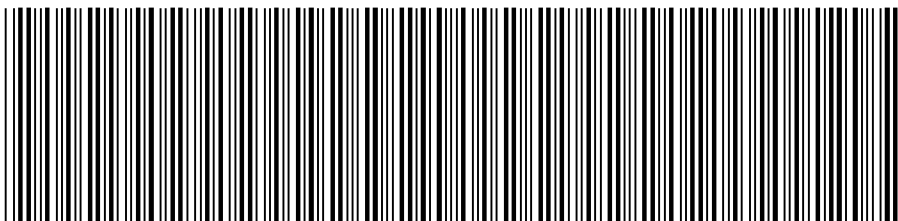


**NYC DEPARTMENT OF FINANCE
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2012121400052001002E1245

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 86

Document ID: 2012121400052001

Document Date: 10-10-2012

Preparation Date: 12-14-2012

Document Type: CONDO DECLARATION

Document Page Count: 84

PRESENTER:

FIDELITY NATIONAL TITLE INS. COMPANY
PICK UP SOPHIA
485 LEXINGTON AVENUE, 18TH FLOOR
NEW YORK, NY 10017
212-481-5858
kat.lam@fnf.com /title no. 12-28859-AC-K

RETURN TO:

SCHIFF HARDIN LLP
666 FIFTH AVENUE
17TH FLOOR
NEW YORK, NY 10103

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	159	1001	Entire Lot	LOWER 496 FULTON STREET

Property Type: COMMERCIAL CONDO UNIT(S)

Borough	Block	Lot	Unit	Address
BROOKLYN	159	1002	Entire Lot	UPPER 496 FULTON STREET

Property Type: COMMERCIAL CONDO UNIT(S)

x Additional Properties on Continuation Page

CROSS REFERENCE DATA

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

PARTIES

PARTY 1:

THE 486-496 FULTON STREET CONDOMINIUM
496 FULTON STREET
BROOKLYN, NY 11201

FEES AND TAXES

Mortgage		Filing Fee:	
Mortgage Amount:	\$	0.00	\$ 0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax:
Exemption:			\$ 0.00
TAXES: County (Basic):	\$	0.00	NYS Real Estate Transfer Tax:
City (Additional):	\$	0.00	\$ 0.00
Spec (Additional):	\$	0.00	
TASF:	\$	0.00	
MTA:	\$	0.00	
NYCTA:	\$	0.00	
Additional MRT:	\$	0.00	
TOTAL:	\$	0.00	
Recording Fee:	\$	463.00	
Affidavit Fee:	\$	0.00	



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

Recorded/Filed 12-14-2012 16:42

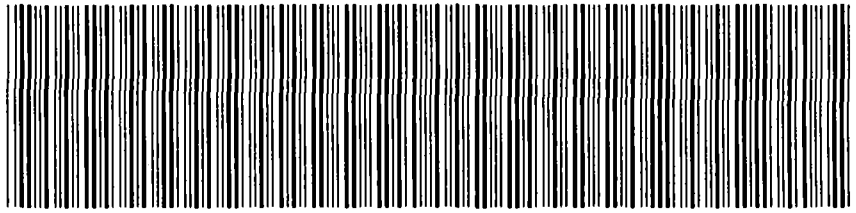
City Register File No.(CRFN):

2012000491699

Annette McMill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2012121400052001002C10C5

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 86

Document ID: 2012121400052001

Document Date: 10-10-2012

Preparation Date: 12-14-2012

Document Type: CONDO DECLARATION

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	159	1	Entire Lot	496 FULTON STREET
Property Type: APARTMENT BUILDING				

R

CONDOMINIUM NO. 3267



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
REAL ESTATE FINANCE BUREAU

January 5, 2011

Douglas Heller, Esq.
Herrick Feinstein LLP
2 Park Avenue
New York NY 10016

Re: 486-496 Fulton Street Condominium
Index No. NA11-0002 (2 units; mixed use)

Dear Mr. Heller:

The Department of Law has reviewed your application for a no-action letter submitted on January 4, 2011 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,

A handwritten signature in black ink, appearing to read "Marissa Piesman".

Marissa Piesman
Assistant Attorney General

R

CONDOMINIUM NO. 3267



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
REAL ESTATE FINANCE BUREAU

August 7, 2012

Douglas Heller, Esq.
Herrick Feinstein LLP
2 Park Avenue
New York NY 10016

Re: 486-496 Fulton Street Condominium
Index No. NA11-0002 (sale of upper unit)

Dear Mr. Heller:

The Department of Law has reviewed your application for a amended no-action letter concerning a transaction involving the above premises, submitted on August 2, 2012.

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,

A handwritten signature in black ink, appearing to read "Marissa Piesman".

Marissa Piesman
Bureau Chief, Real Estate Finance

DECLARATION OF CONDOMINIUM
ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP
OF THE PREMISES KNOWN AS AND HAVING A STREET ADDRESS OF

496 Fulton Street
Brooklyn, New York 11201

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

Name of Condominium

The 486-496 Fulton Street Condominium

Declarant
490 Fulton Owner LLC
c/o Reji G., Inc., 15 West 34th Street 8th Floor, New York, NY 10001

Date of Declaration: October 10, 2012

The land affected by the within instrument lies in

Block 159 formerly known as Lot 1,
now known as Lots 1001 and 1002
on the Tax Map of the County of Kings, City of New York

When Recorded Return to:

Attorneys for Declarant
Herrick, Feinstein LLP
2 Park Avenue
Brooklyn, New York 10016
Attn.: Douglas P. Heller, Esq.
(212) 592-1400

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Exhibit

- A Description of the Land
- B Description of the Units
- C Definitions
- D By-Laws

**DECLARATION
OF
THE 486-496 FULTON STREET CONDOMINIUM**

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

490 Fulton Owner LLC, a Delaware limited liability company, having an address at c/o Reji G., Inc., 15 West 34th Street, 8th Floor, New York, New York 10001 (hereinafter referred to as the "Declarant"), do hereby declare as follows:

ARTICLE 1

DEFINITIONS

All capitalized terms used in this Declaration (hereinafter referred to as the "Declaration") that are not otherwise defined in the Articles hereof will have the meanings set forth in Exhibit C annexed hereto, unless the context in which they are used will otherwise require.

ARTICLE 2

SUBMISSION OF THE PROPERTY

Declarant hereby submits the Property (as hereinafter defined) to the provisions of Article 9-B of the Real Property Law of the State of New York (as heretofore amended, and as the same may hereafter be amended from time to time, the "Condominium Law" and, pursuant thereto, does hereby establish a condominium to be known as The 486-496 Fulton Street Condominium (the "Condominium").

Excluded from the Property to the extent permitted by law are that portion of the Excess Floor Area Development Rights that are now owned, subsequently acquired or that may become available under the Zoning Resolution of the City of New York as provided in Article 18 hereof. Any Excess Floor Area Development Rights shall be retained by Declarant as owner of the Lower Unit. In no event may the size of the Building (as hereinafter defined) be increased through the use of the Excess Floor Area Development Rights by the Lower Unit Owner without the consent of the Upper Unit Owner, in its sole discretion, except as specifically provided in Section 5.5.8 of this Declaration.

ARTICLE 3

THE PREMISES

The Property hereby submitted to a condominium regime (the "Property") is comprised of (a) Declarant's interest in and to (x) the land more particularly described on Exhibit A annexed hereto (the "Land"), (y) the building and all other structures and improvements situated or to be erected on the Land (such structures and improvements being hereunder referred to as the "Building"), and (z) all Alterations (as hereinafter defined) hereinafter made to the Building (the Land, Building and Alterations are hereinafter collectively referred to as the "Premises"), and (b) all of the easements, rights and appurtenances belonging or appurtenant to any of the foregoing. The Building is a five (5) story structure containing approximately 225,000 gross square feet. The Building contains one partial sub-cellar level together with the unexcavated portion of the sub-cellar level which may be excavated and physically added to the Building structure at any time, one cellar level, and a ground floor lobby level with multiple retail spaces with entrances from both the lobby and the street, a private entrance for Upper Unit use, a loading dock and a service entrance for the use of the Lower Unit. The Building construction is steel and wood with exterior masonry walls with windows. The ground and second floor retail spaces contain glass and aluminum storefronts.

ARTICLE 4

THE BUILDING

The Building is composed of steel and wood construction. Exterior walls consist of masonry and windows, with glass and aluminum storefronts at the ground and second floors. The Building consists of one partial sub-cellar level (hereinafter referred to as the "Sub-cellar"), one cellar level (hereinafter referred to as the "Cellar"), a ground floor (hereinafter referred to as the "Ground Floor"), and floors two (2) through five (5) (each a "Floor") and a roof.

ARTICLE 5

THE UNITS

Section 5.1 There are two Units in the Condominium, one for commercial use with approximately seven stores, and one for residential use with approximately 70 dormitory units. These numbers may change if there are subsequent alterations. Exhibit B annexed hereto and made a part hereof sets forth the following data with respect to each Unit necessary for the proper identification thereof: (i) its Unit designation; (ii) tax lot number; (iii) approximate location in the Building; (iv) square foot area and (v) the percentage interest in the Common Elements appurtenant to such Unit. The location of each Unit and the Common Elements to which such Unit has immediate access is shown on the floor plans of the Building (the "Floor Plans") certified by Steven B. Rabinoff, Architect P.C. and approved by the Real Property Assessment Bureau of the City of New York and filed in the Kings County Office of the Register of the City of New York (hereinafter referred to as the "City Register's Office").

Section 5.2 One unit is located on portions of the sub-cellar, cellar, ground floor and floors three (3) through five (5) (hereinafter referred to as the "Upper Unit") and one unit is located on portions of the sub-cellar (including unexcavated portions), cellar, ground and second floors (hereinafter referred to as the "Lower Unit"). The Upper Unit and the Lower Unit are collectively referred to as the "Units" and individually as a "Unit."

Section 5.3 The owner of the Upper Unit is called the "Upper Unit Owner. The owner of the Lower Unit is called the "Lower Unit Owner." To the extent any of the Units are subdivided, the owners of the Upper Unit shall collectively be called the "Upper Unit Owner" and the owners of the Lower Unit shall collectively be called the "Lower Unit Owner." The Upper Unit Owner and the Lower Unit Owner are collectively referred to herein as the "Unit Owners" and individually as a "Unit Owner." In the event that any Unit is further subdivided as provided in this Declaration and the By-Laws, any reference herein or in the By-Laws to such Unit shall be deemed a reference to all units created as a result of such subdivision. The Upper Unit, together with the Upper Unit Limited Common Elements are collectively referred to as the "Upper Section" and the Lower Unit, together with the Lower Unit Limited Common Elements are collectively referred to as the "Lower Section."

Section 5.4 The Upper Unit consists of those portions of the Building and shown on the Floor Plans, except that the Upper Unit shall not include any General Common Elements or Limited Common Elements appurtenant to any other Unit that are located therein. The Upper Unit includes all Facilities, installations and equipment located within the Lower Unit (a) installed by or on behalf of the Upper Unit Owner or (b) which exclusively serve, benefit or are necessary for the existence, Maintenance, operation or safety of the Upper Unit. Additionally, the Upper Unit includes the following items:

5.4.1 Doors, door assemblies, windows, and other installations, if any, opening in the exterior walls of the Building solely accessing the Upper Unit, and skylight exclusively opening into the Upper Unit.

5.4.2 The bicycle storage room located in the Sub-Cellar as shown on the Floor Plans.

5.4.3 The lobby located on the First Floor having an entrance on Livingston Street which exclusively serves the Upper Unit.

5.4.4 Elevators No. 5 and No. 6, as designated and shown on the Floor Plans.

The Upper Unit shall not include any of the Common Elements located therein or any Facilities, plumbing, electrical, heating, venting and air conditioning work, machinery, or other materials and equipment used exclusively by any other Unit.

Section 5.5 The Lower Unit consists of those portions of the Building as shown on the Floor Plans, except that the Lower Unit shall not include any General Common Elements or Limited Common Elements appurtenant to any other Unit that are located therein. It also

includes all other Facilities, installations and equipment located within the Upper Unit (a) installed by the Lower Unit Owner or (b) which exclusively serve, benefit or are necessary for the existence, Maintenance, operation or safety of the Lower Unit. Additionally, the Lower Unit includes the following items:

5.5.1 All doors, door assemblies, windows, storefronts, and other installations, if any, opening in the exterior walls of the Building solely accessing the Lower Unit.

5.5.2 The vestibule and reception and related areas with entranceways.

5.5.3 The Staircases within the Lower Unit as shown on the on the Floor Plans and the stairwells and landings therefor as more particularly located on the Floor Plans.

5.5.4 The storage area in the Sub-Cellar.

5.5.5 A loading dock and related Easement Agreement, dated May 10, 2010 and recorded in the City Register's Office on June 8, 2010 CRFN 2010000190966, and an Amended and Restated Easement Agreement, dated May 28, 2010 and recorded in the City Register's Office on October 6, 2010 CRFN 2010000337434.

5.5.6 Elevator No. 1 and Service Elevator No. 3, as designated and shown on the Floor Plans.

5.5.7 Escalators Nos. 1,2,3 and 4 as designated and shown on the Floor Plans.

5.5.8 Unexcavated portions of the sub-cellar that may be excavated and developed to enlarge the Building in the existing footprint of the Building and to the adjacent vault space.

The Lower Unit shall not include any of the Common Elements located therein or any Facilities, plumbing, electrical, heating, venting and air conditioning work, machinery, or other materials and equipment used exclusively by any other Unit.

ARTICLE 6

DIMENSIONS OF UNITS

The approximate square foot area of each Unit will be measured horizontally from the outside (exterior face) of the exterior walls (perimeter mechanical pipes are not deducted from the measurement of each Unit) to the midpoint of the interior walls and the midpoint of partitions separating one Unit from another Unit or to the Unit-side of walls or other partitions separating a Unit from corridors, stairs, elevators and other mechanical equipment spaces that are part of the Common Elements or the exterior face of the opposite exterior walls.

ARTICLE 7

COMMON ELEMENTS

Section 7.1 The Common Elements of the Condominium consist of the General Common Elements and the Limited Common Elements. The General Common Elements include, but are not limited to, the Land, all parts of the Building and improvements thereon, except the Units and the Limited Common Elements, and all Facilities therein for the common use of the Units and the Unit Owners or which are necessary or convenient for the existence, Maintenance or safety of the Property. The Limited Common Elements of the Condominium (herein referred to as the "Limited Common Elements") consist of those Common Elements that serve or benefit exclusively (a) the Upper Unit or the Upper Unit Owner (in which event they are called "Upper Unit Limited Common Elements") or (b) the Lower Unit or the Lower Unit Owner (in which event they are called "Lower Unit Limited Common Elements"). The General Common Elements are appurtenant to, serve and benefit each Unit to the extent of such Unit's percentage share of the General Common Elements. The General Common Elements are for the common use of all Unit Owners. The Common Elements will remain undivided and no Unit Owner or other person will bring or will have the right to bring any action for partition or division thereof except as may be specifically provided for herein and in the By-Laws.

Section 7.2 The General Common Elements include the following:

7.2.1 The Land, (as more particularly described in Exhibit A attached to this Declaration) including, without limitation any alleys or rear yards, subject to unexcavated portions which are included in a Unit.

7.2.2 Any land lying in the bed of any street, road or avenue open or proposed, public or private, in front of or adjoining the Land, any award made or to be made in lieu thereof, any unpaid award for damage to the Land or the Building by reason of change of grade of any street, and any strips and gores bisecting, adjoining or adjacent to the Land.

7.2.3 All easements, rights of way, privileges, appurtenances and other rights appurtenant to or pertaining to the Property of record or set forth in Article 13 hereof, except those which by their terms or by the terms of this Declaration are appurtenant or pertain only to one or more Units (but not all Units).

7.2.4 All mechanical rooms and equipment which are not otherwise herein described as part of a Unit or Limited Common Element and including the following: In the sub-cellar, the mechanical room, the elevator machine room, the trash holding room, the ejector pit room, restrooms, the right to use sidewalk vaults leading directly to the mechanical service areas (including the sprinkler room, water room, telephone communication room and electrical room), locker rooms and corridors; On the ground floor, the exits, the entry / service corridor, the corridor accessing the loading

dock and stair No. 3, and the accessory service area. On the fifth floor, the elevator machine room.

7.2.5 Any other Facilities in the Building which serve or benefit or are necessary or convenient for the existence, Maintenance, operation or safety of all of the Units and/or the General Common Elements.

7.2.6 Floor slabs and ceiling slabs.

7.2.7 Structural Supports.

7.2.8 The roof except for the portions allocated as Limited Common Elements.

7.2.9 The halls, passages, corridors, landings, lobbies, shafts, shaftways, stairs, stairways (including, but not limited to, fire stairways), but excluding any of the aforesaid items which may otherwise herein be described (or shown on the Floor Plans) as a Limited Common Element or part of a Unit.

7.2.10 The sprinkler system, the common area electric meter for the service corridor and lights in the cellar, the domestic water pump and backflow preventer, any mechanicals for the shared elevator not set forth in Section 7.2.12 below, and all other Facilities serving all of the Units and which serve or benefit or are necessary or convenient for the existence, Maintenance, operation or safety of the Building.

7.2.11 Any sidewalks located on the Land that are exterior to the Building.

7.2.12 The passenger and service elevator designated "4" and on the Floor Plans (including the shafts and any mechanical equipment or room specifically therefore including the machine room over the elevator) as more particularly located on the Floor Plans.

7.2.13 The Exterior Facade of the exterior walls, except the retail storefronts.

Section 7.3 The Upper Unit Limited Common Elements consist of the following:

7.3.1 Floors and ceilings located within the Upper Unit, excluding the floor and ceiling slabs.

7.3.2 Girders, braces, trusses, beams, and supports and interior load bearing walls which are wholly located within the Upper Unit; provided, however, that the Structural Supports shall not be deemed a part of the Upper Unit Limited Common Elements.

7.3.3 Central and appurtenant installations not located within the Upper Unit for services such as heating, cooling venting, air-conditioning, plumbing, electrical work, including piping, pumps, ductwork, registers, fan coils, air vents, fittings diffusers, automatic temperature controls, fan motors and electrical wiring, and materials related to these installations which exclusively serve the Upper Unit.

7.3.4 Wiring, risers, feeders and electrical service switches, meter banks, the trash chute, and individual electrical panels not located within the Upper Unit which exclusively service the Upper Unit.

7.3.5 Telephone, television and all intercom and security system equipment, if any, not located within the Upper Unit exclusively servicing the Upper Unit, including all electrical components such as wiring, conduits, risers, vestibule call panel box and TV cameras and TV receivers.

7.3.6 Other Facilities that are located outside the Upper Unit to the extent that they exclusively serve the Upper Unit.

7.3.7 System of meters for electricity, gas, condenser water or air conditioning and water and sewer, which meters gauge the usage of such utilities exclusively by the Upper Unit

7.3.8 All Signs affixed to the Upper Unit Exterior Facade which exclusively serve the Upper Unit, it being acknowledged that the Upper Unit Owner shall have the right and an easement to install such Signs provided same are above the bottom of the third floor windows and not on the Fulton Street side of the Building, and provided that no advertising signage or signage advertising or identifying a retailer may be installed above other signage advertising or identifying a retailer.

7.3.9 Fire alarm system and meter.

7.3.10 The courtyards on the third floor, as shown on the Floor Plans.

7.3.11 If at any time requested by the Upper Unit Owner, a portion of the roof consisting of up to 5,000 square feet on the Livingston Street side of the Building to be used for purposes solely related to the use of the Upper Unit, such as an amenity for the tenant(s) or occupants of the Upper Unit or for installing satellite dishes (but not for the generation of revenues from persons other than the tenant(s) and occupants of the Upper Unit or any right to affix or install Signs); provided that the designation of such area shall not include the stairway to the roof or the immediate vicinity of the stairway to the roof or in any way block access, or restrict the right of the Condominium Board or the other Unit Owner or other party to use any other portion of the roof to the extent permitted by this Declaration or the By-Laws.

In addition to the foregoing, equipment that is located outside the Upper Unit that exclusively serves the Upper Unit shall be deemed Upper Unit Limited Common Elements.

Section 7.4 The Lower Unit Limited Common Elements consist of the following:

7.4.1 The ground floor retail entrance on Fulton Street.

7.4.2 Central and appurtenant installations not located within the Lower Unit for services such as heating, cooling venting, air-conditioning, plumbing, electrical work, including boilers, piping, pumps, ductwork, registers, fan coils, air vents, fittings diffusers, automatic temperature controls, fan motors and electrical wiring, existing flues as required by law and materials related to these installations which exclusively serve the Lower Unit.

7.4.3 Wiring, risers, feeders and electrical service switches, meter banks and individual electrical panels not located within the Lower Unit which exclusively service the Lower Unit.

7.4.4 Telephone, television and all intercom and security system equipment, if any, not located within the Lower Unit exclusively servicing the Lower Unit, including all electrical components such as wiring, conduits, risers, vestibule call panel box and TV cameras and TV receivers.

7.4.5 System of meters for electrical, gas condenser water for air conditioning and water and sewer, which meters gauge the usage of such utilities exclusively by the Lower Unit.

7.4.6 All signs affixed or to be affixed anywhere on the Exterior Façade on the Fulton Street side of the Building and below the third floor windows on all other sides of the Building which areas shall be exclusively for Lower Unit signage.

7.4.7 An existing kitchen exhaust fan and flue on the ground floor through the roof above the fifth floor, and the right to construct one or more fans and flues through existing chases in the Building or on the outside of the Building provided they do not materially adversely affect the Upper Unit Owner.

