payment or Restriction, other than the following:

- (a) the requirement to comply with Section 10.2 above, including the applicable requirements of Article 15 below (except this Section 12.3 shall govern and supersede any inconsistency between the provisions hereof and said Article 15);
- (b) the restrictions and limitations: (b-1) not to invade, penetrate or disturb any commercially rentable, exposed indoor public areas of the Common Elements or the other Unit, other than for a reasonably temporary period; and (b-2) not to permanently prevent, nor unreasonably interrupt or interfere with, the permitted Use and Enjoyment of the Common Elements or the other Unit (or any portion of either thereof), or the proper and efficient performance, function, capacity or utility of the Equipment and Installations serving the Common Elements or the other Unit;
- (c) the obligation of such Unit Owner, at such Owner's sole Cost and Expense, to Repair any damage to the Common Elements or the other Unit caused by the exercise and performance of such easement and right so as to restore the damaged area (but not any Decorations thereon) and any affected Equipment and Installations to as near as reasonable and economically practical to the condition existing immediately prior to such exercise and performance;
- (d) the further obligation of such Unit Owner, at such Owner's sole Cost and Expense, to indemnify the Board and the other Unit Owner, and their respective agents and employees, from and against all Claims and Costs and Expenses arising in connection with the exercise and performance of such easement and right; and
- (e) in the event access and entry to any commercially rentable or public area of the Common Elements or the other Unit is required: (e-1) such access and entry shall be at such times reasonably convenient and on giving reasonable prior written notice to the Board or said other Unit Owner (as applicable), who shall have the right to have a representative present at all times during such entry; and (e-2) such access and entry shall comply with any security and protection procedures and requirements as may be reasonably required by the Board or said other Unit Owner (and any affected tenant or occupant of such Owner's Unit (as applicable), provided such procedures and requirements shall not preclude such entry.

Section 12.4 Easements of Support, Necessity, Utilities and Services. Each Unit Owner (with respect to the Owner's Unit) and both Unit Owners (with respect to the Common Elements), are hereby granted easements and rights of subjacent support, emergency and necessity as well as for utilities and other services being commonly provided or available to Units, and each Unit and the Common Elements shall be subject to such easements and rights. The easements and rights include an easement and right in favor of each Owner of emergency access for ingress and egress, and to transport materials, supplies and Equipment, to, from,

through, across and on the Common Elements as and to the extent required by fire safety requirements of the building code or other applicable Laws. All tenants, occupants and visitors of Units and all workers in a Unit or elsewhere in the Building, shall have an easement of emergency egress to, through, across and on the Common Elements and, if necessary, a Unit in order to avoid personal injury.

Section 12.5 Easements Allowing Encroachments. Each Unit and the Common Elements have and shall have, and are and shall be subject to, easements for the existence, continuation and Maintenance of encroachments by any Unit on the other Unit and/or a portion of the Common Elements, or an encroachment by a portion of the Common Elements on any Unit and/or other portions of the Common Elements, for so long as the Building or the affected Unit or Common Element shall stand, if and to the extent now existing or hereafter arising as a result of: (a) the Building or any portion thereof settling or shifting naturally; or (b) a Repair or Alteration or other Work by the Condominium Board or a Unit Owner performed in accordance with this Declaration and the By-Laws following a fire or other cause, or a taking by condemnation or eminent domain, or (c) a Repair, Alteration or other Work permitted in, and performed in accordance with, this Declaration or the By-Laws.

Section 12.6 Statutory Easements. In addition to the specific easements reserved and granted in Articles 11 and 12 and elsewhere in this Declaration and the By-Laws, the Property and every portion thereof (including the Common Elements and Units) the Condominium Board and the Owner and Permitted Tenants/Occupants/Invitees of each Unit, shall have and shall be subject to all easements and rights of use and access required by, or set forth in, the Condominium Act or other applicable Law.

Section 12.7 Promotional and Operational Easements 12.7.1 Each Unit. Declarant hereby reserves and grants to each Unit Owner and those of its Agents, Employees and Contractors who are so expressly authorized in writing by such Unit Owner, the easements and rights of access (for ingress and egress) to, and use of, the Common Elements (including specifically, but not limited to, the Building Walls (excluding the portions of the Building Walls of floor 1 and the Storefronts that enclose and are part of the Lower Unit if the Upper Unit Owner is exercising these easements and rights), the Roofs, and the Immediately Adjacent Sidewalks in front of the entrances to such Owner's Unit and in front of the 6 East 49th Street entrance to the Common Elements) for all lawful purposes, including the following:

- (a) to sell, rent, Promote, Operate, manage or make any other Disposition of the such Owner's Unit or any portion thereof, including: (a-1) to install, Maintain, Repair and Alter furnishings, wall and floor coverings and other Decorations in the Common Elements; (a-2) to station sales and rental staff in the Common Elements; (a-3) to erect, install, Maintain, Repair, and Alter otherwise Operate one or more Signs of any size, content, composition, material, color, design, illumination, character and appearance in or on the Common Elements; and (a-4) to provide access to the Common Elements to: sales and rental personnel; cooperating brokers; prospective purchasers and renters; Agents, Employees and Contractors; architects; engineers; and decorators; and
- (b) to store and transport materials, supplies and Equipment and to temporarily interrupt elevator or HVAC/Mechanical/Utility Building Systems and other Building services or Common Elements serving the other Unit in connection with the exercise or performance of: (b-1) rights of such Unit Owner under this Declaration or the By-Laws; or (b-2) any Repair, Alteration or other Work that is either undertaken by such Unit Owner from time to time for existing or future tenants or other occupants of such Owner's Unit or any

portion thereof or permitted by such Unit Owner to be undertaken directly by such existing or future tenants or occupants of the Upper Unit or a portion thereof (collectively, **"Tenant Obligations"**).

The easements and rights of each Unit Owner in this subsection 12.7.1 may be exercised and performed Freely and Without Consent, Payment or Restriction (other than those set forth in Section 11.4 above) and are superior, paramount and take preference over the easements and rights of the Condominium Board to use the Common Elements.

12.7.2 Lower Unit. Declarant hereby grants to the Lower Unit Owner the right to erect, install, Maintain, Repair, Alter and otherwise Operate one (1) or more Signs on the Storefronts and windows of floor 1 of the Lower Unit and on the immediately adjacent Building Walls enclosing the Lower Unit below floor 2, including security gates and cameras, subject only to obtaining the prior written Reasonable Approval or Consent of the Condominium Board as to the size, content, composition, material, color, design, illumination, character and appearance of each Sign.

Section 12.8 Specific Easements Affecting the Upper Unit. In addition to all other easements and rights provided elsewhere in this Declaration or the By-Laws, the Lower Unit Owner, and its invitees and authorized Agents, Employees and Contractors, shall have easements and rights of reasonable access to, through, across and on the elevators and other public portions of the Upper Unit: (a) for ingress to and egress from the Lower Unit Office and for transportation of materials, supplies and Equipment to and from the Lower Unit Office, and (b) to erect, install, Maintain, Repair, Alter otherwise Operate the Equipment now or hereafter erected or installed pursuant to this Declaration to serve the Lower Unit Office, and the Upper Unit shall be subject thereto.

The Lower Unit Owner shall also have the easement and right, Freely and Without Consent, Payment or Restriction (other than compliance with the applicable Work Requirements contained in Section 15.2 below): (a) to erect and install behind the walls and other non-public portions of the Upper Unit new and additional Equipment and related Installations (including pipes, wires, ducts, cables, conduits and chases) to serve the Lower Unit Office; and (b) to Maintain, Repair Alter and otherwise Operate such Equipment and Installations. The Upper Unit Owner shall permit reasonable access to, through, across and on the public portions of the Upper Unit (including its elevators) by the Lower Unit Owner and its Agents, Employees and Contractors to perform Work in connection with the foregoing.

ARTICLE 13

CHANGES IN UNITS AND COMMON ELEMENTS

Section 13.1 Changes. Declarant hereby reserves for itself and grants to each Unit Owner, the right from time to time, Freely and Without Consent, Payment or Restriction, other than those set forth in Section 13.2 and Articles 15 and 31 below, to change the size and number of the Unit owned by Declarant or such Unit Owner (as applicable) (collectively, **"Unit Change"**) by:

- (a) subdividing such Unit into two (2) or more Units (**"Unit Subdivision"**) and establishing new boundary walls separating the Units established on such Unit Subdivision;

- (b) (if such Unit is subdivided) combining (horizontally and/or vertically) all or portions of two (2) or more of its Units ("**Unit Combination**") and incorporating walls, floors, ceilings or other portions of the Common Elements (where entire Units are combined into one (1) Unit) or to establish new boundary walls, floors and/or ceilings as part of the Common Elements (where portions of Units are combined);
- (c) expanding such Unit ("**Unit Expansion**") by razing, moving and relocating the boundary walls (including Building Walls), Perimeter Base Floors and/or Perimeter Base Ceilings separating such Unit from the Common Elements (but not said boundary walls, Perimeter Base Floors or Perimeter Base Ceilings separating such Unit from the other Unit, unless both Units are owned by the Party effecting the Unit Expansion) and in connection therewith: (c-1) (in the case of the Lower Unit Owner) to construct one or more additional floors above the main Roof, which will be added to, and constitute part of, the Lower Unit pursuant to the Development Rights of the Lower Unit Owner in Section 5.4 above; (c-2) to incorporate in such Unit a portion of the Common Elements, including an adjacent hallway, flue, shaft or other space and/or walls, floors, ceilings and/or other portions of the Common Elements; and (c-3) to establish new boundary walls, Perimeter Base Floors and/or Perimeter Base Ceilings of such Unit, including a new main Roof and related Roof Structures, which shall be designated by the Lower Unit Owner in an Amendment to the Declaration, and thereupon become, part of the Common Elements as and to the extent the former boundaries were part of the Common Elements (as provided in clause (e) below and Section 13.2 hereof);
- (d) altering such Unit ("**Unit Alterations**"), including changing the number of offices, rooms and bathrooms and the layout or configuration of the Unit, or any portion thereof; and
- (e) changing the description ("**Description Change**") of portions of such Unit and the affected Common Elements involved in a Unit Change so that such applicable portions of the Common Elements become part of the Unit or a Limited Common Element appurtenant to the Unit and/or portions of the Unit become Common Elements or Limited Common Element appurtenant to the Unit (as applicable).

Upon the original boundary walls, Perimeter Base Floors, Perimeter Base Ceilings and/or other space forming a part of the Common Elements being razed or otherwise incorporated in a Unit in connection with a Unit Change, including Units established on a Unit Subdivision of a Unit (each such Unit being a "**Subdivided Unit**"), they automatically shall no longer be part of the Common Elements and shall become part of the applicable Unit or Subdivided Unit (as the case may be). Similarly, upon new boundary walls, Perimeter Base Floors and/or Perimeter Base Ceilings of a Unit or Subdivided Unit (as the case may be) being constructed, they automatically shall be substituted in place of the former boundaries to become part of the Common Elements (if and to the extent said former boundaries were part of the Common Elements).

Section 13.2 Rights, Restrictions and Requirements. In connection with a Unit Change pursuant to Section 13.1 above:

- (a) the Condominium Board and the other Unit Owner shall fully cooperate with the Applicable Unit Owner making the Unit Change and, in furtherance thereof, shall give such Assurances as said Owner may request in accordance with Sections 20.4 and 20.5 below, each of the Condominium Board and said other Unit Owner hereby granting the Applicable Unit Owner making the Unit Change an irrevocable, durable power of attorney, "coupled with an interest" and for valuable consideration, with full power of

substitution, to execute Government Documents as attorney-in-fact in the name and on behalf of the Board and said other Unit Owner in accordance with clause (k) of this Section 13.2, such Parties agreeing that each Unit Change to a Unit may be made: (a-1) without the approval or consent of the Condominium Board, the other Unit Owner or any Unit mortgage lender (other than a lender holding a mortgage on the Unit that is the subject of the Unit Change, if and to the extent required by the terms of such mortgage); (a-2) without complying with any regulations, rules or other requirements of the Condominium Board for Alterations or changes to Units; (a-3) without paying any kind of fee or other charge of the Condominium Board or its Managing Agent or attorneys or other professional or consultants; and (a-4) without the plans and specifications of the proposed Unit Change being submitted to, or reviewed by, the Condominium Board or an architect, engineer or other professional or consultant chosen by the Condominium Board;

- (b) the Applicable Unit Owner making the Unit Change, at such Owner's sole Cost and Expense, shall duly record an Amendment to the Declaration and Floor Plans to subdivide its Unit and to apportion between or among the Units resulting from such Unit Subdivision, the Common Interest of the Unit so subdivided in accordance with the method set forth in Article 8 above or any other method allowed by the Condominium Act; provided, however, that the aggregate Common Interests of all Units resulting from such Unit Subdivision shall equal exactly the Common Interest of the Unit so subdivided;
- (c) the Applicable Unit Owner combining all or portions of two Units or two (2) or more Subdivided Units, at such Owner's sole Cost and Expense, shall duly record and file an Amendment to the Declaration and Floor Plans to combine such Units or portions thereof and: (c-1) (in the case of a Unit Combination involving entire Units) to declare and establish the Common Interest of the resulting combined Unit to equal exactly the total of the Common Interests of the original Units being so combined; or (c-2) (in the case of a Unit Combination not involving entire Units) to apportion between or among the Units involved in the Unit Combination, the Common Interests of such Units in accordance with the method set forth in Article 8 above or any other method allowed by the Condominium Act; provided, however, that the total Common Interests of all resulting Units following a Unit Combination shall equal exactly the total of the Common Interests of such original Units;
- (d) in the case of a Unit Expansion of a Unit: (d-1) the Declaration and Floor Plans need not be amended to effectuate such Unit Expansion unless otherwise expressly required by the Condominium Act or other applicable Law or the requirements of Governmental Authorities having jurisdiction (any required change in Common Interest must be consented to in writing, in form for recording, by all affected Unit Owners); and (d-2) the Common Interest of such Unit need not change as a result of such Unit Expansion (however, the Common Expenses of the expanded Unit shall be specially allocated and apportioned based on such Unit's Usage in accordance with the Special Allocation and Apportionment Rule as provided in Article 9 above);
- (e) any public or common areas of the Common Elements incorporated in a Unit or a Subdivided Unit pursuant to Section 13.1 above shall remain part of the Common Elements, but its use shall be limited or restricted completely to that Unit only or (at the option of applicable Owner of such Unit) shall become part of such Unit;
- (f) (if and to the extent required by the Condominium Act) the Owner of a Unit or a Subdivided Unit ("**such Owner**"), as applicable, making a Description Change, at the

sole Cost and Expense of such Owner, shall declare, establish, grant and convey in a duly recorded Amendment to this Declaration and a duly filed Amendment to the Floor Plans that: (f-1) the applicable portion of such Owner's Unit shall instead comprise part of the Common Elements or (at the option of such Owner) to comprise a Limited Common Element appurtenant to such Owner's Unit; and/or (f-2) the applicable portion of the Common Elements shall instead comprise such Owner's Unit or (at the option of such Owner) a Limited Common Element appurtenant thereto (as applicable); provided, however, that such Description Change from a Unit to Common Elements (or a Limited Common Element), or vice versa, shall not change the Common Interest of any other Unit not owned by such Owner nor change the Common Interest of such Owner's Unit;

- (g) the Common Interest of a Unit not involved in a Unit Change shall remain the same, unless the Owner and (if and to the extent required by the terms of a mortgage) each mortgagee of such Unit shall consent in writing thereto in accordance with Section 339-i of the Condominium Act and the Common Interests of all Units following a Unit Change shall total 100%;
- (h) all Costs and Expenses thereafter arising with respect to the use, Maintenance, Repair and Operation of a Limited Common Element declared and established in connection with a Description Change shall be borne exclusively by the Owner of the Unit to which same is appurtenant (other than structural Repairs which are expressly stated in this Declaration or the By-Laws to be performed by the Condominium Board as a Common Expense);
- (i) such Owner making a Unit Change shall indemnify the Condominium Board and all other Unit Owners from and against any and all Claims and Liabilities and Expenses arising out of, or in connection with, the Unit Change or the Work in performing such Unit Change;
- (j) the required Amendment to the Declaration to effectuate a Unit Change as herein provided: (j-1) shall be prepared, signed and acknowledged in recordable form by, and at the sole Cost and Expense of, the Applicable Unit Owner making such Unit Change, such Applicable Unit Owner being hereby granted an irrevocable, durable power of attorney by the Condominium Board and the other Unit Owner, "coupled with an interest" and for valuable consideration, with full power of substitution, to execute said Amendment to the Declaration as attorney-in-fact in the name and on behalf of the Condominium Board and the other Unit Owner; (j-2) if requested by the Applicable Unit Owner making such Unit Change, said Amendment shall be certified by the Secretary or an Assistant Secretary of the Condominium in accordance with Article 22 below and may be recorded and filed without the approval, consent or signatures of the Condominium Board or any officer of the Condominium Board or the other Unit Owner (each of whom shall be deemed irrevocably to have approved or consented thereto); and the required Amendment to the Floor Plans to effectuate a Unit Change as herein provided shall be prepared, certified, signed and sealed by an architect or engineer selected exclusively by said Applicable Unit Owner making such Unit Change, at such Owner's sole Cost and Expense;
- (k) the approval, consent and signatures of the Board or the other Unit Owner shall not be required on any Government Document necessary or convenient to perform a Unit Change in accordance with this Article 13, including any application or other Government Document required by the Department of Buildings, the Real Property Assessment Bureau of the City of New York or any other Governmental Authority in

connection with a Building alteration application and or an amendment to the Certificate of Occupancy of the Building or the establishment of separate tax lots for any newly established Units and a reapportionment of the assessed valuation by reason thereof; all such Government Documents shall be prepared, signed and (where required) acknowledged by, and at the sole Cost and Expense of, only the Applicable Unit Owner making such Unit Change, such Applicable Unit Owner being hereby granted an irrevocable, durable power of attorney, "coupled with an interest" and for valuable consideration, with full power of substitution, to execute such Government Documents as attorney-in-fact in the name and on behalf of the Board and the other Unit Owner (nevertheless, in accordance with Article 20 below, the Board shall fully cooperate with the Owner making the Unit Change and in furtherance thereof, upon request of such Unit Owner, shall execute and deliver to such Unit Owner any and all such Government Documents on the terms and conditions provided in said Article 20);

- (l) no license or use fee or rental or other charge (other than the regular Common Charges and Special Assessments, if any, levied on all Unit Owners) may be levied or imposed by the Condominium Board in connection with any wall, space, floor, ceiling or other portion of the Common Elements incorporated in a Unit in connection with such Unit Change;
- (m) the dimensions, usable floor area and interior space (that is, the space within the enclosing walls, floors and ceilings) of any other Unit shall not be changed or penetrated by reason of a Unit Change without obtaining the prior written Discretionary Approval or Consent of the Owner of such affected Unit;
- (n) a Unit Change shall not jeopardize the soundness or structural integrity of any portion of the Building or the life, health or safety of any Owner or Permitted Tenants/Occupants/Invitees of another Unit;
- (o) a Unit Change shall not prevent or unlawfully impair legal access by another Unit to exit stairs or other portions of such Unit leading to a street or to Common Elements which lead to a street;
- (p) a Unit Change shall not permanently diminish or adversely and unreasonably affect: (p-1) the proper and efficient performance, function, capacity or utility of the Equipment and Installations comprising the Common Elements serving the other Unit; or (p-2) the use of the Common Elements serving the other Unit for their intended purposes;
- (q) a Unit Change shall be performed and completed in accordance with the applicable Work Requirements set forth in Section 15.2 below, including compliance with all applicable Laws (such as, if and to the extent required by Law: obtaining all required approvals, permits and licenses of Governmental Authorities having jurisdiction; and, in the case of a Unit Subdivision or Unit Combination, obtaining an alteration permit or an amended or new Certificate of Occupancy or other Government Document to reflect the resulting subdivided Units or Unit Combination, as applicable and if required by Law); and
- (r) no Unit Change shall be made to a Unit without the express written consent of the Existing Unit Mortgagee, for so long as the Existing Unit Mortgage encumbers such Unit, and each holder of a subsequent Unit Mortgage on said Unit if and to the extent required by the terms of said subsequent Unit Mortgage.

ARTICLE 14
MAINTENANCE, REPAIRS, ALTERATIONS AND
OTHER WORK TO UNITS, COMMON ELEMENTS AND ADJACENT
SIDEWALKS AND VAULTS

Section 14.1 Duty to Maintain and Repair the Units and Limited Common Elements. Each Unit Owner, at such Owner's sole Cost and Expense, shall Maintain and Repair (other than structural or extraordinary Repairs expressly stated elsewhere herein or in the By-Laws to be performed by the Condominium Board) such Owner's Unit and its Equipment and Installations and (if established) the Unit's appurtenant Limited Common Element, in accordance and compliance with the Building's Maintenance Standard. The foregoing Maintenance and Repair obligations apply to all items included in the Unit, including those set forth in Section 6.9 above. All of the foregoing Maintenance and Repairs shall be performed or caused to be performed by each Unit Owner in conformity with the high dignity, first-class quality, character and standards of the Building, and in a manner that: (a) shall not materially impair or prevent, nor unreasonably interrupt or interfere with, the permitted Use and Enjoyment of other Units or the Common Elements; and (b) shall maintain the value of all Units. Each Unit Owner shall also comply with the Owner's Maintenance and Repair obligations with respect to such Owner's Unit and its appurtenant areas, Equipment, Installations and (if established) Limited Common Elements set forth in Section 5.1 of the By-Laws.

Section 14.2 Duty to Maintain and Repair the Common Elements. The Condominium Board shall Maintain and Repair the Common Elements in accordance and compliance with the Building's Maintenance Standard, including: (a) the Equipment and other Installations forming a part thereof and such of said Common Elements that are within, bordering and adjacent to a Unit; and (b) water leaks and air penetration between the Building Walls and Unit window frames (but excluding windows). All of the foregoing Maintenance and Repairs shall be performed by the Board in conformity with the high dignity, first-class quality, character and standards of the Building, and in a manner that: (a) shall not materially impair or prevent, nor unreasonably interrupt or interfere with, the permitted Use and Enjoyment of a Unit and (if established) its appurtenant Limited Common Element; and (b) shall maintain the value of all Units and the Building services and Facilities to be provided to the Units pursuant to this Declaration and the By-Laws. The Costs and Expenses of such Maintenance and Repairs shall be part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests. The Condominium Board shall also comply with its Maintenance and Repair obligations with respect to the Common Elements set forth in Section 5.1 of the By-Laws

Section 14.3 Maintenance, Repairs, Alterations and Work to Units and Limited Common Elements. The right and duty of each Owner, at such Owner's sole Cost and Expense, to Maintain, Repair, Alter and perform other Work in or to such Owner's Unit (including the Equipment and other Installations forming a part thereof) and (if established) its appurtenant Limited Common Element are governed by Sections 5.1 and 5.2 of the By-Laws and the applicable Work Requirements set forth in Section 15.2 below.

Section 14.4 Maintenance, Repairs, Alterations and Work to Common Elements. The Condominium Board shall have the substantially exclusive right and duty to Maintain, Repair, Alter and perform other Work to the Common Elements, including the Equipment and Installations forming a part thereof and such Common Elements (if any) within, bordering and adjacent to a Unit, subject to compliance with the applicable Work Requirements set forth in Section 15.2 below and subject and subordinate to all easements and rights reserved to Declarant and granted to each Unit Owner in this Declaration and the By-Laws. The Costs and Expenses of such Maintenance, Repairs, Alterations and Work shall be a part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 14.5 Requisite Approvals for Board Repairs and Alterations. The Condominium Board shall have the right and duty to make all necessary or appropriate Repairs to the Common Elements upon the determination of a majority of those Board Members attending a duly constituted Board Meeting at which a quorum is present, and without the approval or consent of any Unit Owners.

The Condominium Board shall have the right to Alter the Common Elements ("**Board Alterations**") upon the determination of a majority of those Board Members attending a duly constituted Board Meeting at which a quorum is present, and without the approval or consent of the Unit Owners if the Board Alterations to be undertaken in a Budget Year of the Condominium are projected to cost not more than \$250,000.00 in the aggregate. If, however, the costs of Board Alterations to be undertaken in a Budget Year are projected to exceed said \$250,000 threshold, the Board shall not undertake such Board Alterations without first obtaining the Discretionary Approval or Consent of a majority in number or Common Interest of Unit Owners in writing or by a vote at a duly held meeting of Unit Owners called for such purpose at which a quorum is present. The Costs and Expenses of all permitted Board Alterations shall be part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 14.6 Floors, Ceilings, Roofs and Building Walls. The right of each Unit Owner (including its authorized tenants, and the respective authorized Agents, Employees and Contractors of each of the foregoing) to Maintain, Repair, Alter and perform other Work to its Unit pursuant to this Declaration or the By-Laws includes the right, Freely and Without Consent, Payment or Restriction (other than the requirement to comply with the applicable Work Requirements set forth in Section 15.2 below) to pierce, remove and make openings in portions of the Base Floors and Base Ceilings of such Unit (but not removal or openings of the Perimeter Base Floors separating the Upper Unit from the Lower Unit), and the Building Walls (including the installation of new windows therein serving its Unit) and the Roof(s) enclosing such Unit, in the exercise of such right or in the exercise of easements or other rights expressly reserved to Declarant or granted to the Unit Owner in this Declaration or the By-Laws.

Section 14.7 Negligence, Misuse, Abuse or Neglect. Any Maintenance or Repairs (whether structural or non-structural, ordinary or extraordinary) to a Unit or the Common Elements caused by the negligence, misuse, abuse or neglect of:

- (a) a Unit Owner, or a tenant, licensee or occupant of a Unit, or the Agents, Employees and Contractors of such Unit Owner, licensee or tenant, shall be performed by the Party responsible to Maintain same and the total Costs and Expenses thereof shall be charged to, and borne entirely by, such Unit Owner; or
- (b) the Condominium Board, or its Agents, Employees and Contractors, shall be performed by the Party responsible to Maintain same and the total Costs and Expenses thereof shall be charged to, and borne entirely by, the Condominium Board as part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 14.8 Cooperation. Each Unit Owner shall fully cooperate with the other Unit Owner and with the Condominium Board in connection with the Maintenance, Repairs and Alterations permitted to be performed by such other Unit Owner or the Board, and the Condominium Board shall fully cooperate with each Unit Owner in connection with the Maintenance, Repairs and Alterations permitted to be performed by such Unit Owner, all as more particularly set forth in Article 20 below.

Section 14.9 Sidewalks. All Sidewalk Cleaning Obligations and Sidewalk Repair Obligations with respect to the Immediately Adjacent Sidewalks to each Unit and the street entrance to the Common Elements shall be performed by the Condominium Board as a

Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests.

The Sidewalk Cleaning Obligations and Sidewalk Repair Obligations shall be performed in accordance and compliance with the Building's Maintenance Standard and in a manner that shall not unnecessarily prevent or unreasonably interrupt or interfere with the permitted uses of the Immediately Adjacent Sidewalks to a Unit by its Owner and such Owner's Permitted Tenants/Occupants/Invitees. However, all Signs, objects, structures, extensions or enclosures erected or installed by a Unit Owner on, in or under the Immediately Adjacent Sidewalks to the Property pursuant to Sections 10.6, 10.7 and 10.15 above shall be Maintained and Repaired by, and at the sole Cost and Expense of, such Unit Owner. In addition, all Repairs to the Immediately Adjacent Sidewalks necessitated by such erections or installations, or the Maintenance, Repair or Alteration thereof, shall be performed by, and at the sole Cost and Expense of, such Unit Owner.

Section 14.10 Vaults. The vault(s) and the Vault Installations therein existing now or permitted hereafter that serve exclusively one Unit shall be Maintained and Repaired, and (subject to compliance with the applicable provisions of this Declaration and the By-Laws) may be Altered, by the Owner of such Unit, at such Owner's sole Cost and Expense. All such Maintenance, Repairs and permitted Alterations shall be performed in accordance and compliance with the Building's Maintenance Standard and the applicable Work Requirements set forth in Section 15.2 below. The Owner of such Unit shall also pay any governmental vault tax, fee, charge or other imposition levied in respect to such vault(s).

If on or after the date of recording this Declaration any one or more vaults house any Vault Installations serving serving both Units or a portion of the Common Elements, then the Maintenance, Repairs, Alterations and other Operation of such Vault Installations shall be performed by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests.

If the City of New York revokes the right to use any one or more of such vaults, the Party Obligated to Maintain and Repair the affected vault(s), at its sole Cost and Expense or (if such Party is the Condominium Board) as a Common Expense charged to each Unit Owner Pro Rata to its Common Interest, shall close or seal the affected vault(s) and relocate all Equipment and Installations then housed therein in accordance with the applicable Work Requirements set forth in Section 15.2 below, except any such Equipment or Installations comprising the Common Elements or a Unit shall be relocated by the Condominium Board (as a Common Expense) or the Owner of such Unit (at its sole Cost and Expense), respectively, to other portions of the cellar level as shall be determined by the Board or said Unit Owner (as applicable) to be suitable and shall not interfere with any Equipment or Installations then serving a Unit, except only a temporary interruption. The foregoing relocation of said Equipment or Installations, by the Board or the affected Unit Owner (as applicable) shall be performed in accordance with the applicable Work Requirements set forth in Section 15.2 below.

ARTICLE 15 WORK REQUIREMENTS

Section 15.1 Application. All permitted or required Maintenance, Repairs, Alterations and other Work by, or on behalf or at the discretion of, Declarant, a Unit Owner, a tenant or occupant of a Unit, the Condominium Board or a utility provider (each of the foregoing, a "**Responsible Party**") shall be done or performed in accordance and compliance with all applicable Laws and the applicable Work Requirements set forth in Section 15.2 below as well

as all other requirements (if any) applicable thereto set forth elsewhere in this Declaration or the By-Laws.

Section 15.2 Work Requirements. The requirements ("Work Requirements") to be met and complied with pursuant to Section 15.1 above are as follows:

- (a) the Work undertaken by a Unit Owner, the Condominium Board or a utility provider shall be prosecuted with reasonable diligence to completion and performed in a manner that does not permanently prevent or unreasonably and materially interrupt or interfere with, or otherwise unreasonably and adversely affect, the permitted Use and Enjoyment of a Unit or the Equipment and Installations serving such Unit (other than the Unit of the Owner who is undertaking the Work) or the Common Elements (including the Equipment and Installations forming a part of the Common Elements), and shall be performed in a manner that minimizes such interruption or interference to the extent reasonable and practical;
- (b) if the Work permitted in a Unit requires access to another Owner's Unit or its appurtenant Limited Common Element (if any) or to any of the Common Elements, or if the Work permitted in any of the Common Elements requires access to a Unit, such access by contractors, subcontractors, workers, architects, employees and others engaged in the Work and the right to transport therein materials, supplies and Equipment in connection therewith, shall be permitted subject and subordinate to the rights of the then existing tenants and occupants of the affected Unit, and subject further to same being exercised reasonably and in a manner that does not permanently prevent and minimizes any interruption or interference to the extent reasonable and economically practical with the Use and Enjoyment of the affected Unit or Common Elements;
- (c) the Work shall be performed and completed in accordance and compliance with the requirements of Section 10.1 above and the prohibitions of Section 10.2 above;
- (d) at least five (5) business days before a Unit Owner begins Work on, or affecting, the Building's Structural Components, such Unit Owner shall obtain and deliver to the Board, a certification to the Board from a duly licensed engineer specializing in structural engineering that the structural integrity of the Building's Structural Components and the safety and health of occupants of the Building shall not be impaired or threatened or adversely affected by such Work;
- (e) the Work involving or affecting the Limited Common Elements (if any) or Common Elements (including the Equipment and Installations forming part thereof) and the Building's Structural Components:
 - (e-1) shall be performed in a good and workmanlike manner by duly licensed and qualified contractors and subcontractors and (in the case of Work involving the Structural Components) duly licensed engineers specializing in structural engineering who are Reasonably Approved by the Condominium Board; and
 - (e-2) shall utilize materials compatible with, and of at least substantially equal or better quality, design and function than, those then existing in the Building;

- (f) with respect to any Work permitted to be performed in a Unit or its appurtenant Limited Common Element (if any) or the Common Elements, by the Condominium Board or a utility provider:
 - (f-1) any pipes, ducts, wiring, conduits or other Equipment or Installations in connection with such Work shall be concealed in, behind or under the walls, floors or ceilings or, if not feasible, appropriately boxed-in without materially reducing the usable areas thereof; and
 - (f-2) (in the case of Work by the Condominium Board requiring access to a Unit) upon the request of the Owner of the affected Unit, the Condominium Board shall prepare or obtain (as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests) and submit to such affected Unit Owner, and such affected Unit Owner shall receive, at least five (5) full business days before entering such Owner's affected Unit:
 - (f-2.1) copies of all detailed plans and specifications of the Work;
 - (f-2.2) copies of all required permits, licenses, certificates, approvals and consents of Governmental Authorities having jurisdiction of the Work; and
 - (f-2.3) a policy or original certificate of insurance naming the Condominium Board, the affected Unit Owner and (if requested by the affected Unit Owner and required under the terms of the loan instruments of a mortgage encumbering the affected Unit) the holder of such mortgage as additional insured parties for such insurance coverage and amounts, and issued by such insurer, as (in the case of Work in a Unit) shall be Reasonably Approved by the Condominium Board (but naming the affected Unit Owner and its said mortgage holder as additional insured parties) (any dispute as to such insurance shall be resolved by arbitration pursuant to the By-Laws), and providing that at least thirty (30) calendar days' advance written notice shall be given to the affected Unit Owner and its said mortgage holder by the insurer before such insurance coverage is terminated, cancelled or expires;
- (g) the Party performing the Work or a Unit Owner who permits or suffers a tenant, licensee or occupant of its Unit to perform any Work, ("**Responsible Party**"), at such Responsible Party's sole Cost and Expense:
 - (g-1) (in the case only of Work by the Condominium Board) shall maintain the insurance in the preceding clause (f) in full force and effect for the duration of the Work in the affected Owner's Unit;
 - (g-2) shall indemnify the Condominium Board and its members, officers, employees and agents (including the Managing Agent, if any), and each and every other Unit Owner from and against any and all Claims and Liabilities and Expenses arising from the Work or the failure to comply with, any Work Requirements or other provision of this Declaration or the By-Laws;

- (g-3) shall file as and when required all necessary notices, applications, certifications, plans and specifications with Governmental Authorities having jurisdiction and (if the Responsible Party is a Unit Owner) shall pay or reimburse the Condominium Board for all Costs and Expenses of the Board to prepare, review execute and/or submit any Government Document required in connection with the Work to be so submitted pursuant to Article 20 below;
- (g-4) shall obtain and (in the case only of Work done by a Unit Owner) promptly deliver to the Board, and the Board shall make available to the other Unit Owner and its representatives from time to time: (g-4.1) an accurate and complete set of "as built" plans and specifications of the Work promptly following completion thereof; (g-4.2) (if required by Law) a copy of an alteration permit, the original of a new or amended Certificate of Occupancy, and a copy of any other required Government Document (which shall not change the authorized use of the other Unit or any portion thereof without the prior written Discretionary Approval or Consent of the Owner of such other Unit) promptly following receipt of each of the foregoing; (g-4.3) copies of all necessary inspections, approvals, sign-offs, licenses, permits, notices and certifications of Governmental Authorities having jurisdiction; and (g-4.4) (if required by the Condominium Board) the Board of Fire Underwriters certificate with respect thereto promptly following completion of the Work;
- (g-5) shall assume all responsibility (including payment and performance) for: (g-5.1) the Work and the performance, Maintenance and Repair of the Equipment and Installations involved in the Work; (g-5.2) the failure of the proper and efficient performance, function, capacity and utility of any Equipment and Installations affected by the Work; (g-5.3) the weather-tightness of any Work affecting the Building Walls, windows, doors, Roofs (including Roof Structures) or vaults; (g-5.4) waterproofing of any portion of the Building structure directly or indirectly affected by the Work; and (g-5.5) plumbing leaks and damage to another Unit or the Common Elements caused by the Work;
- (g-6) shall promptly and within thirty (30) calendar days after filing satisfy or discharge by bond or otherwise any and all mechanic's lien for Work or materials filed against another Unit or the Common Elements;
- (g-7) shall not prevent or unlawfully impair legal access of another Unit to exit stairs, or those portions of such other Unit or the Common Elements leading to a street;
- (g-8) shall not permanently diminish or adversely and unreasonably affect the proper and efficient performance, function, capacity or utility of another Owner's Unit or the Common Elements serving another Unit (including the Equipment and Installations forming a part of each); and
- (g-9) shall perform the Work in such a manner so as not to cause: (g-9.1) a breach of, or otherwise adversely affect, the quiet enjoyment of a tenant under a lease of all or a portion of a Unit; or (g-9.2) the Owner or lessor under such lease to be default or violation of any of the provisions of such lease;

- (h) with respect to the following Work to be undertaken by a Unit Owner, such Unit Owner, at its sole Cost and Expense, shall comply with the requirements stated below before commencing Work:
- (h-1) in the case of any Work by a Unit Owner requiring the Discretionary or Reasonable Approval or Consent of the Board: (h-1.1) said Unit Owner shall give the Board written notice of the details of the proposed Work; (h-1.2) (if requested by the Board) said Unit Owner shall also cause to be prepared and submitted to the Board detailed plans and specifications of the proposed Work, prepared by an architect, engineer or other appropriate professional chosen by said Unit Owner and (in accordance with Section 15.3 below) shall pay or reimburse the Board (as directed) for the Costs and Expenses of any architect, engineer, consultant or other expert engaged by the Board to review and advise it with respect to such plans and specifications of such Work; and (h-1.3) said Unit Owner shall comply with the provisions of clause (g-4) of this Section 15.2, except if requested by the other Unit Owner, said Unit Owner shall promptly following receipt deliver to the other Unit Owner copies of any required alteration permit or other Government Document for the Work together with copies of all necessary inspections, approvals, sign-offs, licenses, permits, notices and certifications of Governmental Authorities having jurisdiction;
 - (h-2) in the case of Work affecting any of the Building's HVAC/Mechanical/Utility Systems: the prior written Reasonable Approval or Consent of the Condominium Board therefor must be obtained;
 - (h-3) in the case of Work affecting the Building's Structural Components: the prior written Discretionary Approval or Consent of the Condominium Board therefor must be obtained;
 - (h-4) in the case of Work affecting the windows or other portions of a Unit visible from the street: the prior written Discretionary Approval or Consent of the Condominium Board therefor must be obtained, except only the prior written Reasonable Approval or Consent of the Board shall be required to change the Storefronts of the Lower Unit (excluding Signage thereon, which may be changed from time to time without the approval or consent of the Board);
 - (h-5) in the case of any of the foregoing Work by a Unit Owner or a tenant or occupant of a Unit for which the requisite Discretionary or Reasonable Approval or Consent (as applicable) is given: upon the request of the Condominium Board, said Unit Owner and (if applicable) said tenant or occupant of said Unit shall: (h-5.1) sign and deliver to the Condominium Board an alteration agreement, on the standard form adopted by, and in substance satisfactory to, the Condominium Board, setting forth the terms and conditions for performing the Work (including the Condominium Board's Work rules (with respect to hours, days, duration and otherwise), insurance requirements, security deposit and an indemnity in favor of the Condominium Board, its agents and employees, and all Unit Owners, from and against all Claims and Costs and Expenses arising out of the Work); and (h-5.2) pay all reasonable fees and charges of any Managing Agent, attorney, architect, engineer and other consultants and experts engaged by the Board in connection with such alteration agreement and to monitor the Work;

- (i) no Work by a Unit Owner or the Condominium Board shall be undertaken that would with reasonable likelihood: (i-1) permanently or substantially prevent, interfere with, interrupt or adversely affect the Operation of a Unit (if the Board is the Responsible Party) or the other Unit (if a Unit Owner is the Responsible Party), or any portion thereof, or the business of any tenants or occupants thereof or other Use and Enjoyment of the affected Unit or any portion thereof, without obtaining the prior written Discretionary Approval or Consent of the affected Unit Owner therefor; (i-2) otherwise temporarily prevent, interfere with, interrupt or adversely affect the Use and Enjoyment of the affected Unit, without obtaining the prior written Reasonable Approval or Consent of the affected Unit Owner therefor; and if said Discretionary or Reasonable Approval or Consent (as applicable) is given, the Responsible Party performing such Work shall indemnify the affected Unit Owner from and against any and all Claims and Liabilities and Expenses arising from the Work, including any Claims asserted by tenants or occupants of the affected Unit (if the Condominium Board is the Responsible Party, such indemnity shall be deemed given on behalf and for the account of only the applicable Unit Owner(s) who is (are) paying for the costs of the Work and if both Unit Owners are paying such costs, then their respective liability under this indemnity shall be Pro Rata to their respective Common Interests); or (i-3) create substantial dust, unreasonably loud noise, highly offensive odors or other substantial disturbances or material inconveniences affecting the tenants, occupants or invitees of a Unit unless such Work is performed after business hours or during non-business days;
- (j) all Work undertaken or performed by the Owner, or a tenant or occupant, of a Unit, in addition to the other Work Requirements set forth herein, shall be performed: (j-1) in a manner that shall not interfere with, or cause any labor disturbances or stoppages in, the Work of the Condominium Association's employees or other contractors or subcontractors employed by the Condominium Board or the other Unit Owner in connection with any Work in the Common Elements or the other Unit; and (j-2) by such architects, engineers, contractors, subcontractors, suppliers and other laborers who are on the Condominium Board's then approved list, as such list may change from time to time, in the sole discretion of the Condominium Board;
- (k) in addition to the other Work Requirements set forth in this Section 15.2, until a Unit Owner ("**affected Unit Owner**") has fulfilled its obligation under any existing or future lease or agreement to amend the Certificate of Occupancy of the Building ("**C of O**") authorizing the use of the premises demised under such lease or which is the subject of such agreement for the purpose set forth therein, no Work shall be undertaken or performed by the other Unit Owner, or a tenant or occupant of the other Unit (other than ordinary Maintenance and Repairs that do not require the filing of an alteration application with, or the issuance of a building or construction or work permit or other similar authorization from, the New York City Department of Buildings or other Governmental Authority), unless all of the following are complied with (any conflict or ambiguity between the provisions of this clause (k) and any other Work Requirements shall be resolved in favor of this clause (k), which is paramount and shall govern):
 - (k-1) the other Unit Owner shall first give the affected Unit Owner a reasonably detailed written notice of the proposed Work and such further information (including architectural and/or engineering plans and specifications) as the affected Unit Owner may require; and

- (k-2) the other Unit Owner and a tenant or occupant of the other Unit, shall not proceed with such Work without obtaining the applicable prior written Discretionary or Reasonable Approval or Consent of the affected Unit Owner therefor (or the prior written Discretionary Approval or Consent if not otherwise specified and is other than ordinary Maintenance and Repairs as aforesaid) and, if given, the affected Unit Owner may (in its sole and absolute discretion) condition same upon compliance with all of the following requirements (it being intended that the affected Unit Owner may at any time revoke its consent or approval for failure to comply with any thereof):
- (k-2.1) if the continuance of such Work or any condition arising therefrom would (in the affected Unit Owner's sole and absolute judgment) delay the issuance of said amended C of O or a temporary C of O or an extension of a previously issued temporary C of O, then immediately after the giving of written notice by the affected Unit Owner, the other Owner shall cease, or cause said tenant or occupant to cease (as and if applicable), all such Work, remove any such condition and restore the other to the condition existing before commencing such Work, all as and to the extent required by the affected Unit Owner;
 - (k-2.2) the affected Unit Owner or (at the request of the affected Unit Owner) the Condominium Board shall have the right to enter the other Unit and, at the sole Cost and Expense of the other Unit Owner, remove such condition and restore the other Unit to its former condition (but not any Decorations thereon or therein, as to which the affected Unit Owner, its Agents, Employees and Contractors, shall have no liability or responsibility) if not so done promptly and within any time period specified by the affected Unit Owner or the Board (as applicable);
 - (k-2.3) clauses (k-1), (k-2.1) and (k-2.2) above shall apply to any proposed changes in such permitted Work;
 - (k-2.4) if any lien is filed against the Property and/or a Unit as a result of such Work, the other Unit Owner shall promptly and within 30 calendar days discharge such lien by bond or otherwise in such amount and from such bond issuer or surety as shall be acceptable to the Board in its sole judgment, and shall indemnify the Condominium Board, and its agents and employees and the affected Unit Owner from and against any and all Claims and Liabilities and Expenses with respect thereto;
 - (k-2.5) such Work shall not commence until all required permits, certificates licenses and other authorizations therefor are issued and complete copies thereof are delivered to, and received by, the affected Unit Owner or the Condominium Board, or both (if both request same);
 - (k-2.6) such Work shall be prosecuted with reasonable diligence and continuity to completion in compliance with all plans, specifications, notices and/or certifications and in conformity with all permits, certificates, licenses and other authorizations of Governmental Authorities having jurisdiction;
 - (k-2.7) the affected Unit Owner and the Condominium Board, and their respective representatives, shall be given reasonable access to the

other Unit, from time to time, to inspect and monitor such Work as it progresses;

- (k-2.8) promptly after the completion of such Work, all necessary inspections and approvals of the same shall be obtained, all necessary notices and/or certifications shall be filed with the appropriate Governmental Authorities and the affected Unit Owner and the Condominium Board shall be given copies of all such inspections, approvals, notices and certifications;
- (k-2.9) the other Unit Owner shall indemnify the affected Unit Owner and the Condominium Board, and the members, officers, agents and employees of the Board, from and against all Claims and Liabilities and Expenses arising, directly or indirectly, from such Work or the failure to comply with any of the requirements set forth in this clause (k-2), including Claims and Liabilities and Expenses incurred or suffered by the affected Unit Owner or the Condominium Board due to: any violation of Law, any delay in obtaining a temporary or permanent amended C of O or an extension of a previously issued temporary C of O, or the failure to make all appropriate filings with Governmental Authorities in connection with the same;
- (k-2.10) all contractors shall be duly licensed to the extent required by applicable Law and, if required under any contract with any union whose members are performing services at the Building or the Unit of the affected Unit Owner directly or indirectly at the behest, for the benefit, or for the account of the Condominium Board or the affected Unit Owner, such Work shall be performed solely by union members; and
- (k-2.11) such Work shall not interrupt or otherwise interfere with or impair the function, operation or performance of the Building's sprinkler System or fire panel, unless such Work is performed after business hours or during non-business days and in strict compliance with all applicable Laws;

- (l) if a Unit Owner, or a tenant or occupant of the Unit, commences any such Work in violation of the terms and conditions of the preceding clause (k), or fails to comply with any of the requirements set forth in the preceding clause (k-2) in connection with the same, then the following shall apply: (l-1) until such offending Party complies with same, the affected Unit Owner and the Condominium Board shall each be entitled to cause such Work by such offending Party to be halted, including to cause the Managing Agent (if any) to deny access to said Owner's Unit and the Building to such offending Party's Agents, Employees and Contractors for any purpose (other than to remove their tools and Equipment, provided such persons are accompanied at all times by the Building's engineer or superintendent (if and as applicable) or other Person designated by the affected Unit Owner or the Board); (l-2) during the period the Work is halted and until such offending Party is permitted hereunder to resume its Work, the affected Unit Owner and the Board shall each have the right (but not the obligation), for the account of said Unit Owner, to perform any and all Work in and to said Owner's Unit as shall be necessary, in the sole and absolute judgment of the affected Unit Owner, in order to avoid any delay in obtaining said temporary or permanent C of O for the Building (or an extension of any previously issued temporary C of O), whether or not such Work shall be in compliance with the plans and specifications for the Work theretofore performed by, or

on behalf of, said Unit Owner or a tenant or occupant of said Owner's Unit; (l-3) the Costs and Expenses of any such Work performed by the affected Unit Owner or the Board shall be borne by said Unit Owner and shall be paid to the affected Unit Owner or the Board (as applicable) within fifteen (15) calendar days of written demand therefor is given by the affected Unit Owner or the Board (as applicable), together with a reasonably detailed explanation of all such Costs and Expenses; and (l-4) all such Costs and Expenses to be paid to the Board shall constitute additional Common Charges of said Owner's Unit;

- (m) all Work to be undertaken affecting the Building Walls, including those that enclose or border the Lower Unit or the Upper Unit, shall be determined by the Condominium Board, including all determinations concerning the timing, duration and manner of performance of all such Work, as well as any sidewalk bridge, scaffolding or other structure, or a scaffold hanging from the Building's Roof (collectively, "**Sidewalk Structure**") to be erected and all other incidental Work related to such Building Walls, including the following: (m-1) choosing the contractors and approving all subcontractors engaged in the Work; (m-2) approving the terms of all contracts for such Work; (m-3) the commencement date and duration of the Work, except that in the case of an emergency requiring immediate remedial action to avoid bodily injury or substantial property damage, the Work is to commence with reasonably prompt diligence as required by the circumstances; (m-4) the progress of the Work, which is to be under the exclusive supervision of the Condominium Board; and (m-5) the Signage on the Sidewalk Structure for each store or ground floor tenant affected by the Sidewalk Structure (each Sign is to be of such size, material, fabrication, color, composition and appearance as shall be determined exclusively by the Condominium Board, which is to be designed, fabricated, installed and removed by the Board at the sole Cost and Expense of the applicable Owner of the Unit leased or occupied by such tenant);
- (n) with respect to any Work performed by or on behalf of a Unit Owner or a tenant, licensee or occupant of a Unit, such Unit Owner shall indemnify the other Unit Owner from and against any and all Claims and Liabilities and Expenses arising from the Work, including Claims asserted by tenants, licensees and occupants of all or part of the other Unit and all Costs and Expenses arising therefrom, including losses and damages to tenant fixtures and personalty, and any loss or abatement in rent suffered by the other Unit Owner (all amounts payable under this indemnity shall include per diem interest at the rate equal to the lower of 16% a year or the highest legal rate, computed from the date of any monetary loss suffered by the affected Unit Owner to and including the date full payment thereof is received by the affected Unit Owner); and
- (o) with respect to any Work performed by or on behalf of the Condominium Board, the Condominium Board shall indemnify each Unit Owner from and against any and all Claims and Liabilities and Expenses arising from the Work, including Claims asserted by tenants, licensees and occupants of all or part of the Owner's Unit and all Costs and Expenses arising therefrom, including losses and damages to tenant fixtures and personalty, and any loss or abatement in rent suffered by the Unit Owner (all amounts payable under this indemnity shall include per diem interest at the rate equal to the lower of 16% a year or the highest legal rate, computed from the date of any monetary loss suffered by the Unit Owner to and including the date full payment thereof is received by the Unit Owner); the foregoing indemnity shall be deemed given on behalf and for the account of only the applicable Unit Owner(s) who is (are) paying for the costs of the Work and if both Unit Owners are paying such costs, then their respective liability under this indemnity shall be Pro Rata to their respective Common Interests.

