**THIS PLAN HAS BEEN AMENDED. SEE INSIDE COVER.**

**CONDOMINIUM OFFERING PLAN FOR**

# THE PLAZA HOTEL — CONDOMINIUMS

**768 Fifth Avenue**
**New York, New York 10019**

The Plaza

HOTEL RESIDENCES

TOTAL INITIAL PURCHASE PRICE OF THE 152 CONDO HOTEL UNITS OFFERED FOR SALE IS $365,555,000

(152 Condo Hotel Units are being offered for sale hereunder. A separate offering plan was filed with respect to the 181 Residential Units (and 126 Storage Bin Licenses) located in the Building. In addition, three Commercial Units designated Transient Hotel Unit, Accessory Unit and Club Unit are included in the Building but not offered.)

**Sponsor**
CPS 1 Realty LP
c/o El-Ad Properties NY LLC
575 Madison Avenue
New York, New York 10022

**Selling Agent**
Stribling Marketing Associates LLC
924 Madison Avenue
New York, New York 10021

**Sales Office**
One Central Park South
New York, New York 10019
(212) 588-8000

Date of Acceptance for Filing: June 20, 2006

The term of the initial offering of this Plan commenced on June 20, 2006 and expires on June 19, 2007, unless said date is extended in a duly filed amendment.

**SEE PAGE (viii) FOR SPECIAL RISKS TO PURCHASERS**

**BECAUSE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER THAN SELL UNITS, THIS PLAN MAY NOT RESULT IN THE CREATION OF A CONDOMINIUM IN WHICH A MAJORITY OF THE UNITS ARE OWNED BY OWNER-OCCUPANTS OR INVESTORS UNRELATED TO SPONSOR. (SEE SPECIAL RISKS SECTION OF THE PLAN.)**

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

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

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## SPECIAL RISKS TO BE CONSIDERED BY PURCHASERS

### 1. Use Provisions

The Plaza Condominium will initially consist of 152 Condo Hotel Units, a Transient Hotel Unit (comprised of approximately 130 transient hotel guest rooms), 181 Residential Units, an Accessory Unit and a Club Unit and the Common Elements.

The Residential Units are not offered for sale hereunder. Rather, a separate offering plan with respect thereto (the "Residential Plan") has been filed with the Department of Law and any prospective purchasers of Residential Units at The Plaza Condominium should refer to the Residential Plan (a copy of which is available at the Sales Office).

As the fee owner of the Property, Sponsor applied for and received from the New York State Department of Law (the "Department of Law") a "no-action" letter pursuant to which Sponsor: (A) recorded the Declaration and divided the Building into the various Units described herein, namely: (i) the 152 Condo Hotel Units (offered hereunder); (ii) the Transient Hotel Unit, the Accessory Unit and the Club Unit (none of which are offered for sale hereunder); and (iii) the 181 Residential Units (offered for sale under the Residential Plan and not offered hereunder); and (B) conveyed the Accessory Unit, Club Unit and Residential Units to its affiliate(s).

Pursuant thereto, the Declaration of Condominium (creating the various Units as aforesaid) dated as of March 13, 2006 was recorded in the Office of the City Register (on March 23, 2006 as CRFN 2006000164230) by CPS 1 Realty LP, as fee owner, as amended and restated by Amended and Restated Declaration dated as of March 13, 2006 (submitted to the Office of the City Register for recording as CRFN 2006040600067); and by deeds dated as of April 7, 2006, CPS 1 Realty LP conveyed: (i) the Residential Units to its affiliate Plaza Residential Owner LP; (ii) the Accessory Unit to its affiliate Plaza Accessory Owner LP; and (iii) the Club Unit to its affiliate Plaza Club Owner LP. Accordingly, as of the date of the filing of this Plan, the only Units owned by CPS 1 Realty LP (Sponsor) are the 152 Unsold Condo Hotel Units and the Transient Hotel Unit.

Except to the extent otherwise permitted by applicable Laws and approved by the Hotel Board, each Condo Hotel Unit may only be used as Hotel Accessory Quarters (see Special Risk #2 below) and for no other purpose, and in all events subject to all Laws and to the further provisions of the Declaration, Condominium By-Laws and the Hotel By-Laws.

The Residential Units (none of which are offered for sale under this Plan) may generally only be used for residential purposes and, subject to compliance with the Declaration, the Condominium By-Laws and the Residential By-Laws, for a lawful home occupation as defined in the Zoning Resolution.

The Transient Hotel Unit, the Accessory Unit and the Club Unit (none of which are offered for sale under this Plan), may, except as otherwise expressly provided in the Declaration, in the Condominium By-Laws (or the Hotel By-Laws in the case of the Transient Hotel Unit) or as set forth herein, be used for any lawful purpose, including, without limitation, for retail, public event, restaurant, banking, commercial, residential, telecommunications, hotel, office,

performing arts and utility purposes.) The Transient Hotel Unit is located on portions of Floor 2 and Floors 4 through 10 of the Building.

Sponsor makes no representation whatsoever with respect to the uses to which all or any portion of the Non-Condo Hotel Units (designated as any Unit that is not a Condo Hotel Unit and as more particularly described in Section A herein) or their appurtenant Limited Common Elements or any public spaces within the Building may be put at any time; nor does Sponsor make any representation with respect to the identity of the owners or users or future owners or users of any of such Units at any time.

## 2. Use of Condo Hotel Units

As more particularly set forth in the Declaration, Condominium By-Laws and Hotel By-Laws and subject to all applicable Laws, the Condo Hotel Units may generally only be used as Hotel Accessory Quarters. "Hotel Accessory Quarters" means living quarters which are not occupied by the Unit Owner thereof in excess of four months (in the aggregate) in any calendar year, and, when not occupied by such Unit Owner, are available for rental as a "Transient Hotel Room," *i.e.*, a room or single suite of rooms used for transient occupancy and which may be rented on a daily basis as part of a transient hotel. Where a Condo Hotel Unit is owned by an entity (*i.e.*, rather than by one or more natural person(s)), such entity shall designate in writing to the Hotel Board and Hotel Manager one individual as the primary occupant of such Unit, and the term "Unit Owner" as used in the preceding sentence and in connection with the conditions relating to the permitted use of such Unit as reflected therein shall mean such designated individual. The Condo Hotel Units may be available for rental: (i) pursuant to a hotel rental program; (ii) by the Unit Owner directly; or (iii) by a third party designated by the Unit Owner. As more particularly described in Article I(6) of the Unit Management and Operation Agreement, "Rental of Unit by the Public", aside from using the hotel rental program which may be made available from time to time by Hotel Manager, each Condo Hotel Unit Owner may use any licensed rental agent who appears on Hotel Manager's list of qualified agents that possess the objective minimum quality standards as reasonably set forth by Hotel Manager from time to time or alternatively, such Condo Hotel Unit Owner may submit his or her choice of rental agent to Hotel Manager for consideration based on the minimum quality standards. The 130 hotel guest rooms that comprise the Transient Hotel Unit shall be available for rental on a daily basis as part of the transient hotel. Initially, the Transient Hotel Unit Owner shall be Sponsor. It is currently anticipated that FHR (NYC), LLC, an affiliate of Fairmont Hotels & Resorts (U.S.) Inc. will enter into certain agreement(s), with the Transient Hotel Unit Owner and the Hotel Board that permits, while such agreement(s) are in effect for FHR (NYC), LLC or an affiliate thereof to serve as the hotel manager for the Transient Hotel Unit.