7.4.8 Fire alarm system and meter.

7.4.9 Vestibule on sub-cellar outside of Lower Unit service elevators.

7.4.10 The service elevator designated "2" and on the Floor Plans (including the shafts and any mechanical equipment or room specifically therefore including the machine room over the elevator) as more particularly located on the Floor Plans.

7.4.11 First floor service corridor and associated stairwells off Livingston Street.

7.4.12 First floor setback roof on Bond Street.

7.4.13 If at any time requested by the Lower Unit Owner, a portion of the roof consisting of up to 5,000 square feet on the Fulton Street side of the Building to be used for any legal purpose (but not for any use that materially adversely affects the Upper Unit Owner or materially interferes with the use and enjoyment of the Upper Unit by the Upper Unit Owner or the tenant(s) and occupant(s) thereof); provided that the designation of such area shall not restrict the right of the Condominium Board or the other Unit Owner or any other party to use any other portion of the roof to the extent permitted under this Declaration or the By-Laws.

In addition to the foregoing, other equipment that is located outside the Lower Unit that exclusively serve the Lower Unit shall be deemed Lower Unit Limited Common Elements.

ARTICLE 8

USE OF UNITS

Section 8.1 Except as otherwise provided herein or in the By-Laws, the Units may be used for any lawful purpose and for all uses accessory thereto, provided such use is permitted by law, and does not violate the certificate of occupancy for such Unit or any other governmental regulations, subject to the right to change the certificate of occupancy as hereinafter provided.

ARTICLE 9

ALTERATIONS, ADDITIONS, IMPROVEMENTS AND CHANGES TO THE UNITS

Section 9.1 Except to the extent prohibited by law, and except as otherwise provided in this Declaration and the By-Laws, including without limitation Section 5.9 through 5.13 of the By-Laws, each Unit Owner shall have the right, subject to the consent of the Condominium Board, not to be unreasonably withheld or delayed, to make structural alterations, additions, or improvements, whether ordinary or extraordinary, in, to and upon the interior of its Unit. Non-structural alterations, additions or improvements may be made without the consent of the Condominium Board provided the Unit Owner provides proof to the Condominium Board from a professional architect or engineer that the alterations, additions or improvements are non-structural.

Section 9.2 A Unit Owner, at such Unit Owner's sole cost and expense, may legally subdivide such Unit Owner's Unit without the approval of the other Unit Owners or the Condominium Board. In the event of such subdivision a Unit Owner may, subject to the approval of the Condominium Board, redesignate any portion of said Unit as a Limited Common

Element appurtenant to such Unit and/or any portion of a Limited Common Element appurtenant to such Unit as part of the Unit. Notwithstanding anything to the contrary set forth above, no subdivision of any Unit shall cause a change in the aggregate Common Interests appurtenant to any other Unit or have an adverse effect on other Unit Owners, without the consent of the affected Unit Owners, which shall not be unreasonably withheld or delayed.

ARTICLE 10

PERSON TO RECEIVE SERVICE

The Secretary of State of the State of New York is hereby designated to receive service of process in any action which may be brought against the Condominium. The Secretary of State shall send all process to Board of Managers, The 486-496 Fulton Street Condominium, c/o Reji G., Inc., 15 West 34th Street 8th Floor, New York, NY 10001. In the event that it receives such service, the Condominium Board shall promptly notify each Unit Owner.

ARTICLE 11

DETERMINATION OF PERCENTAGE INTERESTS IN COMMON ELEMENTS

The percentage interest of each Unit in the Common Elements as shown on Exhibit B has been based upon the 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.

ARTICLE 12

ENCROACHMENTS

If (a) any portion of the Common Elements encroaches upon any Unit or upon any other Common Element, (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements or (c) any such encroachments shall hereafter occur as a result of (i) settling or shifting of the Building, (ii) any alteration, repair or restoration of the Common Elements made in accordance with this Declaration and By-Laws or (iii) any alteration, repair or restoration of the Building (or any portion thereof) or of any Unit or Common Element after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event a valid easement shall exist for such encroachment and for the Maintenance of the same.

ARTICLE 13

ACCESS TO AND EASEMENTS RELATING TO COMMON ELEMENTS AND EASEMENT AREAS

Section 13.1 Except as otherwise set forth in this Declaration (i) each Unit Owner shall have a nonexclusive easement for the use of the General Common Elements located in any of the other Units or elsewhere on the Property including an easement to connect to existing utilities (e.g. gas, electricity, water, sewer and ventilation) and (ii) each Unit Owner shall have an easement for the use of the Limited Common Elements appurtenant to such Unit located in another Unit or elsewhere on the Property which serve such Unit Owner's Unit. Each Unit shall be subject to an easement in favor of all Unit Owners to use all General Common Elements located in or appurtenant to such Unit or elsewhere on the Property which serve other Units. In addition, the Condominium Board shall have an easement and a right of access within each Unit to inspect the same, to remove violations there from and to use, Maintain, repair or replace the General Common Elements contained therein or elsewhere in the Property. Notwithstanding anything else set forth in this Declaration, all easements and rights of access described in this Article shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business of the Unit Owners and their respective invitees or with the use of the Units for their permitted purposes, and each Unit Owner whose Unit is subject to the easements and rights of access described in this Article shall be reimbursed for reasonable actual out-of-pocket costs (but not consequential damages) incurred by said Unit Owner as a result of the exercise of the easements and rights of access hereunder, including, but not limited to, the cost of repairs to such Unit Owner's Unit and security measures. Such entries shall be permitted on reasonable notice, but in no event less than one (1) Business Day's notice, except that no notice will be necessary in the case of an Emergency Situation. Each Unit Owner shall have a right and easement to use the sidewalk and the ramps, stairways, entrances and exits constituting General Common Elements and any replacements thereof for the sole purpose of providing a means of ingress and egress to and from the Property and the respective Units and an approach to and from the public street.

Section 13.2 The Condominium Board shall have an easement to install, utilize, operate, Maintain, repair, alter, rebuild, restore and replace, renew, expand and relocate within the General Common Elements, any utilities servicing both Units and/or the General Common Elements including, without limitation, all Facilities located in the General Common Elements, together with a non-exclusive or an exclusive right and easement, as the case may be to utilize and receive services from said Facilities. The Condominium Board shall have the right to grant such additional electric, gas, telephone, internet, cable, television, steam, ventilation or other easements for utilities or otherwise construct any shafts, flues or install air conditioning compressors or other equipment or relocate any easements in any portion of the General Common Elements as the Condominium Board shall deem necessary or desirable for the proper operation and Maintenance of the Building or any portion thereof or for the general health or welfare of the Unit Owners and their respective Permittees. The Condominium Board shall initiate and consider the granting of easements at the behest of a Unit Owner. Notwithstanding the foregoing, in the event a proposed easement would have a material adverse effect on a Unit or the use thereof, easement shall not be granted without the consent of the Unit Owner of such Unit.

Section 13.3 The Condominium Board shall have access to any Unit or Common Elements to access such Facilities or Common Elements servicing the Units or the General Common Elements, as the case may be, or in furtherance of the foregoing easements which

access shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business within or use of the Units for their permitted purposes, except in cases of an Emergency Situation.

Section 13.4 Each Unit Owner shall have an easement and right of access within the other Unit or within the Common Elements to access and Maintain the Facilities servicing such Unit or in furtherance of the foregoing easements which access shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business within or use of the Units for their permitted purposes, except in cases of an Emergency Situation.

Section 13.5 The Upper Unit Owner shall have an exclusive easement to install, utilize, operate, Maintain, repair, alter, rebuild, restore and replace, renew, expand and relocate within the Upper Section, any Facilities servicing the Upper Section located therein, together with a right and easement, as the case may be, to utilize and receive services from said Facilities. The Upper Unit Owner or its agents, with respect to the Upper Section, shall have, and shall have the right to grant electric, gas, telephone, internet, cable, television, steam, ventilation or other easements for utilities or otherwise construct any shafts, flues or install air conditioning compressors or other equipment on any roof on which Facilities of the Upper Unit Owner are then located, provided that such Facilities do not materially interfere with the Maintenance of existing Facilities that service any other Unit Owner or both Unit Owners, or relocate any easements in any portion of the Upper Section, as the Upper Unit Owner, shall deem necessary or desirable for the proper operation and Maintenance of the Upper Section or for the general health or welfare of the owners, tenants and occupants of the Upper Unit or, provided such easements do not interfere with the Lower Unit, for its own profit from the revenues generated thereby. The Condominium Board may establish a policy to require that any or all actions taken pursuant to this Section 13.5 shall only be undertaken if it grants its approval, which approval shall not be unreasonably withheld or delayed.

Section 13.6 The Lower Unit Owner shall have an exclusive easement to install, utilize, operate, Maintain, repair, alter, rebuild, restore and replace, renew, expand and relocate within the Lower Section, any Facilities servicing the Lower Section located therein, together with a right and easement, as the case may be, to utilize and receive services from said Facilities. The Lower Unit Owner or its agents, with respect to the Lower Section, shall have, and shall have the right to grant electric, gas, telephone, internet, cable, television, steam, ventilation or other easements for utilities or otherwise construct any shafts, flues or install air conditioning compressors or other equipment on any roof on which Facilities of the Lower Unit Owner are then located, provided that such Facilities do not materially interfere with the Maintenance of existing Facilities that service any other Unit Owner or both Unit Owners, or relocate any easements in any portion of the Lower Section, as the Lower Unit Owner, shall deem necessary or desirable for the proper operation and Maintenance of the Lower Section or for the general health or welfare of the owners, tenants and occupants of the Lower Unit. The Condominium Board may establish a policy to require that any or all actions taken pursuant to this Section 13.6 shall only be undertaken if it grants its approval.

Section 13.7 Each Unit shall have an easement of support and of necessity from all other Units and the Common Elements and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

Section 13.8 Each Unit Owner shall have a right of emergency egress through passageways, emergency stairways and exits contained within any Unit, Limited Common Element or General Common Element, and each Unit shall be subject to the rights to use such passageways, stairways and exits for emergency egress.

Section 13.9 The Declarant shall be solely responsible at its sole cost and expense for maintaining the existing temporary certificate of occupancy for the Building in effect and for obtaining (expeditiously, and with reasonable diligence) a permanent certificate of occupancy for the Building and, for such purposes shall have such easements over the Units and Common Elements as may be required or convenient to renew such temporary certificate of occupancy or obtain a permanent certificate of occupancy, including the right to erect scaffolding and locate construction equipment. Without limiting the foregoing, the Declarant shall have the right, at reasonable times, at reasonable intervals and upon reasonable advance notice, to enter into the Property and any Unit therein to conduct any inspections as are necessary, required or otherwise appropriate in connection therewith. Without limiting the generality of the foregoing, all violations which must be corrected to facilitate obtaining a temporary or permanent certificate of occupancy shall be the responsibility of Declarant except if caused but the Upper Unit Owner (at such time as the Upper Unit Owner is not Declarant or an Affiliate of Declarant) or its tenant. Notwithstanding the foregoing, at such time as the Upper Unit Owner is not Declarant or an Affiliate of Declarant, if the Upper Unit Owner fails to cooperate with Declarant or takes any action that frustrates Declarant's ability to extend the temporary certificate of occupancy or obtain a permanent certificate of occupancy, the Upper Unit Owner shall be solely responsible for any delay or additional expense that results from such failure or action by the Upper Unit Owner.

Section 13.10 The Lower Unit Owner shall have an easement to affix Signs to the extent permitted pursuant to Section 7.4.6 hereof.

Section 13.11 The Lower Unit shall have an easement from the Cellar through the Ground, Second, Third, Fourth and Fifth Floors, to the Roof, to install a flue for a kitchen fan as permitted pursuant to Section 7.4.7 hereof.

Section 13.12 Each Unit Owner shall have, and each Unit and the Common Elements shall be subject to, an easement, (a) to install, utilize, operate, maintain, repair, alter, rebuild, restore and replace or otherwise access satellite dishes and other telecommunications or similar equipment on the applicable Limited Common Elements on the roof of the Building and elsewhere on the Common Elements (but not on a facade) and the conduits and other facilities relating thereto, and to retain any and all income derived therefrom, (b) to maintain any encroachment on any Unit, or any Common Elements or elsewhere on the Property resulting from the installation, operation, maintenance, repair, alteration, rebuilding, restoration or replacement thereof, provided the other Unit Owner is not materially adversely affected. Neither the Condominium nor the other Unit Owner shall be entitled to any portion of any fees,

compensation or other profits received by a Unit Owner or its assignees or licensees for the use of the aforesaid easements or equipment. Any satellite dishes or other telecommunications or similar equipment or other facilities placed upon the roof and the facade of the Building and elsewhere on the Common Elements by a Unit Owner shall be the exclusive property of that Unit Owner or its licensees or assignees, and neither the Condominium nor the other Unit Owner shall have any rights with respect thereto.

Section 13.13 The Upper Unit Owner shall have an easement on the first floor from the service corridor into Elevator No. 2 and into the sub-cellar vestibule accessing Elevator No. 2

Section 13.14 The Upper Unit Owner shall have an easement from Stair No. 4 to the cellar off Bond Street for access into generator room and sub-cellar mechanical rooms.

Section 13.15 The Upper Unit Owner shall have an easement for egress out of the first floor lobby on Fulton Street.

Section 13.16 The Lower Unit Owner shall have an easement through the Upper Unit lobby on Livingston Street for emergency egress.

Section 13.17 The Lower Unit Owner shall have an easement on the fifth floor for access to the elevator machine room on the fifth floor and Stair No. 1 to access the roof.

Section 13.18 Subject to the other terms and conditions of this Declaration, the requirements of law and the approval of the Declarant and the Condominium Board in its sole discretion, the Upper Unit Owner shall be permitted to install, place or permit to be installed or placed any Sign on the Building which does not interfere with the Lower Unit or any business conducted therein. Anything to the contrary contained in this Declaration notwithstanding, no Sign shall be installed on the exterior of the Building (i) which is pornographic and (ii) which is not consistent with any regulations promulgated under the Zoning Resolution of the City of New York. All items installed pursuant to this Section 13.18 shall be installed in accordance with all laws and kept clean and in good order and state of repair and appearance by and at the expense of the applicable Unit Owner. The Lower Unit Owner shall be permitted to place Signs on any construction scaffolding installed to perform Maintenance of the Exterior Facade or a permitted alteration, additions, or improvement in accordance with legal requirements. All scaffolding shall be erected by Unit Owners in accordance with the provisions of Section 5.13.12 of the By-Laws.

Section 13.19 Any easements granted to Declarant, the Condominium Board, any Unit or any Unit Owner under this Declaration and the By-Laws may be exercised by such Person's employees, agents, contractors, suppliers, utility providers, customers, guests, invitees, licensees, servants, tenants, subtenants, members, visitors and members, as the case may be, to the extent necessary to effectuate the purpose for the easement or as otherwise authorized pursuant to the Declaration or By-Laws. provided that the foregoing shall not relieve the Condominium Board or the applicable Unit Owner, as the case may be, from its obligations or liabilities with respect to such easements.

Section 13.20 Except in an Emergency Situation or in connection with obtaining a temporary or permanent certificate of occupancy (and except as otherwise provided in this Declaration and the By-Laws), the Maintenance, operation, replacement or relocation of any easements as aforesaid shall (i) not prevent or unreasonably interfere with the normal conduct of business of the tenants and occupants of the Units for their respective permitted purposes and (ii) not result in the imposition of any mechanic's lien against any of the Units. Any entry granted herein shall be at such times as are reasonably convenient and on reasonable prior notice (but not less than three (3) Business Days), except that no notice will be necessary in the case of an Emergency Situation. A Unit Owner whose Unit is subject to a right of entry may, from time to time, subject to the consent of the Condominium Board, impose reasonable security controls consistent with the Unit Owner's operation of its Unit and the rights of its invitees, if any, and any overall security system for the Property and shall have the right to have a representative present at all times during any such entry. Any company providing utilities or related services and its employees and agents shall have the right of access to any Unit or the Common Elements on behalf of a Unit Owner or the Condominium Board in furtherance of the aforementioned easements of such Unit Owner to in order to install, Maintain, operate, repair, replace and service same, subject to the limitations on such easements set forth in this Section 13.20 and elsewhere in the Declaration.

Section 13.21 Subject to the foregoing restrictions, the Condominium Board and each Unit Owner shall have the right, at reasonable times, at reasonable intervals and upon reasonable advance notice, to enter into the Property and any Unit therein to inspect the structural condition of the Building, and the Facilities that the inspecting party is permitted or required to Maintain; provided, however, that only such notice as shall be practicable under the circumstances (including no notice) shall be required in the event of an Emergency Situation.

ARTICLE 14

NAME OF CONDOMINIUM AND BUILDING

The Condominium shall be designated and known as "The 486-496 Fulton Street Condominium." The Building shall not otherwise be designated and known by any other name except with the consent of all Unit Owners, except that the Building may also be referred to as "496 Fulton Street."

ARTICLE 15

ACQUISITION OF UNITS BY THE CONDOMINIUM BOARD

If (i) any Unit Owner surrenders its Unit, together with its Appurtenant Interest, to the Condominium Board pursuant to the terms of Section 339-x of the Condominium Act, or (ii) the Condominium Board, pursuant to the terms of the By-Laws or otherwise, either (x) acquires or leases any Unit, together with its Appurtenant Interest, or (y) purchases any Unit, together with its Appurtenant Interest, at a foreclosure or other similar sale, then, in any such event, the title, as the case may be, in and to such Unit and such Appurtenant Interest shall be held by the Condominium Board or its designee, corporate or otherwise, on behalf of the remaining Unit

Owners in proportion to their respective interests in the General Common Elements. Any deed to the Condominium Board or its designee or any lease or sublease by the Condominium Board or its designee shall be held by the Condominium Board or such designee, corporate or otherwise, on behalf of the remaining Unit Owners, in proportion to their respective Common Interests.

ARTICLE 16

COVENANTS RUNNING WITH THE LAND

Section 16.1 All provisions of this Declaration, the By-Laws and the Rules and Regulations which are annexed hereto and made a part hereof, including, without limitation, the provisions of this Article, shall to the "extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to, the benefit of the owner of all or any part thereof, or interest therein, and such Unit Owner's heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in or for the benefit of the general public or any other third parties. All present and future owners, tenants, subtenants, licensees, and other occupants and users of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations, as they may be amended from time to time and any restrictions and limitations with respect to the Property and the Units set forth in this Declaration, the By-Laws and the Rules and Regulations apply to all such future owners, tenants, subtenants, licensees, and other occupants and users of the Units. The acceptance of a Deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every Deed or conveyance or lease or use and occupancy agreement thereof.

Section 16.2 If any provision of this Declaration or the By-Laws is invalid under, or would cause this Declaration and the By-Laws to be insufficient to submit the Property to the provisions of, the Condominium Act, such provision shall be deemed deleted from this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act but shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property and their 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 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. If any provision which 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 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.

Section 16.3 Subject to Section 16.2, if this Declaration and the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the provisions of this Declaration and the By-Laws shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property, and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under applicable law to the extent permitted under such 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.

ARTICLE 17

AMENDMENTS OF DECLARATION

Section 17.1 Except as otherwise provided in this Article 17 or the By-Laws, or except as may otherwise be required by law, any provision of this Declaration may be amended, modified, added to, or deleted only by the unanimous vote of Unit Owners taken in accordance with the provisions of the By-Laws. Notwithstanding the foregoing, in the event a Unit Owner in default of (i) its obligation to pay Common Charges, (ii) Maintain the Limited Common Elements appurtenant to such Units or (iii) any other material obligation of this Declaration, and such default shall have continued in each case, for ten (10) days after the defaulting Unit Owner receives notice thereof, the vote of such Unit Owner shall not be required for the addition to, amendment, modification or deletion of any provision of this Declaration.

Section 17.2 No such amendment, modification, addition, or deletion shall be effective until executed and acknowledged by all Unit Owners and recorded in the City Register's Office.

Section 17.3 Notwithstanding the foregoing: (a) any provision of this Declaration benefiting, protecting or otherwise affecting only the Upper Unit or the Upper Unit Owner may be added to, amended, modified or deleted by the Upper Unit Owner without the consent of the Lower Unit Owner and (b) any provision of this Declaration benefiting, protecting or otherwise affecting only the Lower Unit or the Lower Unit Owner may be added to, amended, modified or deleted by the Lower Unit Owner without the consent of the Upper Unit Owner. No such amendment, modification, addition or deletion shall be effective (x) unless the Unit Owner proposing such amendment, addition, modification, addition or deletion shall have provided the Condominium Board and the other Unit Owner for its review at least thirty (30) days prior written notice of its proposed amendment, modification or deletion, along with a certification that such amendment, modification, addition or deletion does not affect the other Unit, and (y) until recorded in the City Register's Office. Any such amendment, modification, addition or deletion shall be executed by any officer as representative of the Condominium Board as attorney-in-fact for the Unit Owners, coupled with an interest, and the officer is hereby authorized by such Unit Owners so to act as their attorney-in-fact. The Unit Owner(s) seeking any such amendment, modification, addition or deletion shall be responsible for any costs

associated therewith. Any dispute as to whether a proposed amendment, modification or addition affects the other Unit shall be submitted to arbitration as provided in the By-Laws.

Section 17.4 To the extent any changes to the Building and to this Declaration are made to obtain a temporary or permanent certificate of occupancy, Declarant shall amend the Declaration and Floor Plans solely to reflect such changes (and record an amendment to the Declaration solely reflecting that the Floor Plans have been so modified), all at Declarant's sole cost and expense, subject to the provisions of Section 13.9 hereof, without the consent of any Unit Owner or the Condominium Board, but upon not less than fifteen (15) days prior written notice to each Unit Owner accompanied by a complete set of the Floor Plans that are to be amended and the proposed amendment to the Declaration.