Section 15.3 Procedure to Obtain Approval. Whenever a Unit Owner, or a tenant or occupant of a Unit or any portion thereof, is required to obtain the Discretionary or Reasonable Approval or Consent of the Board in this the Declaration or the By-Laws, such Unit Owner and (if and as applicable) such tenant or occupant of the Lower Unit (together, "**Applicant**") seeking such Discretionary or Reasonable Approval or Consent, at Applicant's sole Cost and Expense, shall submit to the Board such documents and information (including plans and specifications of any proposed Maintenance, Repair, Alteration or other Work) as the Board may reasonably request. The Board, at the sole Cost and Expense of the Applicant, may engage one (1) or more architects, engineers and other experts to review, consult and advise on such documents and information, to monitor the Work and generally on the matters for which the Discretionary or Reasonable Approval or Consent (as applicable) is required. The Applicant shall also pay or reimburse the Board (as directed) for the reasonable fees and charges of the Managing Agent (if any) and any attorney retained by the Board in connection therewith and any alteration agreement to be entered into with respect thereto. All amounts payable by the Applicant pursuant to this Section 15.3 shall constitute additional Common Charges of such Unit Owner and shall be payable by such Unit Owner within ten (10) calendar days after written demand therefor is made, which shall be accompanied by a reasonably detailed statement of such Costs and Expenses.

Section 15.4 Period to Approve or to Deny. The Condominium Board shall endeavor in good faith to respond in writing to such request for Discretionary or Reasonable Approval or Consent within thirty (30) calendar days, or such longer period as may be reasonable under the circumstances, after it receives the request and all such related documents and information. Pending the response of the Board to such request, no inference shall arise as to whether the Board has given or denied its requisite Approval or Consent. In the event the Reasonable Approval or Consent of the Board is required and the Board conditions, withholds or denies giving its Reasonable Approval or Consent, the Board shall set forth its basis or explanation of such condition, withholding or denial, including (if applicable) a failure of the applicable Unit Owner to submit adequate documents or information to make a determination on whether to give or deny its Reasonable Approval or Consent. In all cases requiring the Reasonable Approval or Consent of the Board, the Board will not unreasonably delay condition withhold or deny its approval or consent. In all cases requiring the Discretionary Approval or Consent of the Board, the Board may delay, condition, withhold or deny its approval or consent without cause or explanation and without liability or other recourse against the Board or its individual members or officers by reason thereof.

Section 15.5 No Assumption of Liability. The Unit Owner who (or whose tenant or Unit's occupant) is performing the Work, shall be fully and solely liable for any and all Claims and Liabilities and Expenses in connection with or arising from the Work performed or caused to be performed by such Unit Owner, or a tenant or occupant of such Owner's Unit, including those relating to: (a) the preparation, execution or submission of a Government Document; (b) payments to contractors, subcontractors, workers, architects, engineers, consultants or others engaged in the Work or to suppliers of material or Equipment; or (c) personal injury or property damage. The approval or consent of the Condominium Board, and the approval of, or consent to, any plans and specifications or the other documents or information submitted in connection with a request for Discretionary or Reasonable Approval or Consent, shall not constitute an assumption by the Board of any responsibility or liability for the Maintenance, Repair, Alteration or other Work to which the same relates, nor an approval, acknowledgment or admission of the accuracy, suitability or soundness of such plans and specifications or other documents or information or their conformity with applicable Law, nor a limitation on the rights of the Board, or the obligations of the Unit Owner performing or causing to be performed such Maintenance, Repair, Alteration or other Work, and such Unit Owner performing, or whose tenant or Unit's

occupant is performing, or causing to be performed the Work shall remain fully and solely responsible to perform and pay for such Maintenance, Repair, Alteration or other Work.

Section 15.6 Remedies. In the event any of the Work Requirements are not met or observed or are otherwise violated, the Board (with respect to Work in or affecting the Common Elements) and a Unit Owner (with respect to Work in or affecting such Owner's Unit) shall have the right so long as such violation continues and until all Work Requirements are met and observed: (a) to suspend, prohibit and enjoin the Work and stop workers, suppliers or deliveries from entering such Common Elements or such Owner's Unit (as applicable); and (b) if reasonably required to avoid or discharge a violation of Law or the Condominium Documents, or an impermissible prevention or interruption in the permitted use or Operation of, or the business conducted in, or the services to, such Common Elements or such Owner's Unit, or to avoid delaying the issuance of an amended C of O or an extension of a previously issued temporary C of O as provided in Section 15.2(k) above, the right to cause the offending Work to be removed and such Common Elements or such Owner's Unit (as applicable) to be restored to its former condition (but not any Decorations thereon or therein, as to which the Board or said Unit Owner, as applicable, shall have no liability or responsibility), all at the sole Cost and Expense of the Responsible Party.

Section 15.7 Correction of Defects. The Responsible Party performing the Work shall assume full and sole responsibility (including payment and performance) to promptly and properly correct all defects (latent and patent, structural and non-structural, ordinary and extraordinary) in the Work. In the event such defects adversely affect the Use and Enjoyment of the Common Elements or another Unit and are not corrected promptly and properly and (in any event) within thirty (30) days after being given written notice thereof, the Board or (if the Board is the Responsible Party and while Declarant owns any Unit) Declarant (in the case of the Common Elements) and the affected Unit Owner (in the case of such Owner's Unit) shall have the right, at the sole Cost and Expense of the Responsible Party, to correct the defect to the extent necessary to permit the continued Use and Enjoyment of the adversely affected Common Elements or Unit (as applicable).

ARTICLE 16

ACQUISITION OF UNITS BY CONDOMINIUM BOARD

Section 16.1 Authority for Acquisition. The Condominium Board is hereby granted the right, power and authority, on behalf and as agent of the Unit Owners: (a) to accept a surrender of, and thereby acquire title to, a Unit and its appurtenant Common Interest from any Unit Owner who elects to surrender the Owner's Unit and appurtenant Common Interest pursuant to the terms of the By-Laws or Section 339-x of the Condominium Act; (b) to purchase and acquire title to a Unit and its appurtenant Common Interest at a sale following a foreclosure of its lien for unpaid Common Charges pursuant to the By-Laws and Section 339-aa of the Condominium Act or to so purchase and acquire a Unit and its appurtenant Common Interest by a deed given in lieu of such foreclosure; and (c) to purchase and acquire a Unit and other real property pursuant to Article 2, subsection 2.4.2(b) of the By-Laws. Each Unit Owner shall cause the Board Member(s) appointed and designated by it to comply with any requirements contained in the Existing Unit Mortgage encumbering such Owner's Unit before acquiring or purchasing a Unit in accordance with this Section 16.1.

Section 16.2 Acquisition By Nominee or Designee of Board. Such acquisition or purchase of a Unit pursuant to Section 16.1 above may, at the option and discretion of the Condominium Board, be in the name of the Condominium Board or in the name of a nominee or designee of the Condominium Board, corporate or otherwise, in each case acting on behalf and as agent of the Unit Owners Pro Rata to their respective Common Interests.

Section 16.3 Authority for Dispositions. The Condominium Board, on behalf and as agent of the Unit Owners, is hereby granted the further right, power and authority to make all Dispositions whatsoever with respect to each Unit acquired or purchased pursuant to Section 16.1 (but not to cast the votes appurtenant to a Unit owned by the Condominium Board or its nominee or designee), including the following:

- (a) to hold, Operate, lease, manage, Maintain, Repair and Alter such Unit and its Equipment and Installations;
- (b) to mortgage and grant security interests in such Unit and its appurtenant Common Interest;
- (c) to offer for sale at public or (at the option and discretion of the Condominium Board) private sale, contract for sale (on terms and conditions determined by the Condominium Board, in its sole judgment and discretion) and convey such Unit and its appurtenant Common Interest; and
- (d) to make such other Dispositions of such Unit and its appurtenant Common Interest (but not to cast the votes appurtenant to a Unit owned by the Condominium Board or its nominee or designee) as may be determined by the Condominium Board, in its sole and absolute judgment and discretion.

Section 16.4 Included in Association's Properties. Each Unit acquired, purchased, Operated or otherwise held by the Condominium Board shall be part of the Association's Properties. All amounts, Costs and Expenses paid or incurred by the Condominium Board or its nominee or designee to acquire, purchase, Operate or hold a Unit, and in connection with all Dispositions of a Unit so acquired, purchased, Operated or held by the Condominium Board or its nominee or designee, shall be regarded as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests.

ARTICLE 17

POWER OF ATTORNEY FROM EACH UNIT OWNER

Section 17.1 Grant of Limited Power of Attorney. With the intention to constitute a limited, durable power of attorney:

- (a) Declarant (as the initial Owner of the Units) does hereby irrevocably authorize, appoint and designate; and
- (b) all successive Owners of each and every Unit, by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether through operation of Law or by transfer, merger, consolidation, liquidation, dissolution or otherwise), shall thereupon automatically have, and be deemed to have, irrevocably authorized, appointed and designated,

each of the following (individually, **“attorney-in-fact”**), severally, as agent and attorney-in-fact, “coupled with an interest” and for valuable consideration, and with full power of substitution, of Declarant or each such Unit Owner (either, **“Principal”**), as applicable, to act on behalf and as agent of Principal and in the name, place and stead of the Principal in any way which the Principal could do if personally present, to the full extent that the Principal is permitted by Law to act through an agent, with respect only to all of those matters, transactions and Dispositions expressly stated in this Declaration or the By-Laws that each such attorney-in-fact has the authority or power to do or perform on behalf and as agent of Principal, including the following:

- (a) Declarant (while it owns a Unit) and the individuals who shall from time to time constitute the Condominium Board (in their capacity as Board Members), severally, as agent and attorney-in-fact of Principal, having the right, power and authority to amend the Condominium Documents in accordance with Article 22 below or to record a correction Declaration in accordance with Section 21.6 below;
- (b) the Declarant (while it owns a Unit) and the individuals who shall from time to time constitute the Condominium Board (in their capacity as Board Members), severally, as agent and attorney-in-fact of Principal, having the right, power and authority to grant Additional Utility Easements/Rights in accordance with Section 11.7 above;
- (c) each Unit Owner and the tenants of the Unit and other Persons who are so expressly authorized in writing by the Unit Owner, severally, as agent and attorney-in-fact of Principal, having the right, power and authority to erect and install Communications Equipment and Other Installations on and in portions of the Common Elements and to thereafter inspect, use, lease, license, Repair, Alter and otherwise Operate same thereon and therein, all as set forth in Section 11.10 of the Declaration; and
- (d) the individuals who shall from time to time constitute the Condominium Board, in their capacity as Board Members and by determination of a majority of the then existing Board Members, as agent and attorney-in-fact of Principal, having the right, power and authority to do the following in the name of the Condominium Board or in the name of the Condominium Board’s nominee or designee, corporate or otherwise (where applicable and provided in this Declaration or the By-Laws):
 - (d-1) the right, power and authority to exercise, perform, give, grant, delegate and withhold the powers, rights, licenses, easements, leases, subleases, concessions, mortgages, deeds, security interests, collateral, Government Documents, Litigation Documents, instruments, approvals, consents, discretions and judgments expressly authorized in the Condominium Documents (as each may be duly amended from time to time) to be exercised, performed, given, granted, delegated and withheld by the Condominium Board on behalf and as agent of the Unit Owners, including in particular (but not limited to) the following rights, powers and authority:
 - (d-1.1) the right, power and authority to acquire in the name of the Board or its nominee or designee, corporate or otherwise, as agent on behalf of the Unit Owners, any Unit, together with its appurtenant Common Interest, whose Owner elects to surrender the same in accordance with Sections 16.1 and 16.2 above or other real or personal property pursuant to Article 2, subsection 2.4.2 of the By-Laws;

- (d-1.2) the right, power and authority to acquire and purchase in the name of the Board or its nominee or designee, corporate or otherwise, as agent on behalf of the Unit Owners, any Unit, together with its appurtenant Common Interest, at a sale following a foreclosure of the Board's lien for unpaid Common Charges pursuant to the By-Laws and Section 339-aa of the Condominium Act or to so acquire and purchase a Unit and its appurtenant Common Interest by deed given in lieu of such foreclosure, and in either case, upon such terms and conditions as shall be approved by the Board in its sole and absolute discretion in accordance with Sections 16.1 and 16.2 above; and
- (d-1.3) (after any such acquisition or purchase pursuant to the preceding clause (d-1.1) or (d-1.2), as applicable) the right, power and authority to convey, sell, lease, mortgage and otherwise deal with and make any other Disposition of (but not vote the interest appurtenant thereto) any such Unit or other real or personal property so acquired or purchased by the Board, without the necessity of further authorization by the Unit Owners, on such terms as the attorneys-in-fact may determine;
- (d-2) the right, power and authority to execute, acknowledge, deliver and, if necessary, record or file any application, document, declaration or other instrument, or any amendment thereto, affecting the Condominium Association, the Property, the Common Elements or the Association's Properties, or a portion of each thereof, that the Condominium Board reasonably deems necessary or appropriate or is required to so do under this Declaration or the By-Laws in connection with the following:
 - (d-2.1) to comply with any Law (including a zoning resolution or variance, or a requirement of a Governmental Authority, such as the Department of Buildings, the City Planning Commission or the Board of Standards and Appeals); or
 - (d-2.2) to permit or facilitate the Use and Enjoyment of all or part of the Common Elements or the Association's Properties or the Units by the respective Owners and Permitted Tenants/Occupants/Invitees of Units; and
- (d-3) the right, power and authority to execute, acknowledge, deliver and, if necessary, record or file any application, document, declaration or other instrument, or any Amendment thereto, affecting a Unit that the Owner of such Unit requests, if required by this Declaration or the By-Laws; or if deemed appropriate by said attorneys-in-fact in its sole and absolute discretion.

Section 17.2 Power of Substitution. The power of substitution in the foregoing limited, durable power of attorney in Section 17.1 includes the full and unqualified authority of each attorney-in-fact to delegate any or all of the foregoing powers given or conferred upon such attorney-in-fact in Section 17.1 to any individual or individuals whom such attorney-in-fact shall select.

Section 17.3 Durability. The limited power of attorney in Section 17.1 above shall be durable and not be affected by the subsequent disability or incompetence of the Principal.

Section 17.4 Unit Owner's Confirmatory Power of Attorney. In confirmation of the foregoing limited, durable power of attorney in Section 17.1 above, each Unit Owner, upon acquiring or succeeding to title to a Unit and simultaneously with the recording of the deed or otherwise succeeding to title to a Unit, at such Owner's sole Cost and Expense, shall duly execute, acknowledge and record in the Register's Office, a Unit Owner's Power of Attorney in the form set forth as EXHIBIT E hereto.

Section 17.5 Limited Power of Attorney Unimpaired. The failure of a Unit Owner to so execute and deliver such Unit Owner's Power of Attorney shall not affect: (a) the validity or enforceability of the limited, durable power of attorney granted in Section 17.1 above; (b) the authority of each attorney-in-fact listed in section 17.1, as agent and attorney-in-fact for such Unit Owner for the matters indicated in Section 17.1 above; or (c) the validity, force, effect or enforceability of the acts of the attorney-in-fact taken pursuant thereto as agent and attorney-in-fact of such Unit Owner.

ARTICLE 18

PRIORITY OF LIEN FOR COMMON CHARGES

Section 18.1 Priority of Lien for Common Charges. The lien on each Unit and its appurtenant Common Interest for unpaid Common Charges (including unpaid Special Assessments) and the interest thereon imposed on the Unit in favor of the Condominium Board, on behalf of the Unit Owners pursuant to Section 339-aa of the Condominium Act, shall have the highest lien priority applicable to an exclusive non-residential condominium afforded or permitted under the Condominium Act, except the lien of a prior recorded first mortgage on a Unit shall be superior and to which said lien for unpaid Common Charges shall be subordinate.

Section 18.2 Subordination. A Person who succeeds to title to a Unit on a sale or conveyance following a foreclosure of a prior recorded first mortgage on such Unit or by deed given in lieu thereof, shall not be liable or responsible for the unpaid Common Charges or Special Assessments of the predecessor Owner of such Unit accruing prior to the date such Person succeeds to title to the Unit and upon title passing to such Person (whether by sale or conveyance as aforesaid), the Unit shall not be subject to the lien in favor of the Condominium Board under the By-Laws and the Condominium Act for such accrued and unpaid Common Charges and Special Assessments owed by the predecessor Owner.

ARTICLE 19

TERMINATION OF CONDOMINIUM

Section 19.1 Condominium Termination Events. The Condominium shall continue until the occurrence of any of the following events ("**Condominium Termination Events**"):

- (a) a taking by condemnation or eminent domain ("**Taking**") of the entire Property; or
- (b) a withdrawal of the Property from the Condominium Act authorized by Unit Owners owning at least 80% in number or in Common Interest of the Units, in writing or by vote cast by written ballot at a meeting of Unit Owners at which a quorum is present, duly called for such purpose; provided, however, that a vote of a Unit Owner in favor of withdrawal shall not be effective or counted without the written consent of the Existing Unit Mortgagee, as well as the holder of any other "Registered Mortgage" (as defined in Section 16.8 of the By-Laws) on such Owner's Unit, if such other Registered Mortgage so expressly provides.

The Condominium Board and its nominee or designee shall have no voting rights with respect to any Units owned by each of them and such Parties and Units shall be excluded from the base number of Owners, Units and Common Interests for quorum and voting purposes in determining whether such 80% threshold is met.

Section 19.2 Partition. If the entire Property is Taken pursuant to said Section 19.1(a) above, then the award of the Taking authority shall be apportioned and divided among all Unit Owners Pro Rata to the respective then existing fair market values of the Units and their appurtenant Common Interests as provided in Article 18 of the By-Laws. If said withdrawal from the Condominium Act is so authorized pursuant to Section 19.1(b) above, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common. The net proceeds of sale resulting from such action for partition shall be divided among all of the Unit Owners Pro Rata to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid out of its share of such funds, such amounts as may be necessary to discharge all unpaid liens on its Unit, including the Existing Unit Mortgage and any other Unit Mortgage then encumbering said Unit, in the order of the priority of such liens.

ARTICLE 20

COOPERATION AND FURTHER ASSURANCES

Section 20.1 Covenant to Cooperate. The Condominium Board, each Unit Owner and all other Persons who, or whose interests in the Property or a Unit, are subject to this Declaration (each of the foregoing, an "**Interested Party**"), shall fully cooperate with each other to effectuate the purposes and provisions of the Condominium Documents, including the Maintenance, Repair, Alteration and Operation of a Unit and/or the Commons Elements and the Unit Changes that may be made from time to time to the Unit.

Section 20.2 Actions and Documents. In furtherance of such cooperation, an Interested Party shall diligently take such actions and shall diligently and properly complete, sign, have notarized and/or acknowledged (if and as required) and deliver such documents (including Government Documents and Litigation Documents) as may be reasonably requested by another Interested Party (the latter, a "**Requesting Party**") in order to effectuate the purposes and provisions of the Condominium Documents and to realize the benefits intended to be conferred thereby.

Section 20.3 Rights and Obligations of Requesting Party. The Requesting Party shall:

- (a) pay or reimburse the Condominium Board (as the Board directs) for the reasonable Costs and Expenses of the Interested Party to perform a request made by a Requesting Party under Section 20.2 above, other than those matters expressly stated elsewhere in this Declaration or the By-Laws to be performed by the Interested Party without (i.e., free of) fee, charge, or payment of any Costs and Expenses;
- (b) pay the governmental fees and charges required in connection with a Government Document;
- (c) have the exclusive right to select the attorney, make all decisions, conduct and control the litigation and all settlement and other negotiations in connection with the litigation which is the subject of a Litigation Document;
- (d) pay all legal fees and disbursements (other than those of any separate attorney the Interested Party may retain for services not included in the following clause (e) hereof), court costs and other expenses of such litigation;
- (e) pay the reasonable legal and other professional fees and disbursements of the Interested Party to review a Government Document or Litigation Document, except where expressly stated elsewhere in this Declaration or the By-Laws that such Government Document is to be executed without (i.e., free of) payment of Costs and Expenses; and
- (f) indemnify each and every Interested Party, its officers, Board Members, directors, members, partners, principals, employees and agents, from all Claims and Liabilities and Expenses resulting from the execution of a Government Document or Litigation Document by the Interested Party or from any Work performed by contractors or other workers engaged by the Requesting Party pursuant to a Government Document or from any action or inaction taken or omitted in accordance with these provisions, other than those Costs and Expenses (such as fees and disbursements of attorneys, architects or other professionals) expressly stated elsewhere in this Declaration or the By-Laws to be paid by the Interested Party without reimbursement.

Section 20.4 Giving Assurances. Each Interested Party shall make and give such assurances as may be reasonably requested by a Requesting Party to confirm or effectuate the provisions of the Condominium Documents or any transaction, action, right, power, privilege, exemption, easement, license, indemnity, remedy, benefit, requirement or other matter provided, authorized, permitted or contemplated in the Condominium Documents (collectively, "**Assurances**").

Section 20.5 Giving Instruments and Documents. The making and giving of Assurances includes the requirement of the Interested Party to sign, have notarized and/or acknowledged (if and as applicable) and deliver to the Requesting Party, and the Requesting Party to receive within ten (10) calendar days after written request therefor is given, instruments or documents (in addition to those specifically provided in the Condominium Documents) prepared or provided by, and at the expense of, the Requesting Party in accordance with Section 20.2 above.

Section 20.6 Limited Power of Attorney.

20.6.1 **Grant of Limited Power of Attorney.** With the intention to constitute a limited, durable power of attorney, an Interested Party who improperly refuses or fails to timely make or give any Assurances, shall automatically have, and deemed to have, irrevocably authorized, appointed and designated the applicable Requesting Party to act as agent and attorney-in-fact, "coupled with an interest" and for valuable consideration, and with the "power of substitution" (as defined and provided in subsection 20.6.2 below) of such Interested Party, in the name, place and stead of such Interested Party in any way which such Interested Party could do if personally present, with respect only to the matters involved in the making and giving of such Assurances, to the full extent that such Interested Party is permitted by Law to act through an agent.

20.6.2 **Power of Substitution.** The "power of substitution" in the foregoing limited power of attorney in subsection 20.6.1 includes the full and unqualified authority of the attorney-in-fact to delegate this limited power of attorney to any Person or Persons whom such attorney-in-fact shall select.

20.6.3 **Durable.** This limited power of attorney shall be durable and shall not be affected by the disability or incompetence of the principal (that is, the applicable Interested Party).

ARTICLE 21

**COVENANTS TO RUN WITH THE LAND;
COMPLIANCE WITH CONDOMINIUM ACT**

Section 21.1 Covenants Run with Land. All provisions of this Declaration, the By-Laws and the Rules and Regulations, as each may be duly amended from time to time, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, are, and shall construed: (a) to be perpetual; (b) to be covenants running with the Land and with every part thereof and interest and estate therein; (c) to inure to, benefit and bind each Owner of all or any part thereof, or interest or estate therein, and such Owner's heirs, executors, administrators, legal representatives, successors and assigns; and (d) to not create any rights in, or for the benefit of, the general public.

Section 21.2 Binding Effect. All present and future Owners and Permitted Tenants/Occupants/Invitees of Units shall be subject to, and shall comply with, the provisions of this Declaration, the By-Laws and the Rules and Regulations, as each may be duly amended from time to time.

Section 21.3 Acceptance, Adoption and Ratification. The recording or the acceptance of a deed or conveyance or the succeeding to title, the entering into a lease, or the entering into occupancy of any Unit or a portion thereof shall constitute, and be deemed conclusively to constitute, an irrevocable agreement that the provisions of this Declaration, the By-Laws and the Rules and Regulations, as each may be duly amended from time to time, are accepted, adopted and ratified by the Owner and Permitted Tenants/ Occupants/Invitees of such Unit as covenants running with the Land and binding upon such Owner and Permitted Tenants/Occupants/Invitees and any other Person having, at any time, any interest or estate in such Unit, with the same force and effect as though such provisions were recited and stipulated at length in each and every deed, conveyance, lease or other document granting or establishing an interest or estate in such Unit.

Section 21.4 Invalidity and Reformation. If any provision of the Condominium Documents is invalid under, or would cause the Condominium Documents to be insufficient to submit the Property to, the provisions of the Condominium Act, or otherwise fails to comply with the Condominium Act, such provision shall be deemed deleted from the Condominium Documents for the purpose only of submitting the Property to the provisions of the Condominium Act or shall be deemed to be appropriately reformed so as to be in compliance in the Condominium Act, as applicable. However, to the extent the validity of establishing a regime of condominium ownership of the Property under the Condominium Act is not adversely affected, such provision shall nevertheless be valid, enforceable and binding upon, and shall inure to the benefit of, the Owners of the Property or any portion thereof and their respective heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable Law, to the extent permitted under such other applicable Law, with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land.

Section 21.5 Deemed Inclusion of Necessary Provisions. If any provision that is necessary to cause this Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included as a part of this Declaration or the By-Laws, as the case may be, for the purposes of submitting the Property to the provisions of the Condominium Act. Such deemed included provision shall also be regarded as part of the covenants running with Land as provided in this Article 21.

Section 21.6 Correction Declaration. The Declarant (while it owns any Unit), the Upper Unit Owner and the individuals who shall from time to time constitute the Condominium Board (in their capacity as Board Members), as agent and on behalf of the Unit Owners, shall each have a limited, durable power of attorney as provided in Section 17.1 above to record a correction Declaration to effectuate the provisions of Sections 21.4 and 21.5 above.

ARTICLE 22

AMENDMENTS TO DECLARATION

Section 22.1 Application to Declaration and By-Laws. All references in this Article 22 to the "Declaration" shall mean and include the Declaration and/or By-Laws (whether or not the By-Laws are expressly indicated).

Section 22.2 Requirements. Subject and subordinate to compliance with Section 22.4 below, the Condominium Board and the following Unit Owners shall each have the power to amend the Declaration subject to obtaining the approvals and/or consents (if and as indicated below), in the following cases (in addition to any other cases expressly provided elsewhere in this Declaration or the By-Laws):

- (a) in the case of an Amendment affecting only the Common Elements, the Association's Properties, the Common Expenses and/or the Common Charges: the Amendment may be made by the Condominium Board (a-1) if approved or adopted by a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present; and (a-2) if approved or consented to by at least a majority in Common Interest of Unit Owners or (as to Article 19 above and any other provision of this Declaration or the By-Laws that requires the approval or consent of a specified higher Common Interest and/or a specified number of Unit Owners) such specified higher Common Interest and/or specified number of Unit Owners, respectively;
- (b) in the case of an Amendment affecting only the Upper or Lower Unit or a Unit Change to the Upper or Lower Unit: the Amendment may be made alone by the applicable Unit Owner (without the approval or consent of the Condominium Board and without the express approval or consent of the other Unit Owner, who automatically and irrevocably shall be deemed to have given its approval and consent thereto);
- (c) in the case of an Amendment to reflect changes required by either an Institutional Lender holding a Unit mortgage, a Governmental Authority having jurisdiction over the Property or the Condominium, or a title insurer of a Unit: the Amendment may be made alone by: (c-1) Declarant so long as Declarant owns a Unit, without the approval or consent of the Condominium Board and without the express approval or consent of any other Unit Owner, who automatically and irrevocably shall be deemed to have given its approval and consent thereto; or (c-2) the Condominium Board, subject to obtaining the prior written Reasonable Approval or Consent of Declarant while Declarant owns any Unit, but without the express approval or consent of any other Unit Owner, who automatically and irrevocably shall be deemed to have given its approval and consent thereto; and
- (d) in the case of an Amendment affecting a Unit's appurtenant Common Interest, size or configuration: the prior written Discretionary Approval or Consent of the Owner of the affected Unit must be obtained therefor.

Section 22.3 Illustration. In furtherance of Section 22.2 above and in accordance with Article 13 above, each Owner shall have the right to execute, record and file Amendments to the Condominium Documents from time to time, without the consent or approval of the Condominium Board and without the express approval or consent of the other Unit Owner (who automatically and irrevocably shall be deemed to have given its approval and consent thereto),

and without such Amendments being executed by the Condominium Board, the other Unit Owner or any Unit mortgage lenders (other than the consent of the holder of a mortgage on the Unit which is the subject of a Unit Change, if and to the extent required under such mortgage):

- (a) to reflect a change in the size or number of such Unit or any Subdivided Unit resulting from a subdivision of such Unit and the reallocation of the Common Interest(s) appurtenant to the Unit(s) involved in such Unit Change, provided such reallocation will not change the Common Interest of any other Unit without obtaining the prior written Discretionary Approval or Consent of the Owner of such other Unit; or
- (b) to reflect a Description Change of such Unit to a Common Element or Limited Common Element, or vice versa (pursuant to Section 13.1(e) above).

Section 22.4 Restrictions. The following restrictions apply to each and every Amendment to this Declaration:

- (a) the prior written Discretionary Approval or Consent of (a-1) the Existing Unit Mortgagee must be obtained as to all Amendments for so long as the Existing Unit Mortgage encumbers a Unit; and (a-2) the applicable subsequent Unit Mortgage holder must be obtained for all Amendments if and to the extent required by the terms of such subsequent Unit Mortgage or if such Amendment would with reasonable likelihood adversely affect the priority or validity of the lien of such subsequent Unit Mortgage; and
- (b) the prior written Discretionary Approval or Consent of the other Unit Owner must be obtained to an Amendment that would with reasonable likelihood: (b-1) unreasonably interfere with a potential or proposed sale, lease, mortgage or other Disposition of such other Unit or any portion thereof; (b-2) abridge, modify, suspend, eliminate or otherwise affect any right, power, easement, license, privilege, indemnity, exemption, remedy or other benefit of such other Unit Owner or a tenant of all or part of such other Owner's Unit; (b-3) impose any discriminatory charge, fee or other imposition against or on such other Unit Owner or a tenant or occupant of all or a portion of such other Owner's Unit; (b-4) change or restrict the permitted use or occupancy of all or a portion of the such other Owner's Unit; (b-5) adversely affect the value, marketing or other Disposition of such other Owner's Unit; or (b-6) adversely affect a tenant or licensee of all or part of such other Owner's Unit or cause such other Unit Owner to incur or suffer any additional obligation or Cost or Expense with respect to any tenant, licensee or occupant of all or part of its Unit.

A provision of an Amendment which violates or is inconsistent with or fails to comply with any of these restrictions shall be invalid, null and void, and without any force or effect.

Section 22.5 Acknowledgment and Recording. Each Amendment to this Declaration or the By-Laws must be signed and acknowledged in accordance with the legal requirements for recording a Unit deed, and shall not be effective, binding or enforceable until recorded in the Register's Office.

Section 22.6 Signatories. In the case of an Amendment to the Declaration or By-Laws by:

- (a) the Condominium Board: the Amendment shall be signed and acknowledged in recordable form by the President or the Vice-President and by the Secretary or an Assistant Secretary of the Condominium Association and (if applicable) shall include a certification by the Secretary or an Assistant Secretary that the required percentage of Common Interest and/or number of Unit Owners (if and as applicable) have approved or consented to, or deemed to have approved or consented to, the Amendment; or

- (b) Declarant or a Unit Owner or a Designee of either: the Amendment shall be signed and acknowledged in recordable form by said applicable Party recording such Amendment or (in the case of a corporation, partnership, limited liability partnership or company, trust, estate or other Entity) an officer, partner, member, trustee, executor, administrator or other appropriate Person authorized by, or having authority to act in behalf of, such Party.

Section 22.7 Floor Plans. The Party authorized to sign, acknowledge and record an Amendment to this Declaration in Section 22.6 above is also authorized to cause to be properly certified and filed and/or recorded with the tax assessor (and other Governmental Authority having jurisdiction) and said Register's Office an appropriate Amendment to the Floor Plans whenever required in connection with such Amendment to this Declaration (such as in the case of an Amendment to this Declaration to reflect a Unit Subdivision or Unit Combination).

Section 22.8 Limited Power of Attorney. With the intention to constitute a limited, durable power of attorney:

- (a) Declarant (as the initial Owner of all Units) does hereby irrevocably authorize, appoint and designate; and
- (b) all successive Owners of each and every Unit, by accepting or recording a deed to a Unit or otherwise succeeding to title to a Unit (whether by operation of Law, or by transfer, merger consolidation, liquidation, dissolution or otherwise) shall thereupon automatically have, and be deemed to have, irrevocably authorized, appointed and designated,

each of the respective persons (individually, "**attorney-in-fact**") listed in Section 22.6 above, severally, as agent and attorney-in-fact, "coupled with an interest" and for valuable consideration, and with full power of substitution, of Declarant and each such successive Unit Owner (either, "**Principal**"), as applicable, to act on behalf and as agent of Principal and in the name, place and stead of the Principal in any way which the Principal could do if personally present, to the full extent that the Principal is permitted by Law to act through an agent, with respect only to the execution, acknowledgment and recording and/or filing by said appropriate attorney-in-fact of said Amendments to this Declaration and (when applicable) Amendments to the Floor Plans in accordance with this Article 22. This limited power of attorney shall be durable and shall not be revoked in the event of the disability or incompetence of the Principal (that is, Declarant or a successor Unit Owner).

Section 22.9 Filing of Conformed Copy with Secretary. A conformed copy of the Amendment to this Declaration and (if applicable) the Amendment to the Floor Plans shall be filed promptly with the Secretary or an Assistant Secretary of the Condominium Association or the Condominium's Managing Agent (if any) by the applicable Party recording the Amendment and shall be made available by the Condominium Board at the Property or the office of the Managing Agent (if any) for inspection (without charge) and copying (at a reasonable charge) by each of the following Parties or a representative of such Party expressly authorized in writing by such Party: (a) a Unit Owner; (b) a Unit mortgage lender; (c) a tenant of a Unit who is expressly authorized in writing by the Owner of such Unit; and (d) a prospective purchaser, mortgage lender or tenant of a Unit who is expressly authorized in writing by the Owner of such Unit.

Section 22.10 Filing with Secretary of State. With reasonable promptness following the recording of an Amendment to this Declaration, such Amendment shall be filed with the Department of State of the State of New York, if and as required by the Condominium Act (including Section 339-s thereof) and the rules, regulations or requirements of the said

Department of State. Such filing with the Department of State shall be the duty of the Condominium Board, at the sole Cost and Expense of the applicable Party recording the Amendment, except that if the applicable Party is the Declarant or a Unit Owner or a Designee of either, then such applicable Party shall have the duty to so file the Amendment.

ARTICLE 23

CONSENT OF DECLARANT

Section 23.1 Consent of Declarant. Any provision of the Condominium Documents which requires the consent, approval, satisfaction or permission (collectively, "**Consent**") of Declarant shall continue unabated so long as Declarant or its Designee owns a Unit. From and after the date Declarant or its Designee no longer owns a Unit, the Consent of Declarant or its Designee (as applicable) shall not be required.

ARTICLE 24

SERVICE OF PROCESS

Section 24.1 Designation of Secretary of State. The Secretary of State is hereby appointed the agent of the Condominium Board upon whom process against it or the Condominium Association may be served. Service of process on the Secretary of State as agent of the Condominium Board and the Condominium Association shall be made by personally delivering to, and leaving with, the Secretary of State or his or her deputy, or with any Person authorized by the Secretary of State to receive such service, at the office of the New York State Department of State in Albany, New York, duplicate copies of such process together with the statutory fee, which shall be a taxable disbursement. Service of process on the Condominium Board and the Condominium Association shall be complete when the Secretary of State is so served. Nothing in this Section 24.1 shall affect the right of any Person to serve process against the Condominium Board on behalf of the Condominium Association in any other manner permitted by Law.

Section 24.2 Person and Address to Whom Process is To Be Sent. 609 Owners LLC, having a post office address at c/o Wharton Realty, 20 East 46th Street, New York, New York 10017, is hereby designated as the Person and address to which the Secretary of State shall mail a copy of any such process served upon the Secretary of State with respect to any Lawsuit against the Condominium Association or the Condominium Board. Each change in the name and/or post office address of the Person to whom a copy of such service of process is to be mailed by the Secretary of State shall be appropriately updated with reasonable promptness by filing such updated information with the Secretary of State in a form then acceptable to the Secretary of State.

Section 24.3 Foreign Entity. The recording or acceptance of a deed or conveyance of a Unit, or the succeeding to title to a Unit, by a Foreign Entity, or the entering into a lease or occupancy agreement of a Unit by a Foreign Entity, shall constitute, and be deemed conclusively to constitute, an acknowledgement and irrevocable agreement by such Foreign Entity to the following:

- (a) such Foreign Entity is subject to the jurisdiction of the federal, state and local courts located in the City, County and State of New York and to the American Arbitration

- Association (or any successor thereto with similar function) under Article 19 of the By-Laws, and any defenses by a Foreign Entity with respect to jurisdictional defects are unconditionally waived;
- (b) any judgment, order or award obtained by the Condominium Board, the Declarant, a Unit Owner or whomsoever against such Foreign Entity in a Lawsuit shall be fully enforceable against it, subject to any rights of appeal, and any defense by such Foreign Entity as to the validity or enforceability of same is hereby unconditionally waived;
 - (c) at or prior to the time such Foreign Entity becomes the Owner or a tenant or occupant of a Unit, it shall duly execute and deliver to the Condominium Board or the Condominium Association's then Managing Agent (if any), and the Condominium Board or such then Managing Agent (if any) shall receive, a written designation or appointment of an agent ("**Registered Agent**") in the State of New York upon whom process against such Foreign Entity may be served;
 - (d) such Registered Agent shall be: (d-1) a natural person (i.e., an individual) who is a resident of the State of New York, or has a business address and is doing business in the State of New York, or (d-2) an attorney duly licensed to practice law, and maintains an office and is doing business, in the State of New York; or (d-3) an Entity authorized to do business in the State of New York; or (d-4) the Secretary of State of the State of New York;
 - (e) such designation or appointment of a Registered Agent shall remain in full force and effect, and may be relied upon, until such Foreign Entity duly executes and delivers to the Condominium Board or said then Managing Agent (if any), and the Condominium Board or said then Managing Agent (if any) receives, a further written designation or appointment of a new Registered Agent who meets the qualifications set forth in the preceding clause (d);
 - (f) in the event of the death, incapacity, incompetency, dissolution, merger, consolidation or other cessation of a Registered Agent upon whom service of process may no longer be effectuated in the State of New York, such Foreign Entity shall immediately execute and deliver to the Condominium Board or said then Managing Agent (if any), and the Condominium Board or said then Managing Agent (if any) shall receive, a further written designation or appointment of a new Registered Agent who meets the qualifications set forth in clause (d) above;
 - (g) pending receipt of such further designation or appointment of a new Registered Agent, said then Managing Agent or (if none) a Person designated in a written notice served on such Foreign Entity shall automatically be, and deemed to be, the Registered Agent of such Foreign Entity and any process served on the Managing Agent or said designee (as applicable) while acting in such capacity as Registered Agent shall be given to such Foreign Entity in the same manner as provided for giving of notices in Article 20 of the By-Laws;
 - (h) the said written designation or appointment of a Registered Agent or a new Registered Agent shall be in form and substance satisfactory to the Condominium Board and may, at the Board's sole option, be prepared by the Board's attorneys at the expense of such Foreign Entity; and

- (i) the failure or refusal of such Foreign Entity to comply with the provisions of the preceding clauses (c) through (h), shall, in addition to all other legal and equitable rights and remedies, entitle the Condominium Board to withhold or deny furnishing the Certificate of Inapplicability set forth in Article 16, subsection 16.19.2 of the By-Laws and the Condominium Board to withhold or deny furnishing the Estoppel Certificate set forth in Section 16.7 of said Article 16 of the By-Laws, without the Condominium Board and Unit Owners incurring any Liabilities and Expenses, and without recourse of any kind against the Condominium Board or any Unit Owner by reason thereof.

ARTICLE 25

INCORPORATION IN DECLARATION

Section 25.1 Incorporation of Exhibits and Floor Plans. Each of the EXHIBITS attached to this Declaration and the Floor Plans of the Building and Units intended to be recorded and filed in the Register's Office contemporaneously with the recording of this Declaration forms a part of, and is hereby incorporated in, this Declaration with the same force and effect as though set forth at length herein.

ARTICLE 26

CHANGES AND WAIVER

Section 26.1 Changes. The provisions of this Declaration may be amended or otherwise changed only by Amendment made, executed, filed and/or recorded in accordance with Article 22 above, except the Rules and Regulations appended to the By-Laws may be amended or otherwise changed in the manner provided in Article 14, Section 14.5 of the By-Laws, without recording an Amendment to this Declaration or the By-Laws, but subject to compliance with the requirements of the Existing Unit Mortgage on a Unit as provided in Section 7.1(b) above.

Section 26.2 No Waiver of Consent. The provisions of this Declaration requiring the Consent of a specified percentage of Common Interest and/or number of Unit Owners or required by the Condominium Act may not be waived.

Section 26.3 Waiver in Writing. All other provisions may be waived only in writing signed by or in behalf (through a duly authorized representative or agent) of the Unit Owner or Condominium Board (as applicable) waiving a provision hereof, unless such provision is expressly stated to have been waived if not exercised, satisfied or performed within a specified period.

Section 26.4 No Inference of Waiver. The delay or failure to enforce or insist on strict performance of, or compliance with, any provision of this Declaration shall not mean or infer that the provision has been waived or that the right to enforce or insist then or thereafter on strict performance of, or compliance with, that or any other provision of this Declaration has been waived. A waiver of any breach or violation or requirement of this Declaration shall not be, or construed to be, a waiver of any subsequent or other breach or violation or requirement hereof.

ARTICLE 27

SEVERABILITY

Section 27.1 Valid and Enforceable. Subject to the provisions of Sections 21.4 and 21.5 above: (a) the invalidity or unenforceability of any provision of this Declaration shall not affect the validity or enforceability of any other provision hereof; and (b) each provision of this Declaration is, and shall be construed to be, valid, binding and enforceable to the fullest extent permitted by Law.

Section 27.2 Condominium Act is Paramount. The Condominium Act is paramount and shall govern and supersede any provision of the Condominium Documents which is contrary to, or prohibited by, the Condominium Act.

ARTICLE 28

DECLARANT'S RIGHTS

Section 28.1 Who May Exercise. The special rights, powers, privileges, exemptions, easements, licenses, indemnities, remedies, protections and other benefits of Declarant (collectively, "**Declarant's Rights**") or a Unit Owner ("**Owner's Rights**") in this Declaration and the By-Laws (as each may be duly amended from time to time), and the duties, limitations, restrictions and requirements thereunder ("**Declarant's Duties**" or "**Owner's Duties**", as applicable) in connection with such Declarant's Rights or Owner's Rights (as applicable) or otherwise applicable to Declarant or a Unit Owner (as applicable), shall inure to, benefit, bind and be enforceable by and against: (a) Declarant or said Unit Owner (as applicable) while Declarant or said Unit Owner (as applicable) owns any Unit; (b) the grantee in a deed of a Unit granted by Declarant or said Unit Owner (as applicable) ("**Designee**") who is so designated as a designee of Declarant or said Unit Owner (as applicable) in a deed, an Amendment to this Declaration or an instrument executed and acknowledged in recordable form by Declarant or said Unit Owner (as applicable) as having one (1) or more specified Declarant's Rights or Owner's Rights (as applicable); (c) a succeeding Owner of such Unit who is likewise so designated by a grantor-Designee of such Unit; (d) a Person who acquires title to such Unit by sale or conveyance following a mortgage foreclosure or a deed given in lieu thereof or similar involuntary conveyance of such Unit ("**Involuntary Transferee**"); and (e) a Person who succeeds to the interest of any of the foregoing in such Unit by operation of Law (e.g., by Laws of descent, distribution, inheritance, or the like) or by merger, consolidation, liquidation or dissolution ("**successor in interest**"). Declarant, a Unit Owner, a Designee, an Involuntary Transferee, and a successor in interest of each of the foregoing, shall continue to have, and may exercise, Declarant's Rights or Owner's Rights (as applicable), subject to compliance with Declarant's Duties or Owner's Duties (as applicable), so long as each of the foregoing owns, leases or holds any other estate or interest in a Unit, except the only Declarant's Rights or Owner's Rights (as applicable) that shall inure to, benefit and be enforceable by a Designee or an Involuntary Transferee or a successor in interest of same, shall be limited to those expressly provided in the instrument granting or giving such Declarant's Rights or Owner's Rights (as applicable).

Section 28.2 New Unit Owner. In accordance with Section 28.1 above, upon the conveyance of a Unit by Declarant or a Unit Owner (as applicable), the new Owner of such Unit and all subsequent Owners of such Unit, shall have, benefit from, and may exercise and enforce, all of Declarant's Rights or Owner's Rights (as applicable) under this Declaration or the By-Laws. An Involuntary Transferee of such new Owner, and each successor in interest of such new Owner or Involuntary Transferee (as applicable) shall succeed to all of Owner's Rights of such new Owner and shall be subject to all of Owner's Duties.

Section 28.3 Covenants with Land Supplemented. This Article 28 is in furtherance of, supplements and supersedes any inconsistencies in Section 21.1 above.

ARTICLE 29

INDEMNIFICATION

Section 29.1 Indemnification Generally. Whenever one (1) Party is required under any provision of this Declaration or the By-Laws ("**Indemnifying Party**") to indemnify or give a written indemnity to any other Party ("**Indemnified Party**"), then such Indemnifying Party shall indemnify the Indemnified Party and all past, present and future directors, officers and shareholders, or partners, or managers, or members (as applicable) and all other principals, agents, attorneys and employees of such Indemnified Party (collectively, the "**Indemnified Parties**"), to the full extent lawful, from and against all Claims and Liabilities and Expenses that shall be paid or incurred, related to or arising from the indemnified matter, including the Costs and Expenses in connection therewith and in connection with the prosecution of the indemnification) (collectively, "**such Claims**"). Any such indemnification shall be in addition to any liability which such Indemnifying Party may otherwise have.

Section 29.2 Contribution. If indemnification is not for any reason to be available with respect to any matter, the Indemnifying Party shall contribute to the settlement of such Claims in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Parties, on the other hand, as well as any other relevant equitable considerations.

Section 29.3 Application. The provisions of this Article shall be applicable to any indemnity given or required to be given under the provisions of this Declaration or the By-Laws, whether or not expressly so stated in any particular provision giving or requiring such indemnity. Nothing contained in this Article shall be deemed to supersede or circumscribe any express limitation on or express expansion of any indemnity given or required to be given under the provisions of this Declaration or the By-Laws.

Section 29.4 Notice of Claims. Promptly after receipt by the Indemnified Party of notice of any such Claims, including the commencement of any Lawsuit covered by the indemnity pursuant to any of the provisions of this Declaration or the By-Laws, the Indemnified Party shall notify the Indemnifying Party in writing of such Claims (including copies of the pleadings and other litigation documents in any such Lawsuit).

Section 29.5 Selection of Attorneys and Settlement. The Indemnifying Party, at such Party's sole Cost or Expense, shall defend the applicable Indemnified Party with counsel reasonably satisfactory to such Indemnified Party, shall keep the Indemnified Party apprised of all legal proceedings and shall be entitled to control and conduct the defense of such Claims (including any Lawsuit), but shall not enter into any compromise or settlement thereof without obtaining prior written Reasonable Approval or Consent of the Indemnified Party.

Section 29.6 Cooperation of Indemnified Party. The Indemnified Party shall cooperate fully and make available to the Indemnifying Party such information and documents under the control or in the possession of the Indemnified Party as are reasonably related to the defense of such Claims (including any Lawsuit).

Section 29.7 Participation of Indemnified Party. The Indemnified Party shall have the right, but not the obligation, at such Indemnified Party's sole Cost and Expense, to participate and be represented by separate counsel (chosen by the Indemnified Party) in the defense, compromise and settlement of such Claims (including any Lawsuit).

Section 29.8 Allocation of Liabilities and Expenses. If the Indemnifying Party is the Condominium Board, then the Liabilities and Expenses of the Condominium Board in connection with an indemnification shall be part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

ARTICLE 30

MISCELLANEOUS: USAGES AND GRAMMAR

Section 30.1 Table of Contents and Captions. The Table of Contents and captions in this Declaration are for convenience and reference only and do not, and shall not be construed to, affect the meaning or interpretation of any provision of this Declaration.

Section 30.2 References. The words "Article", "Section", "provision", "paragraph", "clause" or similar words refer to an Article, section, provision, paragraph and clause of this Declaration, unless otherwise expressly stated. Similarly, the words "hereof", "herein", "above", "below" and similar terms mean this Declaration.

Section 30.3 Grammar. Any word or term in this Declaration or any of the EXHIBITS to this Declaration that is: used in the singular, shall include the plural and vice versa; or used in any gender shall include any other gender; or used in any tense (past, present or future), shall include any other tense, whenever required by the sense of this Declaration and not contrary to the express context.

Section 30.4 Notices. Unless otherwise expressly provided elsewhere in this Declaration or the By-Laws, any request, consent, approval, election, demand, communication or notice (collectively, "notice") to be given or made under this Declaration or the By-Laws (including the Rules and Regulations) must be in writing and delivered or sent as provided in Article 20 of the By-Laws, all of whose provisions shall apply to the giving of notices hereunder and are hereby incorporated herein with the same force and effect as though set forth at length.

Section 30.5 Governing Law. The internal laws of the State of New York will govern this Declaration (including all Exhibits hereto) and the interpretation and enforcement of its provisions, without regard to legal principles or conflicts of laws.

Section 30.6 Day. All references in this Declaration and the Exhibits to "day" shall mean a "calendar day", unless expressly stated to be a business day.

ARTICLE 31

COMPLIANCE WITH ARTICLE 23-A OF GENERAL BUSINESS LAW

Section 31.1 Restriction on Subdivision and Sale. The Declarant represents and agrees that it shall not subdivide any Unit into two or more Units and offer for sale or sell a Subdivided Unit without obtaining the prior written Discretionary Approval or Consent of the Existing Unit Mortgagee for so long as the Existing Unit Mortgage encumbers such Unit and unless either: (a) an offering plan of such transaction is first submitted to, and accepted for filing by, the New York Attorney General ("Attorney General") pursuant to Article 23-A of the General Business Law, and is thereafter consummated in accordance with the terms of such offering plan; or (b) a no-action letter is first issued by the Attorney General permitting such transaction to be consummated without the filing of an offering plan, pursuant to Section 23.9(a)(1) of Part 23 of Title 13 NYCRR.