Sponsor entered into two agreements with the New York Hotel & Motel Trades Council, AFL-CIO (the "Union") in connection with Sponsor's development of the Hotel Section and Sponsor's use of employees in the Hotel Section. Among other things, Sponsor and the Union reached an agreement on the following items: (i) maintaining approximately 131 hotel guest suites (130 are currently planned) as a transient hotel and converting approximately 135 hotel guest suites (152 are currently planned) into Condo Hotel Units and maintaining the Oak Bar, Oak Room, the Palm Court and the Ballroom as hotel function and meeting areas; (ii) converting a portion of the Building into Residential Units for residential use (as set forth in the Residential

Plan); (iii) employee wages, hours and other terms of employment at the Hotel Section; (iv) lobbying efforts by Sponsor and Union with respect to certain legislation regarding hotel conversions; and (v) the structure of the Hotel Section and the Union's role in Sponsor's plans for the Hotel Section. The agreements with the Union do not set forth a term. The approximate size and number of hotel keys referenced in the Union agreements, as described above, substantially conform to Sponsor's plans for the Hotel Section referenced above.

## 3. Subdivision of the Transient Hotel Unit

The Transient Hotel Unit Owner has the right, among other things, to alter and subdivide its Unit into any number of newly created condominium Units and to offer all or any portion thereof as additional Condo Hotel Units or as fractional/timeshare interests. Sponsor will not offer any fractional/timeshare interests for sale without filing a separate offering plan with respect thereto. To the best of Sponsor's knowledge, no subdivision of the Transient Hotel Unit into separate units for sale to the general public is currently contemplated by the Transient Hotel Unit Owner. Sponsor shall not offer additional Condo Hotel Units for sale without an amendment to the Plan.

## 4. Purchaser Deposits; Defaults by Purchasers; Specific Performance

At the time an agreement for the purchase of a Condo Hotel Unit (an "Agreement") is executed, the Purchaser thereunder is required to make a payment in an amount equal to 10% of the purchase price set forth therein (the "Initial Deposit"); and an additional payment equal to 10% of such purchase price (the "Additional Deposit") due and payable no later than the earlier to occur of: (x) four months after the date of the Agreement; or (y) 15 days after Sponsor serves Purchaser with written notice of an amendment to the Offering Plan declaring the same effective, but in no event later than the closing of title to the Unit. The term "Deposit" as used herein refers to both the Initial Deposit and, if the same has been paid at the time in question, the Additional Deposit. Notwithstanding the foregoing, if a Purchaser is a foreign government, a resident representative of a foreign government or other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity), such Purchaser will be required to make an Initial Deposit equal to 50% of the applicable purchase price and will not be required to make an Additional Deposit. The portion of any Deposit made by a Purchaser in connection with the purchase of a Unit in excess of $100,000 in the aggregate will not be federally insured.

In the event a Purchaser defaults under an Agreement, time being of the essence with regard to the obligations of the Purchaser thereunder, and does not cure such default within 30 days after Sponsor gives notice to the Purchaser of such default, Sponsor may, at its option, (i) cancel such Agreement and retain, as liquidated damages, the Deposit made by the Purchaser, together with interest earned thereon, if any; or (ii) bring an action against the Purchaser for specific performance, in which event the Purchaser could be compelled to complete the purchase of the Unit. Additionally, if a Purchaser fails for any reason to close title on the originally scheduled closing date and Sponsor elects not to cancel the Agreement: (a) the closing apportionments to be made at the closing will be made as of midnight of the day preceding the originally scheduled closing date; and (b) the Purchaser shall pay Sponsor interest at a rate of 0.04% per day (or such lower daily rate which is the legal limit, if 0.04% per day exceeds the

legal limit) on the total purchase price, computed from the original closing date until the transaction is actually closed. (See Sections entitled "Procedure to Purchase" and "Unit Closing Costs and Adjustments" in Part I of the Plan for further discussion.)

**5. No Financing Contingency**

A Purchaser may obtain financing from any lending institution or other source, but the Purchaser's obligation to purchase a Condo Hotel Unit pursuant to an Agreement shall not be contingent on the Purchaser obtaining such financing, so that a Purchaser will remain obligated under the Agreement whether or not such Purchaser has been able to obtain financing. Neither Sponsor nor Selling Agent makes any representation whatsoever as to the terms or availability of any mortgage or other financing. Prospective Purchasers should be aware that even if a loan commitment is obtained, its term may be limited and it could expire before the closing date, and Sponsor shall have no liability as a result of any scheduling, rescheduling or adjournment of closing beyond the expiration of a loan commitment. (See Section J in Part I of the Plan for further discussion.)

**6. Agreement/Default on Downpayments**

The Agreement between Sponsor and a Purchaser, the form of which is set forth as Exhibit 1 in Part II of the Plan, in respect of the purchase of a Unit requires the making of an Initial Deposit and, subject to the terms of the Plan and the Agreement, an Additional Deposit. The Deposit, and all other amounts paid by a Purchaser to Sponsor pursuant to the Agreement and/or the Plan in connection with the purchase of a Unit, shall be such Purchaser's own funds (and not a third party's). In the event that a Purchaser fails to close title on the date set for closing or otherwise fails to perform any other obligation under his or her Agreement (including the payment of any portion of the Deposit), and such default is not cured within 30 days after Sponsor gives written notice to such Purchaser of the default, Sponsor, at its option, (i) may cancel such Agreement and retain as liquidated damages (and not a forfeiture or penalty) the Deposit made by the Purchaser, together with all interest earned thereon; or (ii) bring an action against the Purchaser for specific performance, in which event the Purchaser could be compelled to complete the purchase of the Unit. In the event Sponsor retains the Deposit (and any interest thereon) as liquidated damages, in such case, Purchaser shall have no further liability to Sponsor in respect of the Agreement (except for those matters expressly specified therein or herein to survive the termination thereof); however, such Purchaser shall not have any right whatsoever to the return of all or any portion of its Deposit (or any interest thereon). Purchasers are advised that notwithstanding the foregoing, nothing herein shall be deemed to grant Purchaser any right of rescission and/or any right to the return of all or any portion of a Deposit except as granted pursuant to a material amendment to the Plan or as otherwise expressly set forth in the Plan.

Purchasers and the Escrow Agent may apply to the Attorney General in the event of a dispute for a determination on the disposition of the escrowed funds and any interest thereon. Sponsor must avail itself of this procedure if there is a dispute that needs to be resolved. A form for this purpose is set forth in Part II of the Plan. (See the Attorney General dispute provisions in the Section entitled "Procedure to Purchase" in Part I of the Plan for further discussion).

## 7. Control by Sponsor; First Hotel Meeting

The powers and duties necessary for or incidental to the administration of the affairs of the Condominium will be vested in the Condominium Board. As more particularly set forth in the Declaration, Condominium By-Laws and Hotel By-Laws, a separate board of managers, the Hotel Board, shall have the power and authority to govern the affairs of the Hotel Section of the Condominium.