ARTICLE 18

FLOOR AREA DEVELOPMENT RIGHTS

Section 18.1 Each Unit Owner and the Board of Managers shall execute any zoning lot merger, declaration of zoning lot restrictions, zoning lot development agreement, easement for light and air, or other document or instrument required by the owner of all or any portion of the Excess Floor Area Development Rights to effectively utilize them, provided that such use does not violate the restrictions set forth in the Declaration or By-Laws. In order to assure compliance with this provision, each Unit Owner, by accepting a deed or otherwise succeeding to title to a Unit, and the Board of Managers shall be deemed to have granted to Declarant, its successors or assigns, an irrevocable power of attorney, coupled with an interest, to execute, acknowledge and deliver any such zoning lot merger, declaration of zoning lot restrictions, zoning lot development agreement, easement for light and air, or other document or instrument. This Article is subject to the limitation on increasing the size of the Building set forth in Article 2 hereof.

Section 18.2 The ownership of the Excess Floor Area Development Rights has been retained by Declarant as the owner of the Lower Unit. The Excess Floor Area Development Rights are transferable by Declarant and any subsequent owner thereof. Each Unit Owner, by accepting a deed to his Unit, shall be deemed to have waived the right to appear in opposition before any community board or governmental or quasi-governmental authority to oppose in any manner the use or proposed use, on any other property, of any Excess Floor Area Development Rights.

Section 18.3 Upon demand of the Declarant or any subsequent owner thereof of all or any portion of the Excess Floor Area Development Rights, each Unit Owner and the Condominium Board shall execute any zoning lot merger, declaration of zoning lot restrictions, zoning lot development agreement, easement for light and air, and/or any other document(s) or instrument(s) reasonably required by the owner of all or any portion of the Floor Area Development Rights in order that (i) the owner of such rights may effectively transfer them to any Person(s) designated by such owner; and (ii) such Person(s) may effectively utilize such rights. In order to assure compliance with this provision, each Unit Owner, by accepting a deed or otherwise succeeding to title to a Unit, and the Condominium Board shall be deemed to have granted to each owner of the Floor Area Development Rights or any portion thereof, an

irrevocable power of attorney, coupled with an interest, to execute, acknowledge and deliver any such zoning lot merger, declaration of zoning lot restrictions, zoning lot development agreement, easement for light and air, and any other document or instrument.

ARTICLE 19

TERMINATION OF CONDOMINIUM

The Condominium shall continue and the Property shall not be subject to an action for partition (unless terminated by casualty loss, condemnation or eminent domain, as more particularly provided in the By-Laws) until such time as withdrawal of the Property from the provisions of the Condominium Act is authorized by a vote of all Unit Owners. In the event said withdrawal is authorized as aforesaid, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid from out of such Unit Owner's share of such net proceeds all liens on such Unit Owner's Unit, in the order of priority of such liens.

ARTICLE 20

WAIVER

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

ARTICLE 21

CAPTIONS

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

ARTICLE 22

CERTAIN REFERENCES

Section 22.1 A reference in this Declaration to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural and vice versa, unless the context otherwise requires.

Section 22.2 The terms "herein," "hereto" or "hereunder" or similar terms used in this Declaration refer to this entire Declaration and not to the particular provision in which the terms are used, unless the context otherwise requires.

Section 22.3 Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of this Declaration.

ARTICLE 23

SEVERABILITY

Subject to the provisions of 16.2 and 16.3, if any provision of this Declaration is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Declaration and the applicability of such provision, to other persons or circumstances shall not be affected thereby. Each provision of this Declaration shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.

ARTICLE 24

COVENANT OF FURTHER ASSURANCES

Section 24.1 Any party which is subject to the terms of this Declaration and the By-Laws, whether such party is a Unit Owner, a lessee or sublessee of a Unit Owner, an occupant of a Unit, a member of the Condominium Board or an officer of the Condominium or otherwise, shall, upon prior reasonable written request, at the expense of any such other party requesting the same (including, without limitation, reasonable attorney, architectural and engineering fees), execute, acknowledge and deliver to such other party such instruments, in addition to those specifically provided for herein, and take such other action as such other party may reasonably request to effectuate the provisions of this Declaration and the By-Laws or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

Section 24.2 If the Condominium Board, any Unit Owner, or any other party which is subject to the terms of this Declaration fails, within five (5) Business Days after request therefor, to execute, acknowledge or deliver any instrument which such Unit Owner or party is required to take pursuant to this Declaration or the By-Laws, then each of the Condominium Board or the other Unit Owner is hereby authorized as attorney-in-fact for such non-compliant Unit Owner or other party, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action in the name of such Unit Owner or other party and such document or action shall be binding on such Unit Owner or other party.

Section 24.3 If the Condominium Board or any Unit Owner fails to comply with any legal or contractual obligations of the Condominium Board or such Unit Owner, as the case may be, under this Declaration, By-Laws or the Rules and Regulations (hereinafter referred to as the "Defaulting Party") and such failure has a material adverse effect upon the non-defaulting Condominium Board or the other Unit Owner (hereinafter referred to as the "Creditor Party"), the Creditor Party shall have the right to perform or pay the same (without limiting any of its other rights or remedies) provided the Creditor Party shall have given notice to the Defaulting Party and the Defaulting Party fails to cure any monetary default within ten (10) days after such notice from the Creditor Party or fails to commence to cure any non-monetary default within a

period of ten (10) days after such notice thereof from the Creditor Party and does not thereafter proceed with reasonable diligence and continuity to cure such non-monetary default. The aforesaid notice shall not be required as a condition to the exercise by the Creditor Party of its rights in an Emergency Situation, provided, that the Creditor Party shall notify the Defaulting Party immediately after the exercise of any of its rights hereunder.

Section 24.4 With respect to any period during which a Creditor Party is performing any obligation or making any payment which the Defaulting Party is required to, but has failed to perform or failed to make, the Defaulting Party shall make payments to the Creditor Party as follows: the Defaulting Party shall reimburse the Creditor Party for all costs and charges incurred by the Creditor Party on behalf of the Defaulting Party, plus all reasonable out-of-pocket costs and expenses incurred by the Creditor Party in connection therewith, without duplication, together with interest on all of the foregoing at the Default Rate from the date of the payment or performance of the obligation by the Creditor Party or due date (if otherwise provided herein), until fully paid by the Defaulting Party. The Creditor Party may bill the Defaulting Party therefor at any time. In any circumstance where the Defaulting Party is the Condominium Board and the Creditor Party is the Upper Unit Owner, any additional amounts incurred by reason of the Condominium Board's default (provided the Upper Unit Owner or its representatives on the Condominium Board did not approve or agree to the actions or omissions giving rise to the default) which would not have been incurred if the Condominium Board had performed its obligations hereunder shall be the sole responsibility of the Lower Unit Owner and shall not be deemed Common Charges or Common Expenses. Funds expended by the Creditor Party plus interest earned thereon, as aforesaid, shall be deemed a charge assessed against the Defaulting Unit Owner's Unit and the failure to make such reimbursement shall be deemed a default in the payment of Common Charges subject to the provisions governing such defaults as set forth in the Condominium Act and the By-Laws and the Condominium Board, upon receipt of such funds from the Defaulting Party shall promptly reimburse the Creditor Party. In the event that the Creditor Party is a Unit Owner and the Condominium Board fails to take prompt action to collect such Common Charges and enforce its lien rights, the Creditor Party shall be deemed to have, among other things, an assignment from the Condominium Board, of its lien rights as set forth in the Condominium Act and the By-Laws.

Section 24.5 No Unit Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to the Declaration and/or the By-Laws, other than an obligation requiring the payment of a sum of money, if and as long as non-performance of such obligation shall be directly caused by an Unavoidable Delay (as hereinafter defined). As used herein, the term "Unavoidable Delays" means delays resulting from any and all causes beyond a Unit Owner's reasonable control, including, without limitation, delays resulting from actions or inactions of the other Unit Owner (provided such are not themselves the result of actions or inactions by the Unit Owner obligated to perform), governmental restrictions, labor disputes (including strikes, slowdowns and similar labor problems), accident, mechanical breakdown, shortages or inability to obtain labor, fuel, water, electricity or materials, acts of God (including inordinately severe weather conditions), removal of hazardous materials, enemy action, civil commotion, fire or other casualty, of which the Unit Owner required to perform has given the other Unit Owner(s) notice within thirty (30) days after such Unit Owner knows of same. Notwithstanding the foregoing, inability to obtain funds shall not be an "Unavoidable Delay".

The time limit for performance shall be extended for a period equal to the period of any such Unavoidable Delay. However, if non-performance is due to an Unavoidable Delay which does not affect the other Unit Owner's self-help remedy which may otherwise be exercised for such non-performance, then notwithstanding such Unavoidable Delay, such other Unit Owner shall be entitled to exercise such self-help remedy with respect to those obligations to have been performed by the Non-Performing Unit Owners (as hereinafter defined) which are the subject of an Unavoidable Delay provided that, except in an Emergency Situation, the Unit Owner entitled to such self help remedy shall have first given notice to the Non-Performing Unit Owner and such non-performance shall remain uncured for a period of ten (10) days after receipt of such notice. The Unit Owner unable to perform (in this Section 24.5, the "Non-Performing Unit Owner") shall notify the other Unit Owner(s) in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Unit Owner shall, from time to time upon written request of the other Unit Owner(s), keep such other Unit Owner(s) fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

ARTICLE 25

SUCCESSORS AND ASSIGNS

Except as set forth herein or in the By-Laws to the contrary, the rights and/or obligations of the Condominium Board and the Unit Owners shall inure to the benefit of and be binding upon any successor or assign of the Condominium Board and the Unit Owners and shall constitute and be enforceable with respect to the Property as a covenant running with the Land, subject to the provisions of Section 16.3 hereof.

ARTICLE 26

INCORPORATION BY REFERENCE

The terms, covenants, conditions, descriptions and other information contained in (i) the property description annexed hereto as Exhibit A; (ii) the description of the Units annexed hereto as Exhibit B; (iii) the definitions annexed hereto as Exhibit C; (iv) the By-Laws annexed hereto as Exhibit D; and (iv) the Floor Plans are each incorporated herein by this reference and made a part of this Declaration as if set forth at length in the text hereof.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the
10 day of October, 2012.

490 FULTON OWNER LLC

By: [Signature]

Name: Richard Chera

Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : ss.
COUNTY OF Queens)

On the 10th day of October in the year 2012 before me, the undersigned, personally appeared Richard Chera, personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and by his/her signature on the instrument, the individuals, or the person on behalf of which the individual acted, executed the foregoing instrument.

[Signature]
Notary Public

ROBIN HOLLAND *Lunnor*
Notary Public, State of New York
No. 4967017
Qualified in Queens County
Commission Expires May 21, 2014

**EXHIBIT A TO THE DECLARATION OF THE 486-496 FULTON STREET
CONDOMINIUM**

**496 Fulton Street
Brooklyn NY
Block 159, Lot 1**

DESCRIPTION OF THE LAND

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

BEGINNING at the corner formed by the intersection of the westerly side of Bond Street (65 feet wide) with the northerly side of Livingston Street;

RUNNING THENCE northerly, along the westerly side of Bond Street (65 feet wide), 293 feet 5 inches to the corner formed by the intersection of the westerly side of Bond Street with the southerly side of Fulton Street;

RUNNING THENCE westerly, along the southerly side of Fulton Street, 124 feet 6 inches to a point;

RUNNING THENCE southerly, parallel with Bond Street and part of the distance through a party wall, 294 feet 10 1/4 inches to the northerly side of Livingston Street;

RUNNING THENCE easterly, along the northerly side of Livingston Street, 124 feet 6 inches to the corner formed by the intersection of the westerly side of Bond Street (65 feet wide) with the northerly side of Livingston Street, the point or place of **BEGINNING**.

EXHIBIT B TO THE DECLARATION OF THE 486-496 FULTON STREET CONDOMINIUM

496 Fulton Street
Brooklyn NY
Block 159, Lot 1

DESCRIPTION OF UNITS

UNIT	TAX LOT	UNIT AREAS Sq. Ft.	LIMITED COMMON AREAS Sq. Ft.	COMMON AREAS Sq. Ft.	TOTAL Sq. Ft.	COMMON INTEREST	FLOOR/LOCATION OF THE UNIT	COMMON AREAS TO WHICH UNIT HAS IMMEDIATE ACCESS
Lower Unit	1001	108,257	8,538	5,057	121,852	52.40%	Part of Sub-Cellar, Cellar, 1 st and 2 nd Floor	Retail entrance
Sub-Cellar		8,703	964					
Cellar		34,554	514					
1st		32,463	4,032					
2nd		32,537	3,028					
3rd								
4th								
5th								

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Upper Unit	1002	95,388	5,177	2,165	102,730	47.60%	Part of Sub-Cellar, Cellar, Floors 1-5	Floors and ceilings
Sub-Cellar		1,114						
Cellar		163						
1st		912						
2nd		163						
3rd		33,685	4,653					
4th		29,809						
5th		29,542	524					
Total		203,645	13,715	7,222	224,582	100.0%		

COMMON AREA DISTRIBUTION BY FLOOR

FLOOR	COMMON AREA	TOTAL PER FLOOR
Sub-Cellar	3,126	13,907
Cellar	317	35,568
1st	791	38,198
2nd	1,080	36,808
3rd	605	38,943
4th	606	30,415
5th	677	30,743
Total	7,222	224,582

EXHIBIT C

DEFINITIONS

For convenience of presentation, definitions of certain of the terms used in the Declaration and/or By-Laws are set forth below:

“Adversely affect,” or “adverse effect,” shall mean, with respect to any action or proposed change and with respect to any Unit Owner or Unit Owners and their Unit or Units, that such action or change could, if realized, (i) materially increase the Common Charges payable by such Unit Owner or Unit Owners, (ii) materially interfere with such Unit Owner’s access to its Unit or Units, including the elimination of fire exits required by law, (iii) obstruct or degrade the view from the windows of such Unit Owner’s Unit, (iv) otherwise materially diminish such Unit Owner’s use and enjoyment of its Unit or Units or (v) reasonably diminish or damage the value of such Unit or the marketability or the ability of the Unit Owner thereof to obtain financing therefor. In the event of a dispute as to whether a Unit Owner or Unit has been adversely affected, the issue may be resolved through expedited arbitration as set forth in the By-laws.

“Affected Owner” shall have the meaning set forth in Section 5.9.4 of the By-Laws.

“Affiliate” shall mean a Person which owns more than 50% of the legal and beneficial interest of Unit Owner or of any partner or member thereof, a Person with respect to which either Unit Owner or any partner owns more than 50% of the legal and beneficial interest, or a Person as to which more than 50% of its legal and beneficial interest is owned by a Person which owns more than 50% of the legal and beneficial interest of Unit Owner or of any partner or member thereof.

“Altering Owner” shall have the meaning set forth in Section 5.9.4 of the By-laws.

“Appurtenant Interest” refers to, with respect to a Unit, the proportionate undivided interest of the owner thereof, pursuant to the terms of Section 339-i of the Condominium Act, in and to: (i) the Common Elements; (ii) any Unit owned or leased at the time in question by the Condominium Board or its designee, corporate or otherwise; (iii) any proceeds of the sale or lease of the Unit of the nature described in subdivision (ii) above; and (iv) any other assets of the Condominium.

“Building” shall have the meaning set forth in Article 3 of the Declaration.

“Business Day(s)” refer to any day other than a Saturday, Sunday or a legal holiday under the laws of the State of New York.

“By-Laws” refers to the By-Laws governing the operations of the Condominium, which are set forth as Exhibit D of the Declaration.

“City Register’s Office” shall have the meaning set forth in Article 5 of the Declaration.

“Common Charges” refers to the assessments payable to the Condominium Board by the Unit Owners for the purpose of meeting the Common Expenses.

“Common Elements” refers to the Land and all parts of the Building and improvements thereon, excluding the Units, as more particularly described in Article 7 of this Declaration.

“Common Expenses” shall have the meaning set forth in Section 5.1.1 of the By Laws.

“Common Interest” refers to the proportionate undivided interest, expressed as a numerical percentage, of each Unit Owner in the Common Elements. The total of the Common Interest percentages of all Unit Owners equals 100%. The Common Interest of a Unit is the basis for determining, among other things, such Unit Owner’s (1) undivided interest in the Common Elements, and (ii) share of any distributions upon termination of the Condominium. The Common Interest attributable to each Unit is set forth on Exhibit B annexed to this Declaration.

“Condominium” refers to The 486-496 Fulton Street Condominium.

“Condominium Act” refers to the New York Condominium Act, as amended from time to time, and presently found in the New York Real Property Law, Article 9B.

“Condominium Board” refers to the governing body of the Condominium, whose members shall be selected pursuant to the terms of Article 2 of the By-Laws.

“Creditor Party” shall have the meaning set forth in Section 24.3 of the Declaration.

“Declarant” refers to 490 Fulton Owner LLC and its successor and assigns.

“Declaration” refers to the instrument creating the Condominium, as the same may be amended from time to time.

“Defaulting Party” shall have the meaning set forth in Section 24.3 of the Declaration.

“Default Rate” refers to a rate of interest equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by Citibank, N.A., at its New York City office or any successor thereto as its base or reference rate of interest (or such other lender as may be selected by the Condominium Board if Citibank, N.A. ceases to publish such a rate) or (b) the then maximum lawful rate of interest permitted by law in the State of New York.

“Emergency Situation” refers to a situation (a) impairing or imminently likely to impair structural support of any portion of the Building or causing or imminently likely to cause bodily injury to persons or physical damage to the Building or any property in, on, under, within, upon or about the Building, (b) causing or imminently likely to cause loss of any utility, elevator

service or other essential services to the Building or (c) causing or imminently likely to cause interference (other than de minimis interference) with ingress to and egress from the Building.

“Excess Floor Area Development Rights” shall mean all of the Floor Area Development Rights appurtenant to the Land on the date hereof in excess of the Floor Area Development Rights utilized by the Building on the date hereof, together with all Floor Area Development Rights and all other development rights pertaining to the Land arising on or after the date hereof by any means, including without limitation, a modification of or amendment to the Zoning Resolution of the City of New York (the “Zoning Resolution”) or other change in existing law.

“Exterior Facade” means the outer portion of the Building above grade, including, but not limited to, masonry, aluminum or other skin materials, walls or parapets, whether or not visible from street level.

“Facilities” refers without being limited to, annunciators, antennae, boxes, brackets, cables, coils, conduits, controls, control centers, cooling towers, couplers, devices, ducts (including, without limitation, heating, ventilating, air conditioning and plumbing equipment), fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switch gears, systems, tanks, transformers, valves and wiring, used in providing services from time to time in any part of the Building, including, without being limited to, air conditioning, alarm, antenna, circulation, cleaning, communication, computers, cooling, electric, elevators, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, and any replacements thereof.

“Floor Area Development Rights” refers to the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop the zoning lot by erecting thereon a structure or structures with a total floor area determined (i) by multiplying the area of the zoning lot by the maximum allowable floor area ratio for structures in the zoning district or districts in which such zoning lot is located, (ii) by the inclusion of any available bonus floor area, and (iii) by the further inclusion of any use, bulk, density and other development rights permitted under the Zoning Resolution and which may be authorized to be developed by the appropriate agency of the City of New York from time to time.

“Floor Plans” refers to the floor plans of the Building, as the same may be amended from time to time, which are approved by the Real Property Assessment Department of The City of New York and filed with the City Register’s Office.

“General Common Elements” shall mean those Common Elements that are not Limited Common Elements as described in Section 7.1 and 7.2 of the Declaration.

“Hazardous Material(s)” refers to all petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise, including, but not limited to, those

materials defined as “hazardous substances,” “extremely hazardous substances,” “hazardous chemicals,” “hazardous materials,” “toxic substances,” “solid waste,” “toxic chemicals,” “air pollutants,” “toxic pollutants,” “hazardous wastes,” “extremely hazardous waste,” or “restricted hazardous waste” by Hazardous Materials Law or regulated by Hazardous Materials Law in any manner whatsoever from time to time.

“Hazardous Materials Law(s)” refers to all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other binding governmental requirements and any court judgments applicable to Unit Owners, the Condominium or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property as same may be in effect from time to time.

“Impacted Owner” shall have the meaning set forth in Section 5.9.8 of the By-Laws.

“Insurance Trustee” shall receive certain insurance proceeds as described in Section 10.5 of the By-Laws.

“Land” shall have the meaning set forth in Article 3 of the Declaration.

“Limited Common Elements” refers to, individually or collectively, the Upper Unit Limited Common Elements and/or the Lower Unit Limited Common Elements, as the context may require.

“Lower Unit Limited Common Elements” refers to those Common Elements which serve or benefit exclusively the Lower Unit or the Lower Unit Owner as more particularly described in Section 7.4 of the Declaration and the Floor Plans.

“Lower Unit Elevators” shall mean the elevator or elevators serving the Lower Unit identified in Section 5.5.6 of the Declaration.

“Lower Section” shall mean the Lower Unit and any areas on the Property that are Lower Unit Limited Common Elements.

“Lower Unit” shall have the meaning set forth in Section 5.2 of the Declaration.

“Lower Unit Owner” shall holder of the deed for the Lower Unit.

“Maintenance or Maintain” refers to the Maintenance, operation, repair, reconditioning, refurbishing, inspection, testing, cleaning, painting, installation, alteration, addition, reconstruction, restoration and replacement as and when necessary or desirable of any portion of the Property, Building or Facilities.

"Permitted Mortgage" refers to a mortgage secured by a Deed which the Condominium Board has received notice in accordance with the provisions of the By-Laws.