ARTICLE 32

COMPLIANCE WITH EXISTING UNIT MORTGAGE

Section 32.1 Existing Unit Mortgage. Except as otherwise expressly required by applicable Law: (a) Declarant and the Unit Owners shall comply with all provisions of the Existing Unit Mortgage, including in particular (but not limited to) Section 4.2.13 of that certain Loan Agreement secured by the Existing Unit Mortgage; and (b) the provisions of the Existing Unit Mortgage are paramount and shall govern any inconsistencies between its provisions and those of the Condominium Documents.

Section 32.2 Rights of Existing Unit Mortgagee. Declarant and each Unit Owner hereby assigns, conveys and mortgages to the Existing Unit Mortgagee, as further and additional security for the loan secured by the Existing Unit Mortgage, all of the rights and benefits now or hereafter accruing to Declarant and each Unit Owner under the Condominium Documents, as amended or supplemented with the prior written consent of the Existing Unit Mortgagee including, without limitation, all voting rights of Declarant and each Unit Owner to approve and consent to, through its appointed members of the Board or otherwise, the decisions of the Board, the Condominium Association and/or the Condominium. If Existing Unit Mortgagee, its nominee, designee, successor, or assignee acquires title to any portion of the Property, whether by reason of foreclosure, deed in lieu of foreclosure or otherwise, Existing Unit Mortgagee, its nominee, designee, successor, assignee or such purchaser shall (a) succeed to all of the rights of and benefits accruing to Declarant and each Unit Owner under the Condominium Documents, as amended or supplemented with the prior written consent of Existing Unit Mortgagee, (b) be entitled to exercise all of the rights and benefits accruing to Declarant and each Unit Owner under the Condominium Documents, as amended or supplemented with the prior written consent of Existing Unit Mortgagee, as if Existing Unit Mortgagee, its nominee, designee, successor, assignee or such purchaser were originally named as the owner of the Units in the Condominium Documents, and (c) have the immediate right to remove any and all Board Members and officers of the Condominium Association and any and all members of the Board appointed by Declarant and/or each Unit Owner, as applicable, and thereupon Existing Unit Mortgagee, its nominee, designee, successor, assignee or such purchaser shall have the right to appoint Board Members and officers of the Condominium Association and members of the Board, in replacement for those Board Members and officers so removed.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE OF DECLARATION OF CONDOMINIUM]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the 1st day of December, 2003.

609 OWNERS LLC

By:

Signature: 

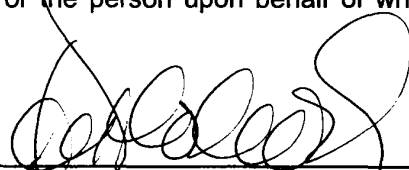
Name: Jeff Sutton

Title: President

ACKNOWLEDGMENT

STATE OF NEW YORK)
)s.s.:
COUNTY OF NEW YORK)

On this 1st day of December, 2003, before me, the undersigned, a notary public in and for said state, personally appeared Jeff Sutton personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

IVAN W. MOSKOWITZ
Notary Public, State of New York
No. 02M0429760
Qualified in New York County
Commission Expires Feb. 5, 2007

CONSENT OF EXISTING UNIT MORTGAGEE:

THE UNDERSIGNED, THE EXISTING UNIT MORTGAGEE, ACKNOWLEDGES AND AGREES THAT THE LIEN OF THE EXISTING UNIT MORTGAGE IS SUBJECT TO THIS DECLARATION, INCLUDING THE BY-LAWS AND OTHER EXHIBITS HERETO, AND HEREBY CONSENTS TO THE RECORDING OF THIS DECLARATION

MORGAN STANLEY MORTGAGE CAPITAL INC.,
a New York Corporation

By: _____

Name: _____

Title: _____

CYNTHIA DEUTSCH
an authorized signatory

ACKNOWLEDGMENT

STATE OF NEW YORK)
)s.s.:
COUNTY OF NY)

On this 3 day of December, 2003, before me, the undersigned, a notary public in and for said state, personally appeared Cynthia Deutsch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lucy Robinson
Notary Public

LUCY ROBINSON
NOTARY PUBLIC, STATE OF NEW YORK
No. 01R06091186
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES APRIL 28, 2007

**EXHIBIT A
TO
DECLARATION OF CONDOMINIUM
ESTABLISHING
609/FIFTH CONDOMINIUM**

DESCRIPTION OF LAND

ALL THAT CERTAIN PLOT, PIECE, OR PARCEL OF LAND, SITUATE, LYING, AND BEING IN THE BOROUGH OF MANHATTAN AND THE CITY, COUNTY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at the corner formed by the intersection of the southerly side of East 49th Street with the easterly side of Fifth Avenue;

THENCE easterly along the southerly side of 49th Street 175 feet;

THENCE southerly parallel with Fifth Avenue and part of the distance through a party wall 100 feet 5 inches;

THENCE westerly parallel with East 49th Street 75 feet;

THENCE northerly parallel with Fifth Avenue 47 feet 5 inches;

THENCE westerly parallel with East 49th Street 100 feet to the easterly side of Fifth Avenue;

THENCE northerly along the easterly side of Fifth Avenue 53 feet to the point or place of BEGINNING.

For information only: Said premises is known as 609 Fifth Avenue (a/k/a 2-6 East 49th Street, New York, New York and lies in Section 5, Block 1284, f/k/a Lot 69 and n/k/a Lots 1001 and 1002 on the Tax Map of the City of New York, Borough of Manhattan.

END OF EXHIBIT A

EXHIBIT B
TO DECLARATION OF CONDOMINIUM
ESTABLISHING 609/FIFTH CONDOMINIUM

DESCRIPTION OF UNITS

Unit Designation	Tax Lot Number	Location in Building Facing in the Direction Set Forth Below	Approximate Floor Area In Square Feet (1)	Approximate Unit Height in Feet/Inches(2)	Common Elements to Which Unit Has Immediate Access	Percentage of Common Interest (3)
Lower Unit	1001	Cellar: North & West Floor 1: North & West Mezzanine: North & West Floor 2: North & West Floor 3: North & West Floor 5: West	Cellar: 4,484 sq. ft. Floor 1: 9,875 sq. ft. Mezzanine: 6,220 sq. ft. Floor 2: 10,635 sq. ft. Floor 3: 10,640 sq. ft. Floor 5: 1,782 sq. ft.	Cellar: 14'2" Floor 1: 10'4" Mezzanine: 12'0" Floor 2: 15'2" Floor 3: 14'2" Floor 5: 12'2"	Exit Stairs " " " " Exit Stairs and Public Corridor	69%
Upper Unit	1002	Cellar: North & West Floor 1: West Floor 4: North & West Floor 5: North & West Floor 6: North & West Floor 7: North & West Floor 8: North & West Floor 9: North & West Floor 10: North & West Floor 11: North & West Floor 12: North & West Floor 13: North & West	Cellar: 3,473 sq. ft. Floor 1: 806 sq. ft. Floor 4: 10,474 sq. ft. Floor 5: 8,439 sq. ft. Floor 6: 10,562 sq. ft. Floor 7: 10,211 sq. ft. Floor 8: 10,200 sq. ft. Floor 9: 7,003 sq. ft. Floor 10: 6,680 sq. ft. Floor 11: 6,674 sq. ft. Floor 12: 5,689 sq. ft. Floor 13: 3,738 sq. ft.	Cellar: 14'2" Floor 1: 10'4" Floor 4: 14'2" Floor 5: 12'2" Floor 6: 12'2" Floor 7: 12'2" Floor 8: 15'0" Floor 9: 11'8" Floor 10: 11'8" Floor 11: 11'8" Floor 12: 11'8" Floor 13: 11'8"	Exit Stairs (All Floors)	31%

Footnotes start on next page.

1. Floor Area of Unit

- 1.1 Unit Boundaries. The approximate floor area of each Unit has been measured from the exterior side of the Building Walls or glass windows at the Building line and/or Property line enclosing the Unit, or from the midpoint of the interior Party Walls separating the Unit from the other Unit, or from the public side or exit stair side of the interior Party Walls separating the Unit from Common Elements consisting of public corridors or exit stairs, respectively, or from the mechanical space or interior side of interior Party Walls separating the Unit from other portions of the Common Elements. Columns and mechanical pipes and chases (whether along the perimeter or within the Unit) are not deducted from the square foot area of the Unit.
- 1.2 Inclusion of Certain Common Elements. The floor area occupied by Common Elements bordering or within a Unit consisting of Building Walls, vents, chase walls or areas, conduits, ducts, shafts, pipes and similar Installations have been included in the computation of the floor area of such Unit, but such Common Elements are not part of said Unit.
- 1.3 Exit Stairs and Elevator Shafts. The exit stairs comprise the Common Elements and have been excluded from the computation of the floor area of the Unit to which they border. The elevator shafts comprising a part of a specified Unit have been included in the computation of the floor area of such Unit.
- 1.4 Allowance. All floor areas used in the calculations of Common Interests are approximations within a tolerance of about 5%.
- 1.5 Based on Full (Actual) Square Footage. The approximate floor areas shown in the "Unit" column equal the full (actual) square footages of the Unit.

2. Unit Height. The height of each Unit consists of the volume of space measured from the top of the Perimeter Base Floor below (located under the finished flooring and sub-flooring materials) to the underside of the Perimeter Base Ceiling above (located above the finished ceiling material). Ceiling heights in this Exhibit B reflect the height of each floor of a Unit before factoring in the thickness of a floor or ceiling slab separating each floor. These ceiling heights vary and do not reflect dropped ceilings in certain areas to accommodate ducts or Equipment. The height shown is approximate and is measured from below the flooring installed over the Base Floors.
3. Common Interest. The Common Interest of each Unit is 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, in accordance with Section 339-i(1)(iv) of the Condominium Act.

END OF EXHIBIT B

**EXHIBIT C TO DECLARATION OF CONDOMINIUM
ESTABLISHING 609/FIFTH CONDOMINIUM**

GLOSSARY

The words frequently used in the Declaration and the EXHIBITS thereto (whether uppercase or lowercase) are defined below in this EXHIBIT C. Unless the context otherwise requires, words used in the singular include the plural, and vice versa, and a reference to any one gender (masculine, feminine or neuter) includes the other two.

“Additional Utility Easements/Rights”: As defined in Article 11, Section 11.7 of the Declaration.

“Agents, Employees and Contractors”: This term includes all agents, employees, contractors, subcontractors, and their respective employees and workers.

“All Development Rights”: As defined in Article 5, Section 5.4 of the Declaration.

“All Repair Work”: All Maintenance and Repairs, whether structural or non-structural, or extraordinary or ordinary.

“Allocation Change”: As defined in Article 9, Section 9.5 of the Declaration.

“Allocation/Appportionment Change”: As defined in Article 9, Section 9.6 of the Declaration.

“Appportionment Change”: As defined in Article 9, Section 9.5 of the Declaration.

“Alter”, “Alters”, “Alterations” and other derivations thereof: All alterations, additions, improvements, installations, demolitions, removals or replacements, whether structural or non-structural, or extraordinary or ordinary.

“amend”, “amended”, “Amendment” and variations thereof: An amendment to any of the Condominium Documents, including any modification, addition, deletion, repeal or other change to a provision thereof.

“Applicable Unit”: As defined in Article 10, Section 10.12 of the Declaration.

“Applicable Unit Owner”: As defined in Article 10, Section 10.12 of the Declaration.

“approval”: Unless otherwise expressly provided, the approval to be obtained is Discretionary Approval.

“Association”: As defined in Article 1, Section 1.3 of the Declaration.

“Association’s Properties”: As defined in Article 7, Section 7.3 of the Declaration.

“Base Ceilings”: As defined in Article 6, Section 6.5 of the Declaration.

“Base Floors”: As defined in Article 6, Section 6.5 of the Declaration.

“Board”: The Board of Managers of the Condominium.

“Board Alterations”: As defined in Article 14, Section 14.5 of the Declaration.

“Board Member”: A member of the Condominium Board.

“Budget” or “Budget of Condominium Operation”: The Budget of Projected Receipts and Expenses of Condominium Operation of the Property for a Budget Year.

“Budget Year”: A Budget for the twelve (12) month period (fiscal or calendar) determined and adopted by the Condominium Board .

“Building”: The building known by the street address of 609 Fifth Avenue (a/k/a 2-6 East 49th Street), New York, New York.

“Building’s Maintenance Standard”: To keep a Unit or the Common Elements or the vaults (as applicable) in good and proper working order, free of water leaks and undue air penetration, and otherwise in clean and sanitary condition. To keep all areas of Units or the Common Elements exposed to public view (including all Unit windows and entrances), and the Immediately Adjacent Sidewalks to the Property, in clean, neat and good appearance and first class condition in accordance with the high quality, character and dignity of the Building. To keep each Roof and outdoor area, including the Immediately Adjacent Sidewalks to the Property, free and clear of snow, ice, water accumulation and debris, and to keep all drains unclogged.

“Building Walls”: As defined in Article 6, Section 6.5 of the Declaration.

“business day”: Any day of the year that is not a Saturday, Sunday or a legal holiday of the State or City of New York or the United States government, as well as any other day recognized as a holiday under a union contract applicable to employees of the Condominium Association.

“business hours”: Between the hours of 8:30 a.m. and 8:00 p.m.

“By-Laws”: The By-Laws of the Condominium set forth as EXHIBIT D to the Declaration, as such By-Laws or a provision thereof may be amended from time to time in accordance with its provisions. The By-Laws provide for (among other matters) the administration and governance of the Condominium, the Operation and uses of the Property and Units and the rights and obligations of the Condominium Board and the Unit Owners.

“calendar day”: Any day of the year.

“Claims”: All claims, disputes, controversies, rights, causes for Lawsuits and Lawsuits.

“Common Charges”: As defined in Article 9, Section 9.1.4 of the Declaration.

“Common Elements”: As defined in Article 7, Section 7.1 of the Declaration.

“Common Expenses”: As defined in Article 9, Section 9.1 of the Declaration.

“Common Interest”: As defined in Article 7, Section 7.1 of the Declaration.

“Common Profits”: As defined in Article 9, Section 9.1 of the Declaration.

"Communications Equipment and Other Installations": All antennae, satellite dishes and other communication devices and related Equipment (including fiber optic cable and other communication lines, wires, cables and conduits), plus any and all other new and/or additional Equipment and Installations that service or benefit one or both Units and/or the general public.

"Condominium": The condominium known as 609/FIFTH CONDOMINIUM, which is the subject of the Declaration to which this Glossary is attached and is being established on the Property by the filing and recording of the Condominium Documents. This term refers to the Property submitted to the provisions of the Condominium Act.

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

"Condominium Association": As defined in Article 1, Section 1.3 of the Declaration.

"Condominium Board" or "Board": The Board of Managers of the Condominium, which is the body that governs the affairs of the Condominium and the Operation of the Common Elements. The Condominium Board comprises the Upper Board Member and the Lower Board Members.

"Condominium Documents": The Declaration, including the Exhibits thereto (such as the By-Laws and Rules and Regulations), and Floor Plans of the Condominium, as each may be amended from time-to-time.

"consent": Unless otherwise expressly provided, the consent to be obtained is Discretionary Consent.

"Costs and Expenses" or "Costs or Expenses" or similar words: All losses, damages (whether actual, consequential, incidental, special, indirect or otherwise), liabilities, costs, expenses and amounts (including reasonable legal fees and disbursements, court costs and all other litigation expenses, together with per diem interest thereon at the rate equal to the lower of 12% a year or the maximum legal rate, computed from the date paid to the date reimbursed) paid, payable or incurred in connection with any Claim or to perform, observe, enforce, uphold, protect, defend, maintain and collect sums payable under a right, remedy, obligation, requirement, agreement or indemnity given in or pursuant to the Condominium Documents or an Amendment thereto. Costs and Expenses also include all costs and expenses: (a) to Operate and make any Disposition of the Common Elements and the Association's Properties, including interest and principal payments under a loan; (b) to conduct the affairs of the entire Property, the Association's Properties and the Condominium Association generally; and (c) to provide services to one or both Unit Owners (as applicable).

"days": All references in the Declaration and By-Laws to "days" shall mean calendar days, unless expressly stated to be business days.

"Declarant": 609 Owners LLC, a Delaware limited liability company, the Declarant of the Declaration.

"Declarant's Rights": As defined in Article 28, Section 28.1 of the Declaration.

"Declaration": The instrument executed by Declarant and recorded in the Register's Office, which submits the Property to the Condominium Act.

“Decorate,” “Decorations” and derivations thereof: All painting, ornaments, furnishings, furniture, fixtures, embellishments and decorations of any kind, including: all manner of flooring (wood, tiles of any composition, carpeting, rugs and other floor coverings); all manner of wall coverings (paper, fabric, wood, glass and other materials); all manner of baseboards and moldings; all manner of lighting fixtures and chandeliers and related switch plates and electrical outlets; all manner of doorknobs, hinges and other hardware; all manner of plants, flowers and landscaping; and all manner of wall and ceiling finishes and coverings (e.g., paint, plaster, wood paneling, fabric and wallpaper).

“Department of Law”: The Department of Law of the State of New York.

“Description Change”: As defined in Article 13, Section 13.1 of the Declaration.

“Designee”: As defined in Article 28, Section 28.1 of the Declaration.

“Development Rights”: As defined in Article 5, Section 5.4 of the Declaration.

“Discretionary Consent” or “Discretionary Approval” or “Discretionary Consent or Approval” or similar words: The consent or approval to be obtained is discretionary and may be conditioned, delayed, withheld or denied, without cause or explanation, in the sole and absolute judgment of the Party whose consent or approval is sought or required to be given, without recourse against such Party in the event consent or approval is conditioned, delayed, withheld or denied.

“Disposition”: To own, hold, lease, sublease, rent, grant easements or concessions, license, mortgage, grant security interests, collateralize, assign, transfer, sell, convey, market, advertise, Promote, offer, administer, Operate, improve, combine, subdivide, expand, contract and to otherwise transact any matter with respect to, and to make any other disposition of, real or personal property allowed by Law, whether or not similar to the foregoing (but not to cast the votes appurtenant to any Unit owned by the Condominium Board or its nominee or designee).

“duties”: All duties, obligations, burdens, responsibilities, requirements and services.

“elect”, “elected”, “election” and similar words and derivations: In the case of the election of the Condominium Board: the Lower Board Members shall be elected by appointment and designation in writing exclusively by the Lower Unit Owner; and the Upper Board Member shall be elected by appointment and designation in writing exclusively by the Upper Unit Owner.

“Entity”: A partnership, limited liability partnership or company, corporation, trust, estate, fiduciary, unincorporated association, syndicate, joint venture, organization, government, embassy, consulate, Governmental Authority or any other entity legally competent to own real property.

“Equipment”: All machinery, tools, apparatus, devices and implements comprising part of a Common Element or Unit (as applicable), now or hereafter, whether mechanical, electrical, electronic, plumbing or otherwise, including: boilers, converters, radiator, heaters, blowers, exchanges and related equipment forming part of a heating System; motors; pumps; water and electric meters, electrical panels, circuit breakers, transformers, switches and related equipment forming part of an electrical System; elevator (including cab, cables, electronics, motor, air conditioner, pit, shaft and related equipment forming part of an elevator System); air-conditioners and heaters (including cooling tower, chillers, condensers, compressors, fan coil

units and related equipment forming part of an air conditioning and/or heating System); fans; telephones and related equipment forming part of a telephone System; intercom (including all equipment forming part of an intercom System); cameras, monitors and related equipment forming part of a security System); televisions, antennae and related equipment forming part of a television System (cable or wireless); appliances (including washers, dryers, refrigerators, ranges and ovens); sinks; toilets; fire alarms; smoke detectors; tanks and tank assemblies; sprinkler heads and alarms and related equipment forming part of a sprinkler or stand-pipe System; bells; thermostats; thermometers; vents; sensors; valves; panels; receptacles; outlets; wiring; siamese connections; hoses, electrical, lighting, plumbing and other fixtures and bulbs; Signs; pipes; lines; ducts; conduits; cables; risers; mains; shafts; pits, flues; chases; hardware; locks; screens, strainers; traps; drains; catch basins; leaders; filters; incinerators; compactors; canopies; closets; cabinets; doors; railings; metal stairs; furniture; mirrors; furnishings; appurtenances; urns, baskets, mail chutes; mail boxes; carpeting; tiles; floor coverings; draperies; shades; window coverings; wallpaper; wall coverings; trees; shrubbery; flowers; plants; horticultural tubs; horticultural boxes; equipment used for cleaning halls, floors, carpets, walls and other areas (whether indoor or outdoor) including for snow removal; and all other equipment forming a part of a System of the Building.

"Existing Lease": A lease demising space in the Building in effect on the date the Declaration is recorded in the Register's Office so long as same shall remain in effect, including all extensions or renewals thereof in accordance with any option or other provision thereof, but excluding any other extensions or renewals thereof and all Amendments thereto thereafter made.

"Existing Tenant": A tenant under an Existing Lease at the date of recording the Declaration.

"Existing Unit Mortgage": The mortgage on the Property dated as of September 30, 2003, made in favor of Morgan Stanley Mortgage Capital Inc., securing a loan in the original principal amount of \$102,000,000.00, together with the loan instruments evidencing or securing such loan.

"Existing Unit Mortgagee": Morgan Stanley Mortgage Capital Inc. or the then holder of the Existing Unit Mortgage.

"Facilities": All fixtures and personal property not otherwise comprising the Equipment, now or hereafter existing in, on, or under the Land or Building and for the use, service or benefit of one (1) or more Units or Unit Owner(s) or forming a part of the Common Elements, or necessary or desirable for the existence, Maintenance, life, health or safety of the Property or any portion thereof or the Owners or occupants of one (1) or more Units.

"family" or similar words: A spouse, child (whether by blood, marriage or adoption), parent (including a step parent or parent-in-law), grandparent and sibling.

"Floor Plans": The floor plans of the Building (showing, among other things, the layout, location and approximate dimensions of the Units as built) certified by a registered architect or licensed professional engineer and filed with the Real Property Assessment Department for the Borough of Manhattan, in the City, County and State of New York and in the Register's Office contemporaneously with the recording of the Declaration.

"Force Majeure": Acts of nature (such as flood, earthquake or severe or unusually inclement weather), explosion, fire, strikes, work stoppage or slowdown, unavailability of materials supplies, war, emergencies, national defense preemptions, governmental restrictions or actions, injunctions or court orders, or any other cause or event beyond the reasonable control of Sponsor, the Condominium Board or other Person in question (as applicable) and not attributable to the improper or bad faith acts or omissions of such Person.

“Foreign Entity”: Any organization that is not formed or organized under the Laws of the State of New York or is not an instrumentality of the State of New York or any county, municipality, village or other Governmental Authority of the State of New York.

“Freely and Without Consent, Payment or Restriction”: This term means and includes, unless otherwise expressly provided: (a) without consent or approval of the Condominium Board or other Unit Owners or mortgagees of Units; (b) without paying any kind of fee, rental, charge, imposition or other sum being paid to the Condominium Board or its Managing Agent, attorneys, architects, engineers or other professionals or consultants, or to Unit Owners; and (c) without complying with any kind of work rule, restriction, requirement or limitation, other than the requirement to comply with applicable Laws, the applicable Work Requirements set forth in Article 15, Section 15.2 of the Declaration, the restriction against Prohibited Uses applicable to both Units, and any other expressly stated restriction, requirement or limitation.

“Governmental Authorities”: All authorities, agencies, departments, assessors, boards, bodies court and other instrumentalities of federal, state, county, municipal, village, local, foreign, international, regional, domestic and other governmental and quasi-governmental authorities having jurisdiction.

“Government Documents”: All notices, reports, registrations, applications, petitions, declarations, easements, licenses, forms, items, papers and other documents to be filed with, or given or submitted to, a Governmental Authority, including any Government Document that is required to be signed by the Condominium Board on behalf and as agent of the Unit Owners in connection with any permit, approval, consent, waiver, exemption, variance or license, building notice, alteration, application or other form of legally required permission to or from a Governmental Authority (including a permit that is necessary to perform Work on any part of the Property), including: (a) a notice, report, registration or other information to be filed with a Governmental Authority relative to a Unit, or an Owner, tenant or occupant of such Unit; (b) any proposed Unit Change to a Unit in accordance with the Declaration; (c) an application, petition or other document required for a zoning variance or an amended or new Certificate of Occupancy for the Building or an alteration permit related to such Unit Change of a Unit or an obligation undertaken in a lease of all or a portion of a Unit; (d) any Signs permitted to be installed, Altered or replaced pursuant to the Declaration or the By-Laws; or (e) an application, petition or other document required to obtain a real estate tax or other tax exemption, abatement or benefit for a Unit.

“HVAC”: Heating, ventilating and air conditioning.

“HVAC/Mechanical/Utility Building Systems”: All Building Systems, including: HVAC; hot and cold water; storm drainage; refuse; waste; fire protection (e.g., sprinkler, sprinkler alarm, hoses, standpipe, siamese connection and related Installations); utilities (e.g., electric, gas, telephone, cable, television and telecommunications); intercom; and security cameras, monitors and other devices.

“Immediately Adjacent Sidewalks”: As defined in Article 10, Section 10.1 of the Declaration.

“include”, “includes”, “including”, “such as”, “for example” and similar words and derivations: Wherever these words precede a list of one or more items, the list is not be limited to the item(s) mentioned and shall always be construed as though followed by the words “but not limited to”.

“indemnify”: Whenever this term is used, it shall include to defend and hold harmless and shall apply to all Related Parties of the Party being indemnified and the respective heirs, distributees, legatees, executors, administrators, legal representatives, successors and assigns of such Indemnified Party and Related Parties.

“individual”: A natural person.

“Installation Requirements”: As defined in Article 10, Section 10.4 of the Declaration.

“Installations”: All Equipment, Facilities, structures, Systems and materials now or hereafter existing in, on, under or adjacent to the Land or Building and for the use, service or benefit of one (1) or more Units or Unit Owner(s) or forming a part of the Common Elements, or necessary or desirable for the Use and Enjoyment of the Property or any portion thereof or the Owners or occupants of one (1) or more Units.

“Institutional Lender”: A savings bank; investment bank; savings and loan association; bank or trust company; credit union; insurance company; real estate investment trust; mortgage trust; a federal, state, municipal, union or other employee, welfare, pension or retirement fund or system; or the existing holder and any subsequent holder of the Existing Unit Mortgage.

“Institutional Mortgage”: Any mortgage covering one (1) or more Units that is a Permitted Mortgage and the initial holder of which is either an Unsold Unit Owner (including Sponsor) or its designee or an Institutional Lender.

“Insurance Trustee”: An Institutional Lender having both an office in the City and State of New York and a capital surplus and undivided profits of \$100,000,000 or more, from time-to-time appointed to serve as such by the Condominium Board.

“Involuntary Transferee”: As defined in Article 28, Section 28.1 of the Declaration.

“Land”: The parcel of land on which the Building is located together with the air space thereover and more particularly identified in EXHIBIT A to the Declaration. The portions of the land occupied by improvements, i.e., the Units and the Common Elements, are included in, and are part of, the Units and the Common Elements, respectively, and the portions of the land comprising the unimproved air space and the Development Rights associated therewith are included in, and part of, the Lower Unit. The Land includes, and is subject to, all easements, agreements, covenants, restrictions, rights, privileges, benefits, encumbrances, burdens and other matters of record appurtenant thereto.

“Laws”: All laws and ordinances of federal, state, city and other local Governmental Authorities and all applicable regulations, codes, rules, orders, permits, directives and requirements of Governmental Authorities having jurisdiction over the Property or the Condominium Association.

“Lawsuits”: All suits, litigation, controversies and disputes, whether legal or equitable, brought in or before any court or judicial system (federal, state, local or international), governmental or administrative authority, arbitration or mediation association or alternative dispute resolution body.

“Liabilities and Expenses”: All liabilities, judgments, awards, losses, damages (whether actual, consequential, incidental, special, indirect or otherwise), penalties, fines and Costs and Expenses.

“Limited Common Elements”: The portions of the Common Elements, if established pursuant to Article 13 of the Declaration, limited or restricted completely or primarily to the use of a specified Unit Owner to the exclusion of all other Unit Owners.

“Litigation Document”: Any pleading, affidavit, petition, application, motion, interrogatory or other document utilized in connection with any litigation, including any litigation required to be brought or defended in the name of the Condominium Board or in the name of the Condominium Board as agent and on behalf of the Unit Owners, such as litigation instituted or defended at the request of Declarant or the Upper Unit Owner relative to: (a) any Government Document or any matter which is the subject of a Government Document; or (b) any of Declarant’s Rights or the rights, powers, easements, licenses, privileges, exemptions, indemnities, remedies and other benefits of Declarant or the Upper Unit Owner under the Condominium Documents.

“Lower Board Member”: The Board Member appointed and designated exclusively by the Lower Unit Owner to represent such Owner’s interests on the Condominium Board.

“Lower Unit”: The space in the Building constituting one of the Condominium Units established under, and designated as such in EXHIBIT B to the Declaration and on the Floor Plans, together with the Common Interest of such Unit. The location of the Lower Unit is more precisely shown on the Floor Plans and referred to in said EXHIBIT B. The Lower Unit includes the portions of the Land occupied by such Unit, all unimproved air space and associated Development Rights appurtenant to the Property, and all Equipment and Systems or portions thereof, wherever located, that are for the exclusive use, service or benefit of the Lower Unit or its Owner and are not expressly stated in the Declaration to be part of the Common Elements or the Upper Unit.

“Lower Unit Office”: As defined in Article 11, Section 11.6 of the Declaration.

“Lower Unit Owner”: The Owner of a Lower Unit.

“Maintain, Maintenance” and similar words: To inspect, test, paint and keep a Unit or the Common Elements (as applicable) in accordance and compliance with the Building’s Maintenance Standard.

“majority of Board Members”: More than fifty percent (50%) of all Board Members or more than 50% of those Board Members attending a duly constituted Board meeting at which a quorum is present, as may be specified or indicated by the text.

“majority in Common Interest of Unit Owners” or words of similar import or other specified percentage: Owners of more than fifty percent (50%) (or other specified percentage) in aggregate absolute Common Interests appurtenant to all Units, or Owners of more than fifty percent (50%) (or other specified percentage) in aggregate absolute Common Interests of only those Unit Owners who are present, in person or by proxy, and voting at a duly constituted meeting of Unit Owners at which a quorum is present, as applicable or indicated. All references herein to “Units” shall exclude any Unit while such Unit is owned by the Condominium Board or its nominee or designee and all references to “Unit Owners” shall exclude the Condominium Board or its nominee or designee as Owner of any Unit. An Owner of more than one (1) Unit shall be counted as a separate Owner for each such Unit.

“majority in number of Unit Owners” or words of similar import or other specified percentage: Owners of more than fifty percent (50%) (or other specified percentage) in aggregate absolute number of all Units, or Owners of more than fifty percent (50%) (or other specified percentage) in aggregate number of only those Unit Owners who are present, in person or by proxy, and voting at a duly constituted meeting of Unit Owners at which a quorum is present, as applicable

or indicated. All references herein to "Units" shall exclude any Unit while such Unit is owned by the Condominium Board or its nominee or designee and all references to "Unit Owners" shall exclude the Condominium Board or its nominee or designee as Owner of a Unit. An Owner of more than one (1) Unit shall be counted as a separate Owner for each such Unit.

"Managing Agent": The Person engaged from time-to-time by the Condominium Board to perform the duties of a managing agent of the Building, if any.

"Mortgage Representatives": The representatives of the holders of all mortgages encumbering Units, designated by the holders of Institutional Mortgages in accordance with the terms of the By-Laws.

"Net Award Trust Funds": As defined in Article 18, Section 18.3, subsection 18.3.4 of the By-Laws.

"Operate", "Operates", "Operation" or derivations thereof: To Maintain, Repair, Alter and otherwise use, operate, manage and conduct the business and affairs of the Condominium Association, the Common Elements, the Association's Properties or the entire Property (i.e., the whole Condominium), as the context requires, or as otherwise indicated by the text.

"Owner": The legal (record) owner of fee simple title of a Unit, including (as indicated, or otherwise expressly provided, by the text): (a) the Lower Unit Owner; or (b) the Upper Unit Owner. An Owner of more than one (1) Unit shall be counted as a separate Owner for each such Unit.

"Owner's Parties": As defined in Article 5, Section 5.4 of the By-Laws.

"Party": A Unit Owner, the Condominium Board (including a Lower or Upper Board Member), a Permitted Mortgagee, a Registered Tenant and an Insurance Trustee are each a party.

"Party Walls": As defined in Article 6, Section 6.5 of the Declaration.

"Perimeter Base Ceilings": As defined in Article 6, Section 6.5 of the Declaration.

"Perimeter Base Floors": As defined in Article 6, Section 6.5 of the Declaration.

"Permitted First Mortgage": A first mortgage placed on a Unit in compliance with the By-Laws.

"Permitted First Mortgagee": The holder of a Permitted First Mortgage.

"Permitted Mortgage": A mortgage placed on a Unit in compliance with the By-Laws.

"Permitted Mortgagee": The holder of a Permitted Mortgage.

"Permitted Tenants/Occupants/Invitees": The tenants, occupants, invitees, licensees, contractors, subcontractors, agents, employees and workers permitted or authorized to occupy, use, visit or enter a Unit by the Owner of such Unit or pursuant to Law or the Condominium Documents.

"Permitted Uses": As defined in Article 10, Section 10.13 of the Declaration.

“Person”: A natural person (i.e., an individual) or an Entity.

“powers”: All powers, rights, authorities, remedies, protections and benefits.

“Prohibited Uses”: As defined in Article 10, Section 10.2 of the Declaration.

“Promote”, “Promotion” or derivations thereof: All manner of offering, advertising, marketing, Signage, displays and other promotion and promotional activities in connection with the sale, rental or Operation of a Unit or a business conducted in a Unit.

“Property”: As defined in Article 2, Section 2.1 of the Declaration.

“Pro Rata”: In the proportion that the Common Interest or floor area or Common Charge of a Unit bears to the total Common Interests or the total floor areas or total Common Charges of all Units (respectively), as applicable or indicated.

“Reasonable Approval” or “Reasonably Approved” or similar words: The approval required to be obtained shall not be unreasonably conditioned, withheld, denied or delayed.

“Registered Mortgage”: As defined in Article 16, Section 16.8 of the By-Laws.

“Registered Mortgagee”: The holder of a Registered Mortgage.

“Register’s Office”: The office of the Register of the Borough of Manhattan, in the City, County and State of New York.

“Related Party”: An individual who has or had an employment, business or family relationship to a Unit Owner or an Entity comprising a Unit Owner or a partner, member, manager, shareholder, officer, director or principal of a Unit Owner or an Entity comprising a Unit Owner; or an Entity whose legal, equity or beneficial interest is owned (directly or indirectly) by a Unit Owner or an Entity comprising a Unit Owner or a partner, member, manager, shareholder, officer, director or principal of a Unit Owner or an Entity comprising a Unit Owner.

“Repair”, “Repaired”, “Repairs” or derivations thereof: To repair, fix, correct, rebuild, restore, replace, substitute, remove and to perform any other Work, apart from Alterations, in or to a Unit or the Common Elements.

“Responsible Party”: As defined in Article 15, Section 15.2(g) of the Declaration.

“Right of First Refusal”: As defined in Article 16, Section 16.19, subsection 16.19.8 of the By-Laws. Same as Match Offer Right.

“Roof”: One of the Structural Components of the Building enclosing the Upper Unit or a portion of the Lower Unit and composed of concrete slab (or other construction material) and its appurtenant Roof Structures.

“Roof Structures”: The membrane, insulation and other portions of the roofing and drainage Systems protecting a Roof and the interior portions of the Building, together with the gutters, leaders, parapets, copings, railings and other walls enclosing a Roof, and (with respect to the main Roof) the bulkheads thereon, including those enclosing the exit stairs, elevators, mechanical Equipment, tanks and other items, if any).

“Rules and Regulations”: As defined in Article 14, Section 14.5 of the By-Laws.

“Section 339-m”: Section 339-m of the Condominium Act.

“Sidewalk Cleaning Obligations”: The obligations imposed by Law to keep the Immediately Adjacent Sidewalks to the Property clean and free of snow, ice, water accumulation and debris.

“Sidewalk Repair Obligations”: The obligations imposed by Law to keep the Immediately Adjacent Sidewalks to the Property properly Maintained and Repaired.

“Sidewalk Structure”: As defined in Article 15, Section 15.2(m) of the Declaration.

“Sign”, “Signs” or “Signage” or similar words: Each or every kind whatsoever of: sign, inscription or lettering (on doors, windows or elsewhere), picture, banner, flag, awning, canopy, planter, landscaping, structure, placard, board, stanchion, decoration and display used for sales, rental, Promotional, advertising, identity, business, Operation and/or any other lawful purpose. There is no restriction or limitation whatsoever on the nature, composition, design, size, illumination, configuration, fabrication, quality, character, color, appearance or content of Signs, unless otherwise expressly provided.

“Special Allocation and Apportionment Rule”: As defined in Article 9, Section 9.1.2 of the Declaration.

“Special Assessment”: The amount assessed by the Condominium Board to pay a portion of the Common Expenses and levied on the Unit Owners or a specified Unit Owner (as applicable) in the time and manner determined by the Condominium Board in accordance with the Declaration or the By-Laws. A Special Assessment is an additional Common Charge and may be payable in an amount or amounts and time period other than that applicable to the regular Common Charges, as determined by the Condominium Board.

“Specially Apportioned Common Expenses”: As defined in Article 9, Section 9.1.3 of the Declaration.

“Storefronts”: The storefronts of the Lower Unit existing at any time, including the glass, frames, windows and all doors of such storefronts, any gates and security devices and alarms protecting such windows and doors, and any awnings, canopies or Signage immediately above or abutting same.

“Structural Components”: The following components of the Building (if and to the extent existing): foundations, foundation walls, pilings, structural columns, beams, supports, girders, load-bearing walls and similar structural members; all Building Walls; all wood joists, concrete slabs or other construction material comprising the Base Floors or Perimeter Base Floors (including subflooring, but excluding any wood flooring, tiles, carpeting or other floor covering thereover) and Base Ceilings or Perimeter Base Ceilings (excluding any finishes or gypsum board or sheetrock thereon) and all Roofs, including the Roof Structures appurtenant thereto).

“successor in interest”: As defined in Article 28, Section 28.1 of the Declaration.

“Systems”: All HVAC/Mechanical/Utility Systems together with the Roofs and Roof Structures serving all or a portion of the Building (including one or more Units and/or the Common Elements).

“Tenant Obligations”: As defined in Article 12, Section 12.7 of the Declaration.

“Unavoidable Causes”: Same as Force Majeure.

“Unit”: A Unit is a portion of the Property established under the Declaration as a condominium unit which is owned separately and exclusively by its Owner together with the Common Interest appurtenant to the Unit. Each Owner has exclusive ownership and possession of the Owner's Unit, subject to certain use and occupancy restrictions, and certain rights and easements (including those in favor of the Condominium Board and Declarant), as and to the extent set forth in the Condominium Documents. A Unit is designated in EXHIBIT B to the Declaration and on the Floor Plans as the Lower Unit or the Upper Unit.

“Unit Alteration”: As defined in Article 13, Section 13.1 of the Declaration.

“Unit Change”: As defined in Article 13, Section 13.1 of the Declaration.

“Unit Combination”: As defined in Article 13, Section 13.1 of the Declaration.

“Unit Expansion”: As defined in Article 13, Section 13.1 of the Declaration.

“Unit Mortgage”: A mortgage encumbering a Unit and the loan instruments secured thereby.

“Unit Owner”: The Owner of a Unit.

“Unit Subdivision”: As defined in Article 13.1 of the Declaration.

“Upper Board Member”: The Board Member appointed and designated exclusively by the Upper Unit Owner to represent the interests of the Upper Unit Owner on the Condominium Board.

“Upper Unit”: The portion of the space in the Building constituting one of the Condominium Units established under the Declaration, and so designated as such in EXHIBIT B to the Declaration and on the Floor Plans, together with the Common Interest appurtenant to such Unit. The location of the Upper Unit is more precisely shown on the Floor Plans and referred to in said EXHIBIT B. The Upper Unit includes the portions of the Land occupied by such Unit and all Equipment and Installations that are for the exclusive use, service or benefit of such Unit or its Owner and are not expressly stated in the Declaration to be part of the Common Elements or the Lower Unit.

“Upper Unit Owner”: The Owner of an Upper Unit.

“Usage”: As defined in Article 9, Section 9.1.2 of the Declaration.

“Use and Enjoy”, “Use and Enjoyment” or “Used and Enjoyed” or similar words: This term means and includes existence, use, occupancy, enjoyment, service, benefit, sale, rental, granting of licenses or concessions, management, control, Operation, function, business, Signage, market, advertisement, Promotion, health, safety, preservation, welfare, security, protection, appearance or other Disposition.

“utility services”: As defined in Article 11, Section 11.7 of the Declaration.

“Vault Installations”: A vault is the underground area adjacent to the Property below the sidewalks. A vault is owned by The City of New York and is permitted to be used by the Property under a revocable license or right. A reference to a vault being a part of the Common Elements or a Unit means such license or the right to use the vault.

“vault”: As defined in Article 10, Section 10.8 of the Declaration.

“Work” or derivations thereof: All labor performed, and all materials and supplies used, to Maintain, Repair, Alter, Operate or perform other Work in or to a Unit or the Common Elements.

“Work Requirements”: As defined in Article 15, Section 15.2 of the Declaration.

END OF EXHIBIT C

**EXHIBIT A
TO
DECLARATION OF CONDOMINIUM
ESTABLISHING
609/FIFTH CONDOMINIUM**

DESCRIPTION OF LAND

ALL THAT CERTAIN PLOT, PIECE, OR PARCEL OF LAND, SITUATE, LYING, AND BEING IN THE BOROUGH OF MANHATTAN AND THE CITY, COUNTY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at the corner formed by the intersection of the southerly side of East 49th Street with the easterly side of Fifth Avenue;

THENCE easterly along the southerly side of 49th Street 175 feet;

THENCE southerly parallel with Fifth Avenue and part of the distance through a party wall 100 feet 5 inches;

THENCE westerly parallel with East 49th Street 75 feet;

THENCE northerly parallel with Fifth Avenue 47 feet 5 inches;

THENCE westerly parallel with East 49th Street 100 feet to the easterly side of Fifth Avenue;

THENCE northerly along the easterly side of Fifth Avenue 53 feet to the point or place of BEGINNING.

For information only: Said premises is known as 609 Fifth Avenue (a/k/a 2-6 East 49th Street, New York, New York and lies in Section 5, Block 1284, f/k/a Lot 69 and n/k/a Lots 1001 and 1002 on the Tax Map of the City of New York, Borough of Manhattan.

END OF EXHIBIT A

EXHIBIT D TO DECLARATION OF CONDOMINIUM

BY-LAWS

OF

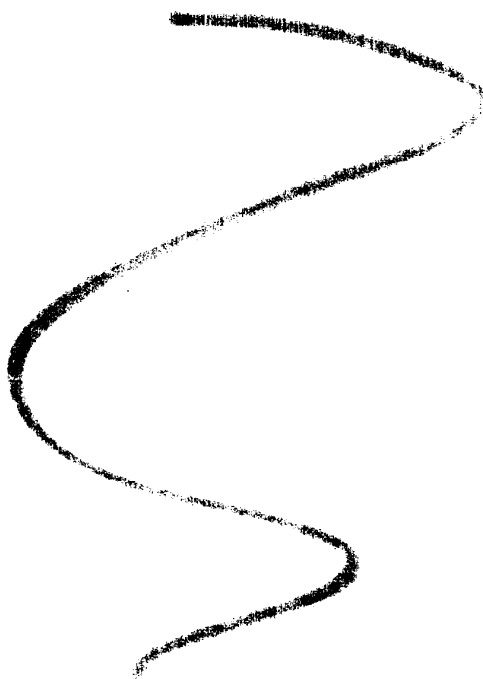
Name of Condominium: **609/FIFTH CONDOMINIUM**

Address of Condominium
Property: **609 Fifth Avenue
New York, New York 10017**

Declarant: **609 Owners LLC**

Prepared by: **Mandel Resnik Kaiser Moskowitz & Greenstein P.C.
220 East 42nd Avenue, 20th Floor
New York, New York 10017
Attn: Alan L. Kazlow, Esq.**

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TABLE OF CONTENTS OF BY-LAWS

<u>Caption</u>	<u>Page</u>
ARTICLE 1 GENERAL.....	2
Section 1.1 Purpose	2
Section 1.2 Location and Description.....	2
Section 1.3 Definitions	2
Section 1.4 Applicability of By-Laws	2
Section 1.5 Application of By-Laws.....	2
Section 1.6 Principal Office of the Condominium Association.....	3
ARTICLE 2 THE CONDOMINIUM BOARD.....	3
Section 2.1 General.....	3
Section 2.2 Status of the Condominium Board.....	3
Section 2.3 Principal Office of the Condominium Board.....	3
Section 2.4 Powers and Duties of the Board	3
Section 2.5 Delegation and Restrictions	9
Section 2.6 Number, Election and Qualification of Board Members	10
Section 2.7 Term of Office of Board Members	11
Section 2.8 Removal and Resignation of Board Members	11
Section 2.9 Vacancies.....	11
Section 2.10 Organizational Meeting of the Condominium Board	12
Section 2.11 Regular Meetings of the Condominium Board	12
Section 2.12 Special Meetings of the Condominium Board.....	12
Section 2.13 Waiver of Notice of Meetings	12
Section 2.14 Quorum of the Condominium Board	12
Section 2.15 Conduct of Meetings.....	13
Section 2.16 Decisions by the Condominium Board	13
Section 2.17 Compensation of Members.....	14
Section 2.18 Standards for Fiduciary Responsibility and Self-Dealing	14
Section 2.19 Liability of Board Members	15
Section 2.20 Transactions by Declarant in lieu of Board	16
ARTICLE 3 OFFICERS	16
Section 3.1 General.....	16
Section 3.2 President	17
Section 3.3 Vice President.....	17
Section 3.4 Secretary	17
Section 3.5 Treasurer.....	17
Section 3.6 Election, Term of Office and Qualifications of Officers	17
Section 3.7 Removal and Resignation of Officers.....	18
Section 3.8 Vacancies.....	18
Section 3.9 Compensation of Officers.....	18
Section 3.10 Liability of Officers	18
ARTICLE 4 UNIT OWNERS.....	19
Section 4.1 Annual Meetings of the Unit Owners	19
Section 4.2 Special Meetings of the Unit Owners	19
Section 4.3 Place of Meetings	20
Section 4.4 Notice of Meetings	20
Section 4.5 Quorum of the Unit Owners	21

TABLE OF CONTENTS
(Continued)

<u>Caption</u>	<u>Page</u>
Section 4.6 Conduct of Meetings.....	21
Section 4.7 Order of Business	21
Section 4.8 Voting	22
Section 4.9 Election of Members of the Condominium Board.....	23
Section 4.10 Action Without a Meeting	23
Section 4.11 Title to Units	24
Section 4.12 Joint, Non-recourse and Limited Liability of Unit Owners.....	24
ARTICLE 5 MAINTENANCE, REPAIRS AND ALTERATIONS OF UNITS, COMMON ELEMENTS AND ASSOCIATION'S PROPERTIES	24
Section 5.1 Maintenance and Repairs.....	24
Section 5.2 Alterations and Major Repairs.....	28
Section 5.3 Declaration Governs Maintenance, Repairs and Alterations of Units, Common Elements and Association's Properties	32
Section 5.4 Negligence, Misuse, Abuse or Neglect.....	33
Section 5.5 Damages Necessitated by Repairs or Alterations	33
ARTICLE 6 INSURANCE	34
Section 6.1 Insurance Requirements for the Condominium Board	34
Section 6.2 Fire and Casualty Insurance.....	34
Section 6.3 Liability Insurance	35
Section 6.4 Boiler and Machinery Insurance.....	36
Section 6.5 Worker's Compensation	36
Section 6.6 Other Insurance.....	36
Section 6.7 Insurance Covering Work Performed by Board	37
Section 6.8 Insurance Amounts and Deductibility	37
Section 6.9 Adjustment and Payments	37
Section 6.10 Allocation of Insurance Premiums	38
Section 6.11 Insurance Requirements for Unit Owners	38
Section 6.12 General Insurance Matters.....	39
ARTICLE 7 DESTRUCTION OR DAMAGE OF BUILDING	41
Section 7.1 Destruction or Damage	41
Section 7.2 Insurance Trust Funds.....	42
Section 7.3 Repairs	43
Section 7.4 Allocation of Net Insurance Trust Funds.....	43
Section 7.5 Insufficient Trust Funds.....	43
Section 7.6 Surplus Trust Funds.....	44
Section 7.7 Lien Priority.....	44
Section 7.8 Abatement in Common Charges.....	44
ARTICLE 8 COMMON CHARGES	44
Section 8.1 Declaration Governs	44
Section 8.2 Determination by Board	45
Section 8.3 Budget of Condominium Operation	45
Section 8.4 Budget Adoption Procedure	45
Section 8.5 Budget Revisions	45
Section 8.6 Failure to Adopt.....	45
Section 8.7 Special Assessments	45

TABLE OF CONTENTS
(Continued)

<u>Caption</u>	<u>Page</u>
Section 8.8 Application of Net Receipts.....	46
Section 8.9 Budget Surplus.....	46
Section 8.10 Separate Fees and Charges	46
Section 8.11 Payment of Common Charges	47
Section 8.12 Lien	47
Section 8.13 Liability.....	47
Section 8.14 Conveyance to Condominium Board.....	49
Section 8.15 Statement of Common Charges	49
Section 8.16 Collection and Remedies on Non-Payment of Common Charges	49
Section 8.17 Sales, Use or Occupancy Tax Exemptions	51
ARTICLE 9 PROPERTY TAXES AND CHARGES	51
Section 9.1 Real Estate Taxes.....	51
Section 9.2 Real Estate Tax Benefits.....	53
Section 9.3 Water Charges and Sewer Rent	53
Section 9.4 Board Certificate.....	54
Section 9.5 Vault Charges	55
ARTICLE 10 UTILITIES	55
Section 10.1 Electric and Gas Services to Units.....	55
Section 10.2 Hot Water Service to Units.....	55
Section 10.3 Heat and Air Conditioning Services to Units	55
Section 10.4 Utility Services to Common Elements.....	56
ARTICLE 11 USES AND OCCUPANCY OF PROPERTY AND ADJACENT SIDEWALKS AND VAULTS	56
Section 11.1 Declaration Governs	56
Section 11.2 Common Elements.....	56
Section 11.3 Units.....	57
Section 11.4 Building Walls and Immediately Adjacent Sidewalks	59
Section 11.5 Vaults	59
Section 11.6 General Prohibitions	59
ARTICLE 12 ROOFS	60
Section 12.1 Roofs.....	60
Section 12.2 Maintenance, Repair and Alteration	61
ARTICLE 13 FIRE SAFETY SYSTEMS	61
Section 13.1 Maintenance, Repairs and Alterations	61
Section 13.2 Changes.....	62
ARTICLE 14 GENERAL OPERATING MATTERS	62
Section 14.1 Compliance with Laws	62
Section 14.2 Indemnification.....	64
Section 14.3 Building Employees, Agents and Contractors; Non-Union.....	64
Section 14.4 Refuse Disposal System.....	65
Section 14.5 Rules and Regulations	65
Section 14.6 Interruption or Reduction in Services	66
Section 14.7 Records and Audits.....	66
Section 14.8 Tenants and Occupants of Units Entitled To Receive Building Services.....	67

TABLE OF CONTENTS

(Continued)

<u>Caption</u>	<u>Page</u>
ARTICLE 15 EXISTING LEASES	68
Section 15.1 Subordination.....	68
Section 15.2 Provision of Services.....	68
ARTICLE 16 UNIT CONVEYANCES, SALES, LEASES AND MORTGAGES.....	69
Section 16.1 General.....	69
Section 16.2 No Severance of Ownership	70
Section 16.3 Payment of Common Charges	70
Section 16.4 Unit Owner's Power of Attorney.....	70
Section 16.5 Gifts and Devises, Etc.....	70
Section 16.6 No Charges Imposed on Transactions	71
Section 16.7 Estoppel Certificate	71
Section 16.8 Registration of Mortgages	71
Section 16.9 Prohibition and Restriction on Mortgaging	71
Section 16.10 Notice of Unpaid Common Charges and Default.....	72
Section 16.11 Performance by Registered/Permitted Mortgagees	72
Section 16.12 Examination of Books	73
Section 16.13 Consent of Mortgagees; Designation of Mortgage Representatives.....	73
Section 16.14 Subordination.....	73
Section 16.15 Waiver of Rights of Partition, Use and Occupancy of Units Acquired or Leased By Board.....	74
Section 16.16 Registration of Tenants.....	74
Section 16.17 Notices to Registered Tenants	74
Section 16.18 Performance by Registered Tenants	75
Section 16.19 No Match Offer Right (or Right of First Refusal)	75
ARTICLE 17 CERTAIN REMEDIES	76
Section 17.1 Self Help	76
Section 17.2 Abatement and Enjoinment	77
Section 17.3 Remedies Cumulative.....	77
ARTICLE 18 CONDEMNATION OR EMINENT DOMAIN.....	77
Section 18.1 Taking of Entire Property	77
Section 18.2 Taking of Units.....	78
Section 18.3 Taking of Portions of Common Elements	78
Section 18.4 Adjustment of Common Interests.....	80
Section 18.5 Abatement in Common Charges.....	81
ARTICLE 19 ARBITRATION	81
Section 19.1 Submission to Arbitration.....	81
Section 19.2 Notice of Arbitration.....	81
Section 19.3 Commercial Arbitration Rules.....	82
Section 19.4 Selection of Arbitrators.....	82
Section 19.5 Decision of Arbitrator(s); Binding Effect.....	83
Section 19.6 Expenses of Arbitration	84
Section 19.7 Limitation on Power of Arbitrator(s).....	84
Section 19.8 Payment of Disputed Sums.....	84
ARTICLE 20 NOTICES	85
Section 20.1 General.....	85

TABLE OF CONTENTS
(Continued)

<u>Caption</u>	<u>Page</u>
Section 20.2 Waiver of Service of Notice	86
ARTICLE 21 FURTHER ASSURANCES	86
Section 21.1 Provisions of Declaration Apply and Govern	86
ARTICLE 22 AMENDMENTS TO BY-LAWS	86
Section 22.1 Provisions of Declaration Apply and Govern	86
ARTICLE 23 TERMINATION OF CONDOMINIUM	87
Section 23.1 Provisions of Declaration Apply and Govern	87
ARTICLE 24 GENERAL	87
Section 24.1 Inspection of Documents	87
Section 24.2 Waiver	87
Section 24.3 Conflicts	87
Section 24.4 Severability	87
Section 24.5 Successors and Assigns	88
Section 24.6 Table of Contents and Headings	88
Section 24.7 References	88
Section 24.8 Grammar	88
Section 24.9 Insurance Trustee	88
Section 24.10 Approvals or Consents	89
Section 24.11 Incorporation of Declaration	89
RULES AND REGULATIONS OF 609/FIFTH CONDOMINIUM	96



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BY-LAWS
OF
THE 180 LIVINGSTON STREET CONDOMINIUM

ARTICLE 1
GENERAL

Section 1.1 Purpose

The purpose of these By-Laws is to set forth the requirements, rules and procedures concerning the governance and conduct of the affairs of the Condominium as well as certain rights and obligations of Unit Owners, including the Disposition of the Property, the Association's Properties, the Building and the Units.