Until the first annual meeting of the Hotel Unit Owners (the "First Annual Hotel Meeting"), the Hotel Board shall consist of three persons – two of which shall be designated by Sponsor and one of which shall be designated by the Transient Hotel Unit Owner (which shall initially be Sponsor), all three of which shall also serve as the Hotel Section's three designees to the seven-member Condominium Board. The First Annual Hotel Meeting shall be held not later than 30 days following the later to occur of: (a) the second anniversary of the First Condo Hotel Closing; or (b) the closing of title to Condo Hotel Units representing at least 50% both in number and aggregate Common Interests of all Condo Hotel Units to Purchasers; and at such meeting, the incumbent three-member Hotel Board designated by Sponsor and the Transient Hotel Unit Owner will resign and a new Hotel Board, consisting of five members, will be elected and/or designated by the Condo Hotel Unit Owners, the Transient Hotel Unit Owner and Sponsor, as the case may be, as described below.

As a result of the foregoing, there is no provision in the Hotel By-Laws that assures a majority of the Hotel Board must be Condo Hotel Unit Owners, Condo Hotel Unit occupants or members of a Condo Hotel Unit Owner or Condo Hotel Unit occupant's household who are unrelated to Sponsor and its principals. Prospective Purchaers are advised that Condo Hotel Unit Owner-occupants and non-resident Condo Hotel Unit Owners, including Sponsor, may have inherent conflicts on how the Hotel Section should be managed because of their different reasons for purchasing, i.e., for personal use as opposed to investment.

Sponsor reserves the unconditional right to rent or lease the Condo Hotel Units (including, but not limited to, transient rental of the Condo Hotel Units on a nightly basis prior to the sale of such Condo Hotel Unit), so there is no commitment to sell more Condo Hotel Units than the fifteen percent of Units necessary to declare this Plan effective, and Condo Hotel Unit Owner-occupants may never gain effective control and management of the Hotel Section. Sponsor must receive consent from its lender, Column Financial, Inc. (on its own behalf and on behalf of other lenders participating from time to time) and any successor lender(s) pursuant to any refinancing (the "Construction Lender" as further defined in Section A of Part I of the Plan), to rent, rather than sell the Condo Hotel Units.

After the First Annual Hotel Meeting, the Hotel Board shall consist of five persons: (i) three members elected and/or designated by the Condo Hotel Unit Owners (including Sponsor); and (ii) two members designated by the Transient Hotel Unit Owner. At meetings of the Hotel Unit Owners, Sponsor will have the right to vote all of the Common Interests appurtenant to the Condo Hotel Units owned by Sponsor as it sees fit. In addition, at elections of members to the Hotel Board held at and after the First Annual Hotel Meeting but before the expiration of the Initial Hotel Control Period, Sponsor and/or its designee will have the right to designate two of the three members of the Hotel Board that are otherwise to be elected by the Condo Hotel Unit

Owners who may be persons related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owners; and Sponsor, its designee and all other Condo Hotel Unit Owners shall have the right to elect the remaining one member of the Hotel Board to be elected by the Condo Hotel Unit Owners who shall not be related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owners. At elections of members to the Hotel Board held after the expiration of the Initial Hotel Control Period but while Sponsor and/or its designee still owns at least one Unsold Condo Hotel Unit, Sponsor will have the right to designate one of the three members of the Hotel Board (who may be related to or affiliated with Sponsor, such designee or other Unsold Unit Owner) that is otherwise to be elected by the Condo Hotel Unit Owners; and Sponsor, its designee and all other Condo Hotel Unit Owners shall have the right to elect the remaining two members of the Hotel Board that are to be elected by the Condo Hotel Unit Owners, which members shall not be related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owners. The Transient Hotel Unit Owner (which will initially and may thereafter be Sponsor) shall at all times have the right to designate two members of the five-member Hotel Board. Accordingly, from and after the expiration of the Initial Hotel Control Period, Sponsor and/or its designee shall have the right to designate not more than one of the three members of the Hotel Board to be elected by the Condo Hotel Unit Owners (although, if the Transient Hotel Unit Owner is Sponsor or an affiliate thereof, Sponsor shall also have the right to designate the two Hotel Board members that are to be designated by the Transient Hotel Unit Owner). There is no restriction on the right of Sponsor and its designee(s) or any Unsold Condo Hotel Unit Owner to vote for members of the Hotel Board who are not related to or affiliated with Sponsor or such designee or Unsold Condo Hotel Unit Owner; however, after the expiration of the Initial Hotel Control Period, neither Sponsor not its designee will designate more than one of the three members of the Hotel Board to be elected by the Condo Hotel Unit Owners.

Three of the five members of the Hotel Board shall also serve as members of the Condominium Board. Until the expiration of the Initial Condo Hotel Control Period, two of such three Hotel Board members also serving as the Hotel Board's designees to the Condominium Board shall be the two Hotel Board members designated by Sponsor in respect of the Condo Hotel Units; and the third Hotel Board member also serving as a Hotel Board designee to the Condominium Board shall be one of the Hotel Board members designated thereto by the Transient Hotel Unit Owner, which is also initially Sponsor. After the expiration of the Initial Hotel Control Period, the two Hotel Board members designated by the Transient Hotel Unit Owner and one of the Hotel Board members to be elected by the Condo Hotel Unit Owners (and who is not designated by Sponsor and/or its designee) shall be the three Hotel Board members who also serve on the Condominium Board.

The "Initial Hotel Control Period" means the period which shall end upon the later to occur of: (a) the fifth anniversary of the First Condo Hotel Closing or (b) the closing of title by Sponsor to Condo Hotel Units representing at least 90%, both in number and in aggregate Common Interests, of all Condo Hotel Units.

Until Sponsor no longer designates or elects a majority of the members of the Hotel Board, Sponsor will, through its control of the Hotel Board, be able to determine the maintenance and operation of, and the services to be provided by, the Hotel Board, and also

(subject to any General Common Charges assessed by the Condominium Board) the determination of Hotel Common Charges to be paid by all Condo Hotel Unit Owners.

Sponsor, through its control of the Hotel Board, may not exercise veto power over expenses applicable exclusively to the Hotel Section as described in Schedule B-1 of this Plan, or over expenses required to comply with any Laws applicable to the Hotel Section, or to remedy any notice of violation entered against the Hotel Section or to comply with any proper work order by an insurer of the Hotel Section. Sponsor may, however, exercise veto power over expenses other than those described in the preceding sentence, to the extent provided in the Plan, for a period ending not more than five (5) years after the First Condo Hotel Closing or whenever the Unsold Hotel Units constitute less than 25% of the Common Interest of all Condo Hotel Units, whichever is sooner. (See Sections P and Q in Part I of Plan for further discussion.)