"Permitted Mortgagee" refers to the holder of any Permitted Mortgage.

"Permittee(s)" refers to all Persons entitled by Deed, indenture, assignment, lease, license or other agreement to use or occupy space within the Building, and including without limitation, their contractors, guests, invitees and licensees, it being understood that the term "Permittees" shall in no event or under any circumstance create or be deemed to create any rights hereunder generally to members of the general public.

"Person" refers to an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any Federal, State, County or municipal government, or any bureau, department, agency, authority or subdivision thereof and any beneficiaries, officers, directors, employees, agents, partners, shareholders, or fiduciaries thereof acting in such capacity on behalf of any of the foregoing.

"Property" shall have the meaning set forth in Article 3 of the Declaration.

"Recognized Mortgagee" shall mean a Permitted Mortgagee that is (a) a savings and loan association; (b) a savings bank; (c) a commercial bank or trust company; (d) an insurance company; (e) an educational, state, municipal or similar public employees' welfare, pension or retirement fund or system or any other corporation or organization subject to supervision and regulation by the insurance or banking departments of any State of the United States or the United States Treasury, or any successor department or departments hereafter exercising the same functions as said departments; (f) an investment banking firm or other financial institution, a real estate investment trust, an institution that qualifies as a REMIC under the Internal Revenue Code of 1986, as amended (whether any of the foregoing shall be acting individually or in any fiduciary capacity); (g) any sovereign wealth fund; (h) any governmental agency or entity insured by a governmental agency; (i) a commercial credit corporation, mutual fund, opportunity fund, merchant bank or other investment company, "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act to 1933, as amended, real estate investment entity, trustee or issuer of collateralized mortgage obligations, or hedge fund; or (j) any entity substantially similar to any of the foregoing and which is generally commercially treated as an institutional investor or any other entity all of the equity owners of which are Institutional Lenders under another clause of this definition; provided any of the foregoing Persons in clauses (a) through (j) inclusive shall be subject to service of process within the United States of America and shall either (x) have (or have an Affiliate which has) a net worth or a combined capital, surplus and undivided profits (as shown by its most recent financial statement) or managed funds of at least \$100,000,000, as adjusted every five (5) years to reflect any increase in CPI, or (y) otherwise be reasonably satisfactory to the Owners, by Supermajority Approval."

"Rules and Regulations" refers to the rules and regulations made in accordance with the By-Laws and attached thereto as Schedule A.

"Signs" refers to any and all signs, awnings, canopies, marquees, banners, flags, pennants, aerals, antennas or the like located in any Unit or upon any Common Elements.

"Special Assessments" shall have the meaning set forth in Section 5.1.3 of the By-Laws.

"Structural Supports" refers to all elements (including, without limitation, foundations, structural columns, slabs, girders, beams, braces, trusses and walls) which are load bearing or which are necessary for the structural integrity of any portion of the Building that is outside of the Unit in which they are located.

"Unavoidable Delays" shall have the meaning set forth in Section 24.5 of the Declaration.

"Unit" or "Condominium Unit" refers to a space designated as the Upper Unit or the Lower Unit in the Declaration and all such Units are collectively referred to as "Units."

"Unit Owner" refers to either the Upper Unit Owner or the Lower Unit Owner at the time in question and all such Unit Owners are collectively referred to as the "Unit Owners."

"Upper Unit Elevators" refers to the elevators serving the Upper Unit as identified in Section 5.4.4 of the Declaration.

"Upper Unit Limited Common Elements" refers to those Common Elements which serve or benefit exclusively the Upper Unit or the Upper Unit Owner as more particularly described in Section 7.3 of the Declaration and the Floor Plans.

"Upper Section" shall mean the Upper Unit and any areas that are Upper Unit Limited Common Elements.

"Upper Unit" shall have the meaning set forth in Section 5.2 of the Declaration.

"Upper Unit Owner" shall have the meaning set forth in Section 5.3 of the Declaration.

"Violating Owner" shall have the meaning set forth in Section 5.9.9 of the By-Laws.

"Work" shall have the meaning set forth in Section 5.9.4 of the By-Laws.

EXHIBIT D

**BY-LAWS
OF THE CONDOMINIUM KNOWN AS THE
THE 486-496 FULTON STREET CONDOMINIUM
BROOKLYN, NEW YORK 11201**

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BY-LAWS

ARTICLE 1

GENERAL

1.1 Purpose. The purpose of these By-Laws is to set forth the rules and procedures concerning the conduct of the affairs of the Condominium. The Condominium is a commercial Condominium, part of Block 159 of the Tax Map of the Borough of Brooklyn, City, County and State of New York, and includes the interest in the Land, the Property, the Building and all other improvements thereon (including, without limitation, the Units and the Common Elements), and all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed real and personal, that is intended for use in connection therewith, all of which have been submitted to the provisions of Article 9-B of the Real Property Law of the State of New York by the recording of a Declaration (which, as the same may be amended from time to time, is herein called the "Declaration") in the Kings County Office of the Register of The City of New York (hereinafter referred to as the "City Register's Office"), together with these By-Laws. All terms used herein which are not separately defined herein, shall have the meanings given to those terms in the Declaration.

1.2 Applicability of By-Laws. These By-Laws are applicable to the Property and to the use and occupancy thereof. All present and future Unit Owners and Permittees of such Unit Owners, as well as all other persons who may use the Facilities of the Property, are and shall be subject to the Declaration, these By-Laws and the Rules and Regulations (as hereinafter defined). The acceptance of a deed of conveyance (a "Deed") or the succeeding to title to, or the execution of a sublease for, or the act of occupancy of, a Unit shall constitute an agreement that the provisions of these By-Laws, the Rules and Regulations and the Declaration are accepted, ratified, and will be complied with. Notwithstanding any rights of the Unit Owners set forth in the Declaration and these By-Laws, no Permittee shall have any greater rights than are set forth in its lease, license or other agreement with the Unit Owner, or in the case of a sublessee or sublicense, the Permittee's sublease or sublicense. Prior to the delivery of the first Deed, Declarant shall comply with those formalities as it deems applicable.

1.3 Principal Office of Condominium. The principal office of the Condominium and the Condominium Board shall be located at c/o Fulton Joint Venture LLC, 15 West 34th Street 8th Floor, New York, New York 10001, or at such other place within the City of New York reasonably convenient thereto as may be designated from time to time by the Condominium Board (as hereinafter defined).

ARTICLE 2

BOARD OF MANAGERS

2.1 Number. As more particularly set forth in Section 2.2, the affairs of the Condominium shall be governed by a board of managers known as the Condominium Board.

The Condominium Board shall at all times consist of five persons, two (2) of whom shall be designated annually by the Upper Unit Owner and three (3) of whom shall be designated annually by the Lower Unit Owner.

2.2 Powers and Duties.

2.2.1 The Condominium Board shall have the powers and duties necessary for or incidental to the administration of the affairs of the Condominium (except such powers and duties which by law, the Declaration, or these By-Laws may not be delegated to the Condominium Board by the Unit Owners).

2.2.2 Subject to the provisions of Subsection 2.2.1 and without limiting the generality thereof, the powers of the Condominium Board include but shall not be limited to the following matters:

2.2.2.1 Operating and Maintaining the Common Elements in accordance with the provisions of the Declaration and these By-Laws, including making contracts and incurring liabilities for utilities, services, equipment and supplies that the Condominium Board determines is necessary or convenient for the Maintenance and operation of the Property.

2.2.2.2 Determining the amount of Common Charges (as hereinafter defined) and collecting same from the Unit Owners subject to the provisions of Section 5.1 of these By-Laws.

2.2.2.3 Employing and dismissing personnel necessary for the Maintenance and operation of the General Common Elements to the extent same is necessary or desirable.

2.2.2.4 Making contracts and incurring liabilities in connection with the exercise of any of the powers and duties of the Condominium Board.

2.2.2.5 Bringing actions on behalf of the Unit Owners, as their respective interests may appear, with respect to any cause of action relating to the General Common Elements as the Condominium Board deems advisable.

2.2.2.6 Causing repairs to be performed in a Unit in the event of an Emergency Situation.

2.2.2.7 Procuring such fidelity bonds as the Condominium Board deems advisable covering officers and employees of the Condominium, handling and being responsible for the Condominium's funds and personal property and procuring managers' and officers' liability insurance if the Condominium Board deems it advisable. The premiums of such bonds and insurance shall be at market rates and shall be paid by the Condominium Board as a part of Common Expenses.

2.2.2.8 Determining policies, adopting and amending the Rules and Regulations governing the details of operation of the Property and its use, including the General Common Elements, and amending such Rules and Regulations from time to time as the Condominium Board deems advisable, provided that the same (i) are consistent with the rights, powers and responsibilities of the Condominium Board under the Declaration and these By-Laws, (ii) do not materially adversely affect the permitted use or operation of any Unit and (iii) do not materially adversely affect the marketability of any Unit or the ability of a Unit Owner to obtain financing thereon.

2.2.2.9 Making additions and improvements to, or alterations of, the General Common Elements, subject to the provisions of Section 5.9 of these By-Laws.

2.2.2.10 Making repairs and restorations of the Common Elements or parts thereof damaged or destroyed by fire or other casualty or necessitated as a result of condemnation or eminent domain proceedings which repairs and restorations shall be performed after a casualty or condemnation to the Common Elements in accordance with the terms of the By-Laws.

2.2.2.11 Enforcing obligations of Unit Owners under the Declaration and the By-Laws.

2.2.2.12 Opening and Maintaining bank accounts on behalf of the Condominium (with respect to matters within its jurisdiction as provided in these By-Laws) and designating signatories therefor.

2.2.2.13 Adjusting and settling insurance claims (and executing and delivering releases in connection therewith) if the loss involves the Common Elements, subject to the provisions of Sections 5.2 and 5.3 of these By-Laws.

2.2.2.14 Borrowing money on behalf of the Condominium, when required in connection with the operation and Maintenance of the Common Elements or the permitted exercise by the Board of Directors of its powers hereunder, provided, however, that (i) the consent of all Unit Owners (other than any consent of the Unit Owner in default of its obligation to pay Common Charges or Maintain the Limited Common Elements appurtenant to such Units or any other material obligation of this Declaration, which default in either case shall have continued for ten (10) days after the defaulting Unit Owner receives notice thereof) shall be required for any borrowings in excess of \$15,000, and (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the consent of the owner of such Unit. If any sum borrowed by the Condominium Board pursuant to the authority contained in this Subsection is not repaid by the Condominium Board, a Unit Owner who pays to the creditor such proportion thereof as such Unit Owner's Common Interest bears to the aggregate Common Interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor has filed or has the right to file against such Unit Owner's Unit.

2.2.2.15 Organizing corporations to act as designees of the Condominium Board with respect to such matters as the Condominium Board may determine.

2.2.2.16 Executing, acknowledging and delivering (i) any declaration or other instrument affecting the Building which the Condominium Board deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution or requirement of the Department of Buildings, the City Planning Commission, the Board of Standards and Appeals, or any other public authority, applicable to the Maintenance, demolition or construction of the Building or (ii) any consent, covenant, restriction, easement or declaration affecting the Property or the Property which the Condominium Board deems necessary or appropriate.

2.2.2.17 Preparing, executing and recording on behalf of all Unit Owners, as their attorney-in-fact, coupled with an interest, amendments to the Declaration and/or these By-Laws as approved in accordance with the Declaration and these By-Laws.

2.2.2.18 Issuing estoppel certificates to any Unit Owner or Permitted Mortgagee relating to such Unit Owner's payment of Common Charges, including without limitation issuing estoppel certificates or with respect to the matters set forth therein including, but not limited to, such matters as are set forth in Article 7, Section 7.9 of these By-Laws.

2.2.2.19 Issuing a so-called condominium agreement or recognition agreement or any similar agreement to any Permitted Mortgagee, upon the request of the Unit Owner whose Unit is encumbered by such Permitted Mortgage, relating to the Condominium Board's agreement to give copies of notices of default on the part of the Unit Owner to the Permitted Mortgagee, permit the Mortgagee to cure defaults and providing reasonable additional time beyond the time provided herein for the Unit Owner to cure a default, acknowledging the priority of the lien of a Permitted Mortgagee that is a holder of a first mortgage to the lien of the Condominium Board for Common Charges, acknowledging any rights of the Permitted Mortgagee expressly set forth in this Declaration and agreeing to such other matters that the Permitted Mortgagee shall reasonably request that the Condominium Board determines are customary in agreements of this type and are not materially adverse to the other Unit Owners including, but not limited to, such matters as are set forth in Article 7, Section 7.9 of these By-Laws.

2.2.2.20 For the benefit of the Lower Unit Owner, entering into a zoning lot merger or any declaration or other instruments necessary to acquire, purchase, allocate, sell or dispose of any Floor Area Development Rights now or in the future appurtenant to the Property or other zoning lot pursuant to the Zoning Resolution of the City of New York or to merge or subdivide a zoning lot.

2.2.2.21 Performing any and all duties imposed on the Condominium Board by legal requirements or insurance requirements applicable to the Property.

2.2.3 Any act with respect to a matter determinable by the Condominium Board pursuant to the Declaration or these By-Laws, shall be done or performed by the

Condominium Board or shall be done on its behalf and at its direction by the agents, employees or designees of the Condominium Board.

2.2.4 In the event the same person or entity is the Unit Owner of each of the Units, then such person or entity may exercise any and all powers of the Condominium Board, and shall have the power to make all determinations to be made by the Condominium Board, directly, without electing or appointing members or officers of the Condominium Board or if a Condominium Board has been elected, without any action on the part of the Condominium Board. Without limiting the foregoing, if the same person or entity is the Unit Owner of each of the Units, then the Condominium Board shall not be obligated by this Declaration to Maintain its own accounts and records and all such accounts and records may be Maintained directly by such person or entity.

2.2.5 Certain matters determinable by the Condominium Board shall require the unanimous approval of all of the Condominium Board voting at a meeting as follows or as otherwise hereinafter provided, except as otherwise expressly provided in these By-Laws:

2.2.5.1 Except as required by law, entering into any contract where the annual charges under such contract equal or exceed 5% of the annual Condominium budget.

2.2.5.2 Other than (i) the initial one-time deposit to operating reserves of three (3) months of Common Charges to be included in the first annual Condominium budget, and (ii) a capital replacement reserve in the initial amount of \$30,000 per annum for the first year of Condominium operations to be increased by 3% annually thereafter, establishing any reserves for the Condominium, including reserves for operating costs and expenses, working capital, capital improvements and or performance of work in or to the Common Elements.

2.2.5.3 Other than Signs permitted under the Declaration, performing any alteration or improvement which would (a) affect in any material respect (including any structural change in the or to any of the Common Elements, (b) result in a material change in the exterior appearance of the Building, or (c) materially modify the ingress and egress to the General Common Elements or an Unit or its Limited Common Elements.

2.2.5.4 Approving Special Assessments to the extent the approval would, together with increases approved or deemed approved over the immediately preceding year's operating budget, result in an increase of the aggregate of Common Expenses and Special Assessments for the year in question in an amount exceeding 5% over the aggregate of Common Expenses and Special Assessments for the immediately preceding year.

2.2.5.5 Borrowing money in excess of \$15,000 which amount shall increase by 3% per year for each year following the date of the recording of the Declaration, shall require Unit Owner consent as provided in Section 2.2.2.14.

2.2.5.6 A reduction in insurance coverage below that set forth herein shall require the unanimous consent of the members of the Condominium Board provided that if

only one Unit Owner or its Recognized Mortgagee requires additional coverage, such Unit Owner shall be required to pay any additional premium to obtain the additional coverage.

2.2.5.7 Entering into a settlement on behalf of the Condominium for an amount in excess of \$15,000, which amount shall increase by 3% per year for each year following the date of the recording of the Declaration, or entering into a confession of judgment or seeking bankruptcy protection on behalf of the Condominium.

2.2.5.8 Entering into the sale, or conveyance of any Common Elements or any portion thereof shall require the unanimous consent of the Unit Owners.

2.2.5.9 Except with respect to Signs and the roof, entering into the lease, license or any other right to use any Common Elements or any portion thereof shall require the unanimous consent of the Unit Owners.

2.2.5.10 Acquiring any real property (or interest therein) shall require the unanimous consent of the Unit Owners.

2.2.5.11 Committing or consenting to any material act or omission in contravention of the obligations of the Condominium Board, or the obligations of a Unit Owner or failing to meet the obligations of the Condominium Board under these By-Laws or the Declaration shall require the unanimous consent of the Condominium Board.

2.3 Managing Agents and Managers. The Condominium Board may employ a managing agent and/or a manager at a compensation established by the Condominium Board to perform such duties and services within the scope of the Condominium Board's powers as the Condominium Board shall authorize. The Condominium Board may employ an Affiliate of Declarant or of a Unit Owner as such managing agent or manager. If the managing agent or manager is not an Affiliate of Declarant, the identity of the managing agent or manager (but not the determination to employ a managing agent or manager) shall be subject to the unanimous consent of the Condominium Board. If the Condominium Board cannot unanimously agree upon a managing agent or manager, the identity of the managing agent or manager shall be determined by arbitration conducted pursuant to the provisions of Article 12 hereof. The Condominium Board may delegate to such managing agent or manager other powers granted to the Condominium Board by these By-Laws.

2.4 Resignation and Removal. A Condominium Board member may resign at any time by written notice delivered or sent by certified mail, return receipt requested, to the Condominium Board. Such resignation shall take effect at the time specified therein and, unless specifically requested, acceptance of such resignation shall not be necessary to make it effective. Any Condominium Board member may be removed by the Unit Owner designating such Condominium Board member, at any time, with or without cause, in which event such Unit Owner will designate a replacement.

2.5 Designations; Vacancies. The Condominium Board shall be filled by designation, in writing, made by each Unit Owner, respectively, in accordance with the provisions of Section 2.1.

In the event of any vacancy on the Condominium Board for whatever reason, such vacancy shall be filled by the Unit Owner who designated such member creating such vacancy. A member of the Board will serve until such member is removed by the Unit Owner designating such member, resigns or otherwise ceases to serve as a member.

2.6 Regular Meetings of Board. Regular meetings of the Condominium Board may be held at such time and place in the Borough of Brooklyn or Borough of Manhattan as shall be determined from time to time by all the members thereof. Notice of regular meetings shall be given to each member thereof; by personal delivery, mail, or facsimile (or such other method as all members of the Condominium Board shall have agreed upon), at least five (5) Business Days prior to the day named for such meeting.

2.7 Special Meetings of Board. Special meetings of the Condominium Board may be called by the President or Vice President by giving five (5) Business Days' prior notice to each member of the Condominium Board in accordance with Section 2.6, which notice shall state the time, place (in either the Borough of Brooklyn or Manhattan in the City of New York) and purpose of the meeting.

2.8 Waiver of Notice. Any member of the Condominium Board may at any time waive notice of a Condominium Board meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Condominium Board at any meeting thereof shall constitute a waiver of notice by him/her of the time and place thereof. If all the members are present at any meeting of the Condominium Board, no notice shall be required and any business may be transacted at such meeting.

2.9 Determinations by Board; Quorum.

2.9.1 Except as otherwise set forth in Subsection 2.9.3, Section 2.13 and Section 5.1.1, or elsewhere where a unanimous decision is required, all determinations by the Condominium Board shall be made by majority vote at a meeting of the Condominium Board at which a quorum, consisting of three members thereof, is present.

2.9.2 If at any Condominium Board meeting there is less than a quorum present, a majority of those members present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.9.3 Members of the Condominium Board may participate in a meeting thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in such meeting can hear each other and such participation shall constitute presence at such meeting. Notwithstanding anything to the contrary contained herein, action permitted or required to be taken at a meeting of the Condominium Board may be taken

without a meeting if all members of the Condominium Board consent in writing to the adoption of a resolution authorizing such action and the writing or writings are filed with the minutes of the Condominium Board.

2.10 Compensation. No member of the Condominium Board shall receive any compensation for acting as such.

2.11 Liability of Board and Unit Owners.

2.11.1 To the extent permitted by applicable law, no individual serving as a member of the Condominium Board or an officer of the Condominium shall have any personal liability with respect to any contract, act or omission of the Condominium Board or of any managing agent or manager or officer in connection with the affairs or operation of the Condominium or any mistake of judgment, negligence or otherwise, except that the foregoing provisions shall not excuse any individual from personal liability to the Condominium or the Unit Owners on account of his or her own individual willful misconduct or bad faith. The foregoing limit of liability shall not reduce or affect any liability of a Unit Owner under the Declaration to these By-Laws or otherwise. Every contract made by the Condominium Board or by any managing agent, manager or officer thereof shall state that it is made by the Condominium Board, managing agent, manager or officer only as agent for all Unit Owners, that the Condominium Board members or managing agent, manager or officer shall have no personal liability thereon (except in their capacities as Unit Owners) and shall also state that the liability of any Unit Owner with respect to any contract, act or omission of the Condominium Board shall be limited to such proportionate share of the total liability as the Common Interest of such Unit Owner bears to the aggregate Common Interests of all Unit Owners and, unless expressly stated to the contrary in such contract (as determined by the Condominium Board in its sole and absolute discretion), to the extent permitted by applicable law, shall be limited to such Unit Owner's interest in such Unit Owner's Unit and such Unit Owner's appurtenant Common Interest so that such Unit Owner shall have no personal liability for such contract, act or omission. Nothing in the preceding sentence shall limit a Unit Owner's liability for the payment of Common Charges. Any such contract or agreement may also provide that it covers the assets, if any, of the Condominium. The Unit Owners (including those who are designating members to the Condominium Board or officers of the Condominium) shall severally, to the extent of their respective interests in their Units and their appurtenant Common Interests, indemnify each of the individuals serving as member of the Condominium Board or officers of the Condominium against any liability, claim, cost or expense (including attorneys fees and disbursements) arising out of or relating to the performance of his or her duties as a member of the Condominium Board or officer of the Condominium, except those arising out of such member's or officer's own bad faith or willful misconduct. The liability of any Unit Owner to indemnify a member of the Condominium Board or an officer of the Condominium, as aforesaid, shall be limited to an amount which is in the same proportion to the total liability of all Unit Owners with respect to such indemnity as the Common Interest of such Unit Owner bears to the aggregate Common Interests of all Unit Owners. The Condominium Board may contract or effect any transaction with any Board member, any Unit Owner, or any Affiliate of any of them without, except in cases of bad faith or willful misconduct, incurring any liability for self-dealing, provided such dealing is on an arms-length basis and not above market rates.