Section 1.2 Location and Description

The Condominium covers the Property, which consists of: (a) the Land, which lies in Section 5, Block 1284, Lot f/k/a Lot 69 and n/k/a Lots 1001 and 1002 on the Tax Map of the Real Property Assessment Department of the City of New York, Borough of Manhattan, New York County, in the State of New York; (b) the Building, which includes the Units, certain of the Common Elements and all easements, rights and appurtenances belonging thereto; and (c) all other property, real, personal or mixed, intended for use in connection therewith. The Property has been submitted to the provisions of the Condominium Act by the recording of the Declaration in the Register's Office, of which Declaration these By-Laws form a part.

Section 1.3 Definitions

The definitions of the words set forth in EXHIBIT C to the Declaration apply wherever these words appear in these By-Laws, unless the context in which such words are used shall otherwise require. The meanings stated for the words within quotation marks in any provision of these By-Laws apply wherever these words appear in these By-Laws or the Declaration, unless the context in which they are used shall otherwise require.

Section 1.4 Applicability of By-Laws

These By-Laws are applicable to the Property and to the uses and occupancies thereof.

Section 1.5 Application of By-Laws

All present and future Unit Owners, mortgagees, lessees, subleases and occupants of Units, and employees, invitees and guests of Unit Owners, as well as all other Persons who may use the Property, are and shall be subject to the Declaration, these By-Laws and the Rules and Regulations, as each of the same may be duly amended from time to time upon and subject to obtaining the prior written Discretionary Approval or Consent of the Existing Unit Mortgagee, for so long as the Existing Unit Mortgage encumbers a Unit, as provided in Section 7.1 of the

Declaration. The acceptance of a deed or other instrument of conveyance, or the succeeding to title to, or the execution of a lease or sublease for, or the act of occupancy of, a Unit shall constitute an agreement that the provisions of the Declaration, these By-Laws and the Rules and Regulations, as each of the same may be duly amended from time to time, are accepted, ratified and will be complied with.

Section 1.6 Principal Office of the Condominium Association

The principal office of the Condominium Association shall be located either at the office of the Declarant or at such other place reasonably convenient thereto as may be designated from time to time by the Declarant.

ARTICLE 2

THE CONDOMINIUM BOARD

Section 2.1 General

The affairs of the Condominium Association and the Operation of the Property and the Association's Properties shall be governed by the Condominium Board as provided in Section 2.4 hereof and elsewhere herein and in the Declaration. In exercising its powers and performing its duties under the Declaration and these By-Laws, the Condominium Board shall act on behalf, and shall be the agent, of the Unit Owners or (where otherwise expressly provided) a specified Unit Owner.

Section 2.2 Status of the Condominium Board

Unless and until the Condominium Board shall incorporate in accordance with the terms of Section 2.4 hereof, the Condominium Board shall have, to the extent permitted by Law, the status conferred upon unincorporated associations under, or pursuant to, the terms of the General Association Law of the State of New York. If the Condominium Board shall incorporate in accordance with the terms of Section 2.4 hereof, the Condominium Board shall have, to the extent permitted by Law, the status conferred upon it under, or pursuant to, the terms of the applicable statutes of the State of New York. In either event, however, the Condominium Board shall also have the status conferred upon it under, or pursuant to, the terms of the Condominium Act.

Section 2.3 Principal Office of the Condominium Board

The principal office of the Condominium Board shall be located at the office of the Declarant or at such other place reasonably convenient thereto as may be designated from time to time by the Declarant.

Section 2.4 Powers and Duties of the Board

2.4.1 General Powers and Duties. The Condominium Board shall have all of the powers and duties necessary for, or incidental to, the administration of the affairs of the Condominium Association and the Operation of the Property (including the Common Elements)

and the Association's Properties, as agent of the Unit Owners or (where otherwise expressly provided) a specified Unit Owner, and each Board Member shall act in the best interests of the Unit Owner who elected such Board Member (i.e., the Lower Unit Owner in the case of the Lower Board Members or the Upper Unit Owner in the case of the Upper Board Member), with due regard to the Maintenance, preservation, protection and value of the Property as a whole and the security, safety and health of the Owners and occupants of Units. The Condominium Board may do all such acts and things except those that by Law, or pursuant to the terms of the Declaration and these By-Laws, may not be, or are expressly not, delegated to the Condominium Board by the Unit Owners. The Condominium Board shall exercise its powers and perform its duties in a manner consistent with the Operation and Maintenance of the Building as a first class office building in the Borough of Manhattan.

2.4.2 Specific Powers and Duties. Without the intention to limit the generality of the foregoing in any respect, the Condominium Board shall have the following specific powers and duties:

- (a) to lease, license, Maintain, Repair, Alter and otherwise Operate and make any other Disposition of the Common Elements and the Association's Properties, and any Units or other property or assets owned, leased or otherwise held or Operated by the Condominium Board or its nominee or designee, including, as the Condominium Board shall deem necessary or proper in connection therewith: (a-1) the purchase and leasing of supplies, Equipment and material; (a-2) the employment or engagement, compensation and dismissal of personnel (including a fire safety director, Managing Agent, attorneys, accountants, mechanical and other engineers, architects or other professionals and consultants); and (a-3) leasing and granting of licenses and easements for portions of the Common Elements and the Association's Properties;
- (b) to acquire Units in accordance with Article 16 of the Declaration and to acquire all rights, titles and interests in real and personal property deemed necessary or proper by the Condominium Board for use in connection with the ownership, Maintenance, Repair, Alteration and other Operation and Disposition of the Property and the Association's Properties as a condominium regime; each of such acquisitions to be in the name of the Condominium Board or its nominee or designee, corporate or otherwise, as agent of the Unit Owners;
- (c) to maintain complete and accurate books and records with respect to the finances and the Operation of the Condominium, including, without limitation: (c-1) detailed accounts, in chronological order, of receipts and expenditures affecting the Property, the Association's Properties and the Common Elements; (c-2) detailed books of account of the Condominium Association and the transactions of the Condominium Board; (c-3) other financial records, as well as other books of account of the Condominium Association, as may be required to be kept pursuant to the terms of these By-Laws; and (c-4) minutes and other records of all meetings held pursuant to the terms of these By-Laws;
- (d) to prepare and adopt a Budget for the Condominium Association for each Budget Year thereof in accordance with Article 9 of the Declaration, setting forth, without limitation: (d-1) a detailed accounting of the anticipated Common Expenses, Specially Apportioned

Common Expenses and any expenses to be charged to a specified Unit in accordance with the Special Allocation and Apportionment Rule for the ensuing Budget Year; (d-2) a detailed projection of all sources and amounts of income or receipts necessary to discharge the same; and (d-3) such reserves for unanticipated expenses, contingencies, alterations, additions, improvements and capital replacements and repairs as the Board may consider appropriate in its sole and absolute discretion;

- (e) to determine the amount and establish the means and methods of payment of, and to collect and institute appropriate Lawsuits for non-payment of, the Common Charges and Special Assessments from the Unit Owners or a specified Unit Owner;
- (f) to require Unit Owners to execute and deliver to the Condominium Board one or more promissory notes in favor of the Condominium Board in such form and substance (including, at such interest rate and other terms) as the Condominium Board shall determine, in connection with Special Assessments levied by the Condominium Board to pay for any duly authorized Repairs and Alterations to the Common Elements or the Association's Properties, or any Unit or other property to be acquired, owned, leased or otherwise held or Operated by the Condominium Board or its nominee or designee, provided that the expense for any such Repairs, Alterations or other Disposition shall be borne as provided in Article 9 of the Declaration and Article 5 and other applicable provisions hereof;
- (g) to borrow money on behalf of the Condominium Association when required in connection with the Maintenance, Repair, Alteration or other Operation or Disposition of the Common Elements or the Association's Properties (including any real or personal property owned, leased or otherwise held or Operated by the Condominium Board, or its nominee or designee) and to secure any debt incurred by it as provided in Section 339-jj(2) of the Condominium Act; provided, however, that: (g-1) no lien to secure repayment of any sum borrowed may be created on any Unit or its Common Interest without obtaining the prior written Discretionary Approvals or Consents of both the Owner of such Unit and the Existing Unit Mortgagee for so long as the Existing Unit Mortgage encumbers such Unit; (g-2) the liability of each Unit Owner shall be limited to the legal and equity interest in such Owner's Unit and if the loan shall not be fully repaid by the Board and such Unit Owner shall pay the lender such proportion of the then outstanding indebtedness represented or secured thereby as such Unit Owner's Common Interest bears to 100%, such Unit Owner shall be entitled to obtain from the lender a release of any judgment or other lien that the said lender shall have filed, or shall have the right to file, against such Owner's Unit, and the loan documentation shall so provide; and (g-3) the prior written Discretionary Approval or Consent of a majority in number or Common Interest of Unit Owners is obtained as provided in clause (o) below (if applicable);
- (h) to open and maintain bank accounts on behalf of the Condominium Association and to designate the signatories required therefor;
- (i) to use the Common Charges and Special Assessments collected from Unit Owners, as well as all other assets and funds held by the Condominium Board or received in connection with the Operation of the Property and the Association's Properties, for the administration and Operation of the Condominium Association, the Common Elements

and the Association's Properties, including: (i-1) the payment of Common Expenses and (i-2) the Maintenance, Repair, Alteration and overall Operation and any other Disposition of the Common Elements and the Association's Properties (including any Units, property or assets owned, leased or otherwise held or Operated by the Condominium Board, or its nominee or designee) in accordance with the Declaration and these By-Laws;

- (j) to obtain insurance for the Property, including the Units (excluding liability insurance for occurrences within or on a Unit) and the Association's Properties, pursuant to the terms of Article 6 hereof;
- (k) to adjust and settle claims under insurance policies obtained pursuant to the terms of Article 6 hereof, and to execute and deliver releases upon such adjustment and settlement on behalf and as agent of: (k-1) all Unit Owners; (k-2) all holders of mortgages and other liens on Units; and (k-3) all holders of any other interest in the Property or the Association's Properties;
- (l) to make, or to contract with others for the making of, Maintenance, Repairs, Alterations and other Disposition of, or to, the Property or any Association's Properties after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings, all in accordance with the terms of the Declaration and these By-Laws;
- (m) to obtain and keep in force (as part of the Common Expenses) fidelity bonds, in amounts deemed appropriate by the Condominium Board for: (m-1) all members of the Condominium Board; (m-2) all officers and employees of the Condominium Association; and (m-3) the Managing Agent (if any);
- (n) to accept the surrender of a Unit pursuant to the terms of Section 8.14 hereof, in the name of the Condominium Board or its nominee or designee, corporate or otherwise, and on behalf and as agent of the Unit Owners;
- (o) to purchase one (1) or more Units at foreclosure or other judicial sale or by deed in lieu of foreclosure, or to acquire Units by surrender, and, in connection therewith, to borrow money on behalf of the Unit Owners and to grant mortgages and other security interests and collateral in connection therewith; provided however, that the affirmative Discretionary Approval or Consent of at least a majority in number or Common Interest of Unit Owners must first be obtained in writing or at a duly constituted meeting of Unit Owners at which a quorum is present for any borrowing in excess of \$250,000.00 (any borrowing below such sum shall not require the approval or consent of Unit Owners);
- (p) to sell, lease, mortgage, securitize, collateralize and otherwise deal with, and make any Disposition of, Units acquired by, and to sublease Units leased by, the Condominium Board or its nominee or designee, corporate or otherwise, on behalf and as agent of all Unit Owners, provided, however, that the Condominium Board or its nominee or designee shall in no event be entitled to vote the votes appurtenant to any such Unit;
- (q) to adopt and amend Rules and Regulations (without recording an Amendment to the Declaration or these By-Laws) and to adopt, impose, levy and collect charges, fees,

interest and fines against Unit Owners for violations of the same or the Declaration or these By-Laws;

- (r) to enforce by any legal means (including Lawsuits) the terms, covenants, conditions and provisions contained in the Condominium Documents and to bring, prosecute, defend and settle any Lawsuits that may be instituted on behalf of, or against, the Unit Owners pursuant to the Declaration, these By-Laws or the Condominium Act;
- (s) to organize as a corporation, limited liability company or other Entity, to the extent and in the manner provided or permitted in the Condominium Act, provided, however, that: (s-1) the organizational documents of any such resulting corporation, limited liability company or other Entity shall conform as closely as practicable to the terms of the Declaration and these By-Laws; and (s-2) the terms of the Declaration and these By-Laws shall prevail in the event of any inconsistency or conflict between the terms thereof and the terms of such organizational documents;
- (t) to organize corporations, limited liability companies and other Entities to act as the nominees or designees of the Condominium Board in acquiring title to, or leasing of, Units and in acquiring rights, titles and interests in real, personal or mixed property for use in connection with the ownership and Operation of the Property and the Association's Properties;
- (u) to execute, acknowledge and deliver the following (unless expressly prohibited by the Declaration or these By-Laws to be executed and delivered by the Board): (u-1) any application, declaration, document or other instrument (including any Government Document or Litigation Document) affecting all or part of the Property or the Association's Properties that the Condominium Board deems necessary or appropriate in accordance with the Declaration or these By-Laws or to comply with any Law, zoning resolution or requirement of any Governmental Authority applicable to the Maintenance, Repair, Alteration or other Operation or Disposition of all or part of the Property or the Association's Properties; and (u-2) any agreement, application, document, consent, covenant, restriction, license, easement or declaration, or any Amendment thereto, affecting the Condominium Association, the Property, the Association's Properties or the Common Elements that the Condominium Board deems necessary or appropriate;
- (v) to prepare, execute, acknowledge and record on behalf and as agent of all Unit Owners, as their attorney-in-fact, "coupled with an interest": (v-1) Amendments to the Declaration to amend the Declaration and/or By-Laws whenever requested by a Unit Owner, to the extent required or permitted under the Declaration or these By-Laws; or (v-2) a restatement of the Declaration or these By-Laws, whenever, in the Condominium Board's judgment, it is advisable to consolidate and restate all Amendments, modifications, additions and deletions theretofore made to the same (subject, however, to compliance with restrictions set forth in Article 22, Section 22.4 of the Declaration);
- (w) (if requested by both Unit Owners) to do the following on behalf and as agent for the Unit Owners:

- (w-1) to protest, complain or apply to the appropriate taxing authority to correct the tax assessments of the Units for any year by filing a single complaint on behalf of all such Unit Owners;
 - (w-2) to commence and prosecute a special proceeding for the review of assessments of real property as an aggrieved person under the Real Property Tax Law;
 - (w-3) to seek administrative and judicial review of the tax assessments for any year;
 - (w-4) to negotiate and settle with the taxing authority the tax assessments and any resulting Lawsuit;
 - (w-5) to execute and acknowledge in the name of the Unit Owners, as agent and as attorney-in-fact, all applications, certifications, petitions, complaints settlement agreements, releases and other documents in furtherance of the foregoing; and
 - (w-6) to retain legal counsel and other professionals and experts on behalf and as agent of the Unit Owners for whom it is so acting to represent such Unit Owners in connection with the foregoing;
- (x) to do the following on behalf and as agent for both Unit Owners or (where appropriate) a specified Unit Owner where required or permitted in carrying out the duties imposed upon the Condominium Board under these By-Laws, the Declaration or the Condominium Act:
- (x-1) to commence and prosecute as well as defend Lawsuits;
 - (x-2) to seek administrative and judicial review;
 - (x-3) to negotiate and settle any such Lawsuits;
 - (x-4) to execute and acknowledge in the name of each Unit Owner for which it is acting as agent, as such Unit Owner's attorney-in-fact, all applications, certifications, petitions, complaints, answers, counterclaims, crossclaims, affidavits, motions, interrogatories, depositions, Litigation Documents, settlement agreements, releases and other documents in furtherance of the foregoing; and
 - (x-5) to retain legal counsel and other professionals on behalf and as agent of each Unit Owner for whom it is so acting to represent such Unit Owner in connection with the foregoing; provided that nothing herein will preclude a Unit Owner to commence, defend and settle any Claim or Lawsuit affecting only such Unit Owner or such Owner's Unit and provided further that all Costs and Expenses, awards, judgments and settlement payments incurred or collected in connection with any Claim or Lawsuit by the Condominium Board as agent for Unit Owners shall be borne and shared only by those Unit Owners on whose behalf the Condominium Board is so acting;

- (y) controlling power shut-offs and other interruptions of the normal functioning of the Property, necessary to facilitate the performance of Work in or to particular Units and/or the Common Elements, which is permitted or required under the Declaration or these By-Laws; provided that the Condominium Board will make all reasonable efforts to minimize to the extent possible and practical any disruption in the Use and Enjoyment of Units;
- (z) to invest any excess funds held by the Board in obligations of the United States and market instruments and funds which invest in any such obligations; and
- (aa) generally, to carry out any and all other powers and duties granted or imposed upon the Condominium Board pursuant to the Declaration, these By-Laws and the Condominium Act.

The Condominium Board shall be responsible for carrying out the duties imposed upon it under the Condominium Documents regardless of whether a Unit, or a portion thereof, is vacant or occupied by the Owner thereof or by Permitted Tenants/Occupants/Invitees.

Section 2.5 Delegation and Restrictions

2.5.1 Right to Delegate. The power and duties of the Condominium Board under the Declaration, these By-Laws, the Condominium Act and other Laws shall be exercised and performed by the Condominium Board or shall be exercised and performed on its behalf and at its direction by the agents, employees, nominees or designees of the Condominium Board.

2.5.2 Executive Committee. The Condominium Board may appoint an Executive Committee by duly adopted resolution, which Executive Committee shall have, and may exercise and perform, all of the powers and duties of the Condominium Board during the intervals between the meetings of the Condominium Board, subject to both the exceptions and limitations contained in subsection 2.5.6, and the restrictions set forth in subsection 2.5.7, of this Section 2.5 and such additional exceptions, limitations and restrictions as the Condominium Board may from time to time deem appropriate.

2.5.3 Other Committees. In addition, the Condominium Board may from time to time appoint, by duly adopted resolutions, such other committees as the Condominium Board may deem appropriate to exercise and perform such powers and duties as the Condominium Board shall direct, each of which committees shall have, and may exercise and perform, all of the powers and duties delegated to it in its enabling resolution, subject, however, to the exceptions and limitations contained in subsection 2.5.6, and the restrictions in subsection 2.5.7, of this Section 2.5.

2.5.4 Lower Board Member Requirement. The Executive Committee and each other committee shall consist of at least one (1) Lower Board Member, unless waived in writing by the Lower Unit Owner.

2.5.5 Managing Agent and/or Manager. The Condominium Board may employ a Managing Agent and/or a manager to serve at a compensation to be negotiated by, and acceptable to, the Condominium Board and to perform such duties and services as the

Condominium Board shall direct. Trigon Equities Corp., having an office and address for notices at 16 East 52nd Street, New York, New York 10022, shall be the initial Managing Agent pursuant to the terms of a separate agreement between the Board and such agent. Subject to the exceptions and limitations contained in subsection 2.5.6 and the restrictions in subsection 2.5.7 of this Section 2.5, the Condominium Board may delegate to such Managing Agent and/or a manager employed by it any of the delegable powers and duties granted to the Condominium Board in these By-Laws.

2.5.6 Non-Delegable Powers and Duties. Notwithstanding anything to the contrary contained in this Section 2.5, the Executive Committee and the Managing Agent shall neither have nor be entitled to exercise or perform, and the Condominium Board shall not delegate to either of them or to any other committee, the powers or duties described in subsections 2.4.2(b), (d), (e), (f), (g), (k) and (n) through (aa) hereof ("**non-delegable powers and duties**"). In addition, neither the Managing Agent, a manager nor any of the committees described in this Section 2.5 shall have, or be entitled to exercise or perform, any of the powers or duties that are expressly prohibited from being delegated under the Condominium Act or other Law.

2.5.7 Exception. However, any and all of these non-delegable powers and duties and all other powers and duties of the Condominium Board may be delegated to a manager or other Person designated by the Board, under such terms and conditions as are approved and determined by the Condominium Board, in connection with a loan (secured or unsecured) obtained by the Condominium Board in accordance with its authority under these By-Laws as agent for the Unit Owners.

Section 2.6 Number, Election and Qualification of Board Members

2.6.1 Initial Board. Until the first meeting of the Unit Owners held pursuant to the terms of Section 4.1 hereof, the Condominium Board shall consist of one (1) or more individuals to be appointed and designated from time to time exclusively by Declarant.

2.6.2 First Elected Board. From and after such first meeting of the Unit Owners, the Condominium Board shall consist of three (3) Board Members (unless otherwise determined by all Unit Owner^s pursuant to Section 4.9.1 below), of whom two (2) Board Members shall be elected (i.e., appointed and designated) exclusively by Lower Unit Owner ("**Lower Board Members**") and one (1) Board Member shall be elected (i.e., appointed and designated) exclusively by the Upper Unit Owner ("**Upper Board Member**")

2.6.3 Qualification. Each Board Member shall be at least 18 years old, but need not be a Unit Owner or meet any other qualification to serve as a Board Member.

2.6.4 Ineligibility. If the Condominium Board perfects a lien against a Unit for unpaid Common Charges, the following shall apply until the lien is paid or discharged by bonding or otherwise: (a) the Owner of such Unit may not thereafter elect any Board Members; and (b) the Board membership of the Board Member(s) appointed and designated exclusively by such delinquent Unit Owner shall immediately be suspended upon perfection of the lien and such Board membership shall automatically cease thirty (30) days thereafter unless the lien is paid or

discharged by bond or otherwise during such thirty (30) day period. In addition, the Board membership of the Board Member(s) exclusively appointed and designated by a Unit Owner shall automatically end when such Owner no longer owns a Unit.

Section 2.7 Term of Office of Board Members

The initial Board Member designated by Declarant will serve at the pleasure of Declarant and until the first meeting of Unit Owners following the recording of the Declaration when the new three (3) Board Members are elected as provided in Section 2.6.2 above. The three (3) Board Members and all succeeding Board Members shall serve for a term of one (1) year. Each annual meeting of Unit Owners is to be held within approximately thirty (30) days of the anniversary of the previous annual meeting of Unit Owners, subject to the right of Condominium Board, in its sole and absolute discretion, to change the date of such annual meeting. There is no limit on the number of terms, successive or otherwise, a Board Member may serve.

Section 2.8 Removal and Resignation of Board Members

2.8.1 Removal. A Board Member may be removed: (a) “with cause” only by a vote of a majority in Common Interest of Unit Owners cast at a duly constituted meeting of Unit Owners called for such purpose at which a quorum is present. A Board Member who is to be removed “for cause” shall be given a written explanation of the basis of removal at least three (3) business days in advance of the meeting of Unit Owners and a reasonable opportunity to be heard at the meeting before the vote is taken; or (b) “without cause” only by the Owner who exclusively appointed and designated such Board Member.

2.8.2 Resignation. A Board Member may resign at any time by giving written notice to the Owner who exclusively appointed and designated such Board Member. In addition, upon the conveyance of a Unit, the Board Member(s) elected exclusively by the Owner of such Unit shall be deemed to have resigned effective on the date of such conveyance.

Section 2.9 Vacancies

2.9.1 Replacement. A vacancy on the Condominium Board resulting from removal, resignation, death, incompetency, incapacity or other cessation of Board membership shall be filled by a replacement who shall be elected exclusively by the Unit Owner who elected such vacating Board Member.

2.9.2 Term. The replacement Board Member so elected to fill the vacancy will serve as a member of the Condominium Board for the remainder of the term of the Board Member being replaced and until the member’s successor is qualified and elected at the next annual meeting of Unit Owners.

2.9.3 Procedure. The replacement Board Member shall be elected by written notice signed by the applicable Unit Owner having the exclusive right to fill such vacancy as aforesaid. Such written notice may be given to the surviving Board Member or any officer of the Condominium or the other Unit Owner without the necessity of a meeting of Unit Owners.

Section 2.10 Organizational Meeting of the Condominium Board

The first meeting of each Condominium Board elected annually by the Unit Owners at meetings held from and after the recording of the Declaration shall be held immediately after each such annual meeting of Unit Owners and no notice of such Board meeting shall be necessary to the newly elected Board Members in order to legally constitute the meeting, provided a quorum shall be present. Alternatively, such first Board meeting may convene at such place, date and time as shall be fixed by the three (3) newly elected Board Members if all three (3) are present at said annual meeting of Unit Owners. In any event, however, such first meeting of the Board shall be held within approximately thirty (30) calendar days following said election by the Unit Owners.

Section 2.11 Regular Meetings of the Condominium Board

Regular meetings of the Condominium Board may be held at such time and place as shall be determined from time to time by a majority of the Board Members; provided, however, that after the recording of the Declaration at least one (1) such meeting of the Condominium Board shall be held during each fiscal year. Written notice of all regular meetings of the Condominium Board shall be given to each Board Member by hand delivery, mail, overnight mail, telecopier (with electronic confirmation of transmission) or telegram at least five (5) business days prior to the date set for such meeting.

Section 2.12 Special Meetings of the Condominium Board

The President may call a special meeting of the Condominium Board, whenever determined by the President to be necessary or desirable. The President shall call a special meeting of the Board to be held within 10 business days after receipt of written request of one (1) or more Board Members therefor. Written notice of all special meetings shall be given to each Board Member at least two (2) business days (if sent by hand delivery, telecopier (with electronic confirmation of transmission) or telegram) or at least five (5) business days (if sent by mail) prior to the date set for such meeting, which notice shall state the date, time, place and purpose of the meeting.

Section 2.13 Waiver of Notice of Meetings

Any member of the Condominium Board may, at any time, waive notice of any meeting thereof or any committee thereof in writing, and such waiver shall be deemed equivalent to the giving of notice. Attendance by a member of the Board at any meeting thereof or any committee thereof shall constitute a waiver by such Board Member of notice of the time and place thereof. However, if all of the members of the Board are present at any meeting thereof or any committee thereof, no notice of such meeting shall be required and any business authorized pursuant to these By-Laws may be transacted at such meeting.

Section 2.14 Quorum of the Condominium Board

2.14.1 Quorum. A quorum of the Condominium Board is required to be present at a Board meeting in order to make any determination or to transact any business. To constitute a quorum of the Board, all Board Members shall be given due notice of the meeting as provided

in Section 2.11 or 2.12 (as applicable) and a majority of all Board Members shall be present at the Board meeting.

2.14.2 Attendance Requirements. Attendance at a meeting of the Board or any committee thereof shall be in person or by conference telephone or other communications equipment permitting all individuals participating in the meeting to hear or otherwise effectively communicate with each other at the same time, and such participation shall constitute presence at such a meeting for all purposes. In addition, a Board Member shall be permitted to attend such Board or committee meeting by proxy, provided the proxy is signed by the Unit Owner who exclusively elected such Board Member.

2.14.3 Adjournment. If, at any meeting of the Condominium Board there shall be less than a quorum present, the Board Member ^{in attendance or} if the number of Board Members is increased to four (4) or more) a majority of the Board Members in attendance may adjourn the meeting to a new date, time and location of which written notice shall be given to all Board Members at least five (5) business days prior to such new date. If at such adjourned date, no quorum is present, the foregoing process shall be repeated from time to time until a quorum is present on an adjourned date. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called but for the lack of a quorum may be transacted without further notice.

Section 2.15 Conduct of Meetings

2.15.1 Presiding Officer. The President elected by a majority of the Board Members shall preside at all meetings of the Condominium Board and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Condominium Board and a record of all transactions and proceedings occurring thereat.

2.15.2 Robert's Rules of Order. The then current edition of Robert's Rules of Order, or any other rules of procedure from time to time acceptable to a majority of the members of the Condominium Board shall govern the conduct of the meetings of the Board, unless the same shall be in conflict with the terms of the Declaration, these By-Laws or the Condominium Act.

Section 2.16 Decisions by the Condominium Board

Except as otherwise expressly provided in the Declaration or these By-Laws, the vote of a majority of those members of the Condominium Board present at a duly constituted meeting thereof at which a quorum is present shall constitute the decision of the Board. Each Board Member shall have one (1) vote on all decisions of the Board and all transactions conducted by the Board. Alternatively, any decision or transaction that is required or permitted to be made or conducted by the Condominium Board may be made or conducted without a meeting thereof if all of the members of the Condominium Board shall individually or collectively consent in writing to such decision or transaction respectively. All such written consents shall be duly filed by the Secretary of the Condominium Association in the minutes of the Condominium Board.

Section 2.17 Compensation of Members

No member of the Condominium Board or any committee thereof shall receive any compensation from the Condominium Association for acting as such.

Section 2.18 Standards for Fiduciary Responsibility and Self-Dealing

2.18.1 **General Standard.** All powers and duties shall be exercised and performed by each Board Member and officer, in good faith and with a view to the interests of the Unit Owner who elected such Board Member, but with due regard to the Maintenance, preservation, protection and value of the Property as a whole and the security, safety and health of Owners and occupants of Units.

2.18.2 **Interested Party Transactions.** The Condominium Board may contract or effect any other transaction with any member or officer of the Board or any Unit Owner, or Related Parties to any of the foregoing (collectively "**Interested Party**"), without the Condominium Board or such Interested Party incurring any liability for self-dealing, provided that the terms of such contract or other transaction, including any compensation paid in respect thereof, shall be on no less favorable terms than those commercially reasonable and at competitive rates at the time such contract or transaction is entered into and reasonable evidence or documentation thereof is given to the Board ("**commercial reasonableness standard**").

2.18.3 **Disclosure.** No contract or other transaction between the Condominium Board and an Interested Party, shall be deemed either void or voidable because of the interest (pecuniary or otherwise) therein of such Interested Party or the presence of such Interested Party at the meeting or meetings of the Board during which such contract or transaction was discussed, authorized, approved or ratified; provided, however, that the contract or transaction shall meet the commercial reasonableness standard at the time that the same is authorized, approved, ratified, executed or otherwise consummated and either:

- (a) the terms of the contract and/or transaction are disclosed to all Board Members, or the fact thereof is disclosed to, or known by, a majority of all Board Members or noted in the minutes thereof, and such Board Members shall authorize, approve or ratify such contract or transaction in good faith by a vote of a majority thereof, less the number of such interested Board Members; or
- (b) the fact thereof is disclosed to, or known by, a majority in Common Interest of all Unit Owners affected thereby, excluding any Unit Owner who also has an interest in such contract or transaction, and a majority in Common Interest of such affected Unit Owners, excluding any such interested Unit Owners, shall authorize, approve or ratify such contract or transaction.

2.18.4 **Quorum.** Any such interested Board Member may be counted in determining the presence of a quorum of any meeting of the Board that authorizes, approves or ratifies any such contract or transaction, but such Board Member shall not be entitled to vote thereat to authorize, approve or ratify such contract or transaction.

Section 2.19 Liability of Board Members

2.19.1 Standard for Liability. The members of the Condominium Board shall have no personal liability to the Unit Owners for errors of judgment, negligence or otherwise, except that each member of the Condominium Board shall be liable thereto for such member's own bad faith or willful misconduct.

2.19.2 Interested Party Transactions. In connection therewith, a Board Member shall not be deemed either to have acted in bad faith or to have committed willful misconduct by reason of any self-dealing in connection with any contract made, or other transaction entered into, between the Condominium Board and such Board Member ("**Interested Board Party**"), provided that any compensation paid, or to be paid, to such Interested Board Party in connection with any such contract or transaction is either: (a) disclosed to all Board Members; or (b) is in accordance with the commercial reasonableness standard for goods sold or services rendered in the Borough of Manhattan, New York County of the City and State of New York and is approved by a majority of the Board Members who are not an Interested Board Party.

2.19.3 Exculpation. The Board Members and the agents (including a Managing Agent and/or manager) of the Condominium Board shall have no personal liability for merely having acted in such capacity. Such exculpation from personal liability shall apply to all transactions of the Board authorized in these By-Laws or the Declaration, including each and every contract made, and other document executed, by or on behalf of the Condominium Board (or its nominee or designee) in accordance with these By-Laws or the Declaration, and each such contract or other document shall so provide (however, the failure to so provide shall not, and shall not be construed to, in any way affect, change or waive such exculpation from personal liability). Such contract or document shall be regarded as being made or executed by or on behalf of the Board (or its nominee or designee) as agent of the Unit Owners and the liability thereunder of a Board Member shall be to the extent only that such Board Member is a Unit Owner and then only as limited in Section 4.12 hereof.

2.19.4 Service Interruptions and Force Majeure. Neither the Condominium Board nor any Board Member (in such capacity as a Board Member) shall be liable for any Claims or Liabilities and Expenses for either: (a) any failure or interruption of any utility or other services to be obtained by, or on behalf of, the Condominium Board or to be paid for as a Common Expense; or (b) any injury, loss, or damage to any individual or property, occurring in or upon either a Unit or the Common Elements and either: (b-1) caused by the Force Majeure, by any Unit Owner or by any other Person; (b-2) resulting from electricity, water, snow or ice, including water that may leak or flow from a Unit, its appurtenant Limited Common Element (if any) or any portion of the Common Elements; or (b-3) arising out of theft or otherwise.

2.19.5 Indemnity. The Unit Owners shall jointly indemnify each and every member of the Condominium Board from and against any and all Claims and Liabilities and Expenses to others arising from such Board Members acts or omissions as, or by reason of the fact that such individual is or was, a member of the Condominium Board, except, however, to the extent that such Claims or Liabilities and Expenses shall be due to, or shall arise out of, the bad faith or willful misconduct of such Board Member.

Section 2.20 Transactions by Declarant in lieu of Board

Until the first conveyance of a Unit, all business to be transacted by the Condominium Board, including all decisions to be made and actions to be taken, may be transacted, made and taken by Declarant (as Owner of both the Lower Unit and the Upper Unit) in lieu of the Board with the same validity, force and effect as though same had been done by the Board.

ARTICLE 3

OFFICERS

Section 3.1 General

3.1.1 Election. The officers of the Condominium Association shall consist of a President, a Vice President, a Secretary and a Treasurer, each of whom shall be elected by vote of a majority of those Board Members attending a duly constituted Board meeting at which a quorum is present. The Condominium Board shall have the power to elect such other officers and assistant officers and it deems appropriate.

3.1.2 Powers and Duties. Generally, the officers will have all of the same powers and duties of the equivalent officer of a stock corporation organized under the Business Corporation Law of the State of New York ("BCL"). Assistant officers (if any), in order of their seniority or in any other order determined by the Condominium Board shall, in the absence or disability of the applicable principal officer, as the case may be, perform the duties and exercise the powers of the applicable principal officer, and shall perform such other duties as the Board or the applicable principal officer shall prescribe.

3.1.3 Execution of Documents. Unless otherwise expressly provided elsewhere in these By-Laws or the Declaration or required by Law, all agreements, contracts, deeds, mortgages, leases, checks and other instruments and documents of the Condominium Association or Condominium Board shall be executed, upon the direction of the Condominium Board, by any two officers of the Condominium Association or by such lesser or other number of officers or by such other Person or Persons as may be designated from time to time by the Condominium Board.

3.1.4 Authorization. The Condominium Board may, by resolution passed in accordance with the provisions hereof, authorize any officer to execute and deliver on behalf of the Board documents or other instruments necessary or desirable to the performance of its duties and obligations hereunder. The President, the Vice President, the Secretary and the Treasurer are each authorized to execute and deliver estoppel certificates regarding the payment of Common Charges or other matters related to a Unit or its Owner to a holder of an existing or proposed Registered Mortgage, a purchaser or a tenant of an Owner's Unit, or to such other parties reasonably entitled to such information as determined by the Board.

Section 3.2 President

The President shall be the chief executive officer of the Condominium Association; and shall preside at meetings of all Unit Owners and of the Board. The President shall have all of the general powers and duties that are incident to the office of president of a stock corporation organized under the BCL, including the power to appoint the members of all committees created by the Condominium Board from among the Unit Owners and other Persons, subject to compliance with subsection 2.5.4 above.

Section 3.3 Vice President

The Vice President shall take the place of the President and exercise and perform, the powers and duties whenever same shall be absent or unable to act. The Vice President shall have all of the general powers and duties that are incident to the office of vice president of a stock corporation organized under the BCL. If the President and Vice President are unable to act, the Board Members shall appoint some other member of the Condominium Board (in the case of the President) or other individual (in the case of the Vice President) to act in the place of such absent or incapacitated officer on an interim basis. The Vice President shall also perform such other powers and duties as shall be required from time to time by the Condominium Board or by the President.

Section 3.4 Secretary

The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board Members. The Secretary shall have charge of such books and papers as the Condominium Board shall direct and, in general, shall have all of the powers and duties that are incident to the office of secretary of a stock corporation organized under the BCL.

Section 3.5 Treasurer

The Treasurer shall have the care and custody of the funds and securities of the Condominium Association and shall be responsible for keeping full and accurate financial records and books of account thereof, showing all receipts and disbursements necessary for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all funds and other securities in the name of the Condominium Board or in the name of the Managing Agent and/or manager (if any) in such depositories as may from time-to-time be designated by the Condominium Board and, in general, shall have all of the powers and duties incident to the office of treasurer of a stock corporation organized under the BCL.

Section 3.6 Election, Term of Office and Qualifications of Officers

3.6.1 Election and Term. Each of the officers of the Condominium Association shall be elected annually by a majority of the Board Members taken at the organizational meeting of each new Condominium Board (except in case of an election to fill a vacancy or to create an additional or new officer), and shall serve at the pleasure of the Board Members.

3.6.2 Qualifications. The President shall be a Lower Board Member. The other officers of the Condominium Board, however, need not be members of the Condominium Board.

An officer may, but need not, have any interest in a Unit or a Unit Owner. Any single person may hold any combination of offices, except that the offices of the President, Vice President and Secretary shall be held by different persons.

Section 3.7 Removal and Resignation of Officers

3.7.1 Removal. Each officer serves at the pleasure of the Board and may be removed at any time, with or without cause, by an affirmative vote of a majority of those Board Members attending a duly constituted meeting of the Board at which a quorum is present.

3.7.2 Resignation. Each officer may resign at any time by giving written notice to the Condominium Board. However, the President will be regarded as having resigned effective on the date such officer ceases to be a Lower Board Member.

Section 3.8 Vacancies

A vacancy in an office shall be filled by a majority vote of those Board Members attending a duly constituted regular meeting of the Condominium Board, or special meeting thereof called for such purpose.

Section 3.9 Compensation of Officers

No officer of the Condominium Association shall receive any compensation from the Condominium Association for acting as such.

Section 3.10 Liability of Officers

3.10.1 Standard for Liability. The officers of the Condominium Association shall have no personal liability to the Unit Owners for errors of judgment, ordinary negligence or otherwise, except that each officer of the Condominium Association shall be liable thereto for such officer's own gross negligence, bad faith or willful misconduct.

3.10.2 Exculpation. The officers of the Condominium Association shall have no personal liability for having acted in such capacity and such exculpation from personal liability shall apply to all transactions of the Board authorized in these By-Laws or the Declaration, including each and every contract made, and other document executed, by or on behalf of the Condominium Board in accordance with these By-Laws or the Declaration, and each such contract and document shall so provide (however, the failure to so provide shall not, and shall not be construed to, in any way affect, change or waive such exculpation from personal liability). Such contract or document shall be regarded as being made or executed by or on behalf of the Board as agent of the Unit Owners and the liability thereunder of an officer shall be to the extent only that such officer is a Unit Owner and then only as limited in Section 4.12 hereof.

3.10.3 Service Interruptions and Force Majeure. None of the officers of the Condominium Association shall be liable for any Claims or Liabilities and Expenses for either: (a) any failure or interruption of any utility or other services to be obtained by any such officer on behalf of the Condominium Association or to be paid for as a Common Expense; or (b) any injury, loss, or damage to any individual or property, occurring in or upon either a Unit or any

portion of the Common Elements or the Association's Properties, and either: (b-1) caused by the Force Majeure, by any Unit Owner or by any other Person; (b-2) resulting from electricity, water, snow or ice, including water that may leak or flow from a Unit or any portion of the Common Elements; or (b-3) arising out of theft or otherwise.

3.10.4 Indemnity. The Unit Owners shall jointly indemnify each and every officer of the Condominium Association from and against any and all Claims and Liabilities and Expenses to others arising from such officer's acts or omissions as, or by reason of the fact that such individual is or was, an officer of the Condominium Association, except, however, to the extent that such Claims or Liabilities and Expenses shall be due to, or shall arise out of, the bad faith or willful misconduct of such officer.

ARTICLE 4

UNIT OWNERS

Section 4.1 Annual Meetings of the Unit Owners

4.1.1 First Meeting. The first meeting of Unit Owners shall be held within approximately thirty (30) days after the recording of the Declaration. At such first meeting, the incumbent Condominium Board Members shall resign, or shall be deemed to have resigned, effective upon the qualification and election by Unit Owners of a successor three (3) member Condominium Board, as provided both in this Article 4 and in Article 2 hereof.

4.1.2 Subsequent Annual Meetings. Thereafter, annual meetings of the Unit Owners shall be held within approximately thirty (30) days of the anniversary of the previous annual meeting, subject to the right of the Board (in its sole and absolute discretion) to change the date of such annual meeting, and at such time and place in the Borough of Manhattan in the City and State of New York as shall be determined by the Condominium Board. At each such subsequent annual meeting, the Unit Owners shall elect the entire number of Board Members and shall transact such other business as may properly come before such meeting.

Section 4.2 Special Meetings of the Unit Owners

4.2.1 Requirements For Special Meeting. The President shall call a special meeting of the Unit Owners whenever so directed by a duly adopted resolution of the Condominium Board upon receipt by the Secretary of a petition calling for such a meeting signed by not less than a majority in Common Interest of all Unit Owners. Each such resolution or petition shall set forth, in reasonable detail, the purposes for calling such a meeting. Within ten (10) business days after receipt of such resolution or petition, the President shall call such special meeting to be held within twenty (20) business days following such receipt thereof, unless the purpose for the meeting is to consider an Amendment to the Declaration or these By-Laws, or to borrow or spend an amount requiring the approval or consent of the Unit Owners, or to remove a Board Member, in which case the provisions of subsection 4.4.4 shall apply. If the President fails to so call such special meeting, then any Unit Owner who signed such petition may so call such meeting by a notice of meeting in accordance with the requirements of Section 4.4 hereof (except that such notice need not be given by the Secretary).

4.2.2 Business of Meeting. No business shall be transacted at such special meeting of Unit Owners except business reasonably related to purposes stated in the notice of special meeting or said petition.

Section 4.3 Place of Meetings

Meetings of the Unit Owners shall be held at the principal office of the Condominium Association or the Managing Agent or at such other suitable place convenient to the Lower Unit Owner as it may designate, unless a meeting is held by conference telephone or other communications equipment as provided in subsection 4.5.1 below.

Section 4.4 Notice of Meetings

4.4.1 Contents. The Secretary of the Condominium Association shall give notice of each annual or special meeting of the Unit Owners to all Unit Owners then of record entitled to vote at such meeting, which notice shall set forth the purpose, time and place of such meeting.

4.4.2 Procedure. Such notice may be given to any Unit Owner by hand delivery, mail, telecopier (with electronic confirmation of transmission) or telegram at least ten (10) days prior to the day fixed for the meeting; however, absent receipt by the Secretary of the Condominium Association of written notice of another address to which notices are to be sent, the delivery or mailing of such notice to any Unit Owner, addressed to the Owner's address at the Property, at least ten (10) days prior to the day fixed for the meeting shall be conclusively deemed the giving of notice to such Unit Owner of such meeting.

4.4.3 Address Change. Any Unit Owner may designate an address for the giving of notice other than such Unit Owner's address at the Property by giving written notice thereof to the Secretary of the Condominium Association not less than ten (10) calendar days prior to the giving of notice of the applicable meeting.

4.4.4 Required Approval or Consent of Unit Owners. Supplementing, modifying and superseding any inconsistency in Section 4.4.2 hereof, if the business to be conducted at any regular or special meeting of the Unit Owners shall include the consideration of a proposal to amend the Declaration or these By-Laws or the Rules and Regulations or a budget item or an expenditure requiring the Unit Owners approval or consent or a proposal to remove a Board Member, the notice of such meeting shall be mailed to all Unit Owners at least twenty (20) business days prior to the day fixed for such meeting and shall be accompanied by a copy of the text of such proposed Amendment, or shall include a reasonably detailed notice of the budget item or expenditure or the basis for removal of the Board Member (as applicable). In such case, the President shall call such meeting to be held not sooner than twenty-one (21) business days, nor later than forty-five (45) business days, following receipt by the Secretary of a Board resolution or a petition signed by the requisite majority in Common Interest of Unit Owners calling for such meeting.

Section 4.5 Quorum of the Unit Owners

4.5.1 Quorum and Attendance Requirements. Attendance (in person or by proxy) of a majority in Common Interest of the Unit Owners shall be required to constitute a quorum to transact any business at a meeting of Unit Owners. In addition, attendance at such meeting of Unit Owners by conference telephone or other communications equipment permitting all individuals participating in the meeting to hear or otherwise effectively communicate with each other at the same time shall constitute presence at such meeting for all purposes.

4.5.2 Adjournment. If, at any meeting of the Unit Owners there shall be less than a quorum present, a majority in Common Interest of Unit Owners present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours from the time fixed for the original meeting. Notice of the adjourned date shall be sent to all Unit Owners in accordance with subsection 4.4.2 above, except that the notice shall be given by hand delivery or telegram at least 24 hours before the adjourned date or by mail at least three (3) business days before the adjourned date.

Section 4.6 Conduct of Meetings

4.6.1 Presiding Officer. The President shall preside at the meetings of Unit Owners and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Unit Owners and a record of all transactions and proceedings occurring thereat. All votes of the Unit Owners shall be tallied by the person(s) appointed by the presiding officer(s) of the meeting.

4.6.2 Robert's Rules of Order. The then current edition of Robert's Rules of Order, or any other rules of procedure acceptable to a majority in Common Interest of the Unit Owners present at any meeting, in person or by proxy, and (while Declarant continues to own any Unit) acceptable also to Declarant, shall govern the conduct of the meetings of the Unit Owners unless the same shall be in conflict with the terms of the Declaration, these By-Laws or the Condominium Act.