**8. Condominium Board of Managers; No Control by Hotel Board or Condo Hotel Unit Owners**

The Condominium Board shall be comprised of seven members: three members designated by the Hotel Board, three members designated by the Residential Board and one member designated by the Accessory Unit Owner. The Club Unit Owner shall not on its own in such capacity designate any members of the Condominium Board. Until the expiration of the Initial Condo Hotel Control Period, two of such three Hotel Board members also serving as the Hotel Board's designees to the Condominium Board shall be the two Hotel Board members designated by Sponsor in respect of the Condo Hotel Units; and the third Hotel Board member also serving as a Hotel Board designee to the Condominium Board shall be one of the Hotel Board members designated thereto by the Transient Hotel Unit Owner, which initially will be Sponsor. Thus, for so long as Sponsor owns the Transient Hotel Unit during the Initial Condo Hotel Control Period, Sponsor will, either as Sponsor or as the Transient Hotel Unit Owner, appoint the three Hotel Board members also serving as the Hotel Board's designees to the Condominium Board; and, together with its affiliates which will initially, and may for a period of time following the first Condo Hotel Unit closing, will have the right to appoint additional members to the Condominium Board in their capacities as the owner of Unsold Residential Units and/or the owner of the Accessory Unit, as the case may, control the Condominium Board.

The Condominium Board shall have the powers and duties necessary for or incidental to the administration of the affairs of the Condominium. Subject to such authority of the Condominium Board, generally, but subject to the Declaration, Condominium By-Laws and Hotel By-Laws provisions governing the same, all determinations which affect only the Hotel Section and do not adversely affect any of the Non-Hotel Units, Non-Hotel Unit Owners, or the General Common Elements shall be made by the Hotel Board. Any dispute between the Hotel Board and the Condominium Board as to which entity shall be entitled to make any determination shall be settled by arbitration in the manner provided in the Condominium By-Laws. As more fully set forth (and except as may otherwise be provided) in the Condominium By-Laws, all determinations required to be made by the Condominium Board shall be by majority of the votes cast at any meeting at which a quorum is present.

The Hotel Section as well as the Residential Section and the Accessory Unit Owner will be represented on the Condominium Board, with the Hotel Section having the right to appoint

three of the seven members of the Condominium Board, the Residential Section having the right to appoint three members and the Accessory Unit Owner having the right to appoint one member. As a result, the members of the Condominium Board representing the Hotel Section will never control a majority vote thereon; and the Non-Hotel Unit Owners (which will initially and may thereafter include Sponsor or affiliates of Sponsor) will, in the aggregate, control a majority of the votes on the Condominium Board. Moreover, Sponsor may initially control a majority vote on the Condominium Board since Sponsor will initially own the Accessory Unit and one or more of the Residential Units and shall, in such capacity, have the right to designate additional members to the Condominium Board in addition to the rights reserved to Sponsor with respect to the election and/or designation of members of the Hotel Board. Condo Hotel Unit Owners shall not be entitled to vote in their individual capacities as Unit Owners at any meeting of the Condominium Board. (See Sections Q and R in Part I of Plan for further discussion).

**9. Interim Service Period**

Prospective Purchasers are advised that until the later of: (i) twelve months after the First Condo Hotel Closing; or (ii) the closing of title to and occupancy of at least 50% of the Condo Hotel Units, some of the services and facilities described in the Plan (such as some of the elevators or a full staff of hotel personnel) may not be available. However, it is anticipated that at all times after the First Condo Hotel Closing, the hotel lobby will be attended 24 hours a day, seven days a week, and there will be at least one elevator servicing every floor on which there are occupied Condo Hotel Units. The interim level of staffing will at all times during this period be commensurate with the levels of occupancy from time to time and adequate to properly maintain the Building. During such interim service period when full services and/or facilities are not available, the Hotel Common Charges payable by the Unit Owners may be reduced accordingly to reflect the corresponding diminished expenses of the Hotel Section. (See Section B in Part I of Plan for further discussion).

**10. Additional Building Work**

Renovation in general is a complicated process which requires the coordination of numerous concurrent tasks, contractors and suppliers and the balancing of complex mechanical and architectural systems, all of which is subject to unanticipated delays and difficulties and necessarily involves noise, disruption, construction dust, debris and inconvenience. Thus, for a period of time following the First Condo Hotel Closing (through, including and beyond the closing of title to any particular purchaser's Condo Hotel Unit), work should be expected to be undertaken and continue by or on behalf of: (i) Sponsor to complete the balance of the Building; (ii) individual Condo Hotel Unit Owners within their Condo Hotel Units (to perform custom renovations, etc., to the extent permitted pursuant to Article IV(2) of the Unit Management and Operation Agreement (which states that a Condo Hotel Unit Owner shall not alter such Condo Hotel Unit in any way without the prior written consent of Hotel Manager)); and (iii) the Non-Condo Hotel Unit Owners to complete renovation, build-out, furnishing and equipping their Units. It is currently anticipated that the initial renovation of the Residential Section will be substantially complete by January 2007, the initial renovation of the Hotel Section will be substantially complete by June 2007 and the initial renovation of the Accessory Unit and the Club Unit will be substantially complete by October 2007, although each of these dates with respect to each such Unit and/or section of the Building is subject to change. During at least the

First Year of Hotel Section Operation, construction workers and related personnel of Sponsor and others will be at the Property from time to time performing renovation work, making adjustments and performing various other tasks related to the completion of renovation, fitting out of, and moving into, the Condo Hotel Units and other portions of the Building which may compromise the security of the Building from time to time. Various systems, including, but not limited to, water supply, air conditioning, heating, cooling, ventilating and elevators, may require more than a year after any particular Unit closing to complete and may be disrupted temporarily and from time to time. Hotel Section elevators and personnel may be taken out of service and diverted to facilitate renovation and exterior hoists may be in place during at least the year following the First Condo Hotel Closing, and from time to time thereafter, as needed, in connection with renovation being performed in Condo Hotel Units by the Unit Owners thereof, to the extent permitted. Various other adjustments, to windows and elevators and other systems, may require eighteen months or more after the First Condo Hotel Closing to complete. Sponsor may not fully complete the decoration or finishing of the lobby, corridors, elevator finishes and other portions of the Building, including, but not limited to, installing light fixtures, painting, hanging wall coverings or laying carpeting, until that particular floor is fully occupied by Unit Owners or, if additional renovation within a Unit is anticipated, for some period thereafter. All of the foregoing work and conditions will create a noisy and otherwise disruptive condition in the Building during the period such work is being performed. Certain portions of the Common Elements may be completed before or after completion of any particular Purchaser's Unit. As a result, certain amenities and benefits anticipated to be available to Condo Hotel Unit Owners may not be available until such other portions of the Building are completed and fully operational. Sponsor shall have no liability whatsoever in the event these services are delayed, not made available, or discontinued or disrupted. Further, to the extent renovations are permitted within the Condo Hotel Units by the Unit Owner thereof, the Hotel Board and/or Sponsor may refuse to permit such alterations in a Condo Hotel Unit until such time as the Building has been completed and permanent certificate(s) of occupancy have been obtained therefor. Even where such alterations are permitted, the Hotel Board and/or Sponsor may impose conditions and deadlines upon the planning, performing and completion of such work. No assurance can be given with regard to the accuracy of any projected schedules or completion dates set forth herein or with respect to the duration of any interim service period or periods of potential disruption to the Condo Hotel Unit Owners and their tenants or occupants, all such dates and timetables, to the extent provided, being only good faith estimates.