2.11.2 Neither the Condominium Board nor any member thereof shall be liable for either (i) any failure or interruption of any utility or other service to be obtained by, or on behalf of, the Condominium or to be paid for as a Common Expense, except when any such failure or interruption is caused by the acts of bad faith or willful misconduct of the Condominium Board or any member thereof; or (ii) any injury, loss or damage to any individual or property, occurring in or about either a Unit or any Common Element.

2.12 Fidelity Bonds.

2.12.1 The Condominium Board shall obtain or ensure Maintenance of fidelity bonds, in amounts deemed appropriate by it, for all of its members, officers and employees and for the managing agent or manager, if any, employed by it and the premiums on such bonds shall constitute Common Expenses.

2.12.2 To the full extent permitted by law, the Condominium Board shall purchase and Maintain directors and officers insurance (i) to indemnify the Condominium for any obligation which it incurs as a result of the indemnification of members and officers of the Condominium as required by law or by a court order, (ii) to indemnify members and officers of the Condominium Board in instances in which they may be indemnified by the Condominium under the provisions of these By-Laws, and (iii) to indemnify members and officers of the Condominium in instances in which they may not otherwise be indemnified, to the extent provided by insurance policies that are commonly in use.

2.13 Committees. The Condominium Board may, subject to such limitations and exceptions as the Condominium Board may prescribe, appoint an Executive Committee and such other committees as the Condominium Board may deem appropriate, each to consist of as many members as the Condominium Board shall deem appropriate for the purpose of making such reports and studies as the Condominium Board deems appropriate.

2.14 Board as Agents of Unit Owners. In exercising their respective powers and performing their respective duties under the Declaration and these By-Laws, the Condominium Board shall act in good faith as, and shall be, the agent of the Unit Owners, subject to and in accordance with the provisions of the Declaration and these By-Laws.

ARTICLE 3

OFFICERS

3.1 Designation. The principal officers of the Condominium shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be appointed by the Lower Unit Owner and the Vice President and Treasurer shall be appointed by the Upper Unit Owner. The Condominium Board members by unanimous agreement may appoint additional Vice Presidents, an Assistant Treasurer, Assistant Secretary and such other officers as in their judgment may be desirable. None of the officers of the Condominium need be Unit Owners or have any interest therein or be members of the Condominium Board. Any natural person may hold more than one office.

3.2 Election of Officers. Subject to the provisions of Section 3.1, the officers of the Condominium shall be elected annually by the Condominium Board and each officer shall hold office until their successors are elected or until his or her death, resignation or removal.

3.3 Resignation and Removal of Officers. Any officer may resign at any time by written notice delivered or sent by certified mail, return receipt requested, to the Condominium Board. Such resignation shall take effect at the time specified therein and, unless specifically requested, acceptance of such resignation shall not be necessary to make it effective. A successor officer may be elected at any regular Board meeting or at any special Board meeting called for such purpose. Any officer may be removed at any time, either with or without cause, by the unanimous vote of the Condominium Board.

3.4 President. The President of the Condominium shall be the chief executive officer of the Condominium and shall preside at all meetings of the Condominium Board. The President shall have all of the general powers and duties which are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York, including, but not limited to, the power to appoint committees in accordance with the provisions of Section 2.13 from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Condominium.

3.5 Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever such President shall be absent or unable to act. If both the President and the Vice President of the Condominium are unable to act, the Condominium Board shall appoint some member of the Board to act in the place of such President and Vice President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Condominium Board or by the President. The Condominium Board, by unanimous agreement, may appoint a Senior Vice President in lieu of, or in addition to, the Vice President, with the same authority and duties as the Vice President, except that the Senior Vice President shall perform the duties of the President if he is absent or unable to serve and the Vice President, if any, shall perform the duties of the President if the Senior Vice President is also absent or unable to serve.

3.6 Secretary. The Secretary of the Condominium shall keep the minutes of all meetings of the Condominium Board. The Secretary shall have charge of such books and papers as the Condominium Board shall direct and shall in general perform all the duties incident to the office of secretary of a stock corporation organized under the Business Corporation law of the State of New York. Any Assistant Secretary appointed by the Condominium Board pursuant to Section 3.1 of these By-Laws shall in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and perform such other duties as the Condominium Board or the Secretary shall prescribe.

3.7 Treasurer. The Treasurer shall have the care and custody of the funds and securities of the Condominium 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 in such depositories as may from

time to time be designated by the Condominium Board and shall in general perform all of the duties incident to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York. Any Assistant Treasurer appointed by the Condominium Board pursuant to Section 3.1 of these By-Laws shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and perform such other duties as the Condominium Board or the Treasurer shall prescribe.

3.8 Execution of Documents. The Condominium Board shall proscribe rules governing the execution of documents, including without limitation, all agreements, contracts, Deeds, leases, checks and other instruments of the Condominium, as it sees fit.

3.9 Compensation of Officers. No Officer shall receive any compensation from the Condominium for acting as an officer of the Condominium.

ARTICLE 4

NOTICES; UNIT OWNER MEETINGS

4.1 Notices. All notices, demands, requests or other communications (collectively, "Notices") required or desired to be given hereunder to the Condominium Board or a Unit Owner shall be sent by (i) certified or registered mail, return receipt requested, postage prepaid, (ii) national overnight delivery service, (iii) facsimile transmission (provided that the original shall be simultaneously delivered by national overnight delivery service or personal delivery), or (iv) personal delivery, and if there is a managing agent of the Condominium Board, a duplicate shall be sent in like manner to such managing agent. All Notices to the Condominium Board or any Unit Owner shall, except as otherwise provided herein, be sent to the address of such Unit Owner at the Property and/or to such other address(es) as may have been designated by such Unit Owner from time to time, in writing, to the Condominium Board. All Notices required or desired to be given hereunder to Permitted Mortgagees shall be sent to their respective addresses, as designated by them from time to time, in writing to the Condominium Board. Any Notice so sent by certified or registered mail, national overnight delivery service or personal delivery shall be deemed given on the date of receipt or refusal as indicated on the return receipt, or the receipt of the national overnight delivery service or personal delivery service. Any Notice sent by facsimile transmission shall be deemed given when received as confirmed by the telecopier electronic confirmation receipt. Notwithstanding the foregoing, whenever under these By-Laws a Notice is (a) received on a day which is not a Business Day or is required to be delivered on or before a specific day which is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day and (b) delivered by hand (or so attempted, but refused) or by facsimile transmission, it shall be deemed given on the day of delivery unless delivery is made after 2:00 p.m. or not on a Business Day, in which event delivery shall be deemed given on the next occurring Business Day.

4.2 Waiver of Service of Notice; Written Consent. Whenever notice is required to be given by law, the Declaration or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof. Any action by vote of the Unit Owners provided in this

Declaration, may be made, in lieu of a vote, by the written consent of Unit Owners entitled to vote thereon owning Units with the Common Interests required under this Declaration or the Condominium Act, and, if applicable, in number, for the taking of such action, or if no percentage or number is specified by Unit Owners owning Units with all of the Common Interests. Notice shall be given to all Unit Owners of the taking of such action by written consent.

ARTICLE 5

OPERATION OF THE PROPERTY

5.1 Determination of Common Expenses and Fixing of Common Charges.

5.1.1 From time to time, but not less frequently than once a year, the Condominium Board, in accordance with Section 2.9, shall: (a) prepare and unanimously adopt a budget for the Condominium for the next ensuing fiscal year, (i) which projects the common expenses for the fiscal year (the "Common Expenses") and sources of income, if any, other than Common Charges and (ii) determines the aggregate amount of Common Charges necessary to be charged to the Unit Owners in order to meet the Common Expenses projected in such budget; and (b) allocate and assess such Common Charges amongst the Unit Owners, pro-rata, in accordance with their respective Common Interests (except as otherwise provided in the Declaration or in these By-Laws). Upon the failure of the Condominium Board to unanimously adopt a budget for a fiscal year, the Condominium Board, without further action, will be deemed to have approved a budget for which all budget items, including all items of income and expense, will automatically be increased by 5%. Such increase in the budget shall be in lieu of, and not in addition to, any other annual increases in budget items that may be scheduled to take place without action by the Condominium Board under the provisions of these By-Laws. The Condominium Board shall advise the Unit Owners in writing of the amount of Common Charges payable by each of them, not later than ten (10) days prior to the first day of the fiscal year in which the budget relates, together with copies of the budget (in a reasonably itemized form) upon which such Common Charges are based to all Unit Owners. Subject to the provisions of Subsection 5.1.2, the Condominium Board may by unanimous vote, at its sole discretion, from time to time, increase or decrease the amount of Common Charges allocated to the Units and payable by the Unit Owners, and may modify its prior determination of the Common Expenses for any fiscal year so as to increase or decrease the amount of Common Charges payable for such fiscal year or portion thereof; however, no such revised determination of Common Expenses shall have a retroactive effect on the amount of Common Charges payable by Unit Owners for any period prior to the date of such new determination

5.1.2 Except as otherwise provided herein, all costs and expenses attributable to the Maintenance and operation of, and any alteration, addition or improvement to, the General Common Elements including, without limitation, insurance premiums payable under the terms of the By-Laws, appropriate reserves and expenses incurred by or on behalf of the Owner hereinafter referred to as Common Expenses) shall be determined by the Condominium Board as set forth in these By-Laws and the Declaration, and shall be borne proportionally by the Unit Owners in accordance with their Common Interests. Notwithstanding the foregoing, where

commercially reasonable, the Condominium Board shall use meters and submeters to allocate costs among the Unit Owners. It shall be the policy of the Condominium that the Condominium Board shall attempt to cause all utilities to be separately metered, such that no individual Unit utility expense shall be included in the Common Expenses. The Common Expenses of the Condominium shall also include the expenses provided for in the Declaration and these By-Laws to be Common Expenses and may also include amounts for working capital, general operating reserves and a reserve fund for replacements and provisions for retiring any deficit for Common Expenses for any prior operating year or period. Any delay or failure by the Condominium Board to prepare or adopt a budget or calculate the annual Common Charges and/or to furnish such written statement to the Unit Owners shall not constitute a waiver of or in any way impair the continuing obligation of the Unit Owners to pay the applicable annual Common Charges assessed against their respective Units, in advance, on the first day of each month, as due and payable pursuant to the terms hereof. Until the Condominium Board shall have made such calculation of the annual Common Charges payable by the Unit Owners and furnished such written statement to the Unit Owners for the fiscal year in question, the Unit Owners shall continue to pay annual Common Charges, to the Condominium Board in twelve (12) equal monthly installments, in an amount equal to the monthly installments of annual Common Charges payable by the Unit Owners during the previous fiscal year. Within fifteen (15) days after the Condominium Board has furnished the aforesaid written statement to the Unit Owners, the Unit Owners shall pay to the Condominium Board, as a lump sum payment, any deficiency in the annual Common Charges payable by the Unit Owners for the period of the fiscal year in question, which has elapsed prior to the furnishing of such written statement. Subject to the right of the Condominium Board to change the amount of Common Charges payable by the Unit Owners as provided in Subsection 5.1.1, for the remainder of such fiscal year, the Unit Owners shall pay monthly installments of annual Common Charges, in advance on the first day of the month, at the rate specified in such written statement. To the extent that during any fiscal year, the share of annual Common Charges payable by a Unit Owners by operation of this Section 5.1 shall exceed or be less than the actual Common Charges due from such Unit Owner for the fiscal year in question, the excess or the deficiency, as the case may be, thereof shall be paid by the Unit Owners or the Condominium Board, as the case may be, not later than ninety (90) days after the end of any such fiscal year.

5.1.3 "Special Assessments" shall mean those assessments levied against Unit Owners for the purpose of paying non-recurring, extraordinary expenses affecting the Common Elements, including without limitation, capital expenses relating to the Common Elements. All Special Assessments relative to the General Common Elements shall be levied by the Condominium Board against the Unit Owners in the proportion of each Unit Owner's respective Common Interests (except as otherwise provided in the Declaration or these By-laws). Such Special Assessments shall be payable by the Unit Owners in addition to their respective obligations to pay Common Charges as herein above provided by this Section 5.1. Any Special Assessment with respect to the Limited Common Elements, for costs incurred by the Condominium Board arising out of the failure of the Unit Owners benefiting from such Limited Common Elements to properly Maintain such Limited Common Elements shall be payable by such Unit Owners as an additional Common Charge. Special Assessments may be payable either in one lump sum or in installments, as the Condominium Board shall determine, provided,

however that the Condominium Board shall give each Unit Owner not less than thirty (30) days' written notice, except in the case of an Emergency Situation, prior to the date upon which such Special Assessment, or the first installment thereof, shall be due and payable, which notice shall set forth, in reasonable detail, the nature and purpose thereof. The Condominium Board shall have all rights and remedies for the collection of Special Assessments as are provided herein for the collection of Common Charges (including, without limitation, the provisions of Section 5.4). Notwithstanding anything to the contrary set forth herein, any proposed Special Assessment shall require the approval of all members of the Condominium Board.

5.1.4 Common Expenses shall include real estate taxes, business improvement district charges and any other assessments levied against the Property (collectively the "real estate taxes") until the Units are separately assessed. Until the Units are separately assessed, a Unit Owner shall pay such real estate taxes in the proportion that the Common Interest of its Unit bears to the Common Interests of all of the Units. Until such time as (and thereafter, in respect of the period until) the Property shall have been subdivided so that each Unit shall constitute a separate tax lot, the Condominium Board shall have the sole right to commence and Maintain tax reduction or other proceedings to reduce the assessed valuation of the Property, which shall be Maintained on behalf of the Unit Owners, collectively. Notwithstanding the foregoing, the Condominium Board shall not settle or compromise such tax reduction proceedings without the consent of all Unit Owners and, to the extent required under any applicable Permitted Mortgage held by a Recognized Mortgagee that is a senior lien on any Unit, the Recognized Mortgagees thereof, in each case not to be unreasonably withheld or delayed and which shall be deemed given if not denied within twenty (20) days after written request therefor. The cost and expense of any such tax reduction proceeding, including reasonable attorney's fees and charges, shall be a Common Expense. Once the Units are separately assessed and the Unit Owner of each Unit is billed directly for such real estate taxes, each Unit Owner shall be required to pay the amount of real estate taxes assessed against its Unit directly to the collecting governmental authority. However, the Condominium Board shall still be obligated to commence and Maintain tax reduction proceedings for the first three fiscal years following the date the Units are separately assessed using counsel unanimously approved by the Condominium Board with all decisions about pursuing or settling any such proceedings to be unanimously approved by the Condominium Board. Notwithstanding the immediately preceding sentence, if the lack of unanimity or the time required to arbitrate a disagreement under Article 12 hereof would result in a failure to meet a required deadline under tax reduction proceedings in any year, the Condominium Board may by majority vote take the necessary action to meet such deadline. Thereafter, unless the Condominium Board unanimously agrees to commence and Maintain tax reduction proceedings, each individual Unit Owners shall, in sole discretion, commence and Maintain tax reduction proceedings.

5.1.5 Notwithstanding anything to the contrary herein, no part of the net earnings of the Condominium may inure (other than by acquiring, constructing, or providing management, Maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any Unit Owner or individual.

5.2 Insurance.

5.2.1 Subject to the provisions of Section 2.2.2.7, the Condominium Board shall be required to obtain and Maintain to the extent obtainable at reasonable rates and to the extent, and with such changes, determined by the Board of Managers to be appropriate, the following insurance: (a) "All Risk" property insurance written under a standard "Special Causes of Loss" form including extensions for the perils of Flood (including sewer back-up) and Earthquake (including land subsidence) coverage, which flood and earthquake coverages may contain a sublimit per occurrence and in the aggregate, annually, as determined by the Condominium Board, building ordinance, demolition and increased cost of construction as required, insuring the Building, all Units and improvements and betterments for up to one hundred percent (100%) of its insurable replacement cost and including provision waiving coinsurance, covering the interests of the Condominium, the Condominium Board, all Unit Owners, all Permitted Mortgagees (as a group), as their respective interests may appear, subject however, to the loss payment provisions hereinafter set forth; (b) worker's compensation and New York State disability benefits insurance as required under New York State law; (c) boiler and machinery insurance under a comprehensive form covering all objects found within the Building; (d) plate glass insurance to the extent, if any, determined by the Condominium Board; (e) elevator liability and collision insurance; (f) fidelity insurance covering the Condominium Board and all officers, directors, managing agents and employees of the Condominium, (g) directors and officers liability insurance covering the Condominium Board for their "wrongful acts" or their status as Condominium Board members; (h) business income insurance with respect to Condominium Common Charges and Special Assessments; and (h) such other insurance, including terrorism insurance, as the Condominium Board may determine. Such coverage shall not include personal property within any Unit. Any material deviation from the above specified coverages shall require the unanimous vote of the Condominium Board.

5.2.2 All such policies shall provide that adjustment of loss shall be made exclusively by the Condominium Board acting by unanimous approval if the loss involves more than one Unit, only the General Common Elements or the General Common Elements and one or more Units and by the affected Unit Owner if the loss involves only one Unit. Insurance proceeds with respect to any loss shall be payable to the Condominium Board, as aforesaid, except that, in the event that the Board of Managers has designated an Insurance Trustee in accordance with Section 10.5, the proceeds of all policies of physical damage insurance, if in excess of One Million Dollars (\$1,000,000) shall be paid over to the Insurance Trustee pursuant to the provisions of Section 10.5 and the fees and disbursements of such Insurance Trustee shall be treated in accordance with the provisions of Section 10.5.

5.2.3 All policies affording Property insurance shall contain, to the extent obtainable, permission to waive rights of subrogation for loss or damage to property affecting the Condominium and shall provide that such policies may not be canceled or substantially modified without providing prior written notice of at least fifteen (15) days for non-payment, and forty-five (45) days for any other reason. Certificates of insurance of Property insurance policies and of all renewals thereof, and if requested, proof of payment of premiums, shall be delivered on behalf of the Condominium Board to all Unit Owners and Permitted Mortgagees prior to the expiration of the then current policies.

5.2.4 The Condominium Board shall, to the extent obtainable at reasonable rates and to the extent, and with such changes, determined by the Board of Managers to be appropriate, Maintain liability insurance as follows: a Commercial General Liability insurance policy (with no exclusion for water damage), or equivalent liability coverage, covering claims for bodily injury, personal injury and property damage occurring in, upon or about the General Common Elements; or as a result of operations thereon, in such amounts as may be required by law and as may from time to time be carried by prudent owners of first-class commercial buildings in the Borough of Brooklyn, New York City, but in all events for limits, through a general liability policy or a combination of a general liability policy and one or more umbrella liability policies, not less than Ten Million Dollars (\$10,000,000) per occurrence in respect of bodily injury or death, and not less than Two Million Dollars (\$2,000,000) for property; a standard "severability" provision and Fire Damage and legal liability coverage; and an umbrella liability policy, supplementing the general liability policy limits in such amount as the Board of Managers shall determine by unanimous agreement. Any insurance Maintained by the Condominium Board may provide for such deductible amounts as the Condominium Board may determine by unanimous agreement

5.2.5 The premiums for all insurance referred to above shall be a Common Expense which shall be apportioned based on the manner in which the insurance company or insurance broker has allocated and underwritten the risks and in the absence of such an allocation in accordance with the respective Common Interests of the Unit Owners. The insurance company shall be directed to determine such allocation based upon the respective replacement costs and the particular uses and operations of the Units and other relevant factors. Any future allocation by the insurance company shall be subject to the approval of the Condominium Board by unanimous agreement. If an agreement cannot be reached, the matter shall be submitted to arbitration. Proof of payment of premiums for such insurance shall be delivered to any Unit Owner, Unit occupant or Permitted Mortgagee within ten (10) days of request therefor.

5.2.6 The following provisions shall apply with respect to insurance requirements of Unit Owners.

5.2.6.1 No Unit Owner shall (1) do or permit any act or thing to be done in or to its Unit which will be in material conflict with any Commercial General Liability, property or other policy of insurance at any time carried by the Condominium Board with respect to the Property, (2) keep anything in its Unit or in the Common Elements which is prohibited by the Fire Department, Board of Fire Underwriters, fire insurance rating organization or other authority having jurisdiction, (3) permit its Unit or the Common Elements to be used in any manner which will increase the insurance rate for the Property over that in effect as of the date of the Declaration, unless such Unit Owner pays the additional cost thereof as provided below, or (4) willfully or knowingly violate or suffer or permit the violation of the terms of any policy of insurance required hereunder, or do or permit or suffer anything to be done, or keep anything in any portion of the Building which could result in termination of any such policies, could adversely affect the right of recovery under any such policies, or would result in reputable and independent insurance companies refusing to insure the Building and improvements in the amounts required hereunder at regular rates.

5.2.6.2 Any costs, expenses, fines, penalties or damages which shall be imposed upon the Condominium Board by reason of a default by a Unit Owner in performing its obligations under this Subsection 5.2.6 shall be assessed against such Unit and shall be payable by the Unit Owner thereof.