Section 4.7 Order of Business

The order of business at all meetings of the Unit Owners shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting;
- (c) reading of the minutes of the preceding meeting (unless waived);
- (d) reports of officers of the Condominium Board;
- (e) reports of members of the Condominium Board;
- (f) reports of committees;
- (g) election of inspector(s) of election (when so required);
- (h) election of members of the Condominium Board (when so required);
- (i) unfinished business; and
- (j) new business.

Section 4.8 Voting

4.8.1 Number of Votes. Subject to the terms of Section 4.9 hereof, each Unit Owner shall be entitled to cast one (1) vote at all meetings of the Unit Owners for each 1.0% Common Interest appurtenant to each Unit owned by such Owner.

4.8.2 Disqualification. Notwithstanding the terms contained in subsection 4.8.1 hereof, no Unit Owner may vote at any meeting of the Unit Owners if the Condominium Board has perfected a lien against such Owner's Unit and the amount necessary to release such lien has not been paid at the time of such meeting. In addition, neither the Condominium Board nor any designee or nominee thereof shall be entitled to cast the votes appurtenant to any Unit owned by the Condominium Board or such designee or nominee. The Common Interests of all Units whose Owners are precluded from voting pursuant to the terms of this subsection 4.8.2 shall be excluded when computing the aggregate number and/or Common Interests of all Unit Owners for quorum and voting purposes.

4.8.3 Fiduciary. A fiduciary shall be the voting member with respect to a Unit owned in a fiduciary capacity.

4.8.4 Co-Owners. If two or more Persons own a Unit, they shall designate one Person amongst them to vote the Common Interest or votes appurtenant to their Unit in a writing given to the Secretary of the Condominium Association, and the vote of such designee shall be binding upon all of such Persons. Failing such a designation, all of such Persons shall mutually vote such Common Interest or cast such votes under one ballot without division, and the concurrence of all such Persons shall be conclusively presumed if any one of them purports to vote such Common Interest or cast such votes without protest being contemporaneously made to the individual presiding over the meeting at which such vote is taken. If protest is made, the Common Interest or votes appurtenant to such Unit shall be counted solely for the purpose of determining whether a quorum is present for such voting.

4.8.5 Proxy. The Owner of any Unit may designate any individual to act as a proxy on such Owner's behalf. The designation of any such proxy shall be made in a writing both signed and dated by the Unit Owner and delivered to the Secretary of the Condominium Association at or before the appointed time for the meeting during which the same is to be effective.

4.8.6 Revocation of Proxy. Any such proxy designation shall be revocable at any time upon written notice given to the Secretary of the Condominium Association; however, no revocation of such a designation shall be effective with respect to any votes cast by such proxy prior to the receipt of such revocation notice by the Secretary. Notwithstanding the foregoing, a proxy may be revoked by a Unit Owner who is personally present at a meeting of the Unit Owners, provided such Unit Owner submits a ballot on the form prescribed by the Secretary, which ballot states the name of the Unit Owner, the Owner's Unit designation number and is signed by the Unit Owner. In such case, the votes cast by the proxy holder shall not be counted and the votes cast by the Unit Owner's ballot shall be counted.

4.8.7 Duration. Except with respect to the designation of a Permitted Mortgagee to act as the proxy of its mortgagor-Unit Owner, or a tenant of all or a portion of a Unit to act as the proxy of its lessor-Unit Owner, no designation to act as a proxy shall be effective for a period in excess of six (6) months after the date thereof. Photocopies, facsimiles or other mechanical reproductions of proxies shall be valid and counted for all purposes.

4.8.8 Majority Vote. Except when otherwise required by Law or otherwise expressly provided in the Declaration or in these By-Laws, the affirmative vote of a majority in Common Interest of those Unit Owners attending a duly constituted meeting of Unit Owners at which a quorum is present shall be binding upon all Unit Owners for all purposes. With respect to any transaction or matter to be determined by a majority number of Unit Owners (or other specified number), a Unit owned by more than one (1) person shall be regarded as one (1) Unit Owner and (if a Unit is subdivided) an Owner of more than one (1) Unit shall be counted as a separate Owner for each Unit so owned by such Unit Owner. The Condominium Board or its designee or nominee shall not have any voting rights with respect to any Unit owned by the Board or its designee or nominee and all voting rights appurtenant to any Unit owned by the Board or its designee or nominee shall be excluded from the count of the Unit Owners and the number and Common Interests of Units for quorum and voting purposes.

Section 4.9 Election of Members of the Condominium Board

4.9.1 Number of Board Members. There shall be three (3) Board Members to be elected each year following the recording of the Declaration, unless increased by vote of a majority in Common Interest of Unit Owners, and upon, and subject to, obtaining the prior written Discretionary Approval or Consent of the Existing Unit Mortgagee for so long as the Existing Unit Mortgage encumbers a Unit.

4.9.2 Election. Two (2) of the three (3) Board Members shall be the Lower Board Members, who shall be elected exclusively by the Lower Unit Owner, and the remaining one (1) Board Member shall be the Upper Board Member, who shall be elected exclusively by the Upper Unit Owner. If the number of Board Members is increased in accordance with subsection 4.9.1 above, the additional Board Members shall maintain the same proportional representation as the initial Board (any fractional number shall be rounded up to the next whole number) or a reasonable approximation thereof. No decrease or change in number of Board Members shall affect the exclusive right of the Upper Unit Owner to elect at least one (1) Upper Board Member.

4.9.3 Procedure. Each Unit Owner shall appoint or designate in writing the Board Member(s) to be elected exclusively by such Unit Owner. Such written appointment or designation shall be delivered to the presiding officer at the meeting of Unit Owners at which a quorum is present or delivered in advance of such meeting to the Managing Agent or any officer of the Condominium Association. Such written appointment and designation shall be retained in the records of the Condominium, appropriately segregated by election.

Section 4.10 Action Without a Meeting

Any action required or permitted to be taken by the Unit Owners at a duly constituted meeting may be taken without such a meeting if Unit Owners sufficient in number and or Common Interest (as applicable) to approve such action at a duly constituted meeting of such

Unit Owners, pursuant to the Declaration or these By-Laws, consent in writing to the adoption of a resolution approving such action. All written consents given by such Unit Owners pursuant to this Section 4.10 shall be retained in the records of the Condominium Association together with a true copy of the resolutions to which they relate.

Section 4.11 Title to Units

Title to any Unit may be taken by any Person or by any two or more Persons as joint tenants, tenants in common or tenants by the entirety, as may be appropriate, but not as Owners in severalty.

Section 4.12 Joint, Non-recourse and Limited Liability of Unit Owners

Each Unit Owner shall be jointly (but not severally) liable with all other Unit Owners with respect to all transactions of, or on behalf of, the Condominium Board, including each and every contract made and other document executed by or on behalf of the Condominium Board. Such joint liability shall be without recourse for personal liability of a Unit Owner and limited to the Owner's legal and equity interest in the Owner's Unit and its appurtenant Common Interest. In addition, the joint liability of each Unit Owner shall be further limited to such portion of the total liability as the Common Interest appurtenant to such Owner's Unit bears to 100%. Each contract made by, or on behalf of, the Condominium Board shall expressly provide for such joint, non-recourse and limited liability in accordance with the foregoing. However, the failure to so expressly provide shall not, and shall not be construed to, in any way affect, change or waive the joint, non-recourse and limited liability of Unit Owners as set forth herein.

ARTICLE 5

MAINTENANCE, REPAIRS AND ALTERATIONS OF UNITS, COMMON ELEMENTS AND ASSOCIATION'S PROPERTIES

Section 5.1 Maintenance and Repairs

5.1.1 Units, Common Elements and Association's Properties. Except as otherwise expressly provided in the Declaration or Section 5.1.5 below or elsewhere in these By-Laws, all Decorating, Maintenance and Repairs, whether structural or non-structural, ordinary or extraordinary (collectively, "All Repair Work"):

- (a) in or to any Unit and all portions thereof shall be performed by the Owner of such Unit, at such Unit Owner's sole Cost and Expense, in accordance and compliance with the Building's Maintenance Standard, including: (a-1) the Unit's interior walls; (a-2) the finishes and coverings of the Unit's boundary and other walls, ceilings and floors; (a-3) the kitchen and bathroom fixtures and appliances; (a-4) the Unit's individual HVAC Systems and those portions of the HVAC/Mechanical/Utility Building Systems exclusively serving the Unit, in each case whether exposed or concealed behind walls, floors or ceilings; (a-5) the interior side of the Unit's windows and their frames, sills, sashes, muntins, mechanisms and latches; (a-6) the Unit's interior and entrance doors and their frames, hardware, glass and saddles; (a-7) the lighting and electrical fixtures and

related Installations (including switches, outlets and branch lines) serving only the Unit and any Common Elements incorporated therein pursuant to Article 13 of the Declaration, but excluding any other Common Elements contained therein); and (a-8) generally, all Equipment and Installations and items included as part of a Unit as set forth in Section 6.8 of the Declaration;

- (b) in or to the Common Elements (other than any Common Elements incorporated into a Unit pursuant to the terms of Article 13 of the Declaration) and Association's Properties, shall be performed by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests;
- (c) in or to or any Unit acquired by the Condominium Board, shall be performed by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests;
- (d) in or to a Limited Common Element appurtenant to a Unit (if established), shall be performed by the Owner of the Unit to which such Limited Common Element is appurtenant, at such Owner's sole Cost and Expense;
- (e) in or to the Immediately Adjacent Sidewalks to the Property shall be performed by, and at the sole Cost and Expense of, the applicable Party set forth in Section 14.9 of the Declaration; and
- (f) in or to any vault shall be performed by, and at the sole Cost and Expense of, the Party (e.g., the Lower Unit Owner or the Board) having the exclusive use thereof.

5.1.2 Lot Line Windows and Vaults. Notwithstanding anything to the contrary contained herein: (a) if a Unit contains lot line windows and closure of such lot line windows is required, such closure shall be performed by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests; and (b) if The City of New York or an instrumentality thereof revokes a license or permit to use a vault, the cost of sealing such vault and relocating the Vault Installations located therein shall be performed by, and at the sole Cost and Expense of, the Party having exclusive use thereof, except any Vault Installations comprising part of the Common Elements or a Unit shall be relocated by, respectively, the Condominium Board (as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests) or the Owner of such Unit (at such Owner's sole Cost and Expense).

5.1.3 Report of Defects and Accidents. Each Unit Owner shall report to the Condominium Board or to the Managing Agent, promptly upon obtaining knowledge thereof: (a) any defect or need for Repairs for which the Condominium Board is responsible pursuant to the terms hereof; and (b) any personal injuries, property damage or accidents occurring on the Common Elements.

5.1.4 Performance Standard. All Repair Work performed hereunder or otherwise, whether by or at the behest of a Unit Owner or the Condominium Board, shall be performed in accordance with the Building's Maintenance Standard and in such a manner as

shall not unreasonably disturb or interfere the Use and Enjoyment of any other Unit by its Owner or such Owner's Permitted Tenants/Occupants/Invitees.

5.1.5 Windows and Entrances. Notwithstanding anything to the contrary provided in Section 5.1.1 above:

- (a) the exterior (outdoor) glass surfaces of all windows of each Unit (excluding any Storefronts of the Lower Unit) are to be washed and cleaned in accordance with Building's Maintenance Standard and applicable Laws by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests;
- (b) the exterior (outdoor) and interior side of any Storefronts of the Lower Unit are to be washed and cleaned by, and at the sole Cost and Expense of, the Lower Unit Owner in accordance with Building's Maintenance Standard and applicable Laws;
- (c) the Condominium Board shall Repair air and water penetration between the Building's Walls and the window frame of a Unit as a Common Expense and charged to the Unit Owners Pro Rata to the respective Common Interests;
- (d) each Unit Owner, at such Owner's sole Cost and Expense, shall Repair its Unit's broken windows, Storefronts, latches or operating mechanisms, mullions, sashes and interior window sills; and
- (e) the entrances to each Unit and the Common Elements are to be washed, cleaned, Maintained and Repaired in accordance with the Building's Maintenance Standard and applicable Law by, respectively, the applicable Owner of the Unit (at such Owner's sole Cost and Expense) or the Condominium Board (as a Common Expense and charged to Unit Owners Pro Rata to their respective Common Interests).

5.1.6 General Maintenance Standard of Units, Common Elements and Association's Properties. Each Unit, including its windows and Storefronts (both indoor and outdoor sides), Unit entrance doors and all portions thereof exposed to public view shall be kept, washed, Maintained and Repaired by its Owner, at such Owner's sole Cost and Expense. The Common Elements (including all portions thereof used by the public or exposed to public view) and the Association Properties shall be kept, washed, Maintained and Repaired by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests. Each Unit Owner or the Condominium Board (as applicable) shall with reasonable diligence and continuity perform All Repair Work necessary to comply with the foregoing.

5.1.7 Neglect. Each Unit Owner shall be responsible for any and all damage to the other Unit or to the Common Elements resulting from such Owner's failure to Maintain and Repair the Owner's Unit (including its Equipment and Installations) in accordance with these By-Laws or the Declaration.

5.1.8 Building Walls and Floor/Ceiling Slabs. Notwithstanding anything herein contained to the contrary, the Condominium Board shall be obligated to pay and perform All

Repair Work to the following portions of the Building as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests: (a) the Building Walls enclosing a Unit (but not Unit windows or Storefronts, nor the sheetrock or wall board separating a Unit from the Building Walls, nor the finishes or coverings thereon, such as paint, wallpaper, wood panel or other surface material); (b) the Base Floors and any subflooring (but not floor finishes or coverings, including tile, wood, carpet or other surface material) and Base Ceilings (but not ceiling finishes or coverings, such as paint, plaster or other decorative material) of Units; and (c) the Building's Roofs and its Roof Structures (including all bulkheads). All such excluded items within or enclosing a Unit are to be Maintained and Repaired by, and at the sole Cost and Expense of, the applicable Owner of such Unit.

5.1.9 General Obligation of Unit Owners. Each Unit Owner, at such Owner's sole Cost and Expense, shall generally be obligated to perform All Repair Work to the Owner's Unit, its Equipment and Installations, and (if established) any appurtenant Limited Common Element in accordance with the applicable Work Requirements set forth in Section 15.2 of the Declaration, unless expressly provided otherwise elsewhere in these By-Laws or the Declaration.

5.1.10 Common Elements In or Adjacent To Units. The Condominium Board, as part of the Common Expenses charged to the Unit Owners Pro Rata to their respective Common Interests, shall be obligated to perform All Repair Work to the Common Elements in, or adjacent to, a Unit in accordance with the applicable Work Requirements set forth in Section 15.2 of the Declaration, unless necessitated by the negligence, misuse, abuse or neglect of a Unit Owner (in which case same shall be Repaired by the Board at the expense of the applicable Unit Owner as provided in Section 14.7 of the Declaration and Section 5.4 below).

5.1.11 Cooperation of Board. The Condominium Board shall reasonably cooperate with each Unit Owner in connection with any Repair permitted to be made to or in connection with the Owner's Unit, its Equipment and Installations, the portion of the HVAC/Mechanical/Utility Building Systems exclusively serving such Owner's Unit, and (if established) its appurtenant Limited Common Element. In furtherance of such cooperation, the Condominium Board shall promptly execute and deliver to the applicable Unit Owner any Government Document required in connection therewith, subject to the Owner's compliance with the following:

- (a) such Unit Owner shall be required to pay all required governmental fees and charges;
- (b) such Unit Owner shall be required to pay all reasonable professional fees (including legal, architect, engineering and other professionals and consultants) and disbursements incurred by the Condominium Board to review the Government Document and to review any accompanying drawings and specifications; and
- (c) such Unit Owner shall indemnify the Condominium Board, its members, officers, attorneys, agents and employees and the other Unit Owner from and against all Claims and Liabilities and Expenses arising from the Government Document executed by the Condominium Board or from any related Work performed by or for such Unit Owner by the Owner's Agents, Employees and Contractors.

Section 5.2 Alterations and Major Repairs

5.2.1 Required Approvals or Consents. No Unit Owner shall make any of the following Alterations or Repairs to its Unit without complying with the "Unit Alteration/Repair Requirements" (as defined and set forth in subsection 5.2.4 below) and without obtaining, in each instance, the prior written Discretionary Approval or Consent of the Existing Unit Mortgagee, for so long as the Existing Unit Mortgage encumbers a Unit, and the following additional approvals or consents:

- (a) the prior written Discretionary Approvals or Consents of both the Condominium Board and (only if the other Unit shall be directly affected thereby) the other Unit Owner shall be required for all Alterations or Repairs affecting the Structural Components of the Building or the street entrances, windows, Storefronts (if any) and any other portions of a Unit visible from the street or otherwise exposed to public view; and
- (b) the prior written Reasonable Approvals and Consents of both the Condominium Board and (only if the other Unit is directly affected thereby) the other Unit Owner shall be required for all Alterations and Repairs affecting HVAC/Mechanical/Utility Building Systems serving a Unit or the Common Elements.

The foregoing Repairs are hereinafter called "**Major Repairs**".

Each Unit Owner shall have the right to make all other Alterations and Repairs to the Owner's Unit without the approval or consent of the Condominium Board or the other Unit Owner, subject to compliance with the Existing Unit Mortgage on the Units and Articles 13, 14 and 15 of the Declaration, Section 5.1 above and subsection 5.2.4 below. The foregoing is not applicable to Declarant, who shall have the right, Freely and Without Consent, Payment or Restriction (other than the requirement to comply with the applicable Work Requirements set forth in Section 15.2 of the Declaration), to perform, or cause to be performed all Alterations and Repairs (whether structural or non-structural, extraordinary or ordinary) to each Unit owned by Declarant, the street entrances, Storefronts and windows of such Unit, all portions of such Unit visible from the street or otherwise exposed to public view, such Unit's individual Equipment and Installations and the portions of the HVAC/Mechanical/Utility Building Systems exclusively serving such Unit.

5.2.2 Silence Not Deemed to be Approval. If the Condominium Board shall fail to answer any written, reasonably detailed request for approval or consent within thirty (30) days after such request is received, such failure to respond shall not constitute, nor be deemed to constitute, the approval or consent of the Condominium Board thereto.

5.2.3 Unit Change. Notwithstanding anything to the contrary contained in Section 5.2.1 or Section 5.1 above, Declarant or the then Owner of each Unit shall have the right from time to time to make a "Unit Change" as defined and provided in Section 13.1 of the Declaration, Freely and Without Consent, Payment or Restriction, other than those requirements and restrictions set forth in Sections 13.2 and 15.2 of the Declaration.

5.2.4 Unit Alteration/Repair Requirements. All Unit Alterations (including structural and non-structural, extraordinary and ordinary) and permitted Major Repairs (collectively, "**Unit Alterations/Repairs**") by a Unit Owner ("**such Unit Owner**") shall comply with the following requirements ("**Unit Alteration/Repair Requirements**"):

- (a) no Unit Alterations/Repairs Work shall commence until the applicable Unit Owner causes all required plans, specifications, notices and/or certifications to be filed with all Governmental Authorities having jurisdiction, procures all required approvals, permits and licenses with respect to the same, and (in the case of only a Unit Owner other than the Declarant, who is exempt from the following requirement) delivers copies of all such plans, specifications, notices, certifications, approvals, permits and licenses to the Board or its Managing Agent (as directed by either);
- (b) the Unit Alterations/Repairs Work shall be prosecuted diligently and with continuity to completion in compliance with all plans, specifications, notices and/or certifications and in conformity with all permits and licenses;
- (c) the Unit Alterations/Repairs Work shall be performed in accordance and compliance with all applicable Work Requirements set forth in Section 15.2 of the Declaration;
- (d) the Condominium Board and its Managing Agent, and their respective employees and representatives, shall be given reasonable opportunity, from time to time, to inspect and monitor such Unit Alterations/Repairs Work as it progresses;
- (e) all contractors involved in the Unit Alterations/Repairs Work shall be duly licensed to the extent required by applicable Law and, if required under any contract with any union whose members are performing services at the Building directly or indirectly at the behest, for the benefit, or for the account of the Condominium Board, such Unit Alterations/Repairs Work shall be performed solely by union members;
- (f) promptly after the completion of such Unit Alterations/Repairs Work, all necessary inspections and approvals of Governmental Authorities having jurisdiction thereof shall be obtained, all necessary notices and/or certifications shall be filed with the appropriate Governmental Authorities and (in the case of only a Unit Owner other than the Declarant, who is exempt from the following requirement) the Condominium Board or its Managing Agent (as directed by either) shall be given a copy of all such inspections, approvals, notices and certifications;
- (g) the Unit Alterations/Repairs shall comply with all applicable Laws; and
- (h) (in the case of only a Unit Owner other than the Declarant, who is exempt from the following requirements):

(h-1) before Work commences, the Unit Owner shall give the Condominium Board written notice of the details of the proposed Unit Alterations/Repairs and (if requested) complete drawings showing all proposed construction changes prepared by an architect, engineer or other appropriate professional;

(h-2) no Unit Alterations/Repairs (including furnishing and Decorations not involving a Unit's entrance or Storefronts, which is not subject to the Board's approval or consent) shall be performed that will affect the Unit's entrances, Storefronts, windows or other portions of a Unit visible from the street or otherwise exposed to public view, unless the

Unit Owner shall obtain the prior written Discretionary Approval or Consent therefor of the Condominium Board;

(h-3) (if required by the Condominium Board) before such Unit Alterations/Repairs Work commences, the Unit Owner shall sign and deliver to the Condominium Board an alteration agreement, on the standard form adopted by, and in substance satisfactory to, the Condominium Board, setting forth the terms and conditions for performing the Unit Alterations/Repairs (including the Condominium Board's Work rules, insurance (which shall include such coverages and amounts as would be acceptable to a prudent lender originating commercial mortgage loans for securitization similar to the mortgage loan encumbering the Units on the date of recording the Declaration), lien waiver and security deposit requirements and an indemnity in favor of the Condominium Board, its members, officers, attorneys, agents (including Managing Agent, if any) and employees, and the other Unit Owner, from and against any and all Claims and Liabilities and Expenses arising out of the Unit Alterations/Repairs); and

(h-4) the Unit Owner shall pay or reimburse the Board (as directed) for the Costs and Expenses it incurs in connection with the review of the construction drawings and related plans and specifications of the proposed Unit Alterations/Repairs, the execution of such Building standard Unit alteration agreement and the monitoring of the Unit Alterations/Repairs Work, including fees and disbursements of the Board's architect, engineer, attorneys, professionals, consultants and Managing Agent (if any).

If a Unit Owner violates or breaches any such Unit Alteration/Repair Requirements, the Condominium Board, shall be entitled to cause such Unit Alterations/Repairs Work by such Unit Owner to be halted, including causing the Managing Agent (if any) or other agent or representatives of the Board, to deny access to the Building to such Unit Owner's Agents, Employees and Contractors and suppliers (other than to permit them to remove their tools and Equipment, provided they are accompanied by the Building's fire director, engineer or superintendent (if any) or other person designated by the Board) until said Owner complies with the same, and if required to avoid an interruption of any Building services to a Unit or the Common Elements, or to avoid or discharge a violation of Law or to remove a condition which threatens the structural integrity of the Building or any portion thereof or the life, health or safety of occupants of Units or to avoid damage to the property, to cause all such Unit Alterations/Repairs Work to be removed and such Owner's Unit restored to its prior condition, at such Unit Owner's sole Cost and Expense.

The foregoing Unit Alteration/Repair Requirements do not apply to furnishing and Decorating the portions of a Unit which do not involve its street entrance doors, windows, Storefronts or other portions thereof visible from the street or otherwise exposed to public view. Such permitted furnishing and Decorating by a Unit Owner may be done Freely and Without Consent, Payment or Restriction, other than the requirement to comply with applicable Work Requirements set forth in Section 15.2 of the Declaration.

5.2.5 Government Documents. The Condominium Board shall execute and return to such Unit Owner who complies with all of the foregoing applicable Unit Alteration/Repair Requirements, any Government Document reasonably required for the Unit

Alterations/Repair, subject to such Unit Owner's compliance with the following: (a) such Unit Owner shall be required to pay all required governmental fees and charges in connection with said Government Document; (b) such Unit Owner shall be required to pay all reasonable professional fees (including legal, architect, engineering and other professionals and consultants) and disbursements incurred by the Condominium Board to review the Government Document and to review any accompanying drawings and specifications; and (c) such Unit Owner shall indemnify the Condominium Board, its members, officers, agents (including the Managing Agent, if any) and employees and the other Unit Owner from and against all Claims and Liabilities and Expenses arising from the Government Document executed by the Condominium Board and from any related Work performed by or for such Owner by such Owner's Agents, Employees and Contractors.

5.2.6 Exculpation of Board and Other Unit Owner. The Condominium Board and its members, officers, agents (including the Managing Agent, if any) and employees, and the other Unit Owner who is not making the Unit Alterations/Repairs, or causing the Unit Alterations/Repairs to be made, shall not be liable for any Claims or Liabilities and Expenses in connection with the preparation, execution or submission of a Government Document or asserted by: (a) any contractor, subcontractor, materialman, architect or engineer on account of any such Unit Alterations/Repairs; or (b) any Person for personal injury or property damage arising therefrom.

5.2.7 Indemnity. Any Unit Owner making or causing to be made such Unit Alterations/Repairs shall indemnify the Condominium Board, its members, officers, agents (including the Managing Agent, if any), employees and the other Unit Owner from and against any and all Claims and Liabilities and Expenses arising in connection with such Unit Alterations/Repairs.

5.2.8 Declarant's Right to Alter. Declarant shall have the right to Alter the Unit or Units owned by it and the Common Elements ("**Declarant's Right to Alter**") in accordance with the easements and rights reserved to Declarant in the Declaration and these By-Laws. Declarant may exercise Declarant's Right to Alter Freely and Without Consent, Payment or Restriction, other than the requirement to comply with the applicable Unit Alteration/Repair Requirements set forth in subsection 5.2.4 above. Declarant's Right to Alter includes all changes to Units and Common Elements in Article 13 of the Declaration and all easements and rights reserved by Declarant in Articles 10, 11 and 12 of the Declaration, including the right of Declarant, its Agents, Employees and Contractors, from time to time, Freely and Without Consent, Payment or Restriction (other than the proviso stated below):

- (a) to newly install and connect to any Building Equipment and Installations, any Equipment and Installations now or hereafter serving the Upper Unit or any portion thereof;
- (b) to thereafter Maintain, Repair and Alter such newly installed and connected Equipment and Installations; and
- (c) to have reasonable access to the Common Elements to perform Work in connection with the foregoing;

provided only that:

- (x) such new Equipment and Installations and connections and the subsequent Maintenance, Repair and Alteration thereof, shall be performed in accordance with the Installation Requirements set forth in Section 10.4 of the Declaration and the applicable Work Requirements set forth in Section 15.2 of the Declaration;
- (y) the new connections shall not unreasonably and adversely affect any Building Equipment and Installations serving the Unit of another Unit Owner or otherwise permanently diminish the proper and efficient performance, function, capacity or utility of any Building Equipment or Installations serving such Unit or its Owner so as to prevent or unreasonably impair the use or Operation of such Unit for its intended purposes;
- (z) the new connections shall not unreasonably and adversely affect the structural integrity of the Building or any portion thereof or the Operation of the Building or the use of the Unit of another Unit Owner for its intended purposes; and
- (aa) Declarant shall maintain from inception through conclusion of the Work such insurance as would be acceptable to a prudent lender originating commercial mortgage loans for securitization similar to the mortgage loan encumbering the Units on the date of recording the Declaration.

The Agents, Employees and Contractors of Declarant shall be given reasonable access to, through, across and on the Common Elements to perform such Alterations to its Unit(s) or the Common Elements as well as to Maintain, Repair, Alter and otherwise Operate same. Such access includes the right to transport and store materials, supplies and Equipment and to cause a temporary interruption in Building services, but shall be exercised in a reasonable manner so as not to unreasonably interfere with the permitted use or Operation of the Unit of another Unit Owner in accordance with the Declaration and By-Laws. Declarant's Right to Alter shall inure to the benefit of, and shall be enforceable by a Unit Owner designed by Declarant as its Designee and each succeeding Owner of such Unit from time to time, unless otherwise provided by Declarant in its designation of said Designee.

5.2.9 Board Alterations. The Condominium Board shall have the substantially exclusive right and responsibility to make all necessary or desirable Alterations to the Common Elements and the Association's Properties (collectively, "**Board Alterations**") in accordance and compliance with the Declaration and in particular (but not limited to) Sections 14.4 and 14.5 thereof, but subject and subordinate to: (a) all easements and rights expressly reserved to Declarant in the Declaration and these By-Laws; and (b) the Condominium Board obtaining all requisite approvals or consents of the Unit Owners before undertaking such Board Alterations as and to the extent set forth in Section 14.5 of the Declaration. All Costs and Expenses of Board Alterations shall be included in the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 5.3 Declaration Governs Maintenance, Repairs and Alterations of Units, Common Elements and Association's Properties

The provisions of the Declaration, and in particular (but not limited to) Articles 13, 14 and 15 thereof, relating to the Maintenance of, and Repairs and Alterations to, the Units, the

Common Elements and the Association's Properties are hereby incorporated herein and are paramount and shall govern the duty, right, terms, restrictions, requirements, approvals and consents, if any, of a Unit Owner or the Condominium Board (as applicable) to perform and pay the Costs and Expenses of Maintenance of, and Repairs and Alterations to, the Units, the Common Elements and the Association's Properties.

Section 5.4 Negligence, Misuse, Abuse or Neglect

The provisions of this Article 5 to the contrary notwithstanding, in accordance with Section 14.7 of the Declaration, in the event that any Maintenance, Repairs, Alterations or other Work is necessitated by the negligence, misuse, abuse or neglect of:

- (a) a Unit Owner, or its tenant, licensee or occupant, or the Agents, Employees and Contractors of such Unit Owner, tenant, licensee or occupant (all the foregoing are collectively, "Owner's Parties"), then the entire Costs and Expenses thereof shall be charged to, and borne by, only such Unit Owner and, if paid by the Board, shall be assessed as a Common Charge against such Owner's Unit and shall be payable by such Unit Owner immediately following the giving of a reasonably detailed written demand therefor; or
- (b) the Condominium Board or its Agents, Employees and Contractors, then the entire Costs and Expenses thereof shall be borne by the Unit Owners as a Common Expense and charged to them Pro Rata to their respective Common Interests.

Nothing contained herein shall be deemed a waiver of any Claims the Board or a Unit Owner may have against an insurer or otherwise. In addition, if the liability of a Unit Owner under the preceding clause is the result of a casualty caused by the negligence, misuse, abuse or neglect of such Unit Owner or Owner's Parties and such casualty is insured under a policy maintained by the Condominium Board containing a waiver of subrogation or equivalent provision, then such Unit Owner's liability shall be reduced by the amount of any insurance proceeds received and collected by the Condominium Board in connection therewith.

Section 5.5 Damages Necessitated by Repairs or Alterations

5.5.1 Damages to Common Elements or Association's Properties. Any damages to the Common Elements or the Association's Properties resulting from any permitted or necessary Repair, Alteration or other Work undertaken by an Owner or Owner's Parties shall be Repaired by the Condominium Board and the Costs and Expenses thereof shall be paid or reimbursed (as directed) to the Board by the Owner of such Unit as additional Common Charges assessed to the Unit. The amount owed is to be paid or reimbursed within ten (10) calendar days after a reasonably detailed written statement or bill therefor is given to such Unit Owner, together with copies of bills or invoices from contractors and/or for time charges of Building staff engaged in the Repair Work, and copies of bills for materials and supplies for which payment or reimbursement is sought. Nothing herein shall be construed to permit an Owner or Owner's Parties to undertake any Repair, Alteration or other Work without obtaining any required prior written Discretionary or Reasonable Approvals or Consents of the Condominium Board (if and as applicable) set forth in the Declaration or these By-Laws.

5.5.2 Damages to Unit. In the event any Repairs, Alterations or other Work undertaken by the Condominium Board requires the removal of any floor, wall or ceiling coverings or other Decorations of a Unit, or necessitates such coverings or Decorations to be damaged due to openings or penetrations of floors, walls or ceilings of a Unit or otherwise, the Condominium Board shall restore the affected floors, walls and ceilings to only Building standard condition, without additions, improvements or Decorations made or installed by the Owner, tenant or occupant of the Unit. The Owner of such Unit shall have the full and sole risk for any damage to said coverings and Decorations of the Unit and the full and sole responsibility, at such Owner's full and sole Cost and Expense, to re-install, restore, replace and otherwise Repair same (to the extent required by Law), without recourse against the Board or the other Unit Owner therefor or for any losses or damages (whether actual, consequential, incidental, special, indirect or otherwise) resulting therefrom. The foregoing shall not excuse the Board from liability for any losses or damages to a Unit, or its Equipment, Installations or Decorations, or to the personal property of the Owner, tenant or occupants of a Unit, resulting from negligence or wrongful acts or omissions by the Condominium Board or its Agents, Employees and Contractors.

ARTICLE 6

INSURANCE

Section 6.1 Insurance Requirements for the Condominium Board

The Condominium Board will maintain the insurance provided in the Existing Unit Mortgage on the Units and these By-Laws to the extent obtainable regardless of whether same is obtainable at reasonable rates (unless otherwise noted). However, the Condominium Board may change the insurance from time to time, but may not eliminate insurance coverage that is obtainable and is required to be maintained under the Existing Unit Mortgage on the Units and these By-Laws.

Section 6.2 Fire and Casualty Insurance

6.2.1 Coverage and Insured Parties. The Board shall obtain and maintain fire insurance with all risk coverage, vandalism and malicious mischief endorsements, insuring the Common Elements and the Association's Properties (if any), and covering the interests of the Condominium Board and all Unit Owners and their mortgagees, as their respective interests may appear, in an amount equal to 100% of the full replacement value of the portions of the Property required to be insured against loss or damage pursuant to this clause (exclusive of foundations and footings), without deduction for depreciation.

6.2.2 Amount and Special Provisions. The fire and casualty insurance coverage shall be not less than an amount sufficient for the insurer to waive any co-insurance requirement or is based on an "Agreed Amount" replacement cost (or comparable term). In addition, such fire and casualty policies shall contain (if available at reasonable rates):

- (a) waivers of: (a-1) subrogation in favor of Owners and designated tenants of Units, (a-2) any defense based upon co-insurance or other insurance, (a-3) invalidity arising out of the acts of an insured party and (a-4) pro rata reduction of liability;

- (b) a provision that any adjustment of loss will be made by the Condominium Board and that all proceeds will be paid to the Condominium Board or (at the option of the Board) an Insurance Trustee appointed pursuant to these By-Laws where the Board is to restore the damaged area in accordance with these By-Laws;
- (c) a New York Standard Mortgagee provision in favor of each Permitted Mortgagee, subject and subordinate however to the preceding loss payment provisions in favor of the Condominium Board or (at the option of the Board) Insurance Trustee; and
- (d) a provision preventing the policy from being canceled or substantially modified unless at least 10 calendar days' prior written notice is given to all insured parties, including all Permitted and Registered Mortgagees who have requested same from the Condominium Board in writing.

6.2.3 Appraisal. Before obtaining any policy of property casualty insurance or any renewal thereof, the Condominium Board shall obtain an appraisal from a property insurance company or otherwise of the full replacement value of the portions of the Property, exclusive of foundations and footings, and without deduction for depreciation, for the purposes of determining the amount of such property casualty insurance to be obtained pursuant to this Section. Any such appraisal of the Building obtained within twelve (12) months preceding the date of issuance of such property casualty insurance policy or a renewal thereof shall suffice for this purpose.

6.2.4 Proof of Insurance. Duplicate originals of all policies of property casualty insurance and of all renewals thereof, together with proof of payment of the premiums, shall be delivered to Declarant, a tenant of any Unit (if requested by the Owner of such Unit) and a Registered Mortgagee of a Unit at least thirty (30) calendar days prior to the expiration of the then current policies.

6.2.5 Excluded From Coverage. The property casualty insurance shall not cover the Decorations or finishes of walls, floors or ceilings of the Common Elements or the Association's Properties or (unless otherwise determined by the Condominium Board or required in the loan instruments of a Unit mortgage) any Unit and shall also exclude the contents of any Unit (including its individual Equipment, appliances, fixtures, furniture, furnishings, Decorations and other personal property). The Condominium Board, however, may obtain such coverage as to any Unit if the Owner of such Unit pays the entire amount of the additional premium therefor.

Section 6.3 Liability Insurance

6.3.1 Coverage. The Condominium Board shall obtain and maintain commercial general liability coverage written on the Insurance Services Office form - 1986 or later (containing the so-called "occurrence clause"), or equivalent comprehensive general liability coverage, in such limits and with such deductibles as are determined to be adequate by the Board (in its sole judgment), with respect to ownership, Operation, Maintenance, use and control against liability for injury or damage to persons or property in or upon the Common Elements and the sidewalks adjacent to the Property, and all of the Association's Properties. The Condominium Board may, in its discretion, obtain umbrella liability insurance in such amounts

as the Condominium Board may determine from time to time, but shall obtain umbrella liability insurance for such periods and in such amounts as may be required in said loan instruments of a Unit mortgage.

6.3.2 Amount. The liability coverage shall be in such amounts as the Condominium Board may determine from time to time. The Condominium Board shall review the amounts of liability coverage at least once each Budget Year.

6.3.3 Insured Parties. The liability policies shall list as co-insureds: (a) the Condominium Board and each and every member and officer thereof, (b) the Managing Agent or manager (if any), (c) each agent and employee of the Condominium Board, (d) each Unit Owner, and (e) (if required by the terms of a Permitted Mortgage of a Unit) the holder of such Permitted Mortgage, as their respective interests may appear.

6.3.4 Excluded from Coverage. Such insurance shall not cover liability of a Unit Owner arising from occurrences within or on the Owner's Unit (including the vault or vaults which are for the exclusive or substantially exclusive use of a Unit Owner, who shall be solely responsible and liable for any occurrences within such vault or vaults). This exception shall not apply to any Unit owned, leased, held or Operated by the Condominium Board or its nominee or designee.

6.3.5 Proof of Insurance. Duplicate originals of all policies of liability insurance and of all renewals thereof, together with proof of payment of premiums for such liability coverage shall be given to each Unit Owner within ten (10) calendar days after being requested.

Section 6.4 Boiler and Machinery Insurance

The Condominium Board shall obtain and maintain boiler and machinery insurance on Equipment constituting part of the Common Elements, but not part of a Unit (which may be separately insured by the Owner of such Unit).

Section 6.5 Worker's Compensation

If the Condominium Board hires any employees, the Condominium Board shall obtain and maintain workers compensation insurance, New York State disability benefits insurance and employer's liability coverage covering employees hired by the Condominium Board. Each Unit Owner shall be solely responsible to obtain and maintain, at its sole Cost and Expense, the foregoing insurance for its own employees.

Section 6.6 Other Insurance

The Condominium Board shall also obtain and maintain the following insurance to the extent available at reasonable rates in the sole judgment of the Board:

- (a) business interruption insurance, including loss of rents in an amount equal to the Common Charges for at least 12 months;

- (b) water damage legal liability insurance;
- (c) elevator liability and collision insurance;
- (d) non-owned and hired automobile liability insurance;
- (e) combination crime insurance, including blanket employee dishonesty, forgery or alteration, covering the members and officers of the Condominium Board, the Managing Agent (if any) and employees (if any) handling funds of the Condominium Board;
- (f) officers and directors liability insurance for officers and members of the Condominium Board;
- (g) such other or additional insurance as the Condominium Board shall determine from time to time; and
- (h) such insurance with respect to the Units and the Condominium as would be acceptable to a prudent lender originating commercial mortgage loans for securitization similar to the mortgage loan on the Units existing at the date of recording the Declaration, which insurance shall in all cases comply in all respects with the insurance requirements expressly contained in said existing mortgage loan for so long as such mortgage encumbers the Units.

Section 6.7 Insurance Covering Work Performed by Board

In connection with Work performed by or on behalf of the Condominium Board, if not already covered by insurance policies then maintained by the Condominium Board, the Condominium Board shall also obtain and maintain installation floater coverage in an amount equal to the cost of the contract for any Work performed by the Condominium Board on the Property or cause its contractors to maintain equivalent insurance, naming the Condominium Board, all Unit Owners and the Registered Mortgagees as their interests may appear, except that such insurance shall not be required if the estimated cost of such Work is less than One Hundred Thousand (\$100,000) Dollars (unless otherwise required by said loan instruments of a Unit mortgage).

Section 6.8 Insurance Amounts and Deductibility

To the extent not specified above and not specified in said loan instruments of a Unit mortgage, all such insurance shall be in such amounts and may provide for such deductible amounts as the Condominium Board may determine from time to time in its sole and absolute discretion.

Section 6.9 Adjustment and Payments

6.9.1 Adjustments by Board. All of the above policies shall provide that adjustment of loss shall be made by the Condominium Board and all policies of property casualty insurance shall provide that the proceeds of insurance shall be paid as follows, unless otherwise provided in said loan instruments of a Unit mortgage loan (whose provisions shall govern and be followed): (a) to the Condominium Board, if \$1,000,000.00 or less; or (at the option of the Condominium Board) (b) to the Insurance Trustee, if in excess of \$1,000,000.00. The fees and disbursements of any Insurance Trustee shall be paid by the Condominium Board

as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests.

6.9.2 Payments. In either instance, all such insurance proceeds actually received by the Board or Insurance Trustee shall be held in trust for the benefit of all Unit Owners and their Permitted Mortgagees and shall be disbursed as provided in Article 7 below.

6.9.3 Adjustments by Unit Owner. The foregoing notwithstanding, a Unit Owner may settle and adjust any claim for a loss to its Unit or any portion thereof (including its individual Equipment and Installations), provided that the insurance proceeds applicable to a loss to the other Unit or the Common Elements shall not be reduced thereby.

6.9.4 Insurance Trustee's Fees and Disbursements. the fees and expenses of Insurance Trustee shall be paid by the Condominium Board as a Common Expense, which shall be specifically allocated by the Board Pro Rata to the portion of the insurance proceeds to be applied to repair the boundaries of each Unit, the Common Elements or the Association's Properties.

Section 6.10 Allocation of Insurance Premiums

The premiums for insurance maintained by the Condominium Board in accordance with this Article 6 shall be a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 6.11 Insurance Requirements for Unit Owners

6.11.1 General Prohibitions. A Unit Owner shall not:

- (a) do or permit or suffer any act or thing to be done in, on or to such Owner's Unit that will with reasonable likelihood invalidate, or invalidates, or be in conflict with any public liability, property or other policy of insurance at any time carried by the Condominium Board with respect to the Property, except no such policy maintained by the Condominium Board shall conflict with or prohibit any use of a Unit permitted under the Declaration;
- (b) keep or suffer to be kept anything in or on its Unit that is prohibited by the Fire Department, Board of Fire Underwriters, fire insurance rating organization or other authority having jurisdiction;
- (c) permit or suffer a Unit to be used in any manner that will with reasonable likelihood increase, or increases, the insurance rate for the Property (including uses permitted and intended by the Declaration), unless the Unit Owner responsible for such increase pays the additional cost thereof as provided in the following subsection 6.11.2; or
- (d) perform or cause to be performed any Work affecting the Common Elements without first obtaining and continuously maintaining until the Work is completed, at the sole Cost and Expense of such Unit Owner, the insurance required in subsection 6.11.3 below.

6.11.2 Unit Owner Liability for Default. Any costs, expenses, fines, penalties or damages imposed upon the Condominium Board by reason of a default by a Unit Owner in performing or complying with its obligations under this Section 6.11 shall be allocated and

assessed entirely to the Owner of such Unit as additional Common Charges. For all purposes hereunder, a schedule or "make-up" of rate for the Property issued by the New York Fire Insurance Exchange or other body making fire insurance rates applicable to the Property shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate or rates then applicable to the Property.

6.11.3 Work by Unit Owner. A Unit Owner, at such Owner's sole Cost and Expense, shall maintain or cause to be maintained by its contractor or otherwise the following insurance during its performance of any Work, other than Work exclusively within its Unit not affecting any of the Common Elements:

- (a) Worker's Compensation and Disability Benefits Insurance as required by the Laws of the State of New York and Employer's Liability Insurance;
- (b) Commercial General Liability and Products/Completed Operations Coverage to the extent such insurance coverage is not included in a policy maintained by the Condominium Board, including the Condominium Board, its agents, successors and assigns, and any tenant or tenants of the Unit as additional insureds with a minimum limit of \$1,000,000.00 each occurrence and \$2,000,000.00 in the aggregate. Additional Commercial General Liability coverage extensions required: This Insurance is Primary Endorsement; Contractual Liability; Per Project Aggregate; Waiver of Subrogation; and
- (c) Installation floater coverage in an amount equal to the cost of the contract for any Work performed in the Common Elements, naming the Unit Owners, the Condominium Board, and any mortgagee of the Unit Owner performing such Work as their interests may appear, except that such insurance shall not be required if the estimated cost of the Work in the Common Elements is less than One Hundred Thousand (\$100,000) Dollars and is covered by insurance policies maintained by the Condominium Board.

Section 6.12 General Insurance Matters

Subject to insurance requirements contained in the loan instruments of a Unit mortgage (whose provisions shall govern and be followed), the policies of insurance required to be maintained under this Article 6 shall meet the following criteria:

- (a) The policies of insurance shall be from a company rated in the A.M. Best Key Rating Guide with ratings of at least A- and of at least VI and such company shall be licensed to do business in the State of New York.
- (b) The policies shall contain a provision that before any change or cancellation of a policy, at least thirty (30) calendar days' advance written notice by certified mail, return receipt requested, shall be given to the following: (b-1) in the case of insurance maintained by the Condominium Board under Sections 6.2 to 6.7 above, to all Unit Owners and Registered Mortgagees; (b-2) in the case of insurance maintained by a Unit Owner under subsections 6.11.3(a) and 6.11.3(b), to the Condominium Board; and (b-3) in the case of insurance maintained by a Unit Owner under subsection 6.11.3(c), to the Condominium Board and any loss payee of such insurance. All policies required to be obtained by the

Condominium Board pursuant to this Article shall be renewed or replaced at least ten (10) calendar days prior to the expiration of the then current term.

- (c) All policies for property insurance maintained by the Condominium Board under Section 6.2 above shall contain waivers of subrogation and generally all policies maintained by the Condominium Board shall also cover cross-liability claims of one insured against another insured.
- (d) All policies shall acknowledge that all Unit Owners are deemed additional insureds for any liability insurance and loss payees for property insurance although not individually named and that the Condominium Board is authorized to sign all checks for payment of proceeds or other instruments required in connection with the processing, payment and settlement of claims on such Unit Owners' behalf (other than the Unit Owner owning the policy under which such proceeds are paid).
- (e) Each liability policy shall be endorsed with a severability of interest endorsement, if not otherwise included, stating that if a claim is brought by one insured against another insured under such policy, or by an employee of one insured against another insured under such policy, each insured shall be considered a separate insured for purposes of the insurance and shall meet the following additional criteria: (e-1) the policies shall be written with a contractual liability endorsement, if not otherwise included, providing coverage for bodily injury or property damage assumed under any type of written contract, except any contract under which the insured assumes liability for the sole negligence of an indemnitee; and (e-2) the policies shall be written to specifically include coverage for legal liability for damage of any part of the Property by fire.
- (f) Any policies required to be furnished by a Unit Owner pursuant to Section 6.11 above may be maintained by the Unit Owner under a blanket policy or policies; provided, however, that the minimum amount of the total insurance afforded by such blanket policy which shall be allocable to the Owner's Unit(s) and the Work to be performed and any sublimits of such policy allocable to the Unit(s) shall be in amounts which shall not be less than the amounts of the insurance required hereunder and the protection afforded under such policy shall be not less than which would have been afforded under a separate policy or policies, and the certificate evidencing such insurance shall contain provisions confirming the foregoing. Certificate(s) evidencing the existence of any policy required to be maintained by a Unit Owner under Section 6.11 above shall be delivered to the Condominium Board with evidence of the payment of the premiums therefor within ten (10) calendar days of such Unit Owner's acceptance of the Unit Deed for its Unit or, if under subsection 6.11.3 above, not less than fifteen (15) calendar days prior to the commencement of the Work. Within ten (10) calendar days of the expiration or termination date of any policy, the Unit Owner shall deliver a renewal or replacement policy, or certificate(s) evidencing the existence thereof, to the Condominium Board together with proof of the payment of the premium therefor.
- (g) All of the conditions contained in Section 6.12 (b) above are required only to the extent obtainable at reasonable rates from any insurance company meeting the requirements set forth in Section 6.12(a) above.

- (h) The requirements set forth in subsection 6.11.3 and this Section 6.12 shall be referred to herein collectively as the “**Insurance Conditions**”.
- (i) Subject to compliance with the requirements of the Existing Unit Mortgage on the Units, the Condominium Board may amend or waive any of the Insurance Conditions from time to time and/or adopt different or additional requirements in lieu of the Insurance Conditions set forth herein, all without recording an Amendment to the Declaration or these By-Laws.
- (j) Without limiting the remedies of the Condominium Board for a Unit Owner’s default or violation of this Article 6, in the event that any Unit Owner fails to provide evidence of insurance required to be provided by such Unit Owner hereunder and does not cure such default within three (3) business days after request therefor by the Condominium Board, the Condominium Board shall be authorized (but not required) to procure such coverage in the amounts stated with all costs thereof to be allocated and assessed to such Unit Owner as additional Common Charges.
- (k) Neither the issuance of any insurance policy hereunder, nor the minimum limits specified herein with respect to a Unit Owner’s insurance coverage, shall be deemed to limit or restrict in any way any Unit Owner’s liability in connection with or arising out of its Work and the indemnification obligations set forth in the Declaration and these By-Laws.
- (l) Each Unit Owner may carry for such Owner’s own benefit any additional or supplemental insurance to that required herein, provided that the insurance coverage for the Condominium Association and the other Unit Owner pursuant to this Article 6 shall not be diminished or otherwise adversely affected by reason of any such additional or supplemental insurance carried by such Unit Owner.

ARTICLE 7

DESTRUCTION OR DAMAGE OF BUILDING

Section 7.1 Destruction or Damage

7.1.1 Insubstantial Destruction or Damage. If less than three-fourths of the Building is destroyed or damaged, the Condominium Board shall promptly arrange to repair and restore the affected Common Elements and any affected Association’s Properties, but not the appliances, Equipment, contents or Decorations of a Unit not owned by the Board or its nominee or designee, which is the sole responsibility of the Owner of such Unit to repair and restore, at its sole Cost and Expense.