Based upon the current schedule, unless delayed by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery and/or the inability to obtain on a timely basis or otherwise, materials or equipment, governmental restrictions, acts of god or other events beyond Sponsor's reasonable control, renovation of the Building will be sufficiently completed to permit the First Condo Hotel Closing to begin on or about January 2007. It is currently anticipated that the initial renovation of the Residential Section will be substantially complete by January 2007, the initial renovation of the Hotel Section will be substantially complete by June 2007 and the initial renovation of the Accessory Unit and the Club Unit will be substantially complete by October 2007, although each of these dates with respect to each such Unit and/or section of the Building is subject to change. Prospective Purchasers should note, however, that the Condo Hotel Units will be completed at differing times over a period that may begin prior to and/or extend significantly beyond January 2007. Sponsor will have no liability to any Purchaser, nor will a Purchaser be entitled to any credit, offset or reduction in the purchase price

for his or her Unit or otherwise be relieved from any obligations under the Agreement, in the event that the First Condo Hotel Closing occurs earlier or later than the targeted date or the time to complete or to close title to such Purchaser's Unit is accelerated, delayed or postponed by Sponsor, provided, however, that in the event the actual or anticipated commencement date of the projected First Year of Hotel Section Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised Hotel Section budget with current projections and if: (i) such amended budget exceeds the projected Hotel Section budget set forth herein by 25% or more; or (ii) the First Condo Hotel Closing does not occur within 12 months after January 2007, the date set forth in Schedule B-1 as the commencement date for the projected First Year of Hotel Section Operation, then in either case Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period under their Agreements, if the Plan has been declared effective) the right to rescind their Agreements within not less than 15 days after the presentation date of the amendment containing such revised budget or after such 12 month period, as the case may be, and any Purchasers electing rescission pursuant to such offer will have their Deposit and any interest accrued thereon returned. Purchasers' rights as described in the preceding sentence are in lieu of any other rights or remedies which may be available pursuant to any applicable law, regulation, statute or otherwise, all of which shall be deemed to have been waived by all Purchasers. As set forth in the Section of this Plan entitled "Effective Date," no closing of title to any Condo Hotel Unit will take place prior to the Plan being declared effective. (See Section B in Part I of Plan for further discussion).

**11. Prohibition Against Advertising**

Purchasers are prohibited from listing their Units for resale with any broker or otherwise advertising, promoting or publicizing the availability of their Units for sale prior to the closing of title thereto. (See Section M in Part I of the Plan for further discussion and Exhibit 1 in Part II of the Plan for further information.)

**12. No Bond or Other Security**

No bond or other security has been posted by Sponsor to secure its obligation to pay Hotel Common Charges, special assessments or real estate taxes with respect to the Unsold Condo Hotel Units. Sponsor represents that it has the financial resources to pay such amounts with respect to the Unsold Condo Hotel Units and agrees to pay such amounts. (See Section O in Part I of the Plan for further discussion.)

**13. Sponsor's Right to Lease Unsold Condo Hotel Units**

Sponsor will endeavor in good faith to sell, but nevertheless reserves the unconditional right to rent or lease, rather than sell, the Condo Hotel Units offered hereunder (including but not limited to, transient rental of the Condo Hotel Units on a nightly basis prior to the sale of such Condo Hotel Unit). As a result, Purchaser may be acquiring a Condo Hotel Unit that has been previously occupied, but unless otherwise specifically agreed to in writing by Sponsor and such Purchaser, such Condo Hotel Unit will be delivered at closing free and clear of all leases and tenancies. In addition, there is no commitment to sell more Condo Hotel Units than the fifteen (15%) percent (in number) of Condo Hotel Units necessary to declare the Plan effective and owner-occupants may never gain effective control and management of the Hotel Section.

Sponsor must receive consent from its lender, Column Financial, Inc. (on its own behalf and on behalf of other lenders participating from time to time) and any successor lender(s) pursuant to any refinancing (the "Construction Lender" as further defined in Section A of Part I of the Plan), to rent, rather than sell the Condo Hotel Units. (See Sections A, I and O in Part I of the Plan for further discussion.)

## 14. Changes in the Non-Condo Hotel Units

Sponsor and any successor Non-Condo Hotel Unit Owner will have the right to alter, divide, subdivide and combine portions of its Units (including, without limitation, subdividing the Transient Hotel Unit into individual hotel condominium units for sale) subject to the provisions of all applicable Laws, the Declaration, Condominium By-Laws, Hotel By-Laws and Residential By-Laws. Sponsor and any successor Non-Condo Hotel Unit Owner will have the right to use such Unit for a purpose other than its current use. In addition, the Transient Hotel Unit Owner has the right, among other things, to alter and subdivide its Unit into any number of newly created condominium Units and to offer all or any portion thereof as additional Condo Hotel Units or as fractional/timeshare interests. Sponsor will not offer any fractional/timeshare interests for sale without filing a separate offering plan with respect thereto. To the best of Sponsor's knowledge, no subdivision of the Transient Hotel Unit into separate units for sale to the general public is currently contemplated by the Transient Hotel Unit Owner. Sponsor shall not offer additional Condo Hotel Units for sale without an amendment to the Plan. (See Section G in Part I of the Plan for further discussion.)

## 15. Transfer Taxes; Mansion Taxes; Closing Costs

Purchasers shall be obligated to pay at the closing of title to their Condo Hotel Unit(s) the New York City Real Property Transfer Tax and New York State Real Property Transfer Tax ("deed stamps") which by law are the primary obligation of the seller. For purposes of calculating the taxes payable, the amounts of such taxes will be included in the consideration subject to such tax. Currently, the New York City Real Property Transfer Tax for individual residential condominiums is 1% of the purchase price of a unit if such purchase price is $500,000 or less and 1.425% of the purchase price if such purchase price is over $500,000. However, there is a risk that the New York City Department of Finance could assess tax at the higher nonresidential rates, 1.425% of the consideration where the consideration is $500,000 or less or 2.625% of the consideration where the consideration is greater than $500,000. In such event, Purchaser shall be obligated to pay the difference between the New York City real property transfer tax paid at the closing of title and the New York City real property tax later determined to be payable, including interest and penalties and such obligation of Purchaser shall survive the closing of title to the applicable Condo Hotel Unit. The New York State Real Estate Transfer Tax is presently $2 for each $500 (or part thereof) of the purchase price of a Condo Hotel Unit. Purchasers shall also be obligated to pay the New York State Additional Tax pursuant to Article 31 of the Tax Law, commonly referred to as the "Mansion Tax," currently 1% of the consideration paid when the consideration exceeds $1,000,000, which tax by law is the primary obligation of the Purchaser. Additionally, Purchasers shall be required to pay various other additional closing costs, fees and adjustments. (See Section N in Part I of the Plan for further discussion.)

## 16. No Reserve Fund/Working Capital Fund

No reserve fund is being established for the Condominium. Sponsor has elected not to provide for a reserve fund to be used for capital replacements or repairs, because the Building will be newly renovated. The Condominium Board, in its discretion, and subject to certain restrictions contained in the Condominium By-Laws, may decide in the future to create a reserve fund by special assessment or by increases in General Common Charges. A Working Capital Fund will be established through payments made therefor by each Purchaser at Closing to be held or used for working capital and for such other appropriate purposes as the Hotel Board may determine. (See Section W in Part I of the Plan for further discussion.)