5.2.6.3 The Condominium Board, each of the other Unit Owners and Permitted Mortgagees, shall be additional named insureds on the general liability coverage Maintained by each Unit Owner. The Unit Owner's insurance shall be primary and non-contributory as to general liability exposures arising out of claims for bodily injury, personal injury and property damage occurring in, on or about such Unit Owner's Unit, and to the extent of the Unit Owner's negligence, in which event any other insurance available to the Condominium Board, other Unit Owners or any other insured, shall be excess.

5.2.6.4 Each Unit Owner shall, at its sole cost and expense, Maintain or cause to be Maintained at all times Worker's Compensation/Employers Liability and New York State disability benefits insurance with respect to such Unit Owner's employees.

5.2.6.5 Each Unit Owner shall, at its sole cost and expense, Maintain or cause to be Maintained at all times Commercial General Liability policy of insurance (which includes water damage insurance), or equivalent liability coverage, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate per location, and an Umbrella Liability policy, with limits of not less than \$5,000,000 per occurrence and annual aggregate per location, or in such higher limits as the Condominium Board, from time to time, may determine by unanimous agreement. The policy or policies described in this subsection shall name as additional insureds the Condominium Board, other Unit Owners and all Permitted Mortgagees.

5.2.6.6 Each Unit Owner may, at its sole cost and expense, Maintain or cause to be Maintained at all times rent insurance for its own benefit;

5.2.6.7 Each Unit Owner may, at its sole cost and expense, Maintain or cause to be Maintained at all times any additional insurance.

5.2.6.8 Each Unit Owner shall require each of its tenants on each property or casualty policy obtained and maintained by a tenant to name the Condominium Board on behalf of all Unit Owners as a loss payee as its interests may appear. Each Unit owner shall require each of its tenants on each liability policy obtained and maintained by a tenant to name the Condominium Board on behalf of all Unit Owners as an additional insured.

5.2.7 With respect to the insurance required to be Maintained or which may be Maintained under this Section 5.2, the following applies:

5.2.7.1 Insurance policies required pursuant to this Section 5.2 shall be in such form and shall be issued by financially responsible insurance companies licensed and admitted to do business in the State of New York, having an "A-" rating or better (or the equivalent of such ratings if there is a change in the basis of the rating) as rated by A.M. Best's Insurance Guide (or any successor publication of comparable standing) shall be deemed a

financially responsible company unless otherwise agreed by the unanimous consent of the Condominium Board.

5.2.7.2 Insurance policies shall provide for prior written notice of at least fifteen (15) days for non-payment, and forty-five (45) days for any other reason prior written notice of the cancellation, non-renewal or modification thereof to the Condominium Board and to the extent reasonably available without additional premium or upon the unanimous consent of the Condominium Board, the additional insureds, including, but not limited to Registered Mortgagees and the managing agent or manager.

5.2.7.3 All policies for property insurance Maintained by the Condominium Board under Subsection 5.2.1 shall contain permit waivers of subrogation with respect to property damage claims.

5.2.7.4 All policies of "Special Causes of Loss" and "Comprehensive Boiler Machinery" coverage required to be obtained by the Condominium Board shall (A) provide that adjustment of loss shall be made by the Condominium Board on behalf of all Unit owners and Permitted Mortgagees, if applicable, as set forth in Section 5.2.2. and (B) name the Insurance Trustee as "loss payee" as agent for the insured in the event the proceeds payable are in excess of \$1,000,000. The Condominium Board shall provide, or cause to be provided, certificates of insurance to all Unit Owners and Permitted Mortgagees evidencing all required Condominium Board policy coverages and additional insured, loss payee or mortgagee status.

5.2.7.5 Any policies required to be furnished by a Unit Owner under Subsection 5.2.7 may be Maintained by the Unit Owner under a blanket policy or coverages; provided, however, that such insurance otherwise complies with Subsection 5.2.7. Certificate(s) evidencing the existence of such coverage to be Maintained by a Unit Owner shall evidence satisfaction of the foregoing requirements and shall be delivered to the Condominium Board, each Unit Owner and Permitted Mortgagee within ten (10) days of such Unit Owner's acceptance of the Deed for its Unit. Within ten (10) days of the expiration or termination date of any policy, the Unit Owner shall deliver a renewal or replacement certificate evidencing the existence thereof, to the Condominium Board, each Unit Owner and Permitted Mortgagee.

5.2.7.6 All of the conditions contained in Subsection 5.2.7 are required of each Unit Owner to the extent obtainable, subject only to any exceptions approved in writing by the Board by unanimous agreement.

5.2.7.7 Except as provided herein, the determination of whether evidence of financial responsibility is reasonably acceptable is in the sole reasonable discretion of the Condominium Board. Except as provided herein, the determination of whether special circumstances warrant that the Condominium Board require a Unit Owner to Maintain higher limits than any specified minimum is in the sole reasonable discretion of the Condominium Board.

5.2.7.8 Without limiting the remedies of the Condominium Board for a Unit Owner's default, 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 two (2) Business Days after request therefor by the Condominium Board, the Condominium Board and the non-defaulting Unit Owner shall each be authorized (but not required) to procure such coverage in the amounts stated with all costs thereof to be assessed against such defaulting Unit Owner's Unit and such costs shall be additional Common Charges, subject to all remedies available to the Condominium Board contained in Sections 5.6 and 5.7 of these By-Laws.

5.2.7.9 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 this Declaration.

5.2.7.10 Each Unit Owner shall be solely responsible for obtaining and Maintaining, at such party's sole expense, such property insurance with respect to such party's interests in property, improvements and betterments, and personal property located within its respective Unit as such party determines is suitable with respect to property not covered under the Condominium Board's property insurance coverage, and, insofar as may be permitted by the terms of the insurance policies carried by it, the Condominium Board, each Unit Owner and each of their respective agents and employees with respect to the other parties for loss, damage or destruction with respect to any such property. All policies of property insurance Maintained by any Unit Owner shall permit a waiver of subrogation with respect to the Condominium Board, each Unit Owner, each Permitted Mortgagee and their respective agents and employees. Each Unit Owner affirmatively waives any rights of subrogation for property damage with respect to damage of any property covered by insurance as required by these provisions.

5.2.7.11 Each insurance policy carried by the Condominium and the Unit Owners shall include an acknowledgment that, in the event of any conflict, the Unit Owner's insurance coverage will be deemed primary coverage with respect to its Unit, to the extent of the Unit Owner's negligence.

5.3 Repair or Reconstruction after Fire or Other Casualty.

5.3.1 In the event that the Property or any part thereof is damaged or destroyed by fire or other casualty (unless three-fourths or more of the Property is destroyed or substantially damaged and both Unit Owners do not duly and promptly resolve to proceed with repair or restoration), the Upper Unit Owner with respect to any damage to or destruction of the Upper Unit or the Upper Unit Limited Common Elements, the Lower Unit Owner with respect to any damage to or destruction of the Lower Unit or the Lower Unit Limited Common Elements, and the Condominium Board with respect to any damage to or destruction of the General Common Elements, shall arrange for the prompt repair and restoration thereof and the Condominium Board or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If only the Upper Section is destroyed or damaged by fire or other casualty and if the net insurance proceeds are less than sufficient to cover, or exceed, the cost of repairs and restoration, the Upper Unit Owner will bear the entire amount of the deficit, or shall receive all of the surplus, as the case may be. If only the Lower Section is destroyed or damaged by fire

or other casualty and if the net insurance proceeds are less than sufficient to cover, or exceed, the cost of repairs and restoration, the Lower Unit Owner will bear the entire amount of the deficit, or shall receive all of the surplus, as the case may be. If said damage or destruction by fire or other casualty affects more than one Unit and/or the General Common Elements, or if the damage only affects the General Common Elements then any deficit or surplus in insurance proceeds shall be borne or shared by all Unit Owners in proportion to their respective common interests. Any surplus payable to any Unit Owner pursuant to this Subsection 5.3.1 shall be lessened by such amounts as may be required to reduce unpaid liens (other than liens of mortgages which are not Permitted Mortgages) on any such Unit in the order or priority of such liens.

5.3.2 If three-fourths (3/4) or more of the Building is destroyed or substantially damaged and if both Unit Owners do not promptly resolve to proceed with the repair or restoration thereof, the Condominium Board will not repair the Building and the Property shall be subject to an action for partition instituted by any Unit Owner or lienor, as if owned in common, in which case the net proceeds of sale, together with the net proceeds of insurance policies shall be divided among all Unit Owners in proportion 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 such Unit Owner's share of such funds any and all unpaid Common Charges assessed against such Unit Owner's Unit, if any and such other amounts as may be necessary to discharge or reduce all unpaid liens on such Unit Owner's Unit (other than the liens of mortgages which are not Permitted Mortgages) in the order of the priority of such liens. As used in this Section 5.3, the words "promptly resolve" mean resolve as promptly as practical under the circumstances but in any event, not more than one hundred eighty (180) days from the date of such damage or destruction.

5.3.3 All actions taken by the Condominium Board pursuant to this Section 5.3 shall be taken only by unanimous consent of its members. In the event of a failure to unanimously agree, the matter shall be submitted to arbitration.

5.4 Payment of Common Charges.

5.4.1 The Unit Owners shall be obligated to pay to the Condominium Board the Common Charges assessed to them by the Condominium Board pursuant to the provisions of Section 5.1 at such time as set forth in such Section, even in the event of a loss covered by insurance as to which rent insurance is applicable. Unless otherwise determined by the Condominium Board, Common Charges shall be payable in twelve (12) equal monthly installments; in advance, on the first day of each month. No Unit Owner may exempt itself from liability to pay Common Charges or from any of its other obligations hereunder by waiver of the use or enjoyment of any of the Common Elements or by abandonment of its Unit. Any sums assessed against a Unit Owner by the Condominium Board or expended by the Condominium Board on behalf of a Unit Owner, as provided in the Declaration or these By-Laws, shall be deemed Common Charges payable by such Unit Owner under this Section 5.4 for which the Condominium Board shall have a lien for nonpayment as provided in Section 5.6 of these By-Laws.

5.4.2 No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against such Unit Owner's Unit subsequent to a sale or other conveyance by such Unit Owner (made in accordance with these By-Laws) of such Unit together with its appurtenant Common Interests provided the written statement set forth in Section 5.4.3 is obtained. A purchaser of a Unit shall be liable for the payment of Common Charges accrued and unpaid against such Unit prior to the acquisition by such purchaser of such Unit. In the event of a foreclosure sale of a Unit by a Permitted Mortgagee, the owner of such Unit prior to the foreclosure sale shall remain liable (jointly and severally with the purchaser) for the payment of all unpaid Common Charges which accrued prior to such sale. Except to the extent prohibited by law, the Condominium Board, on behalf of all Unit Owners, shall have a lien on each Unit for unpaid Common Charges, together with interest thereon, assessed against such Unit.

5.4.3 Notwithstanding Subsection 5.4.2, neither the seller nor the purchaser of a Unit shall be liable for, nor shall the Unit be conveyed subject to a lien for, any unpaid Common Charges against such Unit accrued prior to such conveyance in excess of the amount set forth in a written statement from the Condominium Board.

5.4.4 Subject to the provisions of Subsection 5.4.1 of these By-Laws, in the event that prior to the Units being separately assessed for real estate tax purposes, the Condominium Board pays real estate taxes on behalf of a Unit Owner, the amount of such real estate taxes, determined by multiplying the total real estate taxes due on the entire Property by the percentage of Common Interest carried by that Unit, shall be deemed to be Common Charges, and the Condominium Board shall have a lien (as provided in Subsection 5.4.2) for any such accrued and unpaid amounts.

5.5 Collection of Common Charges. The Condominium Board shall take prompt action to collect any Common Charges due to the Condominium Board which remain unpaid for more than thirty (30) days after the due date for payment thereof, failing which any non-defaulting Unit Owner shall be authorized to take any such actions in the name of and on behalf of the Condominium Board.

5.6 Default in Payment of Common Charges and Special Assessments. In the event any Unit Owner fails to make payment of Common Charges or Special Assessments when due such Unit Owner shall pay interest at a rate per annum equal to the Default Rate on sums owed together with all reasonable expenses, including, without limitation; reasonable attorneys' fees and disbursements paid or incurred by the Condominium Board or by any managing agent in any proceeding brought to collect such unpaid Common Charges or in any action to foreclose the lien on such Unit arising from said unpaid Common Charges as provided in Section 339-z of the New York Condominium Act, in the manner provided in Section 339-aa thereof or in any other manner permitted by law. All such interest and expenses shall be added to and shall constitute Common Charges payable by such Unit Owner. Notwithstanding the foregoing, the Condominium Board may by unanimous agreement establish its own reasonable alternate fees for late payments, whether such fees are more or less than the charges set forth herein. The Condominium Board shall diligently and in good faith enforce the obligations of each Unit Owner to pay all Common Charges and Special Assessments assessed against its Unit.

5.7 Foreclosure of Liens for Unpaid Common Charges. In any action brought by the Condominium Board to foreclose a lien on a Unit because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable rental for the use and occupancy of such Unit Owner's Unit and the plaintiff in such foreclosure action shall be entitled to the appointment, without notice, of a receiver to collect the same. A suit to recover a money judgment for unpaid Common Charges shall be Maintainable without foreclosing or waiving the lien securing such charges. No action shall be brought to foreclose such lien unless thirty (30) days' notice of claim of lien is given to the defaulting Unit Owner and any Permitted Mortgagee thereof. The Condominium Board, acting on behalf of the Unit Owners, shall have the power to bid in the amount of the lien at the foreclosure sale and to acquire and hold, lease, mortgage and convey same. In the event the net proceeds received on such foreclosure sale (after deduction of all reasonable legal fees, advertising costs, brokerage commissions and other reasonable costs and expenses incurred in connection therewith) are insufficient to satisfy the defaulting Unit Owner's obligations, such Unit Owner shall remain liable for the deficit.

5.8 Statement of Common Charges. The Condominium Board shall promptly provide any Unit Owner who so requests, with a written statement of all unpaid Common Charges, Special Assessments, late charges and interest due to it from Unit Owners.

5.9 Alterations, Maintenance and Repairs.

5.9.1 Each Unit and the Limited Common Elements appurtenant thereto shall be Maintained in first-class condition (and with respect to any roofs, roof setbacks or other part of the Property exposed to the elements, free of snow, ice and accumulation of water, to the extent same would cause damage to the Building) by the Unit Owner thereof. Each Unit Owner shall have the affirmative duty to Maintain its respective Unit in such a manner so as to reasonably prevent and avoid inflicting harm to, or interfering with the use and occupancy of, other Units, the Limited Common Elements or the General Common Elements. The Unit Owners or the Condominium Board, as the case may be, shall promptly make or perform, or cause to be made or performed, all Maintenance in connection with their respective Maintenance obligations. Each Unit Owner may inspect the roof at any time.

5.9.2 The cost of Maintaining the Lower Unit Elevators shall be borne by the Lower Unit Owner and the cost of Maintaining the Upper Unit Elevators shall be borne by the Upper Unit Owner. The Condominium Board may elect to perform the Maintenance of any of the Lower Unit Elevators or Upper Unit Elevators and of any Facilities, including elevators and the shafts and equipment therefor, that are Limited Common Elements, and the cost of such Maintenance shall be paid by the Lower Unit Owner in the case of the Lower Unit Elevators, by the Upper Unit Owner, in the case of the Upper Unit Elevators, and by the Unit Owner that has the exclusive use of such Limited Common Elements in the case of Facilities that are Limited Common Elements.

5.9.3 The public areas of the Building and those areas exposed to public view shall be Maintained in good, clean and neat appearance, in conformity with the dignity and character of the Building, by (a) the Condominium Board with respect to the General Common Elements and (b) the Unit Owners with respect to the Units and the Limited Common Elements

appurtenant thereto. Except as otherwise provided in the Declaration or these By-Laws, all painting, decorating, Maintenance, whether structural or nonstructural, ordinary or extraordinary (a) in or to any Unit (including the Limited Common Elements included therein except as otherwise provided in these By-Laws) shall be made by such Unit Owner's sole cost and expense and (b) in or to the General Common Elements shall be made by the Condominium Board and the cost and expense thereof shall be charged to the Unit Owners as a Common Expense.

5.9.4 Each Unit Owner shall have the right, subject to the consent of the Board of Managers (not to be unreasonably withheld) with respect to structural alterations, additions or improvements, or after providing the requisite proof with respect to nonstructural alterations, additions or improvements, in accordance with the terms of Article 9 of the Declaration, but subject to the provisions hereof and of Article 13 of the Declaration with respect to easements and Article 17 of the Declaration with respect to amendments to this Declaration, to make such permitted alterations ("Permitted Alterations") in, to or upon the interior of its Unit or the Limited Common Elements appurtenant thereto (hereinafter referred to as the "Work"), provided the Unit Owner performing the Work (the "Altering Owner") complies with the provisions of these By-Laws, the Declaration and any applicable law, rule or regulation and provided further that to the extent any such Work adversely affects the other Unit Owner (hereinafter referred to as the "Affected Owner"), it satisfies all obligations to the Affected Owner set forth herein. Any dispute as to whether a determination by the Board of Managers is reasonable shall be submitted to arbitration.

5.9.5 If the nature of any Work so requires, the Altering Owner shall cause the Declaration to be amended and new Floor Plans to be filed at the sole cost of the Altering Owner. The Condominium Board shall cooperate with the Altering Owner and, at the Altering Owner's expense, execute all applications, authorizations and other instruments reasonably required to enable the Altering Owner to amend the Condominium Declaration and/or Floor Plans.

5.9.6 No Work shall be commenced until the Condominium Board shall have been furnished with such insurance coverage as it deems appropriate under the circumstances, naming the Condominium Board as an additional insured, and, if required hereunder, granted its approval of the Work.

5.9.7 Any application to any department of The City of New York or to any other governmental authority having jurisdiction thereof for a permit to make a structural alteration, addition, improvement or repair in or to any Unit or to the Limited Common Elements appurtenant thereto so approved by the Condominium Board (if such approval is required) shall, if required by law or such department or authority, be executed by the Condominium Board, provided that the Condominium Board shall not incur any liability, cost or expense in connection with such application or to any contractor, subcontractor, materialman, architect or engineer on account of such alteration, addition, improvement or repair or to any person having any claim for injury to person or damage to property arising therefrom.

5.9.8 At its sole cost and expense, each Unit Owner (hereinafter in this Subsection 5.9.8, the "Liening Owner") shall cause to be removed, by payment, bond or

otherwise, within thirty (30) days after notice of the filing thereof, any mechanics', materialmen's or any other like lien arising by reason of its acts or acts of its agents, contractors, or Permittees, or for any work or materials which it or its agents, contractors, or Permittees has ordered and (A) filed against the other Unit Owner's Unit, or (B) which is filed against its own Unit (such other Unit Owner in (A) or (B) being the "Impacted Owner"). The Liening Owner shall not be required to remove such lien within said thirty (30) day period if such lien does not expose the Impacted Owner to civil or criminal penalties or does not result in a default under the Impacted Owner's Permitted Mortgage(s) or other documents executed in connection therewith, provided the Liening Owner shall in good faith commence and thereafter diligently proceed to contest the same by appropriate proceedings and shall give notice to the Impacted Owner of its intention to contest the validity of such lien. In the event of any such contest, the Liening Owner must cause to be removed or released all liens prior to foreclosure thereof. In the event the Liening Owner fails to comply with the foregoing provisions of this Subsection 5.9.8 (thereby becoming a Defaulting Party), the Impacted Owner (thereby becoming a Creditor Party) may give notice to the Defaulting Party specifying the respect or respects of such noncompliance and if, upon the expiration of ten (10) days after the receipt of such notice, the Defaulting Party shall have failed to cure of any such noncompliance or has not diligently commenced to cure same, then the Creditor Party shall have the right (but not the obligation) to take all steps necessary and appropriate to defend against or remove such lien. The Creditor Party shall be entitled to payment from the Defaulting Party for all costs and expenses (including reasonable attorneys' fees and disbursements) paid or incurred by the Creditor Party in defending against, removing or attempting to defend against or remove such lien in accordance with the provisions of Section 24.3 of the Declaration. NOTHING CONTAINED IN THIS SUBSECTION 5.9.8 IS INTENDED TO GIVE OR CONFER ANY BENEFITS, RIGHTS, PRIVILEGES, CLAIMS, ACTIONS OR REMEDIES TO ANY PERSON AS A THIRD PARTY BENEFICIARY UNDER ANY LAWS OR OTHERWISE AND THE PERFORMANCE OF WORK IN ANY UNIT OR LIMITED COMMON ELEMENTS OR EXCLUSIVE FACILITIES OR EASEMENTS SHALL IN NO WAY BE DEEMED TO GIVE THE THIRD PARTY PERFORMING SUCH WORK THE RIGHT TO ATTACH A LIEN AGAINST ANY OTHER OWNER'S INTEREST IN THE PROPERTY.

5.9.9 If notice of a municipal or other violation of law is given or filed in respect of any portion of the Property as a result of the alleged or actual act or failure to act by any Unit Owner or its Permittees (hereinafter referred to as the "Violating Owner") and such violation (1) jeopardizes the full force or effect of any certificate of occupancy issued to another Unit Owner, (2) adversely affects (other than to a *de minimus* extent) another Owner's right to occupy, use and enjoy its portion of the Property, or any part thereof, or any Facilities, (3) results in the imposition of a penalty or lien against any of another Unit Owner's Unit, (4) adversely affects any Easement granted to another Unit Owner, or (5) would create criminal liability for another Unit Owner, the Violating Owner shall, at its sole cost and expense, remove such violation of record, and pay all fines or penalties and interest thereon, if any, imposed by the governmental entity issuing such fines or penalties, within ten (10) days, or immediately in the case of an Emergency Situation, in the case the violation endangers the health and safety of the Unit Owners or presents an immediate threat to the structure of systems of the Building or, in all other cases, ninety (90) days, of receipt of notice of such violation, provided, however, if the

Violating Owner has been diligently prosecuting the removal of such violation, the period shall be extended for such additional time as is reasonably necessary to remove the violation.