7.1.2 Substantial Destruction or Damage. If three-fourths or more of the Building (including the Units, the Base Floors, the Building Walls, the Roofs and other Common Elements) is destroyed or substantially damaged (i.e., so as to require re-construction) (“**Substantial Casualty**”) and 75% or more in number of Unit Owners do not duly resolve to proceed with the repairs or restoration (herein collectively called “**Repairs**”) within sixty (60) calendar days after the Condominium Board gives notice to all Unit Owners stating whether the net amount of any insurance proceeds payable on account of the loss will be sufficient to pay the

estimated cost of the Repairs, then the Repairs shall not be made and the Property or so much thereof as shall remain shall be subject to an action for partition at the suit of any Unit Owner or lienor as if owned in common. The Condominium Board and its nominee or designee shall have no voting rights with respect to any Units owned by each of them and such Parties and Units shall be excluded from the base number of Owners and Units for quorum and voting purposes in determining whether such 75% threshold is met. The vote of a Unit Owner not to restore or to withhold its vote to restore shall be subject to the Discretionary Approval of the holder of the mortgage on the Units existing at the date of recording the Declaration for so long as such mortgage encumbers the Units. In the event of a partition action, the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all Unit Owners Pro Rata to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of such Unit Owner's share of such fund all unpaid liens or such Owner's Unit in the order of priority of such liens (including liens of mortgages and liens of the Condominium Board). The failure of 75% or more in number of all Unit Owners to promptly resolve to proceed with the Repairs shall not result in the termination of condominium ownership of the Property, which may only terminate upon authorization of 80% in number or Common Interest of all Unit Owners to withdraw the Property from the Condominium Act as provided in Article 19, Section 19.1 of the Declaration. Unless said withdrawal from the Condominium Act is so authorized, in any action for partition, each Unit Owner shall have the right to retain fee title ownership of its Unit in exchange for said Owner's share of the net proceeds of the partition sale. An Owner who exercises such right, shall be responsible, at its sole Cost and Expense, to repair and restore said Owner's Unit and all Common Elements serving and providing a means of ingress to and egress from such Unit, but shall be paid the Owner's Pro Rata share (based on Common Interest) of said net insurance proceeds. If more than one (1) Unit Owner similarly elects to repair and restore its Unit, the Condominium Board will make all determinations with respect to the repair and restoration of said Common Elements.

Section 7.2 Insurance Trust Funds

7.2.1 Trust Funds. Subject to compliance with the aforesaid loan instruments of a Unit mortgage, the proceeds of insurance policies receivable by reason of such casualty shall be payable to the Condominium Board, if the same shall be \$1,000,000 or less in the aggregate, or to either the Condominium Board or (at the option of the Condominium Board) an Insurance Trustee, appointed by the Condominium Board, if the same shall exceed \$1,000,000 in the aggregate. The holder of a mortgage on both the Lower and Upper Units shall be deemed to be appointed the Insurance Trustee. In either instance, all such monies actually received (hereinafter referred to as the "**Insurance Trust Funds**") shall be held in trust for the benefit of all Unit Owners and their Permitted Mortgagees, and shall be disbursed pursuant to the terms of this Article 7, the requirements of the Existing Unit Mortgage on both Units and the Condominium Act (subject to compliance with the Condominium Act, the requirements of the Existing Unit Mortgage are paramount and shall govern any inconsistency between its provisions and these By-Laws).

7.2.2 Owner's Right to Settle. Notwithstanding anything to the contrary contained either in the foregoing subsection 7.2.1 or elsewhere in this Article 7, a Unit Owner may settle or adjust any insurance Claim for a casualty affecting such Owner's Unit, provided

that the insurance proceeds received by the other Unit Owner or the Condominium Board is not reduced thereby.

Section 7.3 Repairs

7.3.1 Repair to Common Elements. If the requisite number of Unit Owners resolve to proceed with the Repairs following a Substantial Casualty or if less than three-fourths of the Building is destroyed or substantially damaged by casualty, the Condominium Board shall arrange for Repairs to be made promptly to the Common Elements, including: (a) the perimeter walls enclosing Units (consisting of: the Building Walls; the furring on the indoor side thereof, such as studs, sheetrock and/or plaster; and painting, wallpapering or other wall coverings, finishes, treatments or Decorations of the Common Elements, but not the Units); (b) all Equipment, Installations and Facilities serving Units that are part of the Common Elements and not expressly stated to be part of a Unit; and (c) any other parts of the Property (including Equipment and Installations) for which the Condominium Board carries insurance covering such destruction or damage.

7.3.2 Order of Priority of Payments. The Condominium Board or the Insurance Trustee (if any), as the case may be, shall disburse the Insurance Trust Funds as follows: first, to pay the Costs and Expenses incurred by the Condominium Board to recover the award; and second, the balance ("**Net Insurance Trust Funds**") to pay to the contractors engaged in making such Repairs in appropriate progress payments.

7.3.3 Order of Priority of Repairs. If Repairs are to be performed in or to Units, Common Elements that serve or enclose Units and other Common Elements or any combination of the foregoing, Repairs shall be performed, to the extent practicable and economical: first, in or to the Common Elements that serve, enclose or provide access to Units; second, in or to the Units; and third, in or to the other Common Elements.

7.3.4 Unit Owners. Each Unit Owner whose Unit, or any portion thereof, shall be the subject of all or part of any Repairs: (a) shall be kept reasonably informed as to the scheduling and progress of Repairs to the Owner's Unit (but may not supervise or otherwise interfere with the performance of such Repairs); and (b) shall be responsible to arrange, pay and perform all Repairs to the interior of such Owner's Unit (excluding any Repairs to be made by the Board, but including: all coverings, finishes, treatments and other Decorations of walls, floors and ceilings; and all Equipment, Installations and Fixtures forming a part of the Unit, to the extent such Repairs are required to be made by applicable Law.

Section 7.4 Allocation of Net Insurance Trust Funds

In the event of a casualty to the Common Elements and one or more Units, the Net Insurance Trust Funds will be allocated to the affected Common Elements in proportion to the Costs and Expenses of Repairs to same, unless such Net Insurance Trust Funds are subject to an action for partition under Section 7.1 above. The amount so allocated will then be applied for the account of both Unit Owners Pro Rata to their respective Common Interests.

Section 7.5 Insufficient Trust Funds

If the Net Insurance Trust Funds shall be less than sufficient for the Condominium Board to discharge the Costs and Expenses of performing the Repairs, the Condominium Board shall levy a Special Assessment (as provided in the following sentence) for the amount of such deficiency and the proceeds of such Special Assessment shall become part of the Net Insurance

Trust Funds. Such Special Assessment shall be levied as a Common Expense and charged to both Unit Owners Pro Rata to their respective Common Interests.

Section 7.6 Surplus Trust Funds

If, conversely, the Net Insurance Trust Funds shall prove to be more than sufficient to discharge the Cost and Expense of performing the Repairs, such surplus shall be paid to both Unit Owners Pro Rata to their respective Common Interests, subject to the rights of holders of liens on a Unit as provided in the following Section 7.7.

Section 7.7 Lien Priority

No payment of any insurance proceeds or surplus Net Insurance Trust Funds shall be made to a Unit Owner until there has first been paid out of such Unit Owner's share thereof, such amounts as may be necessary to reduce unpaid liens on the Unit Owner's Unit (including the liens of mortgages and the liens of the Condominium Board) in the order of priority of such liens. Notwithstanding the foregoing, however, in the event a Special Assessment is levied pursuant to the terms of Section 7.5 above for any projected deficiency in the amount of the Net Insurance Trust Funds available to the Condominium Board and, after the payment of all Costs and Expenses incurred in connection with the Repairs, any portion of the Net Insurance Trust Funds remains unspent, such surplus Net Insurance Trust Funds shall, to the extent of such Special Assessment, be deemed to be, and shall constitute, an unspent Special Assessment and shall be refunded to the Unit Owners Pro Rata to the amount each had paid pursuant to such Special Assessment, free of any claim of any lienor (including, without limitation, any mortgagee) other than the lien of the Condominium Board.

Section 7.8 Abatement in Common Charges

7.8.1 Abatement. Except as otherwise provided in the following sentence and subsection 7.8.2 below, if, as a result of a destruction or damage, a Unit is rendered wholly or partially unusable for the purposes permitted in the Declaration, or the means of reasonable access thereto is prevented, as a result of a destruction or damage, the Common Charges otherwise payable by the Owner thereof shall proportionately abate until such Unit shall again be rendered useable for the purposes permitted in the Declaration and/or until the means of reasonable access thereto shall be restored, as the case may be. The amount of abatement shall be determined by the Condominium Board, in its discretion, reasonably exercised.

7.8.2 Exception. The foregoing notwithstanding, if the destruction or damage shall be caused by an act, omission or negligence of an Owner or an Owner's Parties, the Common Charges otherwise payable by such Owner shall abate only to the extent of any proceeds of business interruption or similar insurance actually collected by the Condominium Board with respect to such affected Unit.

ARTICLE 8

COMMON CHARGES

Section 8.1 Declaration Governs

The principles, rules, requirements and procedures set forth in Article 9 of the Declaration, which is hereby incorporated herein and made a part hereof, shall govern, apply and

be observed in allocating and apportioning the projected Common Profits and projected Common Expenses, and adopting a Budget of Condominium Operation each Budget Year. In the event of any inconsistency or ambiguity between the provisions of said Article 9 of the Declaration and this Article 8, such inconsistency or ambiguity shall be resolved in accordance with the provisions of the Declaration, which are paramount and shall govern and prevail.

Section 8.2 Determination by Board

The Condominium Board shall determine the Common Charges to be assessed to the Unit Owners or a particular Unit Owner based on the Budget of Condominium Operation adopted by the Board each Budget Year and in accordance with the provisions of Article 9 of the Declaration.

Section 8.3 Budget of Condominium Operation

The Condominium Board shall adopt a Budget of Condominium Operation each Budget Year based on: (a) the Board's determination of the projected Common Expenses for such Budget Year, which shall include the projected Specially Apportioned Common Expenses as provided in subsection 9.1.3 of the Declaration; and (b) the Board's determination of the Common Charges, which shall be assessed to the Unit Owners or a particular Unit Owner in accordance with the Special Allocation and Apportionment Rule and Section 339-m of the Condominium Act, as provided in subsection 9.1.2 of the Declaration. A Budget may include such reserve for unanticipated expenses, contingencies, alterations, additions, improvements and capital replacements and repairs with respect to the Common Elements, the Association's Properties and/or the projected Common Expenses as may be determined by the Condominium Board, in its sole and absolute discretion, as provided in Section 9.7 of the Declaration.

Section 8.4 Budget Adoption Procedure

In adopting a Budget of Condominium Operation each Budget Year, the Condominium Board shall follow the procedure and requirements set forth in Section 9.4 of the Declaration.

Section 8.5 Budget Revisions

The Condominium Board may revise a Budget one (1) or more times during a Budget Year in accordance with the same requirements and procedure to adopt such Budget as set forth in Article 9 of the Declaration; provided, however, that after the adoption and implementation of a Budget, a Budget may not be revised to retroactively increase the amount of Common Charges previously billed and a Budget may not be revised after the Budget Year has expired. Nevertheless, a Budget may be adopted or revised to include a deficiency for a prior period that is payable prospectively in one (1) lump sum or installments, as determined by the Condominium Board.

Section 8.6 Failure to Adopt

The failure of the Condominium Board to adopt a new Budget for any Budget Year will not be regarded as a waiver of Common Charges or in any way excuse a Unit Owner from timely paying the Common Charges. Rather, Common Charges will continue to be paid on the basis of the last adopted Budget until a new Budget is adopted.

Section 8.7 Special Assessments

8.7.1 Authority. The Condominium Board may levy a Special Assessment to pay the Common Expenses. A Special Assessment is subject to the same principles, rules, requirements and procedures applicable to Common Charges, including those set forth in Article 9 of the Declaration.

8.7.2 Method of Payment. The Condominium Board may require a Special Assessment to be paid in one (1) lump sum or in periodic installments with or without interest. If Unit Owners are allowed to pay a Special Assessment in installments, the Board may require that each such Unit Owner evidence the Owner's obligation for the Special Assessment by signing and delivering a promissory note in favor of the Condominium Board. The note will be prepared by an attorney selected by the Condominium Board and will be in form and substance (including interest rate, if any) satisfactory to the Condominium Board. The Condominium Board may pledge, sell or make any other Disposition of all Unit Owners' notes as it sees fit. Each Unit Owner will be given written notice of the amount and purpose of a Special Assessment and (if applicable) the terms of a promissory note, at least fifteen (15) calendar days before a payment is due or the promissory note is to be signed and delivered. If a Unit Owner refuses or fails to timely sign and deliver said promissory note, such Unit Owner shall be obligated to pay the full amount of the Special Assessment on the date set by the Condominium Board.

8.7.3 Remedies for Non-Payment. Special Assessments are additional Common Charges. As a result, the Condominium Board will have all of the same rights and remedies for collection of Special Assessments and promissory notes of Unit Owners as are applicable for the collection of Common Charges.

8.7.4 Real Estate Taxes. Until such time as each Unit is separately assessed and billed for real estate taxes, unless paid to the holder of the Existing Unit Mortgage encumbering both Units for forwarding to the taxing authority, the real estate taxes assessed against the Property shall be included in the Common Expenses and assessed to the Unit Owners in the form of a Special Assessment or (at the option and discretion of the Condominium Board) as part of the monthly Common Charges for forwarding same to the appropriate taxing authority on behalf of the Unit Owners (all in accordance with subsection 9.1.3(d) and Section 9.11 of the Declaration and Article 9 of these By-Laws).

Section 8.8 Application of Net Receipts

The net receipts (after deducting expenses) derived from Operation of the Common Elements and the Association's Properties, together with the payments from Unit Owners for Common Charges, Special Assessments and any other sums pursuant to these By-Laws or the Declaration, shall be applied to pay the Common Expenses.

Section 8.9 Budget Surplus

If the revenues (including Common Charges and Special Assessments) shall exceed the actual Common Expenses paid or incurred for a completed Budget Year, the Condominium Board shall determine how to apply the surplus in accordance with Section 9.8 of the Declaration.

Section 8.10 Separate Fees and Charges

The Condominium Board may assess and collect fees and charges from a Unit Owner whenever so provided elsewhere in these By-Laws (e.g., in connection with Unit Alterations/Repairs as provided in subsection 5.2.4(h) above or violations of the Condominium Documents as provided in subsection 2.4.2(q) above) or the Declaration (e.g., in connection with any Government Documents signed by the Condominium Board as provided in Section 10.7 of the Declaration or cooperating with a Unit Owner as provided in Section 20.3 of the Declaration). All such fees and charges shall constitute additional Common Charges allocated and assessed to the applicable Unit Owner. The Board may also impose and collect fees and charges from leasing or licensing portions of the Common Elements or for using vending equipment and the like.

Section 8.11 Payment of Common Charges

All Unit Owners shall be obligated to pay Common Charges, Special Assessments and other additional Common Charges assessed by the Condominium Board pursuant to the terms of Article 9 of the Declaration and this Article 8 at such time or times (but not less than annually) as the Condominium Board shall determine. Unless otherwise determined by the Condominium Board, Common Charges shall be payable in equal monthly installments in advance on the first day of every month.

Section 8.12 Lien

The Condominium Board, on behalf and as agent of the Unit Owners, shall have a lien on each Unit and its appurtenant Common Interest for unpaid Common Charges, Special Assessments and other additional Common Charges assessed against such Unit, together with interest thereon at the rate set forth in subsection 8.16.2 below. Such lien shall have the highest lien priority applicable to an exclusive non-residential condominium afforded or permitted under the Condominium Act, but shall be subject and subordinate to the lien of a prior recorded first mortgage on the affected Unit.

Section 8.13 Liability

8.13.1 Personal Liability. Each Unit Owner shall be personally liable for the payment of the Common Charges (including Special Assessments and any other additional Common Charges) assessed against the Owner's Unit that are due and payable to and including (but not after) the date of conveyance or transfer of title to the Unit together with its appurtenant Common Interest in compliance with the terms of Article 16 hereof. Accordingly, a Unit Owner shall not be liable for any Common Charges, including any installments of a Special Assessment, due and payable subsequent to such permitted conveyance or transfer of the Owner's Unit and its appurtenant Common Interest.

8.13.2 No Exemption for Waiver. No Unit Owner shall be exempted from liability for the payment of Common Charges (including Special Assessments and any other additional Common Charges) by waiving the Use and Enjoyment of any or all of the Common Elements or by abandoning such Owner's Unit (except with respect to a conveyance of a Unit to the Condominium Board, without compensation, pursuant to the terms of Section 8.14 below).

8.13.3 No Abatement for Service Failure. Except as expressly provided to the contrary in Section 7.8 above, no Unit Owner shall be entitled to a reduction or abatement in, or to delay payment of, the Common Charges, Special Assessments or any other additional Common Charges for any inconvenience or discomfort arising from: (a) the failure, interruption or diminution of any utility, Building service or other services; (b) the making of Repairs or Alterations to the Common Elements or any Unit (including such Owner's Unit) pursuant to the terms of the Declaration or these By-Laws; or (c) any action taken or omitted by the Condominium Board or the officers of the Condominium Association to comply with the Law.

8.13.4 Promissory Note. Each Unit Owner shall be personally liable under its promissory note given to the Condominium Board in payment of a Special Assessment pursuant to subsection 2.4.2(f) above, but shall not be liable with respect to any installment payment thereof due after title to the Unit together with its Common Interest is conveyed or otherwise transferred in compliance with the terms of Article 16 hereof, provided that at title closing the succeeding Owner of the Unit shall execute and deliver to the Condominium Board, and the Condominium Board or its Managing Agent (if any) or attorney shall receive, a written assumption of the then unpaid installments under such promissory note; such assumption agreement to be in the form prepared by an attorney retained by the Condominium Board, at the Cost and Expense of the Owner of the Unit being conveyed or transferred, and is to be in the form and content satisfactory solely to the Condominium Board.

8.13.5 Liability of Succeeding Owner. Each succeeding Owner of a Unit (howsoever title to the Unit is acquired), other than an Owner who acquires title through a foreclosure sale pursuant to the Existing Unit Mortgage on such Unit or other prior recorded first mortgage on such Unit, or by deed in lieu of such foreclosure, shall be liable for the payment of all unpaid Common Charges (including all unpaid installments of a Special Assessment or of said promissory note and any other indebtedness owing under promissory notes given by a predecessor Owner of the Unit to the Condominium Board) and any additional Common Charges or other unpaid indebtedness owing to the Condominium Board with respect to such Unit prior to such new Owner's acquisition thereof.

8.13.6 Continuing Liability After Lien Foreclosure. In the event of a foreclosure of a prior lien (whether by a lien foreclosure sale, or a deed in lieu of such foreclosure or otherwise), the defaulting or delinquent Unit Owner shall remain fully liable for the payment of all unpaid Common Charges, including Special Assessments, any other additional Common Charges and any other indebtedness owing to the Condominium Board with respect to such Unit, that accrued prior to the consummation of such foreclosure sale or conveyance by deed in lieu thereof. The additional amounts paid by the other Unit Owner by reason of said Common Charges, additional Common Charges, Special Assessments and other indebtedness owed by such defaulting or delinquent Unit Owner shall be refunded to such other Owner if and to the extent of any net proceeds realized from the enforcement of the Board's said lien against such defaulting or delinquent Unit Owner, after deducting all Costs and Expenses incurred in connection with the enforcement and collection of the Board's lien and paying off all prior liens (as provided in subsection 16.19.13 below).

8.13.7 Default. In case of a default by a Unit Owner, any deficit resulting from unpaid Common Charges and Special Assessments that are not collected from such defaulting or delinquent Unit Owner shall be deemed a Common Expense collectible from the other Unit Owner (or, if the Association shall then consist of more than two (2) Units, all those who are

Unit Owners at the time that the same is levied), subject to being refunded as provided in the preceding subsection 8.13.6.

Section 8.14 Conveyance to Condominium Board.

Any Unit Owner may convey the Owner's Unit, together with its appurtenant Common Interest, to the Condominium Board or to its nominee or designee, corporate or otherwise, on behalf and as agent of, the Unit Owners (other than the conveying Owner) without being compensated therefor, and, in such event, be exempt from the payment of Common Charges and Special Assessments (including all installments to become due pursuant to promissory notes, if any, given to the Condominium Board in payment of a Special Assessment) thereafter accruing; provided, however, that: (a) all Common Charges, any Special Assessments (including all unpaid installments and any other indebtedness owing under said promissory notes) then due and payable with respect to such Unit, and any other additional Common Charges or other indebtedness owed to the Board by such Unit Owner have been paid; (b) such Unit is free and clear of all liens and encumbrances other than the statutory lien for unpaid Common Charges and Special Assessments (provided no monies are then owing under such statutory lien); and (c) no violation of any provision of the Condominium Documents then exists with respect to such Unit.

Section 8.15 Statement of Common Charges

The Condominium Board shall, with reasonable promptness, provide a written statement of all unpaid Common Charges (including Special Assessments and other additional Common Charges) and any other indebtedness due from any Unit Owner upon its receipt of a written request therefor from such Unit Owner. Such statement shall be conclusive upon the Condominium Board and Unit Owners in favor of all Persons who rely thereupon in good faith.

Section 8.16 Collection and Remedies on Non-Payment of Common Charges

8.16.1 Lien and Remedies. The Condominium Board shall take prompt action to collect any Common Charges (including Special Assessments, if any) due to the Condominium Board that remains unpaid for more than thirty (30) calendar days after the due date for the payment thereof. In connection therewith, the Condominium Board shall have the right and obligation: (a) to cause a lien for all sums due and owing to the Condominium Board to be filed with reasonable diligence in the County Clerk's Office pursuant to the terms of Section 339-z of the Condominium Act; and (b) to cause such lien to be foreclosed in the manner provided in Section 339-aa of the Condominium Act. In addition, the Condominium Board may (in its sole and absolute discretion) bring a suit to recover a money judgment for unpaid Common Charges (including Special Assessments and any other additional Common Charges or other indebtedness owed by a Unit Owner) without foreclosing or waiving the lien securing such Common Charges and/or institute any and all other proceedings and actions deemed necessary or desirable by the Condominium Board to recover all such unpaid Common Charges (including Special Assessments and other additional Common Charges), together with all additional sums of money collectible by the Condominium Board by reason of such nonpayment pursuant to the terms of this Section 8.16.

8.16.2 Interest and Late Charge. In the event that any Unit Owner shall fail to make payment of Common Charges (including any Special Assessments and other additional Common Charges) or other indebtedness owed by a Unit Owner within ten (10) calendar days

from the due date, such Unit Owner shall be obligated to pay the Condominium Board, promptly following demand:

- (a) interest thereon at a rate equal to the lower of 16% a year or the highest rate allowed by Law; such interest to be computed from the due date thereof until full payment is received by the Board; and/or
- (b) a late charge in an amount determined by the Condominium Board (but not to exceed \$0.05 on each overdue dollar); together with
- (c) all Costs and Expenses paid or incurred by the Condominium Board, the Managing Agent or the manager (if any) in connection with collecting such unpaid amount, said interest and/or late charge and in filing and foreclosing the aforementioned lien.

Nothing herein shall excuse the obligation, or extend the time period, to pay the Common Charges (including a Special Assessment or other additional Common Charge) or other indebtedness.

8.16.3 Receiver. In addition, if the Condominium Board shall bring an action to foreclose the aforementioned lien, the defaulting Unit Owner will be required to pay a reasonable rental for the use of such Owner's Unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

8.16.4 Additional Common Charges. All such interest, late charge and Costs and Expenses provided in subsection 18.16.2 above, and such rental provided in the preceding subsection 18.16.3, shall be added to and shall constitute additional Common Charges payable by such Unit Owner.

8.16.5 Purchase by Board. In any Lawsuit brought by the Condominium Board to foreclose a lien on a Unit because of unpaid Common Charges, the Condominium Board shall have the power, on behalf and as agent of the Unit Owners (other than the delinquent Owner of such Unit), in its own name or in the name of its nominee or designee, to purchase such Unit at the foreclosure sale thereof and to acquire, hold, lease, Operate, mortgage, convey and make any other Disposition of such Unit (but not to vote the votes appurtenant to the same), subject to compliance with subsection 2.4.2 (g) and (o), if applicable.

8.16.6 Deficiency or Surplus. In the event that the net proceeds received on such foreclosure (after deduction of all legal fees and disbursements, advertising costs, brokerage commissions, receiver's fees and expenses, court costs and other Costs and Expenses paid or incurred in connection therewith) shall be insufficient to satisfy the defaulting Unit Owner's obligations to the Condominium Board, such Unit Owner shall remain personally liable for the deficiency. Any surplus on such foreclosure sale shall be paid to the defaulting Unit Owner after first paying all liens on such Owner's Unit in the order of priority of such liens.

8.16.7 Part of Association's Properties. Any Unit acquired by the Condominium Board or its nominee or designee in connection with the enforcement of its lien for unpaid Common Charges or otherwise shall constitute part of the Association's Properties and shall be held by the Condominium Board or its designee on behalf and as agent of the Unit Owners (other

than the delinquent Owner of such Unit). Accordingly and as an example, the purchase price and all Costs and Expenses incurred in connection with the acquisition, Operation and Disposition thereof, after deducting any receipts or revenues derived from such Operation or Disposition, shall be assessed to the other Unit Owner as part of the Common Expenses until such time as such Unit is no longer owned by the Condominium Board or its nominee or designee.

8.16.8 No Partition or Occupancy. A Unit acquired or leased by the Condominium Board or its nominee or designee shall not be subject to partition or occupancy by the other Unit Owner while owned or leased by the Condominium Board or its nominees or designee.

Section 8.17 Sales, Use or Occupancy Tax Exemptions

The Condominium Board will adopt and follow such procedures as may be available, without additional cost to the Condominium Association (unless the applicable Unit Owner pays same), to enable any Unit Owner eligible for exemption from New York State and/or New York City sales, use and/or occupancy taxes to enjoy such exemption with respect to such Unit Owner's share of Common Expenses. Any benefits obtained by the Condominium Association as a result thereof shall be passed through to, and shall belong exclusively to, the applicable Unit Owner entitled to any such exemption and if both Unit Owners are entitled to such exemption, such benefits shall be apportioned between both Unit Owners Pro Rata to the amount of exemption to which each Owner is entitled.

ARTICLE 9

PROPERTY TAXES AND CHARGES

Section 9.1 Real Estate Taxes

9.1.1 Included in Common Expenses. Until such time as each Unit is separately assessed and billed for real estate taxes, the real estate taxes, business improvement district assessments (if any) or charges and other assessments levied with respect to the Property (collectively, "**Real Estate Taxes**" or "**Real Estate Tax**") shall be included in the Common Expenses and collected by the Condominium Board in addition to, and as part of, the Common Charges, as provided herein, and forwarded to the appropriate taxing authority on behalf of the Unit Owners when due and payable before the imposition of interest or penalties for late payment.

9.1.2 Allocation and Apportionment. Such Common Expense item of Real Estate Taxes shall be allocated and apportioned 32.94% to the Upper Unit and 67.06% to the Lower Unit. The resulting amount so allocated to the Upper Unit and Lower Unit is the share ("**Tax Share**") of this item of Common Expense payable by each Unit Owner as part of the Owner's Common Charges.

9.1.3 Payment and Application. Each Unit Owner shall pay to the Condominium Board, within ten (10) calendar days after written demand therefor, an amount equal to such Owner's Tax Share of Real Estate Taxes, and all amounts collected by the Board

from Unit Owners as their Tax Shares shall be segregated from other monies of the Condominium and used solely to pay the Real Estate Taxes with reference to which such Tax Shares were determined. In lieu of the foregoing, Declarant, as Owner of both Units, may (at its option) timely pay such Real Estate Taxes directly to the taxing Governmental Authority.

9.1.4 Real Estate Tax Exemption or Abatement. If a Unit Owner receives a Real Estate Tax exemption or abatement for its Unit that is reflected in the tax bill for the Property, then from and after and for so long as such Real Estate Tax exemption or abatement is in effect and reflected in the bill for Real Estate Taxes, such Unit Owner shall be entitled to an adjustment in the Tax Share allocated and assessed against its Unit and payable by it on account of its Unit, based on the amount of such Real Estate Tax exemption or abatement, provided that such Unit Owner gives the Board satisfactory documentation of such exemption or abatement. A Unit Owner receiving a Real Estate Tax exemption or abatement for its Unit shall have the sole right to collect, and shall be solely responsible for collecting from the collecting Governmental Authority any refund or rebate of Real Estate Taxes to which it is entitled as a result of such exemption or abatement, and such Unit Owner shall not be entitled to any adjustment in the Common Charges. The Board shall cooperate with such Unit Owner in obtaining such refund or rebate.

9.1.5 Separate Assessment. Once the Units are separately assessed and each Owner is billed directly by the taxing authority for its Unit's Real Estate Taxes, each Unit Owner shall be required to pay such Real Estate Taxes directly to such taxing authority and the Board shall be absolved from all responsibility therefor.

9.1.6 Application for Remission, Refund, Exemption and/or Abatement. Any Unit Owner shall have the right to apply for a tax remission, tax refund, tax exemption and/or tax abatement with respect to its Unit without the approval or consent of the Board and/or the other Unit Owner.

9.1.7 Adjustment. The Condominium Board and each Unit Owner shall have the right, for sixty (60) calendar days after the Units are separately assessed and billed for Real Estate Taxes, to determine any adjustment in Common Charges due to any overpayment or underpayment of Real Estate Taxes included in the Common Charges and paid by each Owner. Such adjustment shall be based on the difference between the Tax Share paid by a Unit Owner and the product of:

- (a) the taxable assessed valuation of the Property on the date of conveyance of the Lower Unit by Declarant (inclusive of any real estate tax exemption or abatement, if applicable pursuant to subsection 9.1.4 above);
multiplied by
- (b) the ratio that the initial actual separate assessed valuation of such Unit bears to the aggregate initial actual separate assessed valuations of both Units (in each case inclusive of any real estate tax exemption or abatement, if applicable pursuant to subsection 9.1.4 above);
multiplied by
- (c) the tax rates applicable to such Unit from and after said date of conveyance of the Lower Unit.

(collectively, "**Water and Sewer Charges**") shall be paid pursuant to one (1) or more common meters ("**Building's Water Meter**") and charged to each Unit pursuant to separate submeters or (if not submetered) a written Usage (i.e., water consumption) survey of an independent, licensed consulting or mechanical engineer or other qualified expert chosen by Condominium Board (the Costs and Expenses of such survey shall be a Common Expense and charged to each Unit Pro Rata to its Common Interest). The survey shall include reasonable details of the estimated consumption of water, the then current water and sewer rates charged by the taxing authority and the qualifications of the expert. A copy of the survey shall be provided to each Unit Owner at least ten (10) calendar days before such costs are due and payable to the Board. Any dispute as to this or any other Budget item shall be resolved by arbitration pursuant to Article 19 of these By-Laws. If not separately submetered, each Unit Owner shall have the right, at any time, at such Owner's sole Cost and Expense, to install a separate submeter or meter to measure the amount of water consumed by Owner's Unit. The Condominium Board shall also have the right to install such submeter at the Cost and Expense of the Owner of the applicable Unit. If submetered, the costs of water and sewer services to such Unit shall thereafter be billed by the Board based on such submeter. If a Unit is separately metered, the costs of water and sewer services to such Unit will thereafter be paid by the Owner of such Unit directly to the taxing authority as measured by such separate meter.

Alternatively, while Declarant remains the Owner of both Units, the Water and Sewer Charges instead shall be charged to each Unit Pro Rata to its Common Interest, if so determined by Declarant (in its sole judgment and absolute discretion).

The Condominium Board shall read, Maintain, Repair and Alter the Building's Water Meter and the Costs and Expenses thereof shall be included in the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests. Alternatively, at the sole option and absolute discretion reserved to Declarant (while it owns both Units) or the Board (if Declarant ceases to own both Units), said Costs and Expenses shall be specially allocated, apportioned and assessed to each Unit Owner Pro Rata to the amount of Water and Sewer Charges payable by such Unit Owner in accordance with the Special Allocation and Apportionment Rule and Section 339-m. Any dispute under this Section 9.3 shall be resolved by arbitration pursuant to Article 19 of these By-Laws.

Section 9.4 Board Certificate

In connection with any proposed conveyance, lease or mortgage of all or part of a Unit, for so long as the Condominium Board is paying Real Estate Taxes and/or Water and Sewer Charges, the Condominium Board or an authorized officer of the Board shall sign on behalf of the Board and deliver to a Unit Owner within ten (10) calendar days after written notice therefor is given, a certification as to the obligation and agreement of the Board to pay the Real Estate Taxes and/or Water and Sewer Charges (as applicable), pursuant to these By-Laws. Such certification shall be addressed to such Unit Owner and/or the proposed purchaser (grantee), tenant or mortgagee, and any title insurer, as directed by such Unit Owner, and shall be conclusive upon the Condominium Board and Unit Owners in favor of all Persons who rely thereupon in good faith.

Section 9.5 Vault Charges

All license fees, taxes and charges for each of the vaults shall be paid by the Party (i.e., the Condominium Board or a Unit Owner) having exclusive use thereof.

ARTICLE 10

UTILITIES

Section 10.1 Electric and Gas Services to Units

Each Unit Owner, at its sole Cost and Expense, shall arrange for any direct electric and gas services to its Unit and shall install separate meters or submeters to measure the Unit's electric and gas consumption. The costs of such utility services to a Unit as measured by such separate meters shall be billed directly to, and paid directly to the applicable utility provider by, the Owner of such Unit. The Costs and Expenses to read, Maintain, Repair and Alter such meters and all related utility Installations (collectively, "**Utility Equipment**") shall also be paid by such Unit Owner and shall be performed by such Unit Owner in accordance with the applicable Work Requirements set forth in Section 15.2 of the Declaration, including obtaining all required Board and governmental approvals and consents and work permits of Governmental Authorities having jurisdiction (if and as applicable).

Section 10.2 Hot Water Service to Units

If a Unit Owner desires hot water service to its Unit, such Unit Owner, at its sole Cost and Expense, shall be responsible to purchase and install its own hot water Equipment and separate meter within its Unit and to thereafter Maintain, Repair and Alter same. All Work in connection with the foregoing shall be performed in accordance with applicable Work Requirements set forth in Sections 15.2 of the Declaration, including obtaining all required Board or governmental approvals and consents and work permits from Governmental Authorities having jurisdiction (if and as applicable).

Section 10.3 Heat and Air Conditioning Services to Units

10.3.1 Heat. Heat to each Unit is provided by steam purchased from Con Edison (or other utility provider). The cost of steam heat is measured by a common meter and shall be charged to each Unit Pro Rata to its Common Interest, subject to the sole option and absolute discretion reserved to Declarant (while it owns both Units) or (if Declarant ceases to own both Units) the Condominium Board to specially allocate, apportion and assess each Unit Pro Rata to its Usage of steam heat, as determined by a Usage survey of a licensed mechanical engineer having at least ten (10) years experience in the mechanical engineering business, who shall be selected by the Party exercising such option, in accordance with the Special Allocation Apportionment Rule and Section 339-m. Any dispute under this subsection 10.3.1 shall be resolved by arbitration pursuant to the Article 19 of these By-Laws.

10.3.2 Air Conditioning. Each Unit Owner, at its sole Cost and Expense, shall purchase and install its individual Equipment for generating and circulating air conditioning

the floors of its Unit and thereafter shall be solely responsible to Maintain, Repair and otherwise Operate all such individual Equipment.

Section 10.4 Utility Services to Common Elements

The Costs and Expenses of all utility services provided to the areas and Equipment comprising the Common Elements, including electric, gas, water and HVAC, and to Maintain, Repair, Alter and otherwise Operate such Equipment, shall be included in the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests, unless otherwise expressly provided elsewhere herein or in the Declaration. For so long as any utility services are provided from the Equipment comprising a Unit (e.g., the Upper Unit in the case of air conditioning provided to portions of the Common Elements located on the cellar level), at the exclusive option and absolute discretion of the Owner of such Unit, the Condominium Board shall reimburse such Unit Owner for the Costs and Expenses incurred to provided said utility service as determined by a Usage survey of a licensed mechanical engineer having at least ten (10) years experience in the mechanical engineering business, selected by said Unit Owner. Any dispute under this subsection 10.3.2 shall be resolved by arbitration pursuant to Article 19 of these By-Laws.

ARTICLE 11

USES AND OCCUPANCY OF PROPERTY AND ADJACENT SIDEWALKS AND VAULTS

Section 11.1 Declaration Governs

The Property, including the Common Elements and the Units, and the vaults and the Immediately Adjacent Sidewalks to the Property, shall be used, Operated, rented and occupied in accordance with the provisions of the Declaration, including in particular (but not limited to) Articles 10 through 15 thereof, which are hereby incorporated herein and are paramount and shall govern any provision of these By-Laws inconsistent therewith.

Section 11.2 Common Elements

11.2.1 Common Elements. Generally, the Common Elements are for the Use and Enjoyment in common by both Unit Owners and their respective Permitted Tenants/Occupants/Invitees for all purposes for which they are reasonably intended, suited and capable in connection with the permitted Use and Enjoyment of the Property and each Unit in accordance and compliance with, and subject and subordinate to the easements and rights provided in, these By-Laws and the Declaration.

11.2.2 Limited Common Elements. Generally, the Limited Common Elements (if any are established pursuant to Section 13.1 of the Declaration) shall be for the exclusive, or primarily exclusive, Use and Enjoyment of the Owner and Permitted Tenants/Occupants/Invitees of the Unit to which they are appurtenant for all purposes for which they are reasonably

intended, suited and capable in connection with the permitted Use and Enjoyment of such Unit in accordance and compliance with, and subject and subordinate to the easements and rights provided in, these By-Laws and the Declaration.

11.2.3 Use Determined by Board. Subject to obtaining the prior written Discretionary Approval or Consent of the Existing Unit Mortgagee for so long as the Existing Unit Mortgage encumbers a Unit as provided in Section 7.1 of the Declaration, the Condominium Board shall have the right, from time to time, to determine, and to amend the Rules and Regulations governing, the uses and changes in uses of the areas, Equipment and Installations comprising the Common Elements, provided all such uses shall be in accordance and compliance with, and subject and subordinate to the easements and rights provided in, these By-Laws and the Declaration and provided further no service to be provided by the Board to a Unit Owner (such as heating) shall be materially reduced or eliminated without obtaining the prior written Discretionary Approval or Consent of the affected Unit Owner.

11.2.4 Easements and Rights. The foregoing rights of Unit Owners to Use and Enjoy the Common Elements and the foregoing right of the Condominium Board to determine the uses of the Common Elements, shall be subject and subordinate to: (a) the various easements and rights set forth in the Declaration, including in particular (but not limited to) Articles 10, 11, 12 and 13 thereof; and (b) Declarant's Rights set forth in the Declaration and these By-Laws, which are superior, paramount and take preference over the rights of: (a-1) any other Unit Owner and Permitted Tenants/Occupants/Invitees of such other Owner's Unit; and (a-2) the Condominium Board.

Section 11.3 Units

11.3.1 Use of Units. Each Unit shall be used strictly in accordance with Article 10 of the Declaration, including in particular (but not limited to) Section 10.2 thereof, and only for the purposes included in the Permitted Unit Uses as provided in Section 10.12 of the Declaration. In no event shall a Unit or any portion thereof (including any Subdivided Unit resulting from a Unit Subdivision of such Unit) be used for any Prohibited Uses as provided in Section 10.2 of the Declaration. The Owner of a Unit or a Subdivided Unit (as applicable) shall not permit or suffer any portion of such Owner's Unit to be used in violation hereof or the Declaration.

11.3.2 Occupancy of Units. Each Unit shall be occupied strictly in accordance and compliance with the Declaration, these By-Laws and all applicable Laws. In accordance therewith, there shall be no restrictions or limitations on the occupancy of a Unit, other than the restrictions against an occupancy in violation of applicable Law. In no event shall the Condominium Board or another Unit Owner have the right to approve, interview, pass upon or otherwise establish any criteria, requirements, restrictions or limitations as to the tenants, subtenants or occupants of a Unit, or any portion thereof, or the businesses conducted therein. The foregoing provisions shall apply to a Subdivided Unit resulting from a Unit Subdivision of a Unit.

11.3.3 Subordination. Any lease or occupancy agreement for all or a portion of a Unit shall be subject and subordinate to the provisions of these By-Laws and the Declaration, unless same or a memorandum thereof is duly recorded prior to the recordation of the Declaration.

11.3.4 Remedies. If a Unit Owner permits or suffers its Unit to be used or occupied in violation of these By-Laws or the Declaration, such violation shall constitute a material breach and default of such Unit Owner's obligations and shall entitle the Condominium Board to all rights and remedies available at law and in equity (including to enjoin the violation pursuant to Section 17.2 below) against such Unit Owner and the offending tenant or occupant of such Owner's Unit. Each Unit Owner acknowledges that recovery of monetary damages or injunctive relief shall be inadequate to remedy any such violation. Accordingly, each Unit Owner agrees that the Condominium Board shall have the right and power to act in the name of such Unit Owner, as attorney in fact, and for the account of such Unit Owner, to terminate the lease or occupancy of the offending tenant or occupant and to eject or remove said offending tenant or occupant from such Owner's Unit by summary dispossession proceedings or by any other suitable action or proceedings at law or in equity, and to repossess the portion of such Owner's Unit so leased or occupied by such offending tenant or occupant (as applicable). The Condominium Board shall give such Unit Owner not less than 20 calendar days' prior written notice of the Board's intention to terminate the lease or occupancy of an offending tenant or occupant. Such Unit Owner shall reimburse the Condominium Board for all Costs and Expenses paid or incurred in connection with such violation and to enforce, uphold, protect and defend the foregoing rights and remedies, as well as the Costs and Expenses of collection thereof. All such Costs and Expenses shall be paid by such Unit Owner, and received by the Condominium Board, within seven (7) business days after written demand therefor is given to such Unit Owner, which shall be accompanied by a reasonably detailed statement of the Costs and Expenses to be reimbursed and copies of any supporting or relevant bills. All sums payable by such Unit Owner to the Condominium Board pursuant to the foregoing shall for all purposes constitute additional Common Charges payable by such Unit Owner. All of the foregoing rights and remedies of the Board, and obligations of each Unit Owner, shall apply to a Subdivided Unit Owner in the event a Unit is subdivided into two (2) or more Units.

11.3.5 Limited Power of Attorney. With the intention to constitute a limited, durable power of attorney, each Unit Owner, by accepting or recording a deed to its Unit or otherwise succeeding to title to such Unit (whether through operation of Law or by merger, consolidation, liquidation, distribution or otherwise) shall thereupon automatically have, and be deemed to have, irrevocably authorized and designated the individuals who shall from time to time constitute the Condominium Board, in their capacity as Board Members, as agent and attorney in fact of such Unit Owner, "coupled with an interest" and for valuable consideration, and with full power of substitution, to act on behalf and as agent of such Unit Owner and in the name, place and stead of such Unit Owner in any way in which such Owner could do if personally present, to the full extent such Owner is permitted by Law to act through an agent, having the right, power and authority with respect only to the following: (a) to institute and prosecute through completion a Lawsuit and all appeals therefrom to terminate an offending lease or occupancy agreement and to eject, evict, dispossess or otherwise remove an offending tenant or occupant of such Owner's Unit, whether by summary dispossession proceedings or otherwise, and to repossess the portion of such Owner's Unit so leased or occupied by such offending tenant or occupant (as applicable) in accordance with subsection 11.3.4 above. This durable, limited power of attorney shall not be affected by the subsequent disability or incompetence of such Unit Owner.

Section 11.4 Building Walls and Immediately Adjacent Sidewalks

11.4.1 General Prohibition. The Building Walls and the Immediately Adjacent Sidewalks to the Property shall be used in accordance and compliance with the Declaration, including the general prohibitions set forth in Section 10.2 thereof.

11.4.2 Rights of Each Unit Owner. Each Unit Owner and the permitted tenants so expressly authorized in writing by such Unit Owner shall have the right, Freely and Without Consent, Payment or Restriction (but subject to compliance with Sections 10.2 and 11.2 of the Declaration), to use the Building Walls (other than the portions thereof enclosing floor 1 of the Lower Unit if the Upper Unit Owner or its permitted tenant is exercising this right) and the Immediately Adjacent Sidewalks to the Property adjacent to such Owner's Unit and entrance to the Common Elements at 6 East 49th Street for all purposes related to the Use and Enjoyment (including Promotion) of such Owner's Unit in accordance with Article 10 (and in particular, but not limited to, Sections 10.4, 10.7 and 10.15) and Article 12 (and in particular, but not limited to, Section 12.7) of the Declaration. The right of each Unit Owner and said authorized tenants to use said Building Walls and said Immediately Adjacent Sidewalks are superior, paramount and take preference over the right of the Condominium Board to Use and Enjoy same.

11.4.3 Use by Units. Each Unit Owner shall have the right, Freely and Without Consent, Payment or Restriction (other than the requirement to comply with the applicable Work Requirements set forth in Section 15.2 of the Declaration and those requirements expressly provided herein or elsewhere in these By-Laws or the Declaration), to erect and install Signs identifying the name of a tenant or tenants of such Owner's Unit on those portions of the Building Walls that enclose and are part of floor 1 of Owner's Unit and any other floors enclosing such Owner's Unit, and thereafter to Maintain, Repair and Alter such Signs. The foregoing right may be exercised and performed Freely and Without Consent, Payment or Restriction, other than the requirement to comply with the applicable Work Requirements set forth in Section 15.2 of the Declaration.

11.4.4 Other Uses Determined by Board. All other uses of the Building Walls and the Immediately Adjacent Sidewalks to the Property shall be determined by the Condominium Board.

Section 11.5 Vaults

The Unit Owner having the exclusive use of one or more vaults shall have the right to use such vaults for all lawful purposes in connection with the permitted Use and Enjoyment of its Unit, but shall not permit or suffer the vaults to be used for any Prohibited Uses as provided in Section 10.2 of the Declaration. The permitted use of the vaults by such Unit Owner shall be subject and subordinate to the easements and rights in favor of the Condominium Board and the other Unit Owner set forth in the Declaration, including in particular, but not limited to, Sections 11.6 and 14.10 of the Declaration.

Section 11.6 General Prohibitions

The Property shall be used in accordance with the requirements of Article 10 of the Declaration and the following:

- (a) no nuisance shall be allowed on any part of the Property, or the vaults or the Immediately Adjacent Sidewalks thereto, nor shall any use or practice be allowed or suffered in or on a Unit or the Common Elements that is an unreasonable interference with the

peaceful possession or proper use of any Unit by its Owner or Permitted Tenants/Occupants/Invitees;

- (b) all valid Laws relating to any portion of the Property shall be complied with at the sole Cost and Expense of the applicable Unit Owner or the Condominium Board, whoever shall have the obligation to Maintain or Repair such part of the Property;
- (c) nothing shall be done or kept, or suffered to be done or kept, in or on any Unit or in or on any of the Common Elements that would increase the rate of insurance for the Property, unless the Unit Owner responsible for such increase pays the additional premium therefor as provided in Section 6.11 above;
- (d) no Unit Owner shall permit or suffer anything to be done or kept in or on the Owner's Unit or in or on the Common Elements that will result in a notice of cancellation or the cancellation of insurance on the Property or the contents thereof, or that would be in violation of any Law;
- (e) no waste shall be committed or suffered in the Common Elements;
- (f) nothing shall be done or suffered in, on or to any Unit or in, on or to the Common Elements, that will impair or threaten the structural integrity of the Building or the life, health or safety of the Owners or Permitted Tenants/Occupants/Invitees of Units; and
- (g) in no event shall load-bearing walls contributing to the support of any Unit or the Common Elements be Altered or removed, except as expressly permitted in, and performed in accordance with, Articles 14 and 15 of the Declaration.

ARTICLE 12

ROOFS

Section 12.1 Roofs

The main Roof above the top floor and all other Roofs at set-backs and above bulkheads (excluding the Development Rights over such Roofs, which are included in, and part of, the Lower Unit) are part of the Common Elements and shall be for the use in common of the Unit Owners and those permitted tenants of a Unit who are so expressly authorized by the Owner thereof for all purposes in connection with the permitted Use and Enjoyment of the Building as shall be determined from time to time by the Condominium Board, subject and subordinate, however to the easements and rights set forth in the Declaration and By-Laws, including:

- (a) the easements and rights reserved and granted to the Lower Unit Owner under Section 5.4 of the Declaration and each Unit Owner under Sections 10.7, 10.15, 11.10, 12.1.3, 12.7, 13.1 and 13.2 of the Declaration, which are superior, paramount and take preference over the easements and rights of the Condominium Board and (in the case only of Section 5.4 of the Declaration) the Upper Unit Owner; and

- (b) the easements and rights for the continued Use and Enjoyment, in their current locations, of any Equipment and Installations serving or benefiting a Unit that may be located in, on, along or under such Roof on the date of recording the Declaration, as set forth in Section 11.6 of the Declaration.

Section 12.2 Maintenance, Repair and Alteration

All Roofs and their Roof Structures are part of the Common Elements and shall be Maintained, Repaired and Altered by the Condominium Board as part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests, in accordance and compliance with Section 14.4 of the Declaration.

ARTICLE 13

FIRE SAFETY SYSTEMS

Section 13.1 Maintenance, Repairs and Alterations

The Building's "Fire Safety Systems" comprise the following three systems (if and to the extent existing at the date of recording the Declaration) : (a) the sprinkler System (which includes the pumps, pressure tank (if any), sprinkler and drain risers, sectional valves, tamper switches, waterflow alarms, sprinkler alarm, drain/test connections, distribution pipes, sprinkler heads and all other related Installations); (b) the standpipe System (which includes the water tank, pipes, hoses, nozzles and all other related Installations); and (c) the siamese connection. The portions of the Building's Fire Safety Systems shall be used, Maintained, Repaired, Altered and otherwise Operated as follows:

- (a) in the case of the portions of the Fire Safety Systems that serve the Common Elements or all or a portion of both Units (e.g., pumps, tanks, risers, valves, switches, alarms, hoses, nozzles and siamese connection): all such Work shall be performed by the Condominium Board in accordance and compliance with the Building's Maintenance Standard and Article 14 of the Declaration, and the Costs and Expenses thereof shall be part of the Common Expenses, and charged to the Unit Owners Pro Rata to their respective Common Interest; or
- (b) in the case of the portions of the Fire Safety Systems that serve exclusively one Unit (e.g., distribution or branch lines and sprinkler heads): all such Work shall be performed by, and at the sole Cost and Expense of, the Owner of such Unit.