## 17. Real Estate Taxes

The estimated real estate taxes payable in respect of each Condo Hotel Unit were calculated based on estimates provided by Sponsor's real estate tax consultant with respect to the Condo Hotel Units in the aggregate for the projected First Year of Hotel Section Operation; and then allocated among the Condo Hotel Units on the basis of the ratio that the initial offering price for each such Unit set forth in Schedule A herein bears to the total initial offering prices of all such Units set forth in Schedule A. Upon determination of individual tax lots and individual assessments for each such Unit, the New York City tax authorities may allocate taxes among the Condo Hotel Units in proportion to each such Unit's percentage interest in the Common Elements or some other basis rather than its relative offering price, and, if so, Units having the same or similar initial offering price may pay different real estate taxes and/or taxes may differ from those set forth on Schedule A. In addition, the New York City tax authorities may assess taxes against the Building in a different manner and in a different amount than that assumed by Sponsor's real estate tax consultant and, if so, Unit Owners may pay significantly different real estate taxes than those set forth on Schedule A. Sponsor can only estimate, based on reasonable, professional third party expert assumptions, what the real estate taxes for each Condo Hotel Unit will be. Only the New York City tax authorities will make this determination upon the filing of tax lots. (See the Sections entitled "Notes to Schedule A" and "Real Estate Taxes" in Part I of the Plan for further discussion.)

To the extent that a Condo Hotel Unit Owner rents his or her Unit, the annual real estate tax deduction (as discussed in the Section entitled "Income Tax Deductions to Condo Hotel Unit Owners and Tax Status of Condominium" below in Part I of the Plan) otherwise allowable could be limited.

## 18. Closing Fees and Costs

All legal costs, fees and expenses charged by each Purchaser's attorney shall be the sole responsibility of such Purchaser. In addition, each Purchaser shall also be responsible for payment of the following fees to Sponsor's attorneys, Kramer Levin Naftalis & Frankel LLP ("Sponsor's Counsel"), in connection with the closing of title to such Purchaser's Unit: (i) the sum of $1,850 to reimburse Sponsor for a portion of its legal fees incurred in connection with the closing of title to the Purchaser's Unit; (ii) $250 for the preparation of ACRIS transfer documents required by the City of New York; (iii) if the Purchaser requests the closing to occur other than at the offices of Sponsor's Counsel (or such other place as Sponsor may designate in

its closing notice) and Sponsor consents to such change (in its sole discretion), an attendance fee of $500 for each closing held within Manhattan and $750 for each closing held in any borough outside Manhattan; (iv) if the closing is adjourned through no fault of Sponsor, an additional fee of $600 for each such adjournment to help defray the cost of preparing for and coordinating the new closing; (v) if Sponsor, in its sole discretion, consents to a Purchaser's request for an assignment of the Agreement, or for the addition, deletion or substitution of names on the Agreement, a fee of $850, payable in advance, for preparation of an assignment agreement; and (vi) if Purchaser obtains mortgage financing, an additional fee of $700 to Sponsor's Counsel to defray the additional costs associated therewith. Purchaser may be required to pay more than one fee with respect to a single Unit pursuant to the preceding provisions of the paragraph. Other additional charges may apply. At Sponsor's option (in its sole discretion), any one or more of the foregoing fees to be paid to Sponsor's Counsel shall be paid by Purchaser prior to closing upon notice to Purchaser. (See Section N in Part I of the Plan for further discussion.)

## 19. No Warranty

Sponsor shall not be obligated to correct, repair or replace any defects relating to renovation of the Units or the Common Elements or in the installation or operation of any appliances, fixtures, or equipment therein, except as expressly provided in this Plan. Sponsor will not warrant the materials or workmanship of any Unit or any of the Common Elements. The Housing Merchant Implied Warranty Law (General Business Law Article 36-B) is not applicable to this offering. Sponsor is required to complete its renovation in accordance with all applicable building codes and filed building Plans and Specifications as well as the provisions of the Plan. (See Section O in Part I of the Plan for further discussion.)

## 20. Insurance

Neither the Condominium Board nor the Hotel Board is required to obtain or maintain any insurance with respect to any personal property (including improvements, betterments, equipment, furniture, furnishings and the like) contained in or constituting part of a Hotel Unit or any liability with respect to occurrences within or about a Hotel Unit or the Limited Common Elements, if any, appurtenant thereto. Consequently, in addition to any other required coverages provided in the then applicable form of Unit Management and Operation Agreement, all Hotel Unit Owners are required, as specified in Section 11.5 of the Condominium By-Laws, to obtain and maintain liability insurance as specified therein. Subject to the requirements in the Hotel By-Laws, Hotel Unit Owners shall not be prohibited from carrying other insurance for their own benefit, and the Hotel Board shall not be prohibited from requesting or seeking to cause the Condominium Board to carry other insurance, or from carrying insurance itself, for the benefit of the Hotel Section or Hotel Unit Owners. To the extent any party is insured, or is required hereunder to be insured, for loss or damage to property, each party will look to its own insurance policies for recovery. Further requirements with respect to such insurance are more particularly set forth in the Hotel By-Laws. Pursuant to the Unit Management and Operation Agreement, which each Condo Hotel Unit Owner shall be required to enter into, Hotel Manager, on behalf of each Condo Hotel Unit Owner, shall, at such Condo Hotel Unit Owner's sole expense, procure and maintain (a) property insurance coverage for all FF&E, improvements and betterments, in form and coverage commercially reasonable and available for luxury hotels comparable to the Hotel Section, and (b) comprehensive public liability insurance on an occurrence basis against

claims for personal injury, death or property damage arising out of or connected with the operations of such Condo Hotel Unit Owner, Hotel Manager or other occupants of such Condo Hotel Unit, indemnifying and protecting such Condo Hotel Unit Owner and Hotel Manager in such amounts and to such extent as may from time to time be usual and prudent for companies operating or owning similar properties in equivalent locations. Purchasers are also advised that the insurance policies to be maintained by or on behalf of the Hotel Board will be on a "replacement cost" basis and will not cover losses to the extent that "market value" of a Unit may exceed its insured replacement cost. Further, as a result of current fluctuations in the insurance market, neither the Condominium Board nor, the Hotel Board will be required to obtain or maintain terrorism coverage but may do so, and in such event, the cost thereof shall be a Common Expense as described in the Condominium By-Laws and/or the Hotel By-Laws. (See Section S in Part I of the Plan for further discussion.)

The insurance quotation set forth in Schedule B-1 (and the notes thereto) in Part I of the Plan (including limits, deductibles and premiums) is based on coverage at current rates and availability; and is also based on the extension of the Terrorism Risk Insurance Act (TRIA) which is due to expire on December 31, 2007. In the event that TRIA is not extended, the Hotel Board (and the Condominium Board) may or may not elect, in its sole and absolute discretion, to purchase additional terrorism insurance and it should be noted that the expiration of TRIA may adversely affect the pricing of certain insurance premiums. Because conditions in the insurance marketplace are volatile, it is not possible to predict what the actual premiums will be for the First Year of Hotel Section Operation. Purchasers should be aware of the possibility of rate increases and/or changes in limits, deductibles and availability of certain coverages.