5.9.10 Any time a Violating Owner is otherwise required under Subsection 5.9.9 to remove a violation, such Violating Owner shall nevertheless not be required to remove the violation pursuant to these By-Laws if upon prior notice to the other Owners and at its own expense, it is contesting by appropriate legal or administrative proceedings or redress, promptly initiated and conducted in good faith and with due diligence, the validity or enforceability, in whole or in part, of the law giving rise to the violation, provided the following conditions are met: (i) such proceeding shall (by court order or order of an administrative agency) suspend the obligation of the Violating Owner to comply with any such law, (ii) failure to comply with any such law pending the contest will not invalidate or vitiate any certificate of occupancy for any portion of the Building or any insurance required hereunder to be Maintained with respect to the Property, in whole or in part, and will not, in the reasonable opinion of the Affected Owner, constitute a present danger to the Property, or any portion thereof, or to the persons using and entering upon the Property and will not interfere with the permitted use by the Affected Owner of its portion of the Property or ingress thereto or egress therefrom in accordance with law, (iii) neither the Property nor any part thereof or interest therein will in the reasonable opinion of the Affected Owner be in danger of being sold, forfeited, confiscated, terminated, canceled or lost as a result of such contest by the Violating Owner, (iv) the Violating Owner shall have furnished such security as may be required in the proceeding, or in the event that none is required, as may be reasonably required by the Affected Owner to insure the payment by the Violating Owner of all costs of compliance, fines and penalties (and any interest thereon imposed by the municipal entity issuing such fines and penalties), as may be incurred by the Violating Owner in the event of a determination in such proceeding adverse to the Violating Owner, and (v) the Affected Owner will not, in its reasonable opinion, be subject to any civil fines and/or penalties or criminal liability or be in default under its Permitted Mortgage as the result of such contest by the Violating Owner.

5.9.11 Neither the Condominium Board nor the Unit Owners (other than the Altering Owner) shall incur any liability, cost or expense (i) in connection with the preparation, execution, or submission of the applications referred to in Subsection 5.9.7 hereof; (ii) to any contractor, subcontractor, materialman, architect or engineer on account of any Work made or caused to be made by any other Unit Owner; or (iii) to any Person asserting any claim for bodily injury, death or property damage arising therefrom. An Altering Owner shall agree (in writing executed and delivered to the Condominium Board, if the Condominium Board shall so request), and shall be deemed to agree (in the absence of such writing) to defend, indemnify and hold the Condominium Board, the members of the Condominium Board, the officers of the Condominium, the Managing Agent and the other Unit Owners harmless from and against any such liability, loss, cost, damage and expense (including reasonable attorneys' fees and disbursements).

5.9.12 Notwithstanding any other provision of the Declaration or these By-Laws to the contrary:

5.9.12.1 In the event that any painting, decorating or Maintenance to the Property or any part thereof is necessitated by the negligence, misuse, neglect or willful misconduct of (a) any Unit Owner or Permittee of a Unit Owner, the entire cost thereof shall be borne by such Unit Owner, or (b) the Condominium Board, the entire cost thereof shall be charged to the Unit Owners as a Common Expense, except in all such cases to the extent such cost is covered by the proceeds of any insurance Maintained pursuant to the provisions hereof.

5.9.12.2 Upon request of a Unit Owner, and at such Unit Owner's sole cost and expense, the Condominium Board shall execute (i) any declaration or other instrument affecting the Limited Common Elements appurtenant to such Unit Owner's Unit which the Unit Owner deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution or requirement of the Department of Buildings, the City Planning Commission, the Board of Standards and Appeals, or any other public authority, applicable to the Maintenance, demolition, construction, alteration, repair or restoration thereof and which would not adversely affect the other Units and (ii) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting the Limited Common Elements appurtenant to such Unit Owner's Unit which the Unit Owner deems necessary or appropriate and which would not adversely affect the other Units or the Common Elements.

5.10 Performance of Work in General Common Elements.

5.10.1 Except as otherwise expressly provided herein, the Condominium Board shall be responsible for and shall operate and Maintain the General Common Elements and shall Maintain the public areas adjacent to the Building, in first class condition, and shall promptly repair any damage or condition relating thereto. Whenever in the judgment of the Condominium Board, the General Common Elements require maintenance or repairs, the Condominium Board shall proceed with such maintenance or repairs and shall assess all Unit Owners for the costs thereof as a Common Charge. Whenever in the unanimous judgment of the Condominium Board, the General Common Elements require additions, alterations or improvements, the Condominium Board shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the costs thereof as a Common Charge.

5.10.2 Notwithstanding the foregoing, a Unit Owner may make alterations, additions and improvements to the General Common Elements and Facilities located in its Unit provided such Unit Owner (i) obtains the consent of the Condominium Board, not to be unreasonably withheld or delayed, (ii) complies with all requirements the Condominium Board may choose to impose in this situation and (iii) the Work is performed in accordance with the requirements applicable to an Altering Owner, and provided that the Unit Owner performing the Work give ten (10) days prior notice to the other Unit Owner and any Permitted Mortgagee and receives no objection to the performance of such Work, not to be unreasonably withheld or delayed. In the event of a dispute with respect to whether or not the failure of the Condominium Board to consent is reasonable, or whether the objection from the other Unit Owner is reasonable, the matter shall be submitted to arbitration.

5.10.3 In the event that an Altering Owner performs Work in the General Common Elements pursuant to Section 5.10.2 and such Work is (i) required by law, (ii)

necessary to preserve health and safety of Unit Owners or their Permittees, or (iii) necessary to preserve the structural integrity of the Building, the cost of performing such Work and related costs (including without limitation, costs for engineering, legal and architectural services), shall be deemed a Common Expense and the Altering Owner shall be entitled to reimbursement therefor from the other Unit Owners based upon the other Unit Owners' Common Interest. In such event, the Altering Unit Owner shall send notice to the other Unit Owner specifying that the Altering Owner is seeking reimbursement for the Work under this Subsection 5.10.3. Failure to so specify shall be deemed a waiver of the right to seek reimbursement hereunder. Notwithstanding anything to the contrary set forth above, in the event of an Emergency Situation the Altering Owner may perform Work of a remedial nature without sending a notice to the other Unit Owner or the Condominium Board.

5.11 Restrictions on Use of Units.

5.11.1 In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of Units shall be restricted to, and shall be in accordance with, the terms contained in this Section 5.11.

5.11.2 Except as otherwise provided in these By-Laws and the Declaration, the Units may be used for any lawful purpose, provided such use is permitted by law, does not violate the then existing certificate of occupancy for such Unit or any other governmental regulations. A Unit Owner may apply to change the certificate of occupancy with respect to its Unit provided the change will not have a materially adverse effect on the other Unit, does not involve material changes to the Common Elements, is at the sole cost and expense of the applying Unit Owner, and does not have a materially adverse effect on any tax abatement or any application for tax abatement applicable to the Building or any part thereof.

5.11.3 The consent of the Condominium Board, not to be unreasonably withheld, shall be required prior to any Unit Owner making an application to the City of New York or other governmental agency having jurisdiction thereover for a variance, special permit or other action changing the legal use of the Property. The Unit Owner making any such application shall be solely responsible for any costs and expenses incurred in connection therewith.

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

5.13 Other Provisions as to Use.

5.13.1 No nuisance shall be allowed in the Units nor shall any use or practice be allowed in the Building which interferes with the peaceful possession or proper use of the Property by its Permittees. No immoral, improper, offensive or unlawful use shall be made of the Building or any portion thereof. Prohibited uses shall include, but not be limited to, any commercial or non-profit establishment of any type or nature whatsoever: (a) the primary purpose of which is to sell, afford or permit on-premises sexual stimulation or sexual liaisons

including a massage parlor; (b) which permits or presents obscene, nude or semi-nude performances or modeling; (c) which sells, affords or permits body massages, whether or not of a sexual nature; (d) which sells "rubber goods" or other sexual or erotic products of a type not commonly found in high-quality, national chain pharmacies; (e) which sells, rents or permits the viewing of X rated video, photographs, books or other material; provided, however, that Unit Owners may use or lease portions of their Units to (x) stores or newspaper or magazine vendors who may stock "adult" magazines or books as an incidental part of such store's or vendor's business (provided such "adult" magazines or books are discreetly displayed) and/or (y) cafes or store-fronts providing computer use or internet access (provided such services are not principally geared to providing access to pornographic sites) and/or (z) stores or store-fronts offering relaxation or stress-reduction services not requiring the removal of articles of clothing (other than shoes and outerwear). All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof, relating to any portion of the Property shall be complied with at the full expense of the respective Unit Owner or the Condominium Board; whoever shall have the obligation to Maintain such part of the Property.

5.13.2 Nothing shall be done, suffered or permitted to be done by any Unit Owner in any Unit or in or to any Common Element, including without limitation, any Work that is otherwise permitted under this Declaration, which would (1) impair the soundness or safety of the Building or materially impair any easement or hereditament pertaining to the Property, (2) result in the cancellation of any insurance carried by the Condominium Board or any Unit Owner hereunder, (3) be noxious or offensive or an unreasonable interference with the peaceful possession and proper use of other Units, or otherwise constitute a nuisance, (4) be in violation of any applicable law or insurance requirements with respect to the insurance referred to in clause (2) above, (5) be in violation of the certificate of occupancy for such Unit or the Building, (6) be in violation of the Declaration, these By-Laws or the Rules and Regulations of the Condominium Board promulgated thereunder, (7) materially adversely affect the plumbing, sewer, electrical, heating or cooling systems and any other mechanical or utility systems of the Building or any Unit, or (8) materially impair the delivery of any service that the Condominium Board, any Unit Owner is permitted to receive or required or permitted to provide hereunder.

5.13.3 If any governmental license or permit, other than a certificate of occupancy or a license or permit applicable to the Building as a whole and required in order to render lawful the operation of the Building, shall be required for the proper and lawful conduct of any business in a Unit, it shall be the responsibility of the Unit Owner of such Unit to duly procure and thereafter Maintain such license or permit and submit the same to inspection by the Condominium Board. The Unit Owner shall at all times comply with the terms and conditions of each such license, permit, or certificate of occupancy.

5.13.4 No Unit Owner shall discharge or permit to be discharged any materials into waste lines, vents or flues of the Building which might reasonably be anticipated to cause damage thereto or any fumes, vapors, or odors into flues or vents or otherwise as may be noticeable, or is a Hazardous Material.

5.13.5 Furniture, fixtures and equipment installed and used in a Unit shall not exceed the permissible floor or electrical loads for said Unit and shall be so equipped, installed

and Maintained by the Unit Owner so as not exceed noise and vibration standards for residential buildings outside its Unit as required by the New York City Department of Buildings.

5.13.6 Subject to the provisions of Article 5 of these By-Laws, each Unit Owner shall pay, before delinquency, any and all taxes, custom and import duties, assessments and public charges levied, assessed or imposed upon such Unit Owner's business and/or personal property and its Unit. Each Unit Owner shall execute such documents and take such action as may be specified by the Condominium Board to facilitate dealing with the proper governmental authority regarding such taxes and other assessments. If any Unit Owner shall fail to pay any taxes and assessments, the Condominium Board may, but is not obligated to, pay such taxes and assessments and shall assess the same to the Unit Owner failing to make such payments, as Common Charges.

5.13.7 No Unit Owner shall, without the consent of the Condominium Board, install, place or permit any lights, fixtures, or decorations of any sort in any trees outside the Building except for normal holiday decorations.

5.13.8 Except for usage incidental to the business of a tenant, no Unit Owner shall use or permit to be used the sidewalks or other space outside the Building for any solicitation, display, sale or similar undertaking (except for the installation of Signs) or storage.

5.13.9 No Unit Owner shall use or permit to be used any loudspeaker, phonograph or other sound system or advertising device which may be heard outside the Unit

5.13.10 Each Unit Owner shall cause its Unit to comply with all applicable laws and insurance requirements.

5.13.11 Each Unit Owner shall be responsible for cleaning the interior and exterior of the windows appurtenant to its Unit, including storefront windows and glass doors; provided, however, no Unit Owner or Permittee shall clean or permit to be cleaned any window or require, permit or allow it to be cleaned, from the outside, in violation of Section 202 of the Labor Law of the State of New York, or any future law of like import, or if applicable, in violation of the rules of the Board of Standards and Appeals of the City of New York or any other governmental authority having jurisdiction over the Land or the Building.

5.13.12 Scaffolding necessary for the performance of Work to the General Common Elements, Limited-Common Elements or any Unit may be erected, provided, however, such scaffolding shall be installed (a) upon ten (10) Business Days prior written notice to the Condominium Board and each Unit Owner, (b) after provision of evidence to the Condominium Board that such scaffolding will be erected and Maintained in conformance with all applicable laws and any insurance requirements imposed by the Condominium Board, (c) in such a manner so as to minimize interference with access to each Unit and protect the safety of persons at the Property and to prevent bodily injury or property damage, (d) in such manner as to minimize blockage of any storefront or similar window display; and (e) consistent with the general manner in which scaffolding is installed in similar buildings in the New York. Unless necessitated by an emergency or to comply with legal requirements or insurance requirements, no scaffolding shall

be erected or in place during the months of October, November, and December of any year. The Condominium Board or the Unit Owner requesting the use of such scaffolding shall use commercially reasonable efforts to install two story (double height) scaffolding that accommodates, to the reasonable satisfaction of the Lower Unit Owner, signage of retail occupants of the building whose storefront is partially obscured by the scaffolding. Notwithstanding anything to the contrary set forth herein, the cost and expense of installing and Maintaining the scaffolding shall be borne by the Unit Owners as a Common Expense, if erected on behalf of the Condominium Board with respect to the General Common Elements. Each Unit Owner shall pay, at its sole cost and expense, the cost and expense of installing and Maintaining the scaffolding for its Unit or the Limited Common Elements appurtenant thereto. The Condominium Board, or such Unit Owner as the case may be shall be responsible for any damage to the Property caused by the installation, Maintenance or removal of said scaffolding by the Condominium Board or the Unit Owner, as the case may be. The Unit Owner that has erected the scaffolding shall remove any scaffolding within 15 days after the cessation of any work, including an interruption to the work that can reasonably be anticipated to be for thirty or more days.

5.14 Right of Access.

5.14.1 Each Unit Owner shall grant a right of access to its Unit to the Condominium Board, the managing agents, managers, superintendents and/or any other person authorized by the Condominium Board for the purpose of making inspections of, or for the purpose of removing violations noted or issued by any governmental authority against, the Common Elements, or any other part of the Property or for the purpose of curing defaults (after the giving of notice and applicable grace period as set forth herein) hereunder or under the Declaration or Rules and Regulations by such Unit Owner or correcting any conditions originating in such Unit Owner's Unit and threatening another Unit or all or any part of the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other portions of the Common Elements within such Unit Owner's Unit or elsewhere in the Building, or for the purpose of reading, Maintaining or replacing utility meters relating to the Common Elements or any other Unit in the Building. Any access provided hereunder: (i) shall not prevent or unreasonably interfere with the normal conduct of business of the Unit Owner or their respective Permittees, for its permitted purposes and (ii) shall not result in the imposition of any mechanic's lien against any of the Units. Any entry granted herein shall be at such times as are reasonably convenient and on reasonable prior notice (but not less than three (3) Business Days' notice), except that no notice will be necessary (i) in the case of an Emergency Situation or (ii) with respect to the exercise of any self-help rights granted under the terms of the Declaration or these By-Laws. A Unit Owner whose Unit is subject to a right of entry may, from time to time, impose reasonable security controls consistent with the Unit Owner's operation of its Unit and the rights of its Permittees, if any, and any overall security system for the Property and shall the right to have a representative present at all times during any such entry. Each Unit Owner whose Unit is subject to the easements and rights of access described in this Subsection 5.14.1 shall be reimbursed for reasonable out-of-pocket costs (but not consequential damages) incurred, including, but not limited to, the cost of repairs to such Unit Owner's Unit and security.

5.14.2 If any excavation or other substructure work shall be undertaken or authorized upon land adjacent to the Building, then, provided that the Condominium Board shall have obtained evidence of insurance, indemnification and other legal protections, for the benefit of the Condominium Board and the Unit Owners, reasonably satisfactory to the Unit Owners, each Unit Owner shall, to the extent necessary, afford to the person causing or authorized to cause such excavation or other substructure work, license to enter upon the Unit owned by such Unit Owner for the purpose of doing such work as shall be reasonably necessary to preserve any of the walls or structures of the Building from injury or damage and to support the same by proper foundations; provided that each Unit Owner shall be given reasonable advanced notice of the commencement of such work, and all such work shall be performed in a manner that shall minimize interference with the use and enjoyment of the Unit by the Unit Owner or its Permittees.

5.15 Rules and Regulations. Annexed hereto as Schedule A and made a part hereof are rules and regulations (hereinafter referred to as the “Rules and Regulations”) concerning the use of the Property. Subject to Section 2.2.2.8 hereof, the Condominium Board may from time to time, modify, amend or add to the Rules and Regulations. In the event of an inconsistency between the Declaration and By-Laws, and the Rules and Regulations, the provisions of the Declaration and By-Laws shall govern.

5.16 Real Estate Taxes, Water Charges and Sewer Rents. Subject to the provisions of Subsection 5.1.2 of these By-Laws, until the Units are separately assessed for real estate tax purposes, (i) the Unit Owners shall pay their respective pro rata share of all real estate taxes with respect to the Property in the proportion that the Common Interest of each Unit bears to the Common Interests of all Units to the Condominium Board as Common Charges, which will in turn pay such taxes to the proper authorities of The City of New York. Water and sewer services shall be supplied to and for all of the Units and the Common Elements through one or more building systems by the City of New York or such other utility servicing the Units and the Common Elements. Subject to the provisions of Subsection 5.1.2 of these By-Laws, and except to the extent water usage is separately metered or sub-metered the Unit Owners shall pay their respective pro rata share of all water and sewer charges with respect to the Property in the proportion that their Common Interest to the Condominium Board as Common Charges, which will in turn pay such taxes to the proper authorities of the City of New York.

5.17 Gas. Gas for the Building will be supplied by the utility company servicing the Units and may be separately metered for each Unit (or portion thereof). Each Unit Owner shall be required to pay the bills for such separately metered gas directly to the utility company. To the extent that gas is supplied to more than one Unit measured by a meter for the Units, the cost of such gas shall be a Common Expense payable by the Unit Owners.

5.18 Electricity. Electricity for each Unit (and its appurtenant Limited Common Elements) shall be supplied by the utility company servicing the Units and separately metered for each Unit (or portion thereof). Each Unit Owner shall be required to pay the bills for electricity consumed or used in such Unit Owner’s Unit (or portion thereof), directly to the utility company as directed by the Condominium Board. In the event electricity is ever provided to or for the General Common Elements, it shall be supplied through one or more separate meters therefor

and the cost thereof will be paid by the Condominium Board and will be borne by the Unit Owners as Common Charges.

5.19 Utilities Serving the General Common Elements. Except as otherwise provided in this Article 5, the cost and expense of steam, electricity and gas serving or benefiting any General Common Elements, if any shall be determined by the Condominium Board, and charged to the Unit Owners as a Common Expense according to their respective Common Interests.

ARTICLE 6

MORTGAGES

6.1 Notice to Condominium Board. A Unit Owner may mortgage such Unit Owner's Unit, and provided that the Condominium Board is notified of the name and address of the holder of any such mortgage encumbering such Unit, such holder will be deemed a Permitted Mortgagee under the terms of the Declaration and these By-Laws. A Unit Owner who satisfies a mortgage covering such Unit Owner's Unit shall so notify the Condominium Board of such satisfaction. The Condominium Board shall Maintain such information in a book entitled "Mortgages of Units".

6.2 Notice of Default and Unpaid Common Charges. The Condominium Board shall notify each Permitted Mortgagee having a Permitted Mortgage encumbering a Unit of (i) any default in the payment of Common Charges by the Unit Owner thereof, (ii) any other default beyond all cure periods by the Unit Owner of such Unit under the provisions of the Declaration or these By-Laws which may to the Condominium Board's knowledge then exist or (iii) the commencement by the Condominium Board of any action or proceeding pursuant to Article 5 of these By-Laws.

6.3 Performance by Permitted Mortgagees. The Condominium Board shall accept, by any Permitted Mortgagee of a Unit Owner, payment of any sum or performance of any act required to be paid or performed by such Unit Owner pursuant to the provisions of the Declaration, these By-Laws or the Rules and Regulations, with the same force and effect as though paid or performed by such Unit Owner.

6.4 Examination of Books and Records. Each Unit Owner and Permitted Mortgagee shall be permitted to examine the books of account and other records of the Condominium at reasonable times, on Business Days.

ARTICLE 7

SELLING, LEASING AND MORTGAGING OF UNITS

7.1 Selling, Leasing and Subleasing. No Unit or portion of a Unit shall be leased, except for a use permitted under the Declaration, and each lease shall expressly provide that the lessee must abide by all obligations of the Unit Owner with respect to such leased premises

under the Declaration and these By-Laws to the extent they are not the obligation of the Unit Owner. Leasing or subleasing shall not release the Unit Owner from any of its obligation under the Declaration.

7.2 Contents of Deed. Any Deed of any Unit shall be deemed to provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, these By-Laws and the Rules and Regulations, as the same may be amended from time to time.