The portions of the Fire Safety Systems that serve all or a portion of both Units or the Common Elements are part of the Common Elements and all Work relating thereto shall be performed and paid by the Condominium Board as part of the Common Expenses as provided in subparagraph (a) above. The portions of the Fire Safety Systems that serve exclusively one (1)

Unit are part of such Unit and all Work relating thereto shall be performed by, and at the sole Cost and Expense of, the Owner of such Unit as provided in subparagraph (b) above.

Section 13.2 Changes

The Condominium Board shall have the right to Alter, change and relocate elsewhere within the Common Elements those portions the Fire Safety Systems that protect the Common Elements or all or a portion of both Units, provided and on condition that all applicable Laws and the requirements (including Work Requirements) and other provisions set forth in Article 15 of the Declaration are met.

ARTICLE 14

GENERAL OPERATING MATTERS

Section 14.1 Compliance with Laws

14.1.1 Responsible Party. The party (“**Responsible Party**”) obligated to Maintain or Repair a portion of the Property or its adjacent vaults and Immediately Adjacent Sidewalks, or the Equipment or Installations in or on the Property or its adjacent vaults and Immediately Adjacent Sidewalks (i.e., the Condominium Board with respect to the Common Elements, including the Equipment and Installations comprising the Common Elements; and a Unit Owner with respect to such Owner’s Unit, including the Equipment and Installations comprising such Unit) shall also have the duty to comply with all Laws applicable thereto, including the existence, use, Maintenance, Repair, Alteration and Operation thereof, and to correct with reasonable diligence all conditions for which violations are noted or issued by Governmental Authorities and to thereafter endeavor in good faith to cause same to be removed of record.

14.1.2 Costs and Expenses. The Costs and Expenses of such compliance and the correction and removal of said violations shall be paid and borne entirely by only such Responsible Party, except that in the case of the Condominium Board, such Costs and Expenses shall be part of Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

14.1.3 Compliance With Declaration. All Work in connection with such compliance with Laws (including correction of said violations) shall be performed in accordance and compliance with the provisions (including Work Requirements) set forth in Article 15 of the Declaration.

14.1.4 Reasonable Diligence. The Responsible Party shall effect compliance with applicable Laws (including correction of said violations) with reasonable diligence and, if non-compliance has or would have a material adverse affect on any other Party, the Responsible Party shall promptly commence and diligently prosecute compliance therewith to completion.

14.1.5 Contest by Board. The Condominium Board shall have the right, on behalf of the Unit Owners, to contest any requirement of applicable Law (including correction of said violations) with which the Board is obligated to comply and which relates to the use, Maintenance, Repair, Alteration or other Operation of the Common Elements or the affairs of the Condominium Association. During such contest, the Condominium Board shall have the right to defer compliance with such requirements of applicable Law, provided:

- (a) the Board prosecutes such contest diligently and in good faith by appropriate proceedings and shall have furnished such security, if any, as may be required in the proceedings, unless compliance with such requirement shall have been excused or exempted by a valid nonconforming use permit, waiver, extension or forbearance exempting the Condominium Board from such requirement; and
- (b) such contest or noncompliance does not involve any threat or danger of: (b-1) foreclosure, forfeiture or loss of any part of the Property; or (b-2) civil or criminal liability being imposed on the Condominium Board or any officer or member of the Board, any Unit Owner or any mortgagee or tenant of a Unit; or (b-3) the creation of any lien, encumbrance or other charge against any part of the Property; or (b-4) impairment of any insurance under Article 6 above.

14.1.6 Contest by a Unit Owner. Each Unit Owner (including Declarant) shall have the right to contest any requirement of applicable Law (including correction of said violations) with which such Unit Owner is obligated to comply under the Declaration or these By-Laws or which relates to the use, Maintenance, Alteration or other Operation of such Owner's Unit or a portion thereof. During such contest, the failure of such Unit Owner to comply with such requirement shall not constitute a default or violation hereunder or the Declaration, provided:

- (a) such Unit Owner is contesting such requirement with reasonable diligence and in good faith by appropriate proceedings and shall have furnished such security, if any, as may be required in the proceedings, unless compliance with such requirement shall have been excused or exempted by a valid nonconforming use permit, waiver, extension or forbearance exempting such Unit Owner from such requirement; and
- (b) such contest or noncompliance does not involve any threat or danger of: (b-1) foreclosure, forfeiture or loss of any part of the Property other than such Owner's Unit; or (b-2) civil or criminal liability being imposed on the Condominium Board, the other Unit Owner or any mortgagee of a Unit or any tenant of such other Unit; or (b-3) the creation of any lien, encumbrance or other charge against any part of the Property other than against such Owner's Unit; or (b-4) the impairment of any insurance under Article 6 above.

Said Unit Owner shall provide the Condominium Board with notice of any contest of the type described above in detail sufficient to enable the Board to ascertain whether the foregoing provisions have been complied with by such Unit Owner.

Section 14.2 Indemnification

14.2.1 Indemnity by a Unit Owner. Each Unit Owner shall indemnify the other Unit Owner and the Condominium Board and the member, officers, employees, agents and attorneys of the Board or the Condominium Association, from and against any and all Claims and Liabilities and Expenses that may be imposed upon or incurred by any of the foregoing by reason of: (a) any Work performed or required to be performed by such Unit Owner in, on or about the Property; (b) any negligence on the part of such Unit Owner or the Permitted Tenants/Occupants/Invitees of such Unit Owner, or the respective Agents, Employees and Contractors of each of the foregoing; or (c) any failure on the part of such Unit Owner to perform or comply with any of the terms or conditions contained in the Declaration or these By-Laws on its part to be performed or complied with.

14.2.2 Indemnity by Condominium Board. The Condominium Board shall indemnify each and every Unit Owner from and against any and all Claims and Liabilities and Expenses that may be imposed upon or incurred by such Unit Owner by reason of: (a) any Work performed by the Condominium Board in, on or about the Property; or (b) any negligence or wrongful acts or omissions on the part of the Board or any of its members, officers, or Agents, Employees and Contractors. All amounts payable pursuant to the foregoing indemnity by the Condominium Board shall be a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 14.3 Building Employees, Agents and Contractors; Non-Union

14.3.1. The Condominium Board shall have the authority: (a) to hire or engage such employees, agents and contractors as may be necessary or appropriate in the judgment of the Condominium Board to perform its obligations set forth in the Declaration or these By-Laws; and (b) to make all decisions concerning the employment, compensation and dismissal of employees, agents and contractors to service the Common Elements and the Owners, tenants and occupants of Units. The Costs and Expenses of such employees, agents and contractors shall be a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests, except: (a) the additional wages of the Building's fire safety director (if any) or engineer to work any additional time or day beyond the Building's standard work schedule at the request of a Unit Owner, together with the related payroll charges and benefits applicable thereto, shall be specially allocated, apportioned and assessed to such Unit Owner as provided in subsection 9.1.3(e) of the Declaration; and (b) the Costs and Expenses of any employees, agents and contractors for Work undertaken by the Board to perform an obligation of a Unit Owner or to abate, remove, correct or otherwise remedy a default, breach or violation of a Unit Owner of a provision of the Declaration or these By-Laws shall be specially allocated, apportioned and assessed to such Unit Owner in accordance with the Special Allocation and Apportionment Rule, Article 17 below and other applicable provisions of the Condominium Documents. Each Unit Owner, at its sole Cost and Expense, shall be solely responsible to hire or engage such employees, agents and contractors to clean, Maintain, Repair and Operate its Unit (including its Unit's Equipment and Systems) and to provide such other services as the Unit Owner may desire that are not required to be provided by the Condominium Board under the Declaration or these By-Laws.

14.3.2. No collective bargaining agreement or other agreement shall be entered into with any union by a Unit Owner that will require the Condominium Board or the other Unit Owner to hire union employees or engage contractors or agents who employ union workers.

Section 14.4 Refuse Disposal System

The Condominium Board shall not be responsible to provide, arrange or pay for the disposal of trash, refuse or garbage (collectively, "**Trash**") of the Owners, tenants or occupants of Units. Each Owner, at such Owner's sole Cost and Expense, shall be responsible for compliance by such Owner and the tenants and occupants of such Owner's Unit with all applicable Laws in effect from time to time as to disposal of Trash, including Laws requiring separation, and separate disposal or recycling, of paper, bottles, cans or other items. The Condominium Board shall arrange for the disposal of any Trash resulting from the Maintenance, Repair, Alteration or Operation of the Common Elements and the Association's Properties. The Costs and Expenses thereof shall be included in the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 14.5 Rules and Regulations

Certain requirements as to the Operation of the Property are set forth in the "**Rules and Regulations**" annexed to, and forming a part of, these By-Laws. Subject to obtaining the prior written Discretionary Approval or Consent of the Existing Unit Mortgagee for so long as the Existing Unit Mortgage encumbers a Unit as provided in Section 7.1 of the Declaration, the Rules and Regulations may be amended from time to time by the Condominium Board and (unless otherwise required by the Condominium Act) without recording an Amendment to the Declaration to so amend the Rules and Regulations; provided, however, that:

- (a) the amended Rules and Regulations may be overruled by vote of a majority in number and Common Interest of those Unit Owners attending a meeting (duly called and held for such purpose) at which a quorum is present;
- (b) such Amendment to the Rules and Regulations shall not adversely affect any of Declarant's Rights set forth in the Declaration or these By-Laws, unless first approved in writing by Declarant or the then Owner of the Upper Unit in each instance; and
- (c) the amended Rules and Regulations shall not become effective or operational for at least thirty (30) calendar days after a copy of the complete text thereof shall be given to the Unit Owners then of record at such Unit Owner's address for notices or (if none is specified) at the Building and delivered or sent in the same manner as provided in Article 20 below for the giving of notices.

A violation or failure to comply with the Rules and Regulations, as duly amended from time to time, shall constitute a violation of these By-Laws.

Section 14.6 Interruption or Reduction in Services

14.6.1 Right to Interrupt or Reduce. The Condominium Board and each Unit Owner shall each have the right to interrupt or reduce all or certain utility services and other services to the Common Elements or Units for the purposes of: (a) dealing with accidents, strikes, the performance of Work and the like; or (b) (in the case of a Unit Owner) the performance of Work in accordance with the easements and rights reserved to each Unit Owner in the Declaration or these By-Laws, including in particular (but not limited to) the performance of Tenant Obligations pursuant to Section 12.7 of the Declaration.

14.6.2 No Liability or Abatement. The Party undertaking said Work (i.e., the Condominium Board or a Unit Owner), and the Related Parties of such Party, shall not be liable in damages or otherwise to any Unit Owner or the permitted tenants or occupants of a Unit for any such interruption or reduction of services, or for any such failure to furnish or interruption of services (including HVAC/Mechanical/Utility Building Systems), whether caused by a public utility or Governmental Authority supplying same or otherwise. In addition, any such permitted interruption or reduction of services, or such failure or interruption of service by a public utility, Governmental Authority or otherwise, shall not entitle any Unit Owner to any abatement or diminution of Common Charges. However, the Party undertaking the Work shall use reasonable efforts to give the affected Unit Owner reasonable prior notice of any contemplated interruption, reduction or failure of services, except in the event of an emergency, and to the extent reasonably practical and economical shall endeavor to minimize any such interruption, reduction or failure.

Section 14.7 Records and Audits

14.7.1 Records Kept by Treasurer. The Treasurer of the Condominium, or the Managing Agent (if any) under the supervision of such Treasurer, shall keep full, detailed and accurate records and books of account with respect to the financial affairs of the Condominium, the Condominium Association and the Condominium Board, which records and books of account shall include: (a) a chronological listing of all receipts of, and expenditures by, the Condominium Board and the Managing Agent (if any), together with cancelled checks, check register, statements, bills and invoices; and (b) a separate listing for each Unit, setting forth, among other things, the amount of each assessment of Common Charges, real estate taxes, if applicable, Special Assessments or other additional Common Charge levied against such Unit, the date when due, the amounts paid thereon and the balance, if any, remaining unpaid.

14.7.2 Records Kept by Secretary. The Secretary of the Condominium, or the Managing Agent (if any) under the supervision of the Secretary, shall keep detailed records of the actions of the Condominium Board, committees of the Board and Managing Agent, and relevant actions of Unit Owners with respect to matters governed by the Declaration or these By-Laws. Such records include: (a) minutes of meetings of the Condominium Board (including meetings of the Board) and any resolutions adopted thereat; (b) minutes of meetings of committees of the Board; and (c) minutes of meetings of Unit Owners and the outcome of any matters voted upon thereat. The Secretary shall also maintain information as to each Registered Mortgage and Registered Tenant of a Unit as provided in Sections 16.8 and 16.16, respectively, below.

14.7.3 Examination. Each Unit Owner and Permitted Mortgagee of the Owner's Unit, and their respective representatives, shall be permitted to examine (without charge) and to copy (at a reasonable charge): (a) the minutes of meetings of the Condominium Board and any committees of the Board; (b) the minutes of meetings of Unit Owners; (c) the books of account of the Condominium Board (but not any personal financial files of Unit Owners maintained by the Condominium Board); and (d) all other information, documents and records as may be in the possession or under the control of the Condominium Board or its agent or professionals in connection with the ownership, Operation and affairs of the Condominium Association and the Property (other than said personal financial files of a Unit Owner).

All such examinations shall be conducted at the office of Managing Agent (if any) or other location reasonably convenient to the Property specified by the Board and in a manner that shall not unreasonably interfere with the Operation or business of the Property, the Condominium Association, the Board or the Managing Agent (if any). The examinations shall be permitted between 9:00 a.m. to 5:00 p.m., on business days and upon reasonable advance written notice, but not more frequently than once a month (such examination shall not extend over more than three (3) business days in any calendar month) as to a Unit Owner and the Owner's Permitted Mortgagee, and their respective representatives. The Board shall retain all such books and records available for examination for at least three (3) years.

14.7.4 Tax Returns and Financial Statements. The Condominium Board shall cause to be prepared and filed on a timely basis and before the imposition of interest, charges or penalties for late filing, all requisite federal, state and city income tax, franchise tax, unincorporated business tax and any other tax returns relating to the Condominium Association, the Condominium Board, the Operation of the Common Elements or the Common Charges. In addition, the Condominium Board shall submit to each Unit Owner and, if so requested, to any Permitted Mortgagee of a Unit, within four (4) months after the end of each fiscal year of the Condominium Association, an annual report of assets and liabilities and the Operation of the Common Elements, the Association's Properties and the Property generally, including the receipts and expenditures of the Condominium Board prepared and certified by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. Any income, franchise or business tax payable under said tax returns, and the Costs and Expenses to prepare and file each such tax return and to prepare and distribute each such annual report, shall be paid by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests.

Section 14.8 Tenants and Occupants of Units Entitled To Receive Building Services

14.8.1 Provision of Service. The Condominium Board shall provide to each tenant or occupant of all or a portion of a Unit, and such tenant shall receive, without discrimination, all of the same services and Facilities as are required to be provided to the Owner of such Unit pursuant to the Declaration, these By-Laws or applicable Law. Each Unit Owner shall be exclusively responsible, at its sole Cost and Expense, to provide such utility services (e.g., HVAC, gas, electric, hot and cold water, etc.) to the tenants and occupants of its Unit to the extent such utility services are not expressly required to be provided by the Condominium Board pursuant to the Declaration or these By-Laws. No fee, charge, imposition or Costs and Expenses

for such services and Facilities provided by the Condominium Board shall be assessed against said tenant or occupant, or the Owner of said Unit, other than regular Common Charges (including Special Assessments) levied on both Unit Owners. The aforesaid services and Facilities include all Building Systems and amenities comprising the Common Elements and the services to be provided by the Building staff as and to the extent set forth herein or in the Declaration.

14.8.2 Removal of Violations. The Condominium Board, with reasonable diligence and in good faith, shall remove any violation noted or issued with respect to the Common Elements. Any condition in the Common Elements constituting a violation (even though not noted or issued) shall be corrected by the Condominium Board with reasonable diligence and good faith if failure to do so is grounds for a tenant of a Unit to reduce or withhold the rent or would constitute a violation of the tenant's lease. All Costs and Expenses paid or incurred by the Board in connection with the foregoing shall be part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests.

14.8.3 Tenant Violations. If a tenant or occupant of a Unit violates any provision of the Condominium Documents, the Condominium Board shall have the right to institute an appropriate Lawsuit against the offending tenant or occupant to abate, enjoin or otherwise remedy such violation if the Owner of such Unit fails to do so with reasonable diligence. In no event, however, will such Unit Owner be liable for any damages, Costs or Expenses based on such violation. The foregoing shall not excuse a Unit Owner from the obligation to pay for Maintenance or Repairs caused by the said tenant's or occupant's negligence, misuse, abuse or neglect as provided in Section 5.4 above and Section 14.7 of the Declaration.

ARTICLE 15

EXISTING LEASES

Section 15.1 Subordination

If and to the extent, and for so long as, the Declaration is subject and subordinate to the rights of any tenants of the Building under Existing Leases (if any) as a matter of law, the rights granted or reserved to any Unit Owner or the Condominium Board and all requirements and limitations under the Declaration and these By-Laws, including the Rules and Regulations, shall be so subject and subordinate.

Section 15.2 Provision of Services.

With respect only to an Existing Lease of a Unit as to which the Declaration is subordinate, if the terms of such Existing Lease require services be provided to the tenant thereunder which under the terms of the Declaration and By-Laws may only be provided by the Condominium Board or are under the exclusive control of the Condominium Board, then, upon the request of the Owner of such Unit, the Condominium Board shall provide such services to said tenant until the Existing Lease expires or sooner terminates. If the services so provided are in excess of, or vary from, the services provided to Unit Owners under the Declaration and By-Laws, then all additional Costs and Expenses incurred by the Board in connection therewith shall

be specially allocated, apportioned and assessed to the applicable Owner of the Unit demised under such Existing Lease as additional Common Charges of such Unit Owner.

ARTICLE 16

UNIT CONVEYANCES, SALES, LEASES AND MORTGAGES

Section 16.1 General

16.1.1 Compliance with By-Laws. Subject to compliance with the Existing Unit Mortgage on both Units, each Unit Owner shall have the right, Freely and Without Consent, Payment or Restriction (except those restrictions and requirements expressly set forth below in this Article 16), to sell, convey (including by gift, or to devise by will or to pass by intestacy) and mortgage its Unit together with the Unit's appurtenant Common Interest and to enter into one or more leases for all or portions of such Unit. Each succeeding Owner of a Unit (howsoever title is acquired) shall be bound by, and the Unit of such succeeding Owner shall continue to be subject to, the provisions of the Declaration and these By-Laws, as each may be amended from time to time. Any purported sale, conveyance or lease consummated in violation of the applicable terms hereof shall be voidable at the sole election and discretion of the Condominium Board.

16.1.2 Intentionally Omitted.

16.1.3 Intentionally Omitted.

16.1.4 Mandatory Deed Provision; Conveyance Requirement. Each and every deed to a Unit shall expressly provide that the acceptance thereof by the grantee shall constitute an acceptance, ratification and assumption of all of the terms of the Condominium Documents, and, in the absence of such express language, the same shall be conclusively deemed to have been included therein. Each sale or conveyance of a Unit shall be for the entire Unit and its appurtenant Common Interest and not just a portion of the Unit.

16.1.5 Mandatory Lease Provisions. Each lease or occupancy agreement of all or a portion of a Unit, including an amendment, extension or renewal of an Existing Lease (collectively, "Lease" or "Lease Agreement") shall expressly state or provide (and shall be deemed to state and provide) that:

- (a) the Lease is subject and subordinate to the Condominium Documents and that in the event of any inconsistency between the Lease and the Condominium Documents, the inconsistency shall be resolved in accordance with the Condominium Documents, which are paramount and shall govern;
- (b) the Condominium Board shall have the right, power and authority to terminate or cancel such Lease and/or to bring summary proceedings to evict or remove the tenant in the name of the landlord-Owner thereunder in the event of: (b-1) a violation or breach by the tenant or occupant of any of the provisions of the Declaration or By-Laws (or Rules and Regulations), as each may be amended from time to time; or (b-2) a foreclosure of landlord-Owner's Unit by the Condominium Board pursuant to the lien granted by

Section 339-z of the Condominium Act, or a deed given to the Condominium Board or its nominee or designee in lieu of such foreclosure; or (b-3) the purchase or acquisition of the Unit by the Condominium Board or its nominee or designee pursuant to Section 16.1 of the Declaration.

Section 16.2 No Severance of Ownership

A Unit Owner shall not execute any deed or other instrument conveying title to the Owner's Unit without including therein its appurtenant Common Interest, it being the intention to prevent any severance of such combined ownership. Any deed or other instrument purporting to affect one (1) or more such interests shall be taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Common Interest appurtenant to any Unit may be sold, conveyed, mortgaged or other Disposition made thereof, except as part of a sale, conveyance, mortgage or other Disposition of the Unit to which such Common Interest is appurtenant or as part of a sale, conveyance or other Disposition of such part of the appurtenant Common Interests appurtenant to all Units. Nothing contained in this Section 16.2 however, shall prohibit the lease of any Unit without the simultaneous lease of its appurtenant Common Interest.

Section 16.3 Payment of Common Charges

A Unit Owner shall not be permitted to convey or lease such Owner's Unit unless such Owner shall have paid in full to the Condominium Board all unpaid Common Charges and additional Common Charges theretofore assessed against such Unit (including past due installments of Special Assessments, but not installments not yet due and payable) and shall have satisfied all unpaid liens, other than that of Permitted Mortgages, on such Unit. A letter from the Condominium Board or its Managing Agent (if any) stating the amount of Common Charges and any additional Common Charges (including Special Assessments, if any) with respect to such Unit may be relied upon as conclusive evidence of such fact.

Section 16.4 Unit Owner's 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 deliver to the representative of such new Owner's title insurer or such insurer's agent (or, if no such representative is present, to the Condominium Board) for recording in the Register's Office, and shall cause to be so recorded therein and shall pay all governmental charges and said title insurer's or agent's service charges for recording, the Unit Owner's Power of Attorney required in Article 17 of the Declaration, in the form set forth as EXHIBIT E to the Declaration or then in use by the Condominium Board.

Section 16.5 Gifts and Devises, Etc.

Any Unit Owner shall be free to convey or transfer the Owner's Unit, together with its appurtenant Common Interest, by gift, or to devise the same by will or to have the same pass by intestacy, without restriction, provided, however, that each succeeding Unit Owner shall be bound by, and such Owner's Unit shall be subject to, the provisions of this Article 16.

Section 16.6 No Charges Imposed on Transactions

In no event shall any charge, fee, cost, expense or other imposition be fixed or collected for any sale, transfer, conveyance or mortgage of a Unit or on a Lease of a Unit or any portion thereof.

Section 16.7 Estoppel Certificate

If requested in writing by a Unit Owner, the Condominium Board shall deliver to the requesting Unit Owner from time to time, and such Unit Owner shall receive within ten (10) calendar days after each written request is given, a written statement ("**Estoppel Certificate**") duly signed by an officer of the Board or the Managing Agent: (a) certifying the date to which Common Charges (including any Special Assessments) have been paid and the amount of any unpaid additional Common Charges or other indebtedness owed under the Condominium Documents; and (b) acknowledging that there are not, to the best knowledge of the Condominium Board, any uncured defaults or violations on the part of the Unit Owner under the Condominium Documents, as same may be then amended, or specifying any defaults or violations if any are claimed.

Such Estoppel Certificate may be conclusively relied upon by any prospective or existing purchaser or any prospective or existing holder of a mortgage on, or any prospective or existing tenant of, the Owner's Unit. The failure of such Unit Owner to receive such Estoppel Certificate within said ten (10) calendar day period shall not give rise to any inference or presumption as to the matter requested, nor shall the Condominium Board or its members, officers, employees, agents or attorneys be liable for any Claims or Liabilities and Expenses for any such failure or any delay in giving same. The Condominium Board shall be required to deliver an Estoppel Certificate to a Unit Owner not more often than four (4) times in any twelve (12) month period.

Section 16.8 Registration of Mortgages

A Unit Owner who mortgages the Owner's Unit or the holder of such mortgage, shall register such mortgage ("**Registered Mortgage**") with the Condominium Board by supplying the Condominium Board with the name and address of the mortgagee and filing a conformed copy of the mortgage and the note secured thereby with the Condominium Board. The failure to comply with the foregoing shall not affect the validity or enforceability of the mortgage. The mortgage on both the Lower and Upper Units existing at the date of recording the Declaration or any time thereafter automatically shall be considered a Registered Mortgage, regardless of compliance with the foregoing. A Unit Owner who satisfies a mortgage covering the Owner's Unit shall so notify the Condominium Board in writing and shall also file a conformed copy of the satisfaction of the mortgage with the Condominium Board. The Secretary of the Condominium shall maintain all such mortgage information and documents in a book entitled Mortgages of Units.

Section 16.9 Prohibition and Restriction on Mortgaging

16.9.1 Prohibition. No Unit Owner shall mortgage, pledge or hypothecate such Owner's Unit unless and until such Owner shall have paid in full to the Condominium Board all unpaid Common Charges and any additional Common Charges theretofore assessed against such

Unit and shall have satisfied all unpaid liens against such Unit, except the liens of mortgages (collectively, "Permitted Mortgages" and individually, "Permitted Mortgage") made in compliance with these By-Laws. Notwithstanding the foregoing, any mortgage, pledge or hypothecation of a Unit without complying with the provisions of this subsection 16.9.1 shall not affect the validity or enforceability of such mortgage, pledge or hypothecation. The mortgage on both the Lower and Upper Units existing at the date of recording the Declaration or any time thereafter automatically shall be considered a Permitted Mortgage.

16.9.2 Restriction. No Unit Owner shall execute any mortgage or other document mortgaging, pledging or hypothecating title to such Owner's Unit without including therein its appurtenant Common Interest, it being the intention to prevent any severance of such combined ownership. Any mortgage or other instrument purporting to affect one or more of such interests without including all such interests shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein.

Section 16.10 Notice of Unpaid Common Charges and Default

In accordance with the requirements of the Registered Mortgage on the Lower and Upper Units existing at the date of recording the Declaration, and whenever requested in writing by the holder of any other Permitted Mortgage (collectively, "Registered/Permitted Mortgagee"):

- (a) the Condominium Board shall promptly notify such Registered/Permitted Mortgagee of any default or violation by its mortgagor-Unit Owner in the payment of Common Charges for more than one (1) calendar month or in the observance or performance of any of the provisions of the Condominium Documents as to which the Condominium Board has knowledge then exists; and
- (b) when giving notice of any such default or violation to such mortgagor-Unit Owner, the Condominium Board shall also send a copy of such notice to such Owner's Registered/Permitted Mortgagee.

In no event shall the Condominium Board or its officers, members, employees, agents or attorneys, or the Unit Owners, be liable for any Claims or Liabilities and Expenses for any failure, through oversight or negligence, in notifying a Registered/Permitted Mortgagee of such default by such mortgagor-Unit Owner or in failing to send a copy of such default notice to the Registered/Permitted Mortgagee, except the foregoing shall not impair or otherwise affect the rights and remedies of the Existing Unit Mortgagee under the Existing Unit Mortgage. Nevertheless, (a) the Condominium Board shall advise such Registered/Permitted Mortgagee of the default or violation promptly after discovering such failure; and (b) if the Condominium Board shall foreclose its lien on such mortgagor's Unit pursuant to the terms of Section 8.16 hereof by reason of such default or violation, the Condominium Board shall pay to such Registered/Permitted Mortgagee the extent of any net proceeds of said foreclosure sale of such Unit (subject to and in accordance with the lien priority set forth in Article 8 above), but not more than the sum as shall be due and owing to such Registered/Permitted Mortgagee.

Section 16.11 Performance by Registered/Permitted Mortgagees

Any sum of money to be paid or any act to be performed by a Unit Owner pursuant to the terms of the Condominium Documents may be paid or performed by such Owner's Registered/Permitted Mortgagee. The Condominium Board shall accept such

Registered/Permitted Mortgagee's payment or performance with the same force and effect as if the same were paid or performed by such Unit Owner. The Registered/Permitted Mortgagee shall have thirty (30) days following the giving of written notice of such failure to pay or perform within which to cure said default.

Section 16.12 Examination of Books

Each Registered/Permitted Mortgagee and its authorized representative shall be permitted to examine the books of account of the Condominium between 9:00 a.m. to 5:00 p.m., on business days, and on reasonable advance notice, but not more frequently than once a month, all as provided more particularly in Section 14.6 above.

Section 16.13 Consent of Mortgagees; Designation of Mortgage Representatives

16.13.1 When Consent Required. Except as otherwise expressly provided in the Existing Unit Mortgage encumbering both Units or the Declaration or these By-Laws, no approval or consent by any mortgagee shall be required with respect to any determination or act of the Condominium Board or any Unit Owner, provided, however, that nothing contained herein shall be deemed to limit or affect the rights of any mortgagee against the mortgagor under the mortgage held by such mortgagee. In the event that any such consent or approval shall be expressly required pursuant to the terms of the Declaration or these By-Laws, the decision of a majority of the "Mortgage Representatives" (as defined in, and if any are designated pursuant to the terms of, the following subsection 16.13.2) shall be deemed binding upon the holders of all mortgages encumbering Units.

16.13.2 Mortgage Representative(s). The holders of Institutional Mortgages constituting a majority in principal amount of all Institutional Mortgages may, if they so elect, designate not more than three (3) representatives ("**Mortgage Representatives**") by giving written notice thereof to the Condominium Board, which Mortgage Representatives shall thereby be empowered to act as the representatives of the holders of all mortgages encumbering Units with respect to any matter requiring the consent or approval of mortgagees under the Declaration or these By-Laws. Unless and until otherwise designated in accordance with the foregoing, the holder of a first mortgage on both the Lower and Upper Units automatically shall be considered the sole Mortgage Representative for all mortgagees of Units. Any designation of a Mortgage Representative pursuant to the terms of this subsection 16.13.2 shall be effective until any successor Mortgage Representative is designated pursuant to the terms hereof and written notice thereof is given to the Condominium Board. Unless otherwise required by Law, no holders of mortgages encumbering Units other than Permitted Mortgagees who hold Institutional Mortgages shall be entitled to participate in the designation of Mortgage Representatives, but all holders of mortgages encumbering Units shall be subject to all determinations made by the Mortgage Representative(s) pursuant to the terms of the Declaration or these By-Laws.

Section 16.14 Subordination

The lien of the Existing Unit Mortgage encumbering both Units is subject to the terms and provisions of the Declaration. The lien of any other mortgage on a Unit shall automatically be subordinate to the terms and provisions of the Declaration and these By-Laws, and any such other mortgage that fails to provide for such subordination shall nonetheless be deemed to provide for such subordination. Although no further instrument shall be required to effectuate

such subordination, each holder of such other mortgage, by accepting such mortgage, agrees to execute and deliver any instruments and documents required to be executed and delivered by the Condominium Board in connection with the confirmation of such subordination. In the event such mortgagee fails to execute and deliver any such instruments or documents, its acceptance of such mortgage shall be deemed to constitute its appointment of the Condominium Board as its true and lawful attorney-in-fact in its name, place and stead to execute and deliver any such instruments and documents, such power being "coupled with an interest" and for valuable consideration, and with full power of substitution.

**Section 16.15 Waiver of Rights of Partition, Use and
Occupancy of Units Acquired or Leased By Board**

In the event that any Unit shall be acquired or leased by the Condominium Board, or its nominee or designee, on behalf of Unit Owners, in accordance and compliance with the Existing Unit Mortgage, the Unit so acquired or leased (as applicable) shall be part of the Association's Properties and title to such Unit or such lease (as applicable) shall be deemed held on behalf of the Unit Owners as tenants-in-common and all Unit Owners shall be deemed to have waived all rights of partition, use and occupancy with respect to such Unit. All Costs and Expenses incurred in connection with the acquisition, ownership, lease, use, Operation and Disposition of such Unit shall be part of the Common Expenses and charged to the Unit Owners Pro Rata to their respective Common Interests. Similarly, all revenues derived from the rental, Operation, sale, permitted mortgaging or other Disposition of such Unit shall be used to defray the Common Expenses or for such other appropriate purposes as shall be determined by the Board, in its sole and absolute discretion.

Section 16.16 Registration of Tenants

The tenant under any lease demising space in all or a portion of any Unit who is authorized in writing by the Unit Owner to have the benefits and protection of Sections 16.17 and 16.18 below, may register with the Condominium Board by furnishing to the Condominium Board a statement of its name and address, the date of its lease, a description of the premises demised to it, and the last date on which such lease is scheduled to expire. Any tenant having so registered is herein called a "Registered Tenant".

Section 16.17 Notices to Registered Tenants

Whenever requested in writing by a Registered Tenant of a Unit: (a) the Condominium Board shall promptly notify such Registered Tenant of any default or violation by the Owner of such Unit in the Unit Owner's payment of Common Charges and any additional Common Charges (including any Special Assessments) for more than one (1) calendar month; and (b) when giving notice of any default, violation or failure to comply with the Condominium Documents to said Unit Owner, the Condominium Board shall also send a copy of such notice to each Registered Tenant of such Owner's Unit.

In no event shall the Condominium Board or its officers, members, employees, agents or attorneys, or the Unit Owners, be liable for any Claims or Liabilities and Expenses for any failure, through oversight or negligence, in notifying a Registered Tenant of such default, violation or failure by such Unit Owner or in failing to send a copy of notice thereof to said Registered Tenant. Nevertheless, promptly after the Board discovers its failure, the

Condominium Board shall advise such Registered Tenant of the Unit Owner's default, violation or failure.

Section 16.18 Performance by Registered Tenants

Any sum of money to be paid or any act to be performed by a Unit Owner pursuant to the terms of the Condominium Documents may be paid or performed by such Owner's Registered Tenant. The Condominium Board shall accept such Registered Tenant's payment or performance with the same force and effect as if the same were paid or performed by such Unit Owner.

Section 16.19 No Match Offer Right (or Right of First Refusal)

16.19.1 Inapplicability. Each Unit Owner shall have the right to convey, sell and lease its Unit without offering the Condominium Board or the other Unit Owner a right to acquire, purchase or lease the Unit on the same terms and conditions offered by a bona fide purchaser or tenant or other person.

16.19.2 Certificate of Inapplicability. If requested in writing by a Unit Owner, the Condominium Board shall furnish, or cause the Managing Agent (if any) to furnish, to such Unit Owner, and such Unit Owner shall receive within ten (10) calendar days after such written request is made, a written certification to the effect that the conveyance, sale or lease (as applicable) of the Unit is not subject to a right of first refusal or match offer in favor of the Condominium Board or any other Unit Owner under the Condominium Documents ("Certificate" or "Certificate of Inapplicability").

16.19.3 Execution of Certificate. The Certificate shall be executed and acknowledged by any Board Member or any officer authorized by the Condominium Board or the Managing Agent (if any).

16.19.4 Effect of Certificate. Such Certificate shall be conclusive upon the Condominium Board and the Unit Owners in favor of all Persons who rely upon such Certificate in good faith.

16.19.5 Pre-requisite for Giving Certificate. The Condominium Board shall have the right (without liability for any Claims or Costs and Expenses or other recourse of the Unit Owner requesting the Certificate) to refuse to issue such Certificate if: (a) such Unit Owner is in default in the payment of Common Charges or additional Common Charges (including Special Assessments, if any) or in the payment or performance of a substantial obligation under the Condominium Documents; or (b) such Unit is subject to an unpaid lien (other than a Permitted Mortgage). Upon the curing of such default or the satisfaction (or appropriate provision reasonably acceptable to the Board is made for the satisfaction) of such unpaid lien (as applicable), the Condominium Board shall cease to refuse to issue the Certificate and shall issue same within ten (10) calendar days thereafter.

ARTICLE 17

CERTAIN REMEDIES

Section 17.1 Self Help

17.1.1 Notice of Violation. If a Unit Owner shall violate, breach or default under any of the provisions of the Condominium Documents on such Owner's part to be observed or performed (hereafter collectively, "violation" or derivations thereof), including any violation of Owner's obligation to Maintain or Repair the Owner's Unit or the Immediately Adjacent Sidewalks thereto pursuant to the terms of Article 14 of the Declaration or these By-Laws (including removing trash, exterminating pests as needed and otherwise complying with the Rules and Regulations, as they may be amended from time to time), and shall fail to cure such violation within fifteen (15) days after being given written notice of the same from the Condominium Board or the Managing Agent (if any), or with respect to any violation not reasonably susceptible to cure within such period, shall fail to diligently to commence such cure and, thereafter, to prosecute such cure with due diligence to completion, the Condominium Board shall have the right to enter such Owner's Unit and, at the sole Cost and Expense of the offending Unit Owner, to summarily abate, remove or cure such violation without thereby being deemed guilty or liable in any manner of trespass ("**Right of Self-Help**"). The offending Unit Owner shall reimburse the Condominium Board for the Costs and Expenses incurred to remedy such violation within ten (10) calendar days after being given written demand therefor accompanied by a reasonably detailed bill itemizing same, together with the Costs and Expenses of collection thereof and per diem interest on all paid Costs and Expenses incurred at a rate equal to the lower of 16% a year or the highest rate allowed by Law, computed from the date each item of Cost or Expense is incurred or paid to the date full payment of same is received by the Condominium Board. All such Costs and Expenses shall constitute additional Common Charges assessed to, and payable by, the offending Unit Owner.

17.1.2 No Violation Notice in Emergency. In addition, in the event that the Condominium Board shall determine that the abatement, removal or cure of any such violation is immediately necessary for the preservation of the Building or for the life, safety or health of the occupants of the Building or other individuals, or is required to avoid the suspension of any necessary service in the Building or to correct any dangerous or hazardous condition, the Condominium Board may take such action immediately, without prior notice and without allowing the said Unit Owner any period of time within which to cure or to commence to cure such violation.

17.1.3 Indemnity. If the Condominium Board exercises its Right of Self-Help pursuant to this Section 17.1, the Board shall be deemed to have agreed to indemnify the offending Unit Owner from any and all Claims and Liabilities and Expenses that may be incurred by the offending Unit Owner in connection with the exercise of its Right of Self-Help.

17.1.4 Duty to Protect. In exercising the Right of Self-Help, the Condominium Board shall make all reasonable efforts to protect life and property located in the portion of the Property to which Work is being performed pursuant thereto and shall not unreasonably interfere with the use of such portion of the Property for its intended purposes.

Section 17.2 Abatement and Enjoinment

17.2.1 Unit Owner Violation. In the event that any Unit Owner shall violate any of the provisions of the Condominium Documents on such Owner's part to be observed or performed, the Condominium Board shall have the right to enjoin, abate or remedy the continuance or repetition of any such violation by appropriate Lawsuit.

17.2.2 Violation of Declarant's Rights. The violation of any of the terms of the Declaration or these By-Laws with respect to any of Declarant's Rights thereunder or hereunder shall give to Declarant and its Designee Unit Owner (if any) the right to enjoin, abate or remedy the continuation or repetition of any such violation by appropriate Lawsuit.

17.2.3 Reimbursement. The offending Party who is the subject of a Lawsuit brought pursuant to this Section 17.2 shall be obligated to reimburse the Party bringing such Lawsuit for any and all Claims and Liabilities and Expenses incurred in connection with such violation and the Lawsuit, as well as all Costs and Expenses of collection thereof.

17.2.4 Additional Common Charges. All sums payable by a Unit Owner to the Condominium Board pursuant to the terms of this Article 17 shall, for all purposes hereunder, constitute additional Common Charges assessed to, and payable by, such Unit Owner.

Section 17.3 Remedies Cumulative

The remedies specifically granted to the Condominium Board or Declarant (and Designee Unit Owner of Declarant) in this Article 17 or elsewhere in the Condominium Documents shall be cumulative, shall be in addition to all other remedies obtainable at law or in equity, and may be exercised at one time or at different times, concurrently or in any order, in the sole discretion of the Condominium Board or Declarant (or a Designee Unit Owner of Declarant), as the case may be. Further, the exercise of any remedy shall not operate as a waiver, or preclude the exercise, of any other remedy.

ARTICLE 18

CONDEMNATION OR EMINENT DOMAIN

Section 18.1 Taking of Entire Property

If the entire Property is taken in condemnation or by eminent domain (herein called "**Taken**" or a "**Taking**"), then the award of the Taking authority shall be distributed between the Unit Owners Pro Rata to the respective then existing fair market values of the Units and their appurtenant Common Interests as determined by the Taking authority. Each Unit Owner shall have the right to pursue a separate Claim against the Taking authority for its share of the award, which may include an award for all fixtures, additions and improvements that are part of the Owner's Unit as well as for relocation and moving expenses and similar allowances designed to facilitate relocation of a displaced business concern.

Section 18.2 Taking of Units

If only one (1) Unit is Taken, then the award of the Taking authority shall be distributed exclusively to the Owner of the Unit so Taken. In the event the remaining Unit Owner elects to withdraw the Property from the Condominium Act in accordance with Section 19.1(c) of the Declaration, then the portions of the Property not Taken shall be subject to an action for partition pursuant to Section 19.2 of the Declaration, which shall apply with respect to, and exclusively for the benefit of, said remaining Unit Owner.

Section 18.3 Taking of Portions of Common Elements

18.3.1 Board Authority. If the entire Property is not Taken but portions of the Common Elements are Taken, regardless of whether one (1) or more Units are also Taken, the Condominium Board as agent and on behalf of the Unit Owners shall have the exclusive right and authority to pursue a Claim against the Taking authority with respect to only the portions of the Common Elements Taken and the remaining portions of Common Elements and the remaining Units damaged or destroyed by the Taking, except as otherwise provided in subsection 18.3.2 below. The Board's right and authority to pursue such Claim includes the following: (a) to present evidence, negotiate, settle and otherwise conduct and make all decisions as to the proceedings before the Taking authority and all Lawsuits resulting therefrom, (b) to execute and acknowledge in the name of the Unit Owners, as attorney-in-fact, all Litigation Documents, settlement agreements, releases and other documents in furtherance of the foregoing; and (c) to retain legal counsel, appraisers and other professionals and experts in connection with the foregoing.

18.3.2 Separate Claims of Units Taken. Each Owner of a Unit which is also Taken with portions of the Common Elements shall continue to have the right to pursue a separate Claim against the Taking authority with respect to only such Owner's Unit and its appurtenant Common Interest, including the Unit's Equipment, Installations, fixtures, additions and improvements, as well as the Owner's moving and relocation expenses as provided in Section 18.2 above. However, the Claim with respect to a Unit not Taken but that is damaged or destroyed by the Taking shall be pursued exclusively by the Board in accordance with the preceding subsection 18.3.1, except that the Owner of such damaged or destroyed Unit shall have the exclusive right to pursue any Claim against the Taking authority with respect to only the Unit's Equipment, Installations, fixtures, additions and improvements (other than those to be Repaired by the Board) and the Owner's relocation and moving expenses.

18.3.3 Allocation of Award. The award in such Taking under subsection 18.3.2 above shall be allocated between or among the Common Elements Taken and the Unit or Units Taken Pro Rata to their respective then existing fair market values. Such values shall be determined in accordance with the floor space Taken (including the floor space of a Unit Taken together with the floor space of the Individual Limited Common Element, if established, appurtenant to such Unit also Taken), the relative value of said floor space Taken to other space in the Property, the uniqueness of said floor space Taken, the overall dimensions of the remaining floor space not Taken, and any decrease in the availability, utility, function or performance of Common Elements for common use or exclusive or substantially exclusive use resulting from such Taking. Any Unit Owner who has the right to use, or to exclusive or

substantially exclusive use of, the affected Common Elements or whose Unit is Taken may dispute any appraisal obtained to determine such values and submit the controversy to arbitration in accordance with Article 19 below.

18.3.4 Application of Award. The award of the Taking Authority made with respect to the Common Elements and Units that are not Taken but are damaged or destroyed by the Taking shall be paid to the Condominium Board as agent and on behalf of the Unit Owners and applied by the Board on the following order: first, to pay the Costs and Expenses incurred by the Condominium Board to recover the award; and second, the balance ("**Net Award Trust Funds**") to Repair the remaining Units and remaining portions of the Common Elements not Taken but that are damaged or destroyed by the Taking, such Repair to be performed on the same basis as set forth in the provisions of Section 7.3 above, which shall apply and be followed with respect to such Repair of said damaged Units and Common Elements. Such Net Award Trust Funds shall be allocated to the affected Common Elements and Limited Common Elements (if established) Pro Rata to the Costs and Expenses to Repair same, which allocation shall be made on the same basis as set forth in the provisions of Section 7.4 above, which also shall apply and be followed with respect to such allocation of Net Award Trust Funds. If the Net Award Trust Funds shall be insufficient to pay the Costs and Expenses of performing such Repairs, the Board shall levy a Special Assessment to pay the deficiency, which Special Assessment shall be levied on the Unit Owners on the same basis as set forth in the provisions of Section 7.5 above, which also shall apply and be followed with respect to such insufficiency in the Net Award Trust Funds. If, conversely, the Net Award Trust Funds shall exceed the Costs and Expenses of performing such Repairs, such surplus shall be distributed to the Unit Owners on the same basis as set forth in the provisions of Section 7.6 above, which also shall apply and be followed with respect to such surplus in the Net Award Trust Funds.

In the event Repairs are not made and the remaining portions of the Property not Taken shall become the subject of an action for partition, then the Net Award Trust Funds shall be distributed to all remaining Unit Owners Pro Rata to the respective then existing fair market values of the Units and their appurtenant Common Interests in accordance with Section 19.2 of the Declaration.

18.3.5 Declarant Unit. If the Unit owned by Declarant, or any portion thereof, shall be the subject of all or part of any Repairs, then notwithstanding anything herein to the contrary, the Declarant shall have the exclusive right to arrange, make all determinations and supervise the Repairs, Decorating, finishing and equipping of such Unit.

18.3.6 Party in Charge. If the damage or destruction is to be Repaired and affects exclusively or substantially exclusively a single Unit, then notwithstanding anything herein to the contrary, the Owner of such Unit shall promptly make all arrangements and determinations as to, and shall supervise, the Repairs thereof. In all other cases, the Condominium Board shall promptly make all such arrangements and determinations of, and shall supervise, the Repairs, except as otherwise expressly provided in subsection 18.3.5 above with respect to the Declarant to do the same with respect to its Unit.

18.3.7 Decorations. The Costs and Expenses to make Repairs to coverings, finishes, treatments and other Decorations of walls, floors or ceilings of the Common Elements shall be part of the Common Expenses to the extent the Net Award Trust Funds, after being

allocated and applied for all other Repairs in accordance with this Article 18, shall be insufficient therefor.

18.3.8 Lien Priority. No payment of any award or surplus Net Award Trust Funds shall be made to a Unit Owner until there has first been paid out of such Unit Owner's share thereof, such amounts as may be necessary to pay off all unpaid liens on the Owner's Unit (including the liens of mortgages and the liens of the Condominium Board) in the order of priority of such liens. Notwithstanding the foregoing, however, in the event a Special Assessment is levied pursuant to the terms of subsection 18.3.4 above for any projected deficiency in the amount of the Net Award Trust Funds available to the Condominium Board and, after the payment of all Costs and Expenses incurred in connection with the Repairs, any portion of the Net Award Trust Funds remains unspent, such surplus Net Award Trust Funds shall, to the extent such Special Assessment contributed to such surplus, be deemed to be, and shall constitute, an unspent Special Assessment and shall be refunded to the Unit Owners so assessed in proportion to the amount assessed, free of any claim of any lienor (including, without limitation, any mortgagee) other than the lien of the Condominium Board.

Section 18.4 Adjustment of Common Interests

18.4.1 Changes in Common Interests. If a portion of the Property Taken is no longer subject to the Condominium Documents and the Property shall not be subject to a partition action as provided in Section 19.2 of the Declaration, then the Common Interest of each Unit affected by such Taking shall be eliminated (if an entire Unit is Taken) or proportionately reduced (if only a portion of a Unit is Taken) and the Common Interests appurtenant to the other Unit shall be proportionately increased by the amount of change in Common Interest of the affected Unit so that the total Common Interests of the remaining Units shall equal 100%. All such proportionate changes in Common Interests shall be based on the same factors used originally to determine the Common Interests as set forth in Article 8 of the Declaration. Any dispute that may arise hereunder shall be resolved by arbitration pursuant to Article 19 below.

18.4.2 Procedure. All changes in Common Interests shall be reflected in a duly recorded Amendment to the Declaration and (to the extent required by the Condominium Act) Floor Plans, which shall be prepared by the Condominium Board. The Amendment to the Declaration shall be executed and acknowledged in recordable form by the Condominium Board and the remaining Unit Owners and holders of recorded liens on such Units in accordance with Article 22 of the Declaration. In lieu of executing the Amendment, such Unit Owners and lienors may execute and acknowledge in recordable form a separate consent which shall be attached to the Amendment.

18.4.3 Changes in Votes. Following said Taking of all or a portion of a Unit and the recording of such Amendment to the Declaration and (if applicable) said consent to such Amendment, the votes based on the Common Interest appurtenant to the affected Unit shall be based on its new Common Interest (in case of only a partial Taking) or shall wholly terminate (in the case of a Taking of the entire Unit) and the votes based on Common Interests appurtenant to the other Unit whose Common Interest is changed pursuant to subsection 18.5.1 above shall be based on its new Common Interests.

Section 18.5 Abatement in Common Charges

If due to destruction or damage caused by a Taking a Unit is rendered wholly or partially unusable for the purposes permitted in the Declaration, or the means of reasonable access thereto is prevented, the Common Charges otherwise payable by the Owner thereof shall proportionately abate until such Unit shall again be rendered useable for the purposes permitted in the Declaration and/or until the means of reasonable access thereto shall be restored, as the case may be. The amount of abatement shall be determined by the Condominium Board, in its discretion, reasonably exercised. The foregoing notwithstanding, if the destruction or damage shall be caused by an act, omission or negligence of the Owner or Owner's Parties of the affected Unit, the Common Charges otherwise payable by such Owner shall abate only to the extent of any proceeds of business interruption or similar insurance actually collected by the Condominium Board with respect to such affected Unit.

ARTICLE 19

ARBITRATION

Section 19.1 Submission to Arbitration

19.1.1 Requirement to Arbitrate. This Article shall constitute a written agreement of the Parties to submit to arbitration (and not litigation) conducted in The City of New York in accordance with the terms of this Article 19 and the then "applicable commercial arbitration rules" (as defined in Section 19.3 below) any dispute, controversy or claim arising out of, or concerning, the Declaration or these By-Laws (including the Rules and Regulations) for which arbitration is required or permitted under the Declaration or these By-Laws, provided that: (a) the only Parties to the dispute are Unit Owners or one (1) or both Unit Owners and the Condominium Board; and (b) if the terms of this Article 19 differ from or conflict with the then applicable commercial arbitration rules, the arbitrators shall be chosen and the arbitration shall be governed in accordance with and pursuant to the terms and provisions of this Article 19.