## 21. Waiver of Diplomatic or Sovereign Immunity

Purchasers will be required to waive expressly any and all immunity from suit by Sponsor, the Condominium Board and/or the Hotel Board. In addition, any Purchaser that is a foreign government, a resident representative of a foreign government or other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity) will be required at the time of closing of title to such Purchaser's Unit, to deposit with the Hotel Board an amount equal to two years' estimated Hotel Common Charges. (See Sections J and N in Part I of the Plan for further discussion.)

## 22. Certificate of Occupancy

If, as of the First Condo Hotel Closing, only a temporary Certificate of Occupancy has been issued for the Building, Sponsor will use all reasonable diligence to cause the New York City Department of Buildings to continuously renew the temporary Certificate of Occupancy until a permanent Certificate of Occupancy for the Building has been issued. Sponsor will, at its sole expense, do and perform, or cause to be done and performed, all such work (subject to events and circumstances beyond Sponsor's reasonable control, e.g., casualty, strikes, governmental restrictions, acts of god, etc.), and will supply, or cause to be supplied, all such materials, and will submit or cause to be submitted all such documentation, and shall pay all applicable fees required by the New York City Department of Buildings that shall be necessary in order to cause the temporary Certificate of Occupancy to be continuously renewed until a permanent Certificate of Occupancy for the Building has been issued. Prospective Purchasers

are advised that a permanent Certificate of Occupancy is required for permanent use of the Building, and that a temporary Certificate of Occupancy may be renewed only for a total of two years from the first date of issuance. (See Part I, Section R for further discussion).

**23. Terraces and Balconies**

As indicated in Schedule A, there are Terraces appurtenant to certain Condo Hotel Units. Each such Terrace is a Hotel Limited Common Element. The Unit Owner of a Condo Hotel Unit having a Terrace shall have the exclusive use of the Terrace appurtenant thereto, subject to the right of the Hotel Board to regulate its use in accordance with the Hotel By Laws; and such Condo Hotel Unit Owner having access thereto (or the managing agent of the Hotel Section as the case may be), at its own cost and expense, shall be responsible for all normal repairs and maintenance to such Terrace. Any structural or extraordinary repairs or replacements thereto (including leaks) shall be made by or for the Hotel Board and the cost and expense thereof (unless caused by or attributable to the Condo Hotel Unit Owner) shall be charged to all Hotel Unit Owners as a Hotel Common Expense. The Balconies are merely decorative, are appurtenant to certain Condo Hotel Units on Floor 15 and may not be used by the Unit Owners in the appurtenant Units for any purpose. (See Section B in Part I of the Plan for further discussion.)

**24. Vaults**

Existing sidewalk vaults are located under Central Park South, Fifth Avenue and West 58th Streets at the Lower Concourse C, Lower Concourse Mezzanine B (West 58th St. only), and Main Concourse A levels. The vault space will be used as part of the Building. Vault spaces are subject to standard New York City vault license rules.

**25. Lot Line Windows; Light and Air Easement; 22 CPS Restrictions and Easements**

The windows on the west façade on the southerly section of the Building from floor 8* through floor 13 will be provided with sprinklers due to the proximity and construction of the building on the adjacent lot to the west. These windows, and above, may be required to be reduced in size and/or be provided with sprinklers, where not currently provided, if 22 CPS (as defined below) is ever redeveloped with one or more buildings of different configurations than that now located on the same. The rooms having these windows have other windows that, under the existing building codes, will satisfy light, air and other requirements for the lawful use of such rooms for habitation purposes. These windows in the Condo Hotel Units are identified on the Floor Plans included as Exhibit 5 in Part II of the Plan.

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* As shown on the Floor Plans to be filed with the City Register's Office upon the recording of this Declaration, the floors of the Building are designated as follows: Mechanical Floor D, Lower Concourse C, Lower Concourse Mezzanine B and Main Concourse A (below grade); First Floor (at grade); and Floors 2 through 21 (above grade). All "Floor" references herein are in accordance with such floor designations. Floor numbering in the plans for the Building filed with the New York City Department of Buildings includes references to construction levels which may differ from the Floor designations of the Building as set forth above.

The Property is benefited by a light and air easement, which protects the windows on the west façade on the northerly section of the Building (these windows on floor 8 through floor 13 will be provided with sprinklers due to the proximity and construction of the adjacent building to the west). Therefore, any future development (alteration or new construction) on the adjacent lot would be required, by any governing authorities having jurisdiction, to respect the legal light and air for these windows and not create a non-conforming condition. These windows in the Condo Hotel Units, if any, are identified on the Floor Plans included as Exhibit 5 in Part II of the Plan.

Pursuant to a certain light and air easement made by Sponsor, as the owner of the property located at 22 Central Park South which currently serves as a residential building and adjoining the Building to the west, Sponsor has granted a perpetual and exclusive easement for unrestricted light and air over 22 Central Park South, New York, New York (designated as Block 1274, Lot 55 on the Tax Map of the City of New York, "22 CPS") above a horizontal plane drawn at an elevation of 155.89 feet above the datum level used by the Topographical Bureau, Borough of Manhattan, which is 2.75 fee above the National Geodetic Survey Vertical Datum of 1929, mean sea level, Sandy Hook, New Jersey. Such easement: (i) prohibits the construction of any building structure, improvement, alteration or addition to 22 CPS that will infringe upon the easement, (ii) runs with the affected lands, buildings and improvements, (iii) benefits the owner of 1 Central Park South, New York, New York (designated as Block 1274, Lot 25 on the Tax Map of the City of New York) and its successors and assigns thereof, and (iv) is binding on the owner of 22 CPS, and its successors and assigns. Such light and air easement is subordinate to a net lease covering 22 Central Park South, New York, New York (the "22 CPS Lease") which net lease which expires on April 3, 2008.

Sponsor does not own any air development rights with respect to the Property and is not reserving the right to transfer air development rights to adjoining buildings, including 22 CPS.

Additionally, Sponsor has entered into a Restatement Declaration of Easements, Covenants and Restrictions (the "Restatement") in order to restate, clarify and consolidate certain easements, covenants and restrictions (collectively, "EC&R's") documented in the 22 CPS Lease and certain recorded documents. The EC&R's relate to systems and operations of 22 CPS. The 22 CPS steam system and electrical service (for the basement of 22 CPS) are connected to and reliant upon the Building. Employees and personnel of the Building use space in the basement of 22 CPS for various reasons, including, but not limited to, (i) rooms for security and fire personnel, (ii) an employee entrance, (iii) an emergency exit and (iv) basement space necessary for maintenance and upkeep of ventilation/exhaust ducts. The easements imposed by the contemplated Restatement shall (a) run with the lands, buildings and improvements affected thereby; and (b) inure to the benefit of and be binding upon the owner(s) of 22 CPS and the Building.