7.3 No Severance of Ownership. No Unit Owner shall execute any Deed, mortgage or other instrument conveying or mortgaging title to such Unit Owner's Unit without including therein its appurtenant Common Interest, it being the intention to prevent any severance of such combined ownership. Any such Deed, 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. No part of the Common Interest appurtenant to any Unit may be sold, conveyed or otherwise disposed of, except as part of a sale, conveyance or other disposition of the Unit to which such interest is appurtenant or as part of a sale, conveyance or other disposition of such part of the appurtenant Common Interests of all Units.

7.4 Payment of Assessments. No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate or lease such Unit Owner's Unit unless and until the Unit Owner shall have paid in full to the Condominium Board all unpaid Common Charges and Special Assessments theretofore assessed by the Condominium Board against such Unit and until such Unit Owner shall have satisfied all unpaid liens against such Unit Owner's Unit other than Permitted Mortgages.

7.5 Labor Relations. Each lease hereafter entered into for all or a portion of either of the Units shall provide that tenant shall not employ, or permit the employment of, any contractor or laborer, or permit any materials to be delivered to or used in the Building, if, in the Condominium Board's sole judgment, such employment, delivery or use will interfere or cause any conflict or disharmony with other contractors or laborers engaged in the construction, Maintenance or operation of the Building or any business conducted at the Building by the Condominium Board or any Unit Owner or Permittee of such Unit Owner, or the use and enjoyment of the Building by other tenants or occupants. In the event of such interference, conflict or disharmony, upon the Condominium Board's request, the Unit Owner employing such contractor or laborer shall cause all contractors or laborers causing such interference or conflict to leave the Building immediately.

7.6 Mortgage of Units. Subject to Article 6, each Unit Owner shall have the right to mortgage or otherwise encumber such Unit Owner's Unit (and all or any portion of its interest therein) without restriction.

7.7 Transfer Tax upon Sale by Declarant or Affiliate. Unless otherwise provided in a purchase agreement, in the event any Unit is sold, transferred or assigned by Declarant or an

Affiliate of Declarant, the New York State and New York City real property transfer tax obligations, if any, shall be assumed and paid at closing by the purchaser, transferee or assignee.

7.8 Subordination, Non-disturbance and Attornment Agreements. The Condominium Board will enter into an agreement with any tenant with which a Unit Owner has entered into a lease for all or a portion of such Unit. Under the terms of such agreement, the tenant will acknowledge that the lease is subject and subordinate to the Declaration, and the Condominium Board will agree that so long as there is no event of default under said lease as would entitle the landlord under the lease to terminate the lease or dispossess the tenant thereunder, the tenant shall not be named or joined in any action or proceeding to foreclose the lien of the Condominium Board on the Unit for Common Charges or any other sums of any sort, and the Condominium Board shall agree that the lease shall not be terminated in any foreclosure or other action or proceeding instituted in connection with any such lien or in the exercise of any rights of the Condominium Board or in case the Condominium Board takes possession of the Unit pursuant to any provision of the Declaration or By-Laws, or otherwise; provided, however, that if the Condominium Board or any other party succeeds to the interests of the Unit Owner under the lease, the tenant will agree to be bound to the Board or party under all of the terms, covenants and conditions of the lease and the tenant will attorn to the Board or party as its landlord.

7.9 Estoppel and Agreement for benefit of Permitted Mortgagee. Supplementing Article 2, Subsection 2.2.2.18 of these By-Laws, the Condominium Board will enter into an estoppel and agreement with any owner of a Unit upon acquisition, or subsequently, when requested by a Unit Owner or its existing or proposed Permitted Mortgagee in form acceptable to the Unit Owner. The estoppel and agreement shall contain all or any of the following representations and statements to the extent requested by the Unit Owner or the Permitted Mortgagee: confirmation that the Declaration, By-Laws and tax lot drawings as amended as provided to the Unit Owner are complete, correct and in full force and effect; a statement as to the amount of common charges and assessments and all other amounts due the Condominium by the Unit Owner at a time or event specified by the Unit Owner, confirmation of all payments made to that date and a statement as to the monthly Common Charges and Special Assessments payable following Closing; confirmation of the then current budget of the Condominium and the amounts due by the applicable Unit Owner, and an agreement that the calculation of payments due by the Unit Owner or services provided to the Unit Owner will not be changed without its consent; an agreement to deliver all notices which are sent to the to the Unit Owner to its lender or lender's designee at the address provided; confirmation that any lender to a Commercial Unit Owner or its designee shall be deemed a Permitted Mortgagee by the Condominium; confirmation that the current use of the Units is lawful; agreement that the tenant of the Unit Owner is a third party beneficiary of the obligations of the Condominium to a Unit Owner, and an agreement to permit the tenant of the Unit Owner to undertake such alterations if designated by the Unit Owner; agreement that the Condominium shall have the same rights to consent to the actions of the tenant of a Unit Owner as it does to an action of the Unit Owner; agreement to provide the lender of a Unit Owner ten days prior notice of any action or sanction it has determined to take against the Unit Owner; and a confirmation to the Unit Owner's lender that it knows of no posted violations or pending bankruptcy with respect to the Unit other than those set forth in the Plan and any additional ones that it sets forth in the estoppel and agreement.

7.10 Possible Conflict between Lease and Declaration. Declarant has or is in the process of executing a lease with Raymours Furniture Company, Inc. for a portion of the Lower Unit (the "Raymours Lease"). The Raymours Lease provides or shall provide that in the event of a conflict between the express terms of the Raymours Lease and the Declaration, these By-Laws, the Rules and Regulations, the Floor Plans or the unit deed to the Lower Unit Owner, the terms of the Raymours Lease shall govern. The Declarant or Lower Unit Owner shall provide Potential Unit Owners, mortgagees, Permitted Mortgagees, tenants or subtenants or other parties who have a legitimate interest with a copy of the Raymours Lease. The provisions of the first two (2) sentences of this Section 7.10 shall not apply to any amendment or extension of the Raymours Lease made after the date hereof which creates a new conflict with the Declaration or these By-Laws.

ARTICLE 8

CONDEMNATION

8.1 Repair and Restoration. In the event of the taking in condemnation or by eminent domain of all or any part of the General Common Elements, the Condominium Board, as set forth below, will arrange for the prompt repair and restoration of such part of the General Common Elements so taken which, pursuant to the provisions of these By-Laws, are required to be Maintained by the Condominium Board. The award made for any such taking shall, be payable to the Condominium Board; provided, however, that if any such award exceeds One Million Dollars (\$1,000,000) and the Condominium Board has appointed an Insurance Trustee, such award shall be payable to the Insurance Trustee and shall be disbursed to the contractors engaged in such repair and restoration, if any, in appropriate progress payments. If the net proceeds of any such award are insufficient to cover, or if such net proceeds exceed the cost of any repairs and restorations, the deficit or surplus, as the case may be, will be borne and shared by all Unit Owners with respect to any taking of the General Common Elements pro rata in accordance with such Unit Owner's Common Interest.

8.2 Taking; Adjustment of Common Interest. If all or a portion of any Unit shall be taken by eminent domain, the Common Interest appurtenant to each Unit remaining after such taking shall be adjusted as follows: (1) if one Unit is taken in its entirety, the Common Interest appurtenant to the remaining Units shall be increased in proportion to the existing Common Interests of such Units to 100% in the aggregate; and (2) if a portion of any Unit (a "Partially Taken Unit") is so taken and any other Units (a "Retained Unit") are not taken, then each Partially Taken Unit shall, for the purpose of calculation only, be treated as if it had been divided prior to such taking into two (2) Units, one of which (the "Non-Taken Unit") having appurtenant thereto a Common Interest equal to the product of the Common Interest of the Partially Taken Unit and a fraction, the numerator of which is the floor area in square feet of the Non-Taken Unit and the denominator of which is the floor area in square feet of the Partially Taken Unit, and the other of which (the "Taken Unit") having appurtenant thereto a Common Interest equal to the product of the Common Interest of the Partially Taken Unit and a fraction, the numerator of which is the floor area in square feet of the Taken Unit and the denominator of which is the area in square feet of the Partially Taken Unit (the "Taken Common Interest"). The Taken Common

Interest shall be allocated among the Retained Units and the Non-Taken Unit in proportion to their respective Common Interests prior to such reallocation.

8.3 Application of Condemnation Award. The proceeds of any condemnation award resulting from the taking of (i) a Unit or any portion thereof shall belong to the Unit Owner of such Unit, (ii) the General Common Elements or any part thereof shall belong to the Unit Owners in accordance with their Common Interests calculated before the adjustment provided in Section 8.2 and (iii) any Limited Common Element or any part thereof shall belong to the Unit Owners, with the right to exclusive use of such Limited Common Element, to each in accordance with the interest(s) of such Unit Owner(s) in and to such Limited Common Element(s); provided, that any Unit Owner not otherwise entitled to any such proceeds in accordance with the foregoing may make a claim in any condemnation proceeding for any diminution in value of its interest as the result of such condemnation; and provided, further that if the Condominium Board shall have the obligation to restore the Building in accordance with Section 8.1, then such proceeds shall be assigned to the Condominium Board and delivered to the Condominium Board or the Insurance Trustee, as applicable, for purposes of such application. The proceeds of any condemnation award resulting from a taking of one or more Unit(s) or any portion thereof and a taking of the Common Elements (including the Limited Common Elements) or any portion thereof, if not otherwise allocated by the condemning authority, shall be allocated by the Condominium Board (subject to the reasonable approval of each Permitted Mortgagee if required by the applicable Permitted Mortgage) between those resulting from the taking of a Unit(s) or portion thereof and those resulting from the taking of the Common Elements (including the Limited Common Elements) or portion thereof. Notwithstanding anything in this Section to the contrary, no payment of any such proceeds shall be made by the Condominium Board to a Unit Owner without the consent of the Permitted Mortgagee, if required by the terms of a Permitted Mortgage, and unless there has first been paid out of such proceeds such Unit Owner's share of all Common Charges, Special Assessments, liens or unpaid assessments on its Unit or a release is obtained from such lienor.

8.4 Impairment of Easements. In the event all or any portion of any Unit shall be taken in condemnation, and as a result of such taking, the interest of any other Unit Owner in and to any easement or other property interest provided for these By-Laws or the Declaration (including rights with respect to Limited Common Elements) shall be taken or otherwise impaired, then such other Unit Owner may petition the Court having jurisdiction for a division of the award in respect of such taking between the Unit or such portion thereof and such easement or other property interest.

8.5 Actions by Board. All actions taken by the Condominium Board pursuant to the provisions of this Article 8 must be unanimous. In the event of a failure to achieve a unanimous determination, the matter shall be submitted to arbitration.

ARTICLE 9

RECORDS AND AUDITS

9.1 Records. The Condominium Board or the managing agent for the Condominium, if any, shall keep detailed records of the actions of the Condominium Board, minutes of the meetings of the Condominium Board, and financial records and books of account with respect to the activities of the Condominium Board, including a listing of all receipts and expenditures.

9.2 Audits. Within four months after the end of each fiscal year, an annual report of receipts and expenditures prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant shall be submitted by the Condominium Board to the Unit Owners, and, if so requested by a Unit Owner, to its Permitted Mortgagee. The cost of such report shall be paid proportionally by the Unit Owners as a Common Expense in accordance with their respective Common Interests.

9.3 Availability of Documents. Copies of the Declaration, these By-Laws, the Rules and Regulations and the Floor Plans and all books and records of the Condominium, as the same may be amended from time to time, shall be Maintained at the offices of the Condominium Board or the managing agent and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours.

ARTICLE 10

MISCELLANEOUS

10.1 Waiver. No provision contained in these By-Laws or the Rules and Regulations shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

10.2 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws nor the intent of any provision hereof.

10.3 Certain References.

10.3.1 A reference in these By-Laws to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context otherwise requires.

10.3.2 The terms "herein," "hereof" or "hereunder" or similar terms used in these By-Laws refer to these entire By-Laws and not to the particular provision in which the terms are used, unless the context otherwise requires.

10.3.3 Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of these By-Laws.

10.4 Severability. Subject to the provisions of the Declaration, if any provision of these By-Laws is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of these By-Laws and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of these By-Laws

shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law. In the event any provision of these By-Laws or the Rules and Regulations conflicts with the provisions of the Declaration, the provisions of the Declaration shall control.

10.5 Insurance Trustee. The Condominium Board shall have the power by unanimous approval to appoint an Insurance Trustee, in its sole discretion. Any Insurance Trustee shall be a bank or trust company in the City of New York, designated by the Condominium Board and having a capital surplus and undivided profits of Five Hundred Million Dollars (\$500,000,000) or more. In the event the Insurance Trustee resigns or the Condominium Board wishes to replace it, the Condominium Board shall promptly appoint a new Insurance Trustee. The Condominium Board shall pay the fees and disbursements of any Insurance Trustee and such fees and disbursements shall constitute a Common Expense. The Insurance Trustee shall hold all such proceeds in accordance with Section 254(4) of the Real Property Law of the State of New York. If required by either Unit Owner's construction or permanent lender, which is a Registered Mortgagee, such lender, if it agrees, shall be the Insurance Trustee until its release of all Units from the lien of its mortgage.

10.6 Successors and Assigns. Except as set forth herein or in the Declaration to the contrary, the rights and/or obligations of any Unit Owner or its designee as set forth herein shall inure to the benefit of and be binding upon any successor or assign of said Unit Owner or its designee.

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

10.8 Waiver of Diplomatic or Sovereign Immunity.

10.8.1 Each Unit Owner by its acceptance of delivery of title to, and the deed for, a Unit and its continued ownership of a Unit waives any and all immunity from suit or other actions or proceedings and agrees that, should the Condominium Board bring any suit, action or proceeding in New York or any other jurisdiction to enforce any obligation or liability of the Unit Owner arising, directly or indirectly, out of or relating to the By-Laws, no immunity from such suit, action or proceeding will be claimed by or on behalf of the Unit Owner.

10.8.2 As of date of acceptance of the Deed for the Unit, the Unit Owner acknowledges and agrees that all disputes arising, directly or indirectly, out of or relating to the By-Laws may be dealt with and adjudicated in the state courts of New York or the federal courts sitting in New York, and hereby expressly and irrevocably submits the person of the Unit Owner to the jurisdiction of such courts in any suit, action or proceeding arising, directly or indirectly,

out of or relating to the By-Laws. So far as is permitted under the applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action shall be necessary in order to confer jurisdiction upon the person of the Unit Owner in any such court.

10.8.3 The Unit Owner irrevocably waives, to the fullest extent permitted by law, and agrees not to assert, by way of motion, as a defense or otherwise in any suit, action or proceeding arising, directly or indirectly, out of relating to the By-Laws, brought in the state courts in New York or the federal courts sitting in New York: (i) any objection which it may have or may hereafter have to the laying of the venue of any such suit, action or proceeding in any such court; (ii) any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum; or (iii) any claim that it is not personally subject to the jurisdiction of such courts. The Unit Owner agrees that final judgment from which the Unit Owner has not or may not appeal or further appeal in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon the Unit Owner and, may so far as is permitted under the applicable law, be enforced in the courts of any state or any federal court and in any other courts to the jurisdiction of which the Unit Owner is subject, by a suit upon such judgment and that the Unit Owner will not assert any defense, counterclaim, or set off in any such suit upon such judgment.

10.8.4 The Unit Owner agrees to execute, deliver and file all such further instruments as may be necessary under the laws of the State of New York, in order to make effective the consent of the Unit Owner to jurisdiction of the state courts of New York and the federal courts sitting in New York and any other provisions of this Section 10.8.

10.8.5 Nothing in this Section 10.8 shall affect the right of the Condominium Board to bring proceedings against the Unit Owner in the courts of any jurisdiction or jurisdictions.

10.8.6 In the event the Unit Owner is a foreign government, a resident representative of a foreign government or such other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e. diplomatic or sovereign immunity), such Unit Owner hereby designates C.T. Corporation System, having its offices, at the date hereof, at 111 Eighth Avenue, New York, New York 10011 as its duly authorized and lawful agent to receive process for and on behalf of the Unit Owner in any state or Federal suit, action or proceeding in the State of New York based on, arising out of or connected with the By-Laws.

10.9 Patriot Act. No Unit Owner in its capacity as a Unit Owner may act directly or indirectly for or on behalf of any person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Persons," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and no Unit Owner shall be engaged in any business at the Property directly or indirectly on behalf of, or instigating or facilitating such business, directly or indirectly, on behalf of any such person, group, entity or nation.

ARTICLE 11

AMENDMENT TO BY-LAWS

11.1 Amendments by Unit Owners. Any provision of these By-Laws may be added to, amended, modified or deleted only by the vote of sixty-six and two-thirds percent (66 2/3%) of the Unit Owners in number and common interest taken in accordance with the provisions of these By-Laws, provided further, that the Common Interest appurtenant to each Unit as expressed in the Declaration shall not be altered without the written consent of all Unit Owners directly affected. The Unit Owner(s) seeking any such amendment, modification, addition or deletion to these By-Laws shall be responsible for any costs associated therewith

11.2 Amendments Affecting Recognized Mortgagees. Notwithstanding any provision contained herein to the contrary, no modification, addition, amendment or deletion of or to the By-Laws shall be effective as against a Recognized Mortgagee whose interest would be adversely affected by such modification, addition, amendment or deletion unless such Recognized Mortgagee has given its prior written consent thereto, which consent shall not be unreasonably withheld or delayed. Any dispute that shall arise as to whether a modification, addition, amendment or deletion would adversely affect a Recognized Mortgagee shall be resolved by arbitration pursuant to Article 12 hereof.

ARTICLE 12

ARBITRATION

12.1 General Procedure. Any dispute which involves a determination as to whether a Unit Owner may have been materially adversely affected or any dispute in which the Condominium Board is obligated under the Declaration or these By-Laws to act unanimously and is able to reach unanimous agreement, and any other arbitration provided for in the Declaration or these By-Laws shall be submitted to arbitration as set forth herein. In the event of a dispute involving insurance coverage, the arbitrator shall be required to choose only between the positions of each Unit Owner. The arbitration shall be conducted before one arbitrator in New York City by Judicial Arbitration and Mediations Services, Inc. ("JAMS") or National Arbitration and Mediation ("NAM") or any successor organization of either, in accordance with its rules then in effect and the decision rendered in such arbitration shall be binding upon the parties and may be entered in any court having jurisdiction. In the event that neither JAMS nor NAM is in existence and neither organization has a successor, any arbitration hereunder shall be conducted in New York City before one arbitrator appointed, on application of any party, by any justice of the highest court of appellate jurisdiction located in the County of New York. The decision of the arbitrator so chosen shall be given within ten (10) days after such arbitrator's appointment. Any arbitrator appointed or selected in connection with any arbitration under this Article 12 shall be a lawyer or real estate owner, developer, or manager familiar with condominium properties and having general legal or real estate experience, as the case may be, of not less than fifteen (15) years.

12.2 Costs and Expenses. The fees, costs and expenses of the arbitrator will be borne by the losing party in the arbitration or, if the position of neither party to the dispute will be substantially upheld by the arbitrator, such fees, costs and expenses will be borne equally by the disputants. Each disputant will also bear the fees and expenses of such Unit Owner's counsel and expert witnesses. All costs and expenses paid or incurred by the Condominium Board in connection with or resulting from any arbitration held hereunder, including, without limitation, the fees and expenses of counsel and expert witnesses, will constitute Common Expenses.

12.3 Agreement by Parties. The parties to any dispute required or permitted to be submitted to arbitration hereunder may, by mutual agreement between them, vary any of the provisions of Section 12.1 with respect to the arbitration of such dispute, or may agree to resolve their dispute in any other manner, including, without limitation, the manner set forth in Section 3031 of the New York Civil Practice Law and Rules and known as the "New York Simplified Procedure for Court Determination of Disputes."

SCHEDULE A

RULES AND REGULATIONS

1. The sidewalks, entrances, passages, public halls, elevators, vestibules, corridors and stairways of the Building shall not be obstructed or used for any other purpose than ingress to and egress from the Building.

2. Each Unit Owner shall keep such Unit Owner's Unit (including the surface of any roof setback appurtenant to a Unit) in a good state of preservation and cleanliness, and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance.

3. No radio antennae, television aerials, satellite dishes, or similar devices shall be permitted to be attached to or hung from the Exterior Facade. No sign, notice, advertisement or illumination shall be inscribed or exposed on or at any door or window or other part of the Building except such as are permitted pursuant to the Declaration or the By-Laws.

4. All radio, television or other electrical equipment of any kind or nature installed or used in each Unit 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 radio, television or other electrical equipment in such Unit Owner's Unit.

5. No occupant of the Building shall send any employee of the Building or of the managing agent thereof out of the Building on any private business.

6. No vehicle belonging to a Unit Owner or to a member of the family or guest, tenant or employee of a Unit Owner shall be parked in such manner as to impede or prevent ready access to any entrance to or exit from the Building by another vehicle, but the foregoing shall not prohibit parking in front of the Building where permitted by applicable legal requirements.

7. Unit Owners will observe or cause to be observed all legal requirements with respect to the disposal of trash.

8. No Unit Owner shall at any time keep or permit to be kept in such Unit Owner's Unit any inflammable, combustible or explosive fluid, material, chemical or substance, except as shall be necessary and appropriate for the permitted uses of such Unit.

9. Each Unit Owner shall periodically cause its Unit to be inspected for rodents and other pests, and, if necessary and upon ten (10) days notice to the Condominium Board, cause the same to be exterminated by a reputable and licensed extermination company.

10. In the event that any portion of either Unit is used for the preparation of food, such portion of such Unit shall be vented through Facilities on the roof.