19.1.2 Exclusive Dispute Resolution Method. Arbitration in accordance with this Article shall be the exclusive dispute resolution method for any dispute for which arbitration is required or permitted under the Declaration or these By-Laws, unless: (a) expressly provided otherwise in the Declaration or these By-Laws; or (b) all Parties to the dispute unanimously agree to vary any of the terms of this Article or unanimously agree to resolve their dispute in any other manner (including the manner set forth in Section 3031 of the New York Civil Practice Law and Rules and known as "New York Simplified Procedure for Court Determination of Disputes" or an equivalent statute).

Section 19.2 Notice of Arbitration

The Party desiring arbitration of such dispute, controversy or claim shall give notice ("Arbitration Notice") of its intention to submit such dispute, controversy or claim to arbitration. Such Arbitration Notice shall set forth with particularity the dispute, controversy or claim sought to be arbitrated, and shall, in addition, comply with any applicable requirements of

the then applicable commercial arbitration rules, which requirements supplement, without conflicting with, the foregoing requirements in this sentence regarding such notice.

Section 19.3 Commercial Arbitration Rules

For purposes of this Article 19, the term “**then applicable commercial arbitration rules**” shall mean the commercial arbitration rules then applicable of the American Arbitration Association (or any successor thereto with similar function). If the American Arbitration Association or any successor thereto with similar function shall not then be in existence, the Parties to an arbitration to which the arbitration rules of the American Arbitration Association (or any successor thereto with similar function) would otherwise apply under this Article 19, during the fifteen (15) calendar day period following the giving of the Arbitration Notice referred to in Section 19.2 above, shall endeavor to agree upon an appropriate body of rules to govern arbitration to be conducted pursuant to this Article 19, and such rules so agreed on shall be the then applicable arbitration rules. However, if said Parties fail to so agree within such fifteen (15) calendar day period, such arbitration shall be governed by, and the then applicable arbitration rules shall be, the rules then applicable of the entity most commonly utilized in the New York City metropolitan area for the arbitration of commercial disputes.

Section 19.4 Selection of Arbitrators

19.4.1 Definition. The term “**Appointing Authority**” shall mean the entity or body that administers the then applicable commercial arbitration rules, provided that if such entity or body shall be affiliated with or subject to control by any party to an arbitration, the Appointing Authority for purposes of such arbitration shall instead be the entity at the time most commonly utilized in the New York metropolitan area for the arbitration of commercial disputes and which is not so affiliated or subject to such control.

The term “**qualified arbitrator**” as used herein shall mean a disinterested individual having not less than ten (10) years experience relating to commercial office buildings or similar commercial real estate in New York City relatively comparable to the Property and relating to the specific matter in dispute.

19.4.2 Number of Arbitrators. In any dispute involving claims exceeding \$100,000 in the aggregate, the dispute shall be submitted for resolution by three (3) arbitrators selected in accordance with subsection 19.4.3 below. All other disputes shall be submitted for resolution by a single arbitrator.

19.4.3 Procedure. In the case of a dispute to be resolved by three (3) arbitrators as provided in subsection 19.4.2 above, the Party desiring arbitration shall appoint a qualified arbitrator on its behalf, and give notice thereof to the other Party or Parties to the arbitration, who shall, within fifteen (15) calendar days thereafter, collectively (if more than one other Party), appoint a second qualified arbitrator on its or their behalf and give written notice thereof to the first Party. The arbitrators thus appointed shall, within fifteen (15) calendar days following the appointment of the second arbitrator, appoint a third qualified arbitrator and said three arbitrators shall, as promptly as possible (but in any event within thirty (30) calendar days following the

appointment of the third arbitrator), determine the matter that is the subject of the arbitration, and whether any damages, costs or expenses are to be awarded in connection therewith.

19.4.4 Selection by Appointing Authority. If a Party to the arbitration having the right pursuant to subsection 19.4.3 above to appoint an arbitrator fails or neglects to do so when the requisite fifteen (15) calendar day period, or if the two (2) arbitrators appointed by the Parties to the arbitration shall fail to appoint a third arbitrator within the requisite fifteen (15) calendar day period following the appointment of the second arbitrator, then any of the Parties to the arbitration may apply to the Appointing Authority for the appointment of such arbitrator.

19.4.5 Successor. In the event any of the three (3) arbitrators selected pursuant to subsection 19.4.3 or 19.4.4 above shall fail, refuse or be unable to act, his or her successor shall be appointed within ten (10) calendar days by the Party or Parties to the arbitration who originally appointed him or her, or in the event such Party or Parties shall fail so to appoint such successor, or in the case of the third arbitrator, his or her successor shall be appointed as provided in subsection 19.4.4 above. None of the Parties to the arbitration shall raise any challenge or objection as to the full power and jurisdiction of the Appointing Authority to entertain such application and make such appointment.

Section 19.5 Decision of Arbitrator(s); Binding Effect

19.5.1 Majority Requirement. The decision of the arbitrator (in the case of a single arbitrator) or a majority of the arbitrators (in the case of three (3) arbitrators) shall be delivered to the Parties to the arbitration by the arbitrator(s) when made and shall be controlling for all purposes under the Declaration and these By-Laws immediately upon receipt by said Parties of a copy of the decision.

19.5.2 Immediately Effective. The effectiveness of such decision for such purposes shall not be delayed or postponed pending confirmation of the arbitration decision or award or entry of judgment upon the decision or award, notwithstanding any challenge or contest by any of said Parties with respect to the decision or award, and notwithstanding any application or other request by any of said Parties that the arbitrator(s) or any court or other body stay, set aside, nullify or otherwise change the decision or award. Said Parties shall make no request or other application to the arbitrator(s) or any court or other body for any injunction, stay or other relief that would be contrary to the provisions of the preceding sentence, and agree that the arbitrator(s), any court and any other body shall have no jurisdiction or other authority to consider any request or other application for, or to grant, any injunction, stay or other relief that would violate any provision of this Article 19.

19.5.3 Subsequent Change. If any decision of the arbitrator (in the case of a single arbitrator) or a majority of the arbitrators (in the case of three (3) arbitrators) shall be set aside, nullified, modified or otherwise changed after the Parties to the arbitration receive a copy of the original decision or award, said Parties shall thereupon comply with the action setting aside, nullifying, modifying or otherwise changing the original decision or award, with such changes and adjustments by said Parties in actions taken pursuant to the original decision as may be necessary for such purpose.

19.5.4 Binding and Conclusive. In any such arbitration, the determination of such dispute, controversy or claim by such arbitration shall constitute the final determination thereof and shall be binding and conclusive upon the Parties to such arbitration and shall constitute an "award" by the arbitrator within the meaning of the American Arbitration Association rules and judgment may be entered thereon in any court of competent jurisdiction.

19.5.5 Exculpation and Indemnity of Arbitrators. No arbitrator, including an arbitrator selected by any Party to the arbitration, shall have any liability to any other Party to the arbitration by reason of the arbitrator's participation in any determination made under this Article 19, and each of the Parties to the arbitration shall indemnify the arbitrator(s) against any and all Claims and Liabilities and Expenses asserted against any arbitrator by reason of such arbitrator's participation in any such determination.

Section 19.6 Expenses of Arbitration

19.6.1 Subject to subsection 19.6.2 below, unless otherwise determined by the arbitrator (in the case of a single arbitrator) or a majority of the arbitrators (in the case of three (3) arbitrators), whose determination shall be binding and conclusive upon all Parties to the arbitration, the expenses of arbitration shall be shared equally by said Parties, and each of said Parties shall be responsible for the fees and expenses of its own attorneys and other representatives and witness.

19.6.2 Notwithstanding anything contained in these By-Laws or the Declaration to the contrary, if the Condominium Board is a Party to an arbitration and the position of the Condominium Board is substantially upheld or the Board is the prevailing Party in the determination and award of arbitrator(s), then the Party opposing the Board in such arbitration shall reimburse the Board for all Costs and Expenses paid or incurred in connection with the arbitration, including the fees and expenses of its attorneys and witnesses, together with per diem interest at the rate and on the terms contained in subsection 17.1.1 above.

Section 19.7 Limitation on Power of Arbitrator(s)

The arbitrator(s) shall apply the Law of the State of New York without regard to principles of conflict of Laws and shall have no power to vary or modify any of the provisions of the Declaration or these By-Laws, and the powers and jurisdiction of the arbitrator(s) are hereby limited accordingly.

Section 19.8 Payment of Disputed Sums

To the extent any dispute, controversy or claim concerns liability for, or payment of, Common Expenses allocated, apportioned and assessed to a Unit, the Owner of such Unit shall pay the portion of such Common Expenses levied on it, without prejudice to such Owner's right to contest (by arbitration) the amount in dispute and (if such Owner's objection is upheld in arbitration) to be reimbursed any overpayment awarded in the arbitration in accordance with Section 9.4 of the Declaration.

ARTICLE 20

NOTICES

Section 20.1 General

20.1.1 How and Where Given. All notices required or desired to be given hereunder, except for a notice of a meeting or a special meeting of Unit Owners under Section 4.4 above, shall be sent by hand delivery or overnight courier by a nationally recognized courier (with receipt of delivery) or registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

- (a) (in the case of a notice to the Condominium Board) to:

Board of Managers of
609/Fifth Condominium
c/o Trigon Equities Corp.
16 East 52nd Street
New York, New York 10022
Attention: President

with a copy sent simultaneously and in like manner to the Declarant at its address given below (for so long as Declarant owns a Unit) and to the then Managing Agent of the Building (if different from the address of the Board);

- (b) (in the case of a notice to a Unit Owner other than Declarant) to the Unit Owner at the address of the Building;

- (c) (in the case of a notice to Declarant) to:

609 Owners LLC
c/o Wharton Realty
20 East 46th Street
New York, New York 10017
Attn: Jeff Sutton, President

with a copy sent simultaneously and in like manner to:

Mandel Resnik Kaiser Moskowitz & Greenstein P.C.
220 East 42nd Street, 20th floor
New York, New York 10017
Attn: Ivan W. Moskowitz, Esq.

20.1.2 Changes in Address. Each Party may substitute a different address or add an address by sending written notice of the change to the other Parties (i.e., the Condominium Board, Unit Owners, Permitted Mortgagees and Registered Tenants).

20.1.3 Date Effective and Notice Period. Unless otherwise expressly provided elsewhere in the Declaration or these By-Laws, each notice shall be effective only if and when given or sent as provided in subsection 20.1.1 above. Notice by a Unit Owner to the Board Member elected exclusively by such Unit Owner shall not be effective notice to the Board, which must be given strictly as provided in subsection 20.1.1(a) above. Any specified period of time following the giving or sending of a notice shall begin on the day delivered by hand (unless

it is not a business day or is actually received after business hours, in which case the period shall begin on the next business day), or the next business day after being sent by overnight courier or the second full business day after being deposited in a post office or mail depository maintained by the United States Postal Service. Notices mailed from outside the United States or notices of a change of address or an additional address shall not be considered effective until actually received.

20.1.4 Refusal or Failure to Accept. A refusal or failure to accept a notice shall be deemed receipt of the notice and will not affect the effectiveness, validity or enforceability of the notice, nor excuse or justify delaying the performance of any duties.

Section 20.2 Waiver of Service of Notice

Whenever any notice is required to be given by Law or pursuant to the terms of the Condominium Documents, 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.

ARTICLE 21

FURTHER ASSURANCES

Section 21.1 Provisions of Declaration Apply and Govern

The provisions of Article 20 of the Declaration are applicable to, and govern, the terms, restrictions and requirements to be followed by the Condominium Board, each Unit Owner and all Persons who, or whose interests in the Property or a Unit are subject, in connection with the cooperation by the aforementioned with each other in order to effectuate the purposes and provisions of the Condominium Documents, including the giving of Assurances and the limited power of attorney set forth in Sections 20.4, 20.5 and 20.6 of the Declaration.

ARTICLE 22

AMENDMENTS TO BY-LAWS

Section 22.1 Provisions of Declaration Apply and Govern

The provisions of Article 22 of the Declaration are applicable to, and govern, the terms, restrictions, requirements, approvals and consents to be followed or obtained to amend these By-Laws.

ARTICLE 23

TERMINATION OF CONDOMINIUM

Section 23.1 Provisions of Declaration Apply and Govern

The provisions of Article 19 of the Declaration are applicable to, and govern, the terms, restrictions, requirements, approvals and consents to be followed or obtained to terminate condominium ownership of the Property. Accordingly, the condominium ownership of the Property shall continue until the occurrence of any of the Condominium Termination Events, as defined and provided in Section 19.1 of the Declaration.

ARTICLE 24

GENERAL

Section 24.1 Inspection 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 Condominium Board or its Managing Agent (if any) and shall be available for inspection by Unit Owners and their authorized representatives and agents in accordance with the provisions of subsection 14.7.3 above.

Section 24.2 Waiver

The provisions of Article 26 of the Declaration, as hereby modified to change all references therein to “this Declaration” (or similar words) to read instead “these By-Laws (including the Rules and Regulations annexed hereto)” or similar words, shall apply and govern with respect to changes and waivers of provisions of these By-Laws (including the Rules and Regulations annexed hereto).

Section 24.3 Conflicts

These By-Laws are intended to be consistent with, and to complement and supplement, the Declaration, and are also intended to be consistent with the Condominium Act and all other applicable Laws. In the event that any provision of these By-Laws or of the Rules and Regulations shall be construed to be inconsistent with any provision of the Declaration, the Condominium Act or other applicable Law, the provision contained in the Declaration, the Condominium Act or other applicable Law, as the case may be, shall control.

Section 24.4 Severability

If any provision of these By-Laws is invalid or unenforceable as against any Person or under certain circumstances, the remainder of these By-Laws and the applicability of such provision to other Persons or circumstances shall not be affected thereby. Each provision of these

By-Laws shall be valid and enforced to the fullest extent permitted by Law, except as otherwise provided herein.

Section 24.5 Successors and Assigns

24.5.1 General. Subject and subordinate to Article 28 of the Declaration and the lien priority set forth in Section 8.12 above, the powers and/or duties of, and limitations imposed on, a Unit Owner as set forth in these By-Laws and the Declaration, shall inure to the benefit of, and shall be binding upon, such Owner's heirs, executors, administrators, legal representatives, successors and assigns.

24.5.2 Declarant's Rights. The Declarant's Rights under the Declaration and these By-Laws and the duties, limitations, restrictions and requirements thereunder and hereunder in connection therewith or otherwise applicable thereto, shall inure to and be binding upon a "Designee", an "Involuntary Transferee" and a "successor in interest" of Declarant, all as defined and more particularly provided in Article 28 of the Declaration:

Section 24.6 Table of Contents and Headings

The Table of Contents and the Article, Section and subsection headings in these By-Laws are for convenience and reference only and do not, and shall not be construed to, affect the scope, meaning or interpretation of any provision of these By-Laws.

Section 24.7 References

The words "Article", "Section", "subsection", "provision", "paragraph" and "clause" or similar words refer to an Article, Section, subsection, provision, paragraph and clause of these By-Laws, unless otherwise expressly stated. Similarly, the words "hereof", "herein", "above", "below" and similar terms mean these By-Laws. All references in these By-Laws to the "other Unit Owner" or similar words shall be construed to mean "other Unit Owners" or similar words in the event the Condominium Association shall consist of more than two Units at the time in question.

Section 24.8 Grammar

Any word or term in these By-Laws that is: used in the singular, shall include the plural and vice versa; or used in any gender shall include any other gender; or used in any tense (past, present or future), shall include any other tense, whenever required by the sense of these By-Laws and not contrary to the express context.

Section 24.9 Insurance Trustee

The Insurance Trustee shall be appointed by the Condominium Board and the fees and disbursements of any Insurance Trustee shall be paid by the Condominium Board as a Common Expense and charged to the Unit Owners Pro Rata to their respective Common Interests. The Insurance Trustee shall hold all proceeds as trust funds until paid over or applied as provided in the Declaration and these By-Laws.

Section 24.10 Approvals or Consents

Wherever in the Declaration or these By-Laws provision is made for any required Discretionary or Reasonable Approval or Consent of the Condominium Board, such approval or consent shall be sufficient and effective only if given in writing by the Board prior to implementing the transaction for which approval or consent is required or requested, and the approval or consent of the Unit Owners shall not be required, unless otherwise expressly provided in the Declaration or these By-Laws.

Section 24.11 Incorporation of Declaration

The provisions of Article 32 of the Declaration and all other provisions of the Declaration referred to in these By-Laws are hereby incorporated herein with the same force and effect as though set forth at length.

END OF BY-LAWS

The Rules and Regulations of 609/Fifth Condominium
start on the next page and are part of these By-Laws.

RULES AND REGULATIONS OF 609/FIFTH CONDOMINIUM

[Addendum to, and forming a part of, the By-Laws of such Condominium.]

1. No Unit Owner shall allow or suffer anything whatever to fall from the windows, doors, or Roof of its Unit or sweep or throw therefrom any dirt or other substance into any of the Common Elements (except for the use of waste lines in the manner for which intended and not prohibited under the Declaration and the By-Laws) or on to any yard or alley adjacent to the Building or the Immediately Adjacent Sidewalks to the Property. No carpet, rug or other article shall be hung or shaken from any window of the Building.
2. No Unit Owner shall place a load upon any floor of its Unit exceeding the floor load per square foot area that it was designed to carry and that is allowed by applicable Law. All Equipment that generate vibrations or noise shall be placed and maintained by each Unit Owner at its sole Cost and Expense in settings sufficient to absorb and prevent vibration and unreasonable noise and annoyance.
3. No Unit Owner shall Alter, damage, impair, destroy or otherwise adversely and materially affect the Common Elements or the Limited Common Element appurtenant another Unit (if any) without obtaining the express prior written Discretionary Approval or Consent of the Condominium Board or the Owner of such other Unit, respectively, except as expressly permitted herein or in the Declaration or the By-Laws. A Unit Owner shall give the Condominium Board or another Unit Owner prompt notice of any Repairs that are needed in or to the Common Elements or (if established) the Limited Common Elements appurtenant such other Owner's Unit, respectively, after such Unit Owner has actual notice thereof.
4. Water closets, sinks and other plumbing apparatus in the Building shall not be used for any purpose other than those for which they were designed or constructed, and no sweepings, rubbish, rags or any other article shall be thrown into the same. Any damage resulting from misuse of any water closets, sinks or other apparatus in a Unit shall be promptly repaired and paid for by the Owner of such Unit.
5. Each Unit Owner shall submit for inspection by the Condominium Board and its agents and employees any business permits or licenses required for the lawful conduct of any business permitted to be carried on in its Unit.
6. Any amounts assessed as a Common Expense against a Unit in addition to the regular monthly Common Charges due and payable as provided in the By-Laws shall be paid to the Condominium Board upon demand or if not demanded, then with the next monthly payment of Common Charges due and payable as provided in the By-Laws.
7. No servant or employee of the Condominium Board shall be sent out of the Building by any Unit Owner at any time for any purpose.
8. Complaints by a Unit Owner regarding services or Operation of the Building shall be made in writing to the Condominium Board or its Managing Agent (if any).

9. The fiscal year of the Condominium Association shall be a calendar year beginning on the first day of January or such other fiscal year as the Condominium Board shall establish from time to time.

10. No vehicle belonging to an Owner, tenant or occupant of a Unit or to Agents, Employees or Contractors of such Owner, tenant or occupant, shall be parked in such manner as to impede or prevent ready access to or from the 6 East 49th Street freight entrance to the Building or from another Unit.

11. A Unit Owner may apply to the Condominium Board for a temporary waiver of one or more of the Rules and Regulations. Such temporary waiver may be granted by the Board in its sole discretion, for good cause shown.

12. At the discretion of the Condominium Board, any approval or consent given under these Rules and Regulations may be made conditional and may also be amended at any time. However, if expressly provided herein or elsewhere that the reasonable Approval or Consent is required, then such approval or consent may not be unreasonably conditioned, delayed, withheld or denied.

13. The Immediately Adjacent Sidewalks to the Property, the public or common areas of the Common Elements (including the entrances, public vestibules, corridors and exit stairways) shall not be obstructed or encumbered by refuse or otherwise used for any purpose other than in connection with the prompt and efficient delivery of merchandise, Equipment, materials and supplies, and the temporary loading or unloading thereof, or for ingress to and egress from the Units, using those portions of said sidewalks and Common Elements as shall be designated by the Condominium Board. No hand trucks or other vehicle shall be used for the delivery or receipt of merchandise, Equipment, material or supplies on the Common Elements, except those equipped with rubber tires and safeguards.

14. No velocipedes, bicycles, scooters, baby carriages or similar vehicles shall be allowed to stand in the public halls, passageways, or other public areas of the Common Elements.

15. All service and delivery persons going to or from a Unit will be required to use the entrance to such Unit or (when applicable, as determined by the Board) the 6 East 49th Street freight entrance to the Building.

16. Freight, furniture, furnishings, trade fixtures, business equipment, cartons, merchandise and other heavy or bulky items of any description shall be taken into and out of the Building only through a service entrance to a Unit or (when applicable as determined by the Board, in its sole judgment) the 6 East 49th Street freight entrance to the Building. The Board shall determine the days, hours and manner of use of the 6 East 49th Street freight entrance and other portions of the Common Elements. The Board has the right to examine all freight and other items being taken into and out of the Building through the 6 East 49th Street freight entrance and other portions of the Common Elements and to exclude all freight and items which violate, or which are taken into and out of the Building in violation of, these Rules and Regulations. Unit Owners (other than Declarant, who is exempt from this provision) and the tenants, licensees and occupants of each Owner's Unit (other than a Unit owned by Declarant) shall not move any safe, heavy machinery,

heavy equipment, bulky matter or fixtures into or out of its Unit or the Building without obtaining the prior written Discretionary Approval or Consent of the Condominium Board. If such safe, machinery, equipment, bulky matters or fixtures require special handling, all Work in connection therewith shall comply with all applicable Laws and the insurance requirements of the Board, and shall be done during such hours and on such days as the Board may designate.

17. No article (including, but not limited to, garbage cans, bottles or mats) shall be placed or stored by a Unit Owner or the tenants or occupants of a Unit in any portions of the Common Elements or on any of the exit stairways of the Building, nor shall any exit stair or fire egress thereof be obstructed in any manner.

18. Each Unit Owner shall comply with all applicable municipal, state and federal laws and the regulations, codes and other requirements of Governmental Authorities having jurisdiction (collectively called "**Environmental Laws**") regarding the disposal by a Unit Owner or the tenants or occupants of an Owner's Unit of trash, refuse or garbage (collectively called "**Trash**"). In furtherance thereof, each Unit Owner shall comply with all environmental Laws requiring Trash to be separated into "recyclable" and "non-recyclable" materials. The Condominium Board may designate from time to time types of materials which must be separated for recycling, the types of containers or binding to be used by a Unit Owner or the tenants or occupants of an Owner's Unit for disposal of designated recyclable or non-recyclable materials and the locations where recyclable or non-recyclable materials shall be deposited. Each Unit Owner shall comply with all other rules and regulations the Condominium Board may establish from time to time for disposal and recycling of Trash. Any Costs and Expenses incurred by the Condominium Board as a result of a Unit Owner's violation of this rule by a Unit Owner or the tenants or occupants of an Owner's Unit or the enforcement of this rule against such Unit Owner or such tenants or occupants (including legal fees and disbursements, litigation expenses and fines and penalties imposed on the Condominium Board by any Governmental Authority having jurisdiction) shall be payable, promptly following demand, by said Unit Owner as part of the Common Charges. Notwithstanding the foregoing, Declarant shall not be obligated to reimburse the Condominium Board for any Costs and Expenses incurred by the Board as a result of a violation of this rule by a tenant or occupant of a Unit owned by Declarant or the enforcement of this rule against Declarant by reason of said violation.

19. There shall be no playing or lounging in the public portions of the Common Elements (including the Building entrances, passages, vestibules and corridors) or exit stairways of the Building, except in areas (if any) designated as such by the Condominium Board.

20. The Condominium Board or the Managing Agent may, from time to time, curtail or relocate portions of the Common Elements, if any devoted to storage or service purposes in the Building.

21. Nothing shall be done or kept in any Unit or on any Roof, or in the Common Elements, that will increase the rate of insurance of the Building, or the contents thereof, without the prior written Discretionary Approval or Consent of the Condominium Board. No Unit Owner shall permit or suffer anything to be done or kept in any Unit or on any Roof, or in, or on the Common Elements, that will result in the cancellation or a notice of cancellation of insurance on the Building, or the contents thereof, or that would be in violation of any Law. No Owner, tenant,

licensee or occupant of a Unit, or their respective agents, employees, licensees or visitors, shall, at any time, bring into or keep in such Owner's or tenant's Unit or its Roof any inflammable, combustible, or explosive fluid, material, chemical, or substance, except as shall be necessary and appropriate for the permitted uses of such Unit or its Roof.

22. There shall be no barbecuing in the Units (other than in that portion thereof used as a restaurant in accordance and compliance with the Declaration and By-Laws, and applicable Laws) or the Common Elements or on any Roof.

23. All copiers and other office Equipment, microwave ovens, radios, television and other electrical equipment of any kind or nature installed or used in each Unit or any portion thereof shall fully comply with all rules, regulations, requirements, or recommendations of the New York Board of Fire Underwriters and the public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any electrical equipment used in such Owner's Unit. No toaster ovens or other cooking appliances shall be used in a Unit, other than microwave ovens, Fire Underwriting approved coffee brewing machines and the existing cooking equipment approved or permitted by the Declarant to be used in the restaurant of the Lower Unit.

24. No radio or television aerial, antennae, satellite dish or similar device shall be attached to or hung from the Building Walls, windows or Roofs, other than an area on the main Roof (if any) as may be designated by the Condominium Board for such purpose or as permitted to be erected and installed by the Upper Unit Owner pursuant to the Declaration or the By-Laws.

25. The agents of the Condominium Board or the Managing Agent (if any), and any contractor or worker authorized by the Condominium Board or the Managing Agent (if any), may enter any room or area of the Common Elements or Units or a Roof at any reasonable hour of the day, on at least one (1) day's prior oral or written notice to the Unit Owner, for the purpose of inspecting such Unit or Roof for the presence of any vermin, insects or other pests and (if a Unit Owner fails to do as required in paragraph 28 below) for the purpose of taking such measures (for the account and at the expense of such Unit Owner) as may be necessary to control or exterminate any such vermin, insects or other pests; however, such entry, inspection and extermination shall be done in a reasonable manner so as not to unreasonably interfere with the use, occupancy or Operation of such Unit for its permitted purposes.

26. If any key or keys of an Owner or a tenant or occupant of a Unit, or any agent, employee, licensee or visitor of such Owner or tenant or occupant, are entrusted by such person to the Building's fire safety director or engineer (if any) or other employee of the Condominium Association, or to the Managing Agent (if any), whether for such person's Unit, office, vehicle, trunk or other item of personal property, the acceptance of the key shall be at the sole risk of such Unit Owner or tenant or occupant, and neither the Condominium Board (or its agent and employees) nor the Managing Agent (or its employees) or the other Unit Owner shall be liable for injury, loss or damage of any nature whatsoever, directly or indirectly resulting therefrom or connected therewith.

27. No Owner (other than Declarant, while it owns a Unit), tenant or occupant of a Unit, or any employee, agent or contractor thereof, shall at any time enter upon or attempt to enter upon

the main Roof of the Building without first obtaining the prior written Discretionary Approval or Consent of the Condominium Board in each instance. If, however, the purpose of such entry is to Maintain or Repair any Equipment of a Unit located on a Roof, the Board shall not unreasonably withhold, deny or condition its approval or consent, provided such Unit Owner shall comply with all Work Requirements set forth in Section 15.2 of the Declaration and any other applicable provisions of the Condominium Documents.

28. Each Unit Owner, at its sole Cost and Expense, shall engage a pest exterminator to regularly inspect (at least once monthly) and exterminate vermin, insects and other pests from such Owner's Unit.

29. No Unit Owner shall use, keep or permit or suffer to be used or kept in its Unit any unreasonably foul or noxious gas or substance. No Unit Owner shall not permit or suffer its Unit to be occupied or used in a manner unreasonably offensive or objectionable to the Condominium Board or the other Unit Owner or the occupants of the other Unit by reason of unreasonably loud or offensive noises, odors and/or vibrations, or otherwise unreasonably interfere with the quiet enjoyment of tenants, licensees or occupants of a Unit or those having business in a Unit. No birds, reptiles or other animals shall be kept or harbored in the Building. Smoking or carrying lighted cigars or cigarettes anywhere in the Building is strictly prohibited.

30. No awning, projection or Signs shall be attached to the Building Walls, except as expressly permitted in the Declaration or By-Laws or for which the prior written Discretionary Approval or Consent of the Condominium Board may be given.

31. No Unit Owner shall mark, paint, drill into, or in any way deface any part of the Common Elements nor permit or suffer any tenant, licensee, occupant or visitor of its Unit to so do. Any violation hereof by a Unit Owner shall be repaired and restored to its former condition by the Condominium Board at the sole Cost and Expense of such Unit Owner.

32. No additions, locks or bolts of any kind shall be placed on any doors or windows comprising the Common Elements, nor shall any changes be made in existing locks or mechanisms thereof, by any Owner, licensee, tenant or occupant of a Unit

33. No canvassing, soliciting or peddling shall be permitted or suffered in any Unit or elsewhere in the Building. Each Unit Owner shall cooperate, and shall use all good faith efforts to cause the tenants, licensees and occupants of its Unit to cooperate, to prevent same.

34. Each Unit Owner shall be solely responsible to provide for its own security and to establish security procedures for tenants and persons occupying and visiting its Unit, including the issuance of passes. Each Owner shall be liable to the Board for the acts of all persons to whom it issues passes and shall exclude from entering its Unit any one who does not present a pass between the hours of 6:00 p.m. and 8:00 a.m. and at all hours on Sundays or legal holidays. The foregoing requirement with respect to the issuance of passes does not apply to the portions of the Lower Unit open to the general public. All security procedures and hours for use of the 6 East 49th Street freight entrance and other portions of the Common Elements shall be determined by the Condominium Board.

35. The Condominium Board shall have the right to prohibit any advertising by any Owner, tenant, licensee or occupant of a Unit (other than a Unit owned by Declarant, which is exempt from this provision) which the Board determines tends to impair the reputation of the Building or its desirability for quality retail and office uses. Upon written notice from the Board, the applicable Owner shall refrain, and shall use its good faith efforts to cause tenants, licensees and occupants of its Unit to refrain, from or discontinue such advertising.

36. No Unit Owner shall cause, permit or suffer any unreasonable, offensive odors of cooking or other processes, or any unusual or other unreasonable, objectionable odors to permeate or emanate from its Unit or any portion thereof.

37. If the Building contains central air conditioning ventilation, each Unit Owner shall keep, and cause its tenants to keep, all windows of its Unit closed at all times and to abide by all rules and regulations issued by the Condominium Board with respect to such activities.

38. All Costs and Expenses or other amounts to be paid or reimbursed by a Unit Owner for any violation or breach of the Rules and Regulations shall constitute additional Common Charges and shall be payable to the Board immediately following service of a reasonably detailed written demand therefor accompanied by any applicable supporting bills from third party contractors, suppliers or others.

END OF RULES AND REGULATIONS

[Lower] [Upper]* Unit
Tax Lot: _____

**EXHIBIT E TO DECLARATION OF CONDOMINIUM
ESTABLISHING 609/FIFTH CONDOMINIUM**

UNIT OWNER'S POWER OF ATTORNEY

[To be Executed in Triplicate]

This Unit Owner's Power of Attorney is being made as of _____, _____, by _____ (hereinafter (collectively)* called

"Principal"), having an office address at _____, _____, as owner of the unit designated in the Declaration as the [Lower] [Upper]* Unit ("Unit") of 609/Fifth Condominium, located at 609 Fifth Avenue (a/k/a 2-6 East 49th Street), New York, New York, and also designated as Tax Lot ____ in Section 5, Block 1284 on the Tax Map, in favor of the individuals who from time to time comprise the Board of Managers of said Condominium, in their capacity as Board Members, 609 Owners LLC, each Unit Owner, and each Successor of each such Attorney-in-Fact, as provided in Sections 3 and 7 below.

* Delete where inapplicable.

TERMS: The terms of this Unit Owner's Power of Attorney are set forth in Sections 1 through 10, which start on the page immediately following the Acknowledgment entitled "Terms of Unit Owner's Power of Attorney".

TABLE OF CONTENTS

Section	Caption	Page	Section	Caption	Page
Section 1.	Definitions	3	Section 6.	Examples of Certain Actions Authorized under Limited Power of Attorney	5
Section 2.	Unit Owned by Principal	3	Section 7.	Successor Attorney-In-Fact and Board Members	5
Section 3.	Authorization, Appointment and Designation of Agents and Attorneys- in-Fact	4	Section 8.	Table of Contents and Headings	6
Section 4.	Power of Substitution	5	Section 9.	References	6
Section 5.	Unaffected by Disability or Incompetence	5	Section 10.	Grammar	6

AFFIRMATION AND ATTESTATION: Principal affirms, attests and covenants that this instrument is legal and valid, has been duly authorized by all requisite organizational action, is being duly executed by a duly authorized signatory, and is binding upon and fully enforceable against Principal in accordance with its terms, and may be so relied upon each "Attorney-in-Fact" (as defined and identified in this instrument).

PRINCIPAL:

[Name of Principal]

[Name of Principal]

By: _____
[Name Principal's General Partner or Manager/Member]

By: _____
[Signature]

By: _____
[Signature]

[Print Name of Signatory]

[Print Name of Signatory]

[Title of Signatory]

[Title of Signatory]

ACKNOWLEDGMENT

State of New York)
) ss.:
County of _____)

On the _____ day of _____ in the year _____
before me, the undersigned, a notary public in and for said state, personally appeared _____, 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 to me 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(s), or the person upon behalf of which the individual(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)
) ss.:
County of _____)

On the _____ day of _____ in the year _____ before me, the undersigned, a notary public in and for said state, personally appeared _____, 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 to me 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(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

TERMS OF UNIT OWNER'S POWER OF ATTORNEY

Section 1. Definitions

1.1 The following terms are frequently used in this instrument and will have the respective meanings given to them:

"Building": The building known by the street address of 609 Fifth Avenue (a/k/a 2-6 East 49th Street), New York, New York.

"By-Laws": The By-Laws of the Condominium set forth as EXHIBIT D to, and recorded together with, the Declaration, as such By-Laws or a provision thereof may be amended from time-to-time in accordance with its provisions.

"Condominium": The condominium which is the subject of the Declaration, known as 609/Fifth Condominium and established on the Property by the filing and recording of the Declaration, the By-Laws and the Floor Plans of the Condominium.

"Declarant": 609 Owners LLC.

"Declaration": The instrument entitled "Declaration of Condominium Establishing a Plan for Condominium Ownership of the Premises known as and by the street number of 609 Fifth Avenue (a/k/a 2-6 East 49th Street), New York, New York and executed by 609 Owners LLC, as Declarant, and recorded in the New York County Office of the Register of the City of New York on _____, 200__ in CRFN# _____, thereby establishing a condominium regime of ownership of the Property under Article 9-B of the Real Property Law of the State of New York, as such Declaration may be amended from time to time in accordance with its provisions by a duly executed and recorded instrument.

"Land": The parcel of land on which the Building is located and more particularly described in EXHIBIT A to the Declaration.

"Property": The Land and Building and all other improvements on or under the Land.

"Tax Map": The Tax Map of the Real Property Assessment Department of The City of New York for the Borough of Manhattan, County of New York, in the State of New York.

"Unit" or "Principal's Unit": The Unit of the Condominium owned by Principal and more particularly identified in the preamble of this Unit Owner's Power of Attorney.

1.2 The words and terms used herein without express definition that are also used in the Declaration (including EXHIBIT C thereof) and the By-Laws shall have the same meanings as they do in said instruments.

Section 2. Unit Owned by Principal

2.1 Principal is the owner of record of fee title interest in the Unit of the Condominium. The Unit and its Tax Lot identified in the preamble of this Unit Owner's Power of Attorney correspond to the designation of the Unit in the Declaration and on the Floor Plans of the Condominium ("**Floor Plans**") filed with the Real Property Assessment Department of The City of New York and the designation of the Tax Lot of the Unit in Section 5, Block 1284 on the Tax Map of the Borough of Manhattan of said Real Property Assessment Department and on said Floor Plans.

Section 3. Authorization, Appointment and Designation of Agents and Attorneys-in-Fact

3.1 Principal hereby confirms all powers of attorney deemed to have been granted and given by Principal under the Declaration and By-Laws and, in furtherance thereof, Principal reaffirms same below.

3.2 With the intention to constitute a durable limited power of attorney, Principal does hereby irrevocably authorize, appoint and designate each of the following (each, an "**Attorney-in-Fact**") as agent and Attorney-in-Fact of Principal, "coupled with an interest" and for valuable consideration, with full power of substitution, to act on behalf and as agent of Principal and in the name, place and stead of the Principal in any way which the Principal could do if personally present, to the full extent that Principal is permitted by law to act through an agent, with respect only to all of those matters, transactions and Dispositions stated in the Declaration or By-Laws that each such Attorney-in-Fact has the authority or power to do or perform on behalf and as agent of Principal, including (but not limited to) the following:

- (a) the Declarant (that is, 609 Owners LLC), each Unit Owner and the individuals who shall from time to time constitute the members of the Condominium Board (in their capacity as Board Members), severally, as agent and Attorney-in-Fact of Principal, having the right, power and authority to amend the Condominium Documents in accordance with Article 22 of the Declaration and Article 22 of the By-Laws (including an Amendment to reflect a Unit Change to the Unit owned by the Declarant in accordance with Article 13 of the Declaration), or to record a correction Declaration in accordance with Section 21.6 of the Declaration;
- (b) each Unit Owner and the individuals who shall from time to time constitute the Condominium Board (in their capacity as Board Members), severally, as agent and Attorney-in-Fact of Principal, having the right, power and authority to grant Additional Utility Easements/Rights in accordance with Section 11.7 of the Declaration;
- (c) each Unit Owner and the tenants of such Owner's Unit and other Persons who are so expressly authorized by the said Unit Owner, severally, as agent and Attorney-in-Fact of Principal, having the right, power and authority to erect and install Communications Equipment and Other Installations on and in portions of the Common Elements, and to thereafter inspect use, lease, license, Operate, Repair and Alter same thereon and therein, all as set forth in Section 11.10 of the Declaration; and
- (d) the individuals who shall from time-to-time constitute the Condominium Board (in their capacity as Board Members) and by determination of a majority of the then existing Board Members, as agent and Attorney-in-Fact of Principal, having the right, power and authority to do the following in the name of the Condominium Board or in the name of Condominium Board's nominee or designee, corporate or otherwise (where applicable and provided in the Declaration or By-Laws):
 - (d-1) the right, power and authority to exercise, perform, give, grant, delegate and withhold the powers, rights, licenses, easements, leases, subleases, concessions, mortgages, deeds, security interests, collateral, Government Documents, Litigation Documents, instruments, approvals, consents, discretions and judgments expressly authorized in the Condominium Documents (as each may be duly amended from time-to-time) to be exercised, performed, given, granted, delegated and withheld by the Condominium Board on behalf and as agent of the Unit Owners, including in particular (but not limited to) the following rights and powers:
 - (d-1.1) the right, power and authority to acquire in the name of the Board or its nominee or designee, corporate or otherwise, as agent on behalf of the Unit Owners, any Unit, together with its appurtenant Common Interest, whose Owner elects to surrender the same in accordance with Sections 16.1 and 16.2 of the Declaration
 - (d-1.2) the right, power and authority to acquire and purchase in the name of the Board or its nominee or designee, corporate or otherwise, as agent on behalf of the Unit Owners, any Unit, together with its appurtenant Common Interest, and other real

property, whether at a sale following a foreclosure of the Board's lien for unpaid Common Charges pursuant to the By-Laws and Section 339-aa of the Condominium Act or to so acquire and purchase a Unit and its appurtenant Common Interest by deed given in lieu of such foreclosure, or otherwise and in any such case, upon such terms and conditions as shall be approved by the Board in its sole and absolute discretion in accordance with Sections 16.1 and 16.2 of the Declaration; and

- (d-1.3) (after any such acquisition or purchase pursuant to the preceding clause (d-1.1) or (d-1.2), as applicable) the right, power and authority to convey, sell, lease, mortgage and otherwise deal with and make any other Disposition of (but not vote the interest appurtenant thereto) any such Unit so acquired or purchased by the Board, without the necessity of further authorization by the Unit Owners, on such terms as such Attorneys-in-Fact may determine;
- (d-2) the right, power and authority to execute, acknowledge, deliver and, if necessary, record any application, document, declaration or other instrument, or any Amendment thereto, affecting the Condominium Association, the Property, the Common Elements or the Association's Properties, or a portion of each thereof, that the Condominium Board deems necessary or appropriate or is required to so do under the Declaration or the By-Laws in connection with the following: (d-2.1) to comply with any Law (including a zoning resolution or variance, or a requirement of a Governmental Authority, such as the Department of Buildings, the City Planning Commission or the Board of Standards and Appeals); or (d-2.2) to permit or facilitate the Use and Enjoyment of all or part of the Common Elements or the Association's Properties or the Units by the respective Owners and Permitted Tenants/Occupants/Invitees of Units in accordance with the Condominium Documents; and
- (d-3) the right, power and authority to execute, acknowledge, deliver and (if necessary) record or file any application, document, declaration or other instrument, or any Amendment thereto, affecting a Unit that the Owner of such Unit requests, if required by the Declaration or the By-Laws, or if deemed appropriate by said Attorney-in-Fact, in its sole and absolute discretion.

Section 4. Power of Substitution

4.1 The power of substitution in the foregoing limited power of attorney in Section 3 includes the full and unqualified authority of each Attorney-in-Fact to delegate any or all of the foregoing powers given or conferred upon such Attorney-in-Fact in Section 3 to any person or persons whom such Attorney-in-Fact shall select.

Section 5. Unaffected by Disability or Incompetence

5.1 The limited power of attorney in Section 3 shall be a durable power of attorney and shall not be affected by the subsequent disability or incompetence of the Principal.

Section 6. Examples of Certain Actions Authorized under Limited Power of Attorney

6.1 The actions authorized by Principal to be performed by the Condominium Board as Attorney-in-Fact of Principal pursuant to Section 3 include all of the specific powers and duties enumerated in the By-Laws in Section 2.4 thereof.

Section 7. Successor Attorney-In-Fact and Board Members

7.1 Principal hereby irrevocably gives to, and confers upon, each of the following ("**Successor Attorney-in-Fact**") all of the powers herein given to, and conferred upon, Declarant or each Unit Owner:

- (a) a "successor in interest" of the Declarant or a Unit Owner (as applicable), and each and every successive successor in interest thereof;

- (b) a "Designee" of the Declarant or a Unit Owner with respect only to those of these powers that are so delegated to such Designee and each and every successive successor in interest thereof; and
- (c) an "Involuntary Transferee" of each of the foregoing and a successor in interest of such Involuntary Transferee and each and every successive successor in interest thereof.

The quoted terms in the preceding clauses (a), (b) and (c) are defined in Article 28 of the Declaration.

7.2 The designation and appointment of Declarant or each Unit Owner, and each Successor Attorney-in-Fact, as an Attorney-in-Fact of Principal pursuant to Section 3 and Section 7.1, respectively, shall remain in full force and effect until (but not after) Declarant or the Person who owns the Unit, or said Successor Attorney-in-Fact (as applicable), ceases to own any Unit of the Condominium.

7.3 The designation and appointment of the Board Members (in their capacity as Board Members) as Attorney-in-Fact of Principal pursuant to Section 3 shall apply to, inure to the benefit of, and shall be exercisable and enforceable by each and every individual who shall from time to time constitute a member of the Condominium Board, in such individual's capacity as a Board Member.

Section 8. Table of Contents and Headings

8.1 The Table of Contents and Section headings in this instrument are for convenience and reference only and do not, and shall not be construed to, affect the meaning or interpretation of any provision of this instrument.

Section 9. References

9.1 The words "Section", "paragraph" and "clause" or similar words refer to a Section, paragraph and clause of this instrument, unless otherwise expressly stated. Similarly, the words "hereof", "herein", "above", "below" and similar terms mean this instrument.

Section 10. Grammar

10.1 Any word or term in this instrument that is: used in the singular, shall include the plural and vice versa; or used in any gender shall include any other gender; or used in any tense (past, present or future), shall include any other tense, whenever required by the sense of this instrument and not contrary to the express context.

END OF UNIT OWNER'S POWER OF ATTORNEY

OWNER'S POWER OF ATTORNEY

FROM

Principal:

TO

Attorney-in-Fact:

**BOARD OF MANAGERS OF
609/FIFTH CONDOMINIUM**

AND

Attorney-in-Fact:

609 OWNERS LLC

AND

Attorney-in-Fact:

EACH UNIT OWNER

Attorney-in-Fact:

EACH SUCCESSOR OF EACH SUCH ATTORNEY-IN-FACT

Condominium:
Address of Condominium

**609/FIFTH CONDOMINIUM
609 Fifth Avenue
(a/k/a 2-6 East 49th Street)
New York, New York**

Property:

Principal's Unit:

[Upper] [Lower]* Unit

County: New York
Section: 5
Block: 1284
Lot: _____

** Delete where inapplicable*

RECORD AND RETURN TO:

Law Offices of
MANDEL RESNIK KAISER MOSKOWITZ & GREENSTEIN P.C.
220 East 42nd Street
New York, New York 10017
Attention: Alan L. Kazlow, Esq.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

Division of Public Advocacy
Investment Protection Bureau

December 4, 2003

Stephen Gaines, Esq.
Mandel Resnik Kaiser Moskowitz & Greenstein P.C.
220 East 42nd Street
New York, New York 10017

Re: 609 Fifth Avenue Partners, LLC
609 Fifth Avenue
New York, New York
File No: NA03-0215

Dear Mr. Gaines:

The Department of Law has reviewed your application for a "no-action letter" submitted on November 7, 2003 and supplemented on November 20, 2003 concerning a transaction involving the above premises.

On the basis of the facts and circumstances stated in your letter and supporting documentation, the Department has determined that it will not take any enforcement action because the described transaction occurs without filing or registration pursuant to Section 352-e and Section 359-e of the General Business Law. We understand that it is your opinion as counsel that the transaction is not subject to those registration and filing requirements.

This position is based solely upon the limited information supplied and representations made in your letter and supporting documentation. Any different set of facts or circumstances might result in the Department's taking a different position. In addition, this letter expresses the Department's position on enforcement action which could arise from this transaction only, occurring without filing or registration, and does not purport to express any legal conclusion on any subsequent transaction or offering.

The issuance of this letter shall not be construed to be a waiver of or limitation on the Attorney General's authority to take enforcement action for violations of Article 23-A of the General Business Law and other applicable provisions of law.

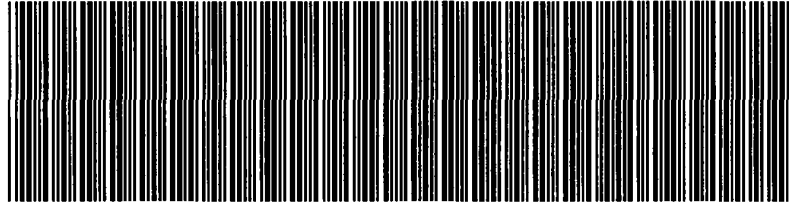
Very truly yours,

Kenneth E. Demario
Assistant Attorney General

H:\WP\DEMARIO\FORMS\NA03-0215\609Fifth Avenue.wpd

120 Broadway, New York, NY 10271
Securities Matters • (212) 416-8222 • Fax (212) 416-8816
Real Estate Matters • (212) 416-8100 • Fax (212) 416-8179

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



2004010702254001002S4ADB

SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2004010702254001

Document Date: 12-01-2003

Preparation Date: 01-07-2004

Document Type: CONDO DECLARATION

SUPPORTING DOCUMENTS SUBMITTED:

TO BE KNOWN AS LOTS

Page Count
1

REMARKS:

Block 1284 f/k/a lot 69 is n/k/a lots 1001 & 1002

50 IN
ORIGINAL

**EXHIBIT B
TO DECLARATION OF CONDOMINIUM
ESTABLISHING 609/FIFTH CONDOMINIUM**

DESCRIPTION OF UNITS

Unit Designation	Tax Lot Number	Location in Building Facing in the Direction Set Forth Below	Approximate Floor Area In Square Feet (1)	Approximate Unit Height in Feet/Inches(2)	Common Elements to Which Unit Has Immediate Access	Percentage Common Interest
Lower Unit	1001	Cellar: North & West Floor 1: North & West Mezzanine: North & West Floor 2: North & West Floor 3: North & West Floor 5: West	Cellar: 4,484 sq. ft. Floor 1: 9,875 sq. ft. Mezzanine: 6,220 sq. ft. Floor 2: 10,635 sq. ft. Floor 3: 10,640 sq. ft. Floor 5: 1,782 sq. ft.	Cellar: 14'2" Floor 1: 10'4" Mezzanine: 12'0" Floor 2: 15'2" Floor 3: 14'2" Floor 5: 12'2"	Exit Stairs " " " Exit Stairs and Public Corridor	69%
Upper Unit	1002	Cellar: North & West Floor 1: West Floor 4: North & West Floor 5: North & West Floor 6: North & West Floor 7: North & West Floor 8: North & West Floor 9: North & West Floor 10: North & West Floor 11: North & West Floor 12: North & West Floor 13: North & West	Cellar: 3,473 sq. ft. Floor 1: 806 sq. ft. Floor 4: 10,474 sq. ft. Floor 5: 8,439 sq. ft. Floor 6: 10,562 sq. ft. Floor 7: 10,211 sq. ft. Floor 8: 10,200 sq. ft. Floor 9: 7,003 sq. ft. Floor 10: 6,680 sq. ft. Floor 11: 6,674 sq. ft. Floor 12: 5,689 sq. ft. Floor 13: 3,738 sq. ft.	Cellar: 14'2" Floor 1: 10'4" Floor 4: 14'2" Floor 5: 12'2" Floor 6: 12'2" Floor 7: 12'2" Floor 8: 15'0" Floor 9: 11'8" Floor 10: 11'8" Floor 11: 11'8" Floor 12: 11'8" Floor 13: 11'8"	Exit Stairs (All Floors)	31%

Footnotes start on next page.