The Restatement provides for easements in favor of the owner of the Building ("Plaza Owner") for ingress and egress over portions of the basement areas of 22 CPS. 22 CPS Owner is entitled to the benefits of an Emergency Exit Agreement entered into between Plaza Owner and the New York City Transit Authority, providing an easement for emergency exit to 59th street. There is also an and (ii) egress through certain 22 CPS basement areas to the Hotel Section kitchen area. Such basement areas are used by the Building and 22 CPS for, among other things, emergency egress (from the Building to a landing located on 22 CPS) for

employees and agents of Building and 22 CPS. Residential tenants of 22 CPS are not authorized and do not have access to such basement areas. In addition, the Restatement provides rights to Plaza Owner for (i) access to pipes and conduits located in 22 CPS in connection with the Building's providing steam (for heat and hot water) and electrical service to the basement of 22 CPS and (ii) maintenance and repairs of such areas. Upon a sale of 22 CPS, Plaza Owner shall have the option (within 180 days from the date of such sale) to discontinue (by written notice to the owner of 22 CPS ("22 CPS Owner")) steam service to 22 CPS. If such option is exercised, then 22 CPS Owner must procure, at its sole cost and expense, steam service from the public utility within one year from the date of such discontinuation notice. Plaza Owner is required to maintain commercial general liability and property insurance (naming 22 CPS Owner as an additional insured), insuring claims for bodily injury or property damage occurring on, in or about the easement areas. 22 CPS Owner is required to pay to Plaza Owner its allocated cost of the steam being provided to the Building to 22 CPS. 22 CPS Owner is also required to maintain property insurance coverage in sufficient amounts to rebuild and/or reconstruct the portions of 22 CPS necessary to all safe ingress, egress and unimpaired access through the easement areas. 22 CPS Owner has a right to terminate the easements in the Restatement if: (i) Plaza Owner ceases use of the easement areas for a continuous period of two years; (ii) the ground floor use of the Building changes from hotel or condominium use; or (iii) the Building is substantially destroyed by casualty and subsequently rebuilt. Notwithstanding the foregoing, the Restatement can only be changed, modified or amended by an instrument in writing executed by Plaza Owner and 22 CPS Owner, and approved by their respective mortgagees of record. Notwithstanding the fact that the Restatement runs with the lands, buildings and improvements affected thereby, Sponsor has no right to terminate the easements described herein and the Restatement does not allow the Plaza Owner to terminate any current means of egress from 22 CPS. (See Section S in Part I of Plan for further discussion).

**26. Increase or Decrease in Common Interest**

The Common Interest of each of the Units has been determined pursuant to Section 339-i(1)(iv) of the Condominium Act and accordingly based upon a comparison of 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. Based upon final specifications, construction conditions and/or "as-built" plans for the Building reflecting relative measurements, areas and uses of portions of the Building, application of such method of allocation of Common Interest may justify a minor increase or decrease in the aggregate Common Interest appurtenant to the Condo Hotel Units and a corresponding decrease or increase in the Common Interest appurtenant to the Non-Condo Hotel Units. In such event, the Common Interest appurtenant to each individual Condo Hotel Unit would be adjusted (by a minimal amount) pro rata. Sponsor expressly reserves the right, from time to time prior to the First Condo Hotel Closing, to effect such a change in the Common Interests and to amend the Plan so as to reflect the same. In no event, however, will the Common Interest of any Condo Hotel Unit be increased as a result of any of the foregoing by more than 5%. (See Section S in Part I of Plan for further discussion).

## 27. Window Washing and Window Treatments

The Building does not feature a window washing rig. The washing and cleaning of interior glass surfaces of windows in the Condo Hotel Units shall be the responsibility of Hotel Manager pursuant to the Unit Management and Operation Agreement. Hotel Manager shall cause all window interiors to be cleaned a minimum of five times per calendar year. The exterior glass surfaces will be washed, cleaned and replaced at the direction of the Condominium Board and the cost thereof charged as a General Common Expense. Condo Hotel Unit Owners are prohibited from cleaning or allowing to be cleaned any window from the outside in violation of Section 202 of the New York State Labor Law, any other applicable Laws, any insurance policy or requirement or otherwise.(See Section S in Part I of Plan for further discussion).

## 28. Additional Units

Sponsor reserves the right to change the number and size of the Units by, among other things, subdividing and reconfiguring the Units and, in connection with such subdivision and reconfiguration, redesignating in an amendment to the Declaration a portion of a subdivided Unit of one type (e.g., a Non-Condo Hotel Unit) as a Unit of another type (e.g., a Condo Hotel Unit). In such event, the Common Interest appurtenant to any diminished Unit will decrease and such reduced Common Interest will be allocated to and/or among the newly created and/or configured Units. Sponsor expressly reserves the right, from time to time prior to the First Condo Hotel Closing, to effect such changes and to amend the Plan so as to reflect the same. (See Sections G and H in Part I of Plan for further discussion).

## 29. Landmark Status

The Property has been designated a landmark, governed by Chapter 8-a of the Administrative Code of the City of New York. Prior to a Unit Owner performing any construction work at the Property requiring a building alteration permit issued by the New York City Department of Buildings, application must be made to, and approved by, the New York City Landmarks Preservation Commission for: (i) a Certificate of No Effect, in the case of interior work, and (ii) either a Certificate of No Effect or Certificate of Appropriateness, whichever is applicable, in the case of exterior work.

In light of the landmark status of the Building, and to preserve its architectural harmony, minimize unsightly views from the other Terraces and Units and promote safety, each Unit Owner having the exclusive use of a Terrace will be required to obtain the consent of the Hotel Board (or the Residential Board in the case of a Terrace appurtenant to the Residential Section) prior to any altering, decorating, landscaping, improving, installing (including, without limitation, satellite dishes) or painting of his Terrace. This restriction will not apply to Sponsor, in respect of Unsold Condo Hotel Units.

The Condominium Board (and/or, in the case of landmarked interiors, the applicable Unit Owner(s)) shall assume responsibility for the costs of maintaining and complying with the requirements of the landmark status of the building (and/or any portion thereof) and any declaration or similar instrument which may be required and the costs associated therewith shall

be a General Common Expense (or an expense of the Unit Owner owning such portion of the Building). (See Section B in Part I of Plan for further discussion).

## 30. Promotion

Sponsor and its designee(s) shall have the right, until the tenth anniversary of the First Condo Hotel Closing, to use, without charge, portions of the Building, including the Common Elements, for exhibitions, events, promotional functions (e.g., with respect to any sales programs for Unsold Condo Hotel Units) or otherwise. (See Section B in Part I of Plan for further discussion).

## 31. Roof Easement

The Transient Hotel Unit Owner and/or its designee (and its respective successors and assigns) shall have an easement to erect, use, lease, license, maintain, repair, replace and operate a platform and other facilities for the purpose of erecting, using, leasing, licensing, maintaining, repairing, replacing and operating antennae, satellite dishes and other communications equipment on the roof of the Building (which is otherwise a Common Element). None of the Condo Hotel Unit Owners, the Condominium Board, the Residential Board, the Hotel Board, or any other Non-Condo Hotel Unit Owner will have any interest in the rents, profits or revenues from the rental, use or sale of any such space pursuant to the aforementioned easements and rights. The Transient Hotel Unit Owner (and/or such designee) shall have the right to create additional units consisting of portions of its Unit, each of which shall have as an appurtenant easement to use a portion of its Unit platform and other facilities on the roof of the Building, upon which such additional unit owners (or its tenant or licensee) may erect, use, lease, license, maintain, repair, replace and operate antennae, satellite dishes and other telecommunications equipment. If such additional Units are created, the percentage interest in the Common Elements allocated to such units and the percentage interests of all other Units will remain unchanged. (See Section G in Part I of Plan for further discussion).

## 32. Unit Management and Operation Agreement

As described in "Available Services and Facilities" in Section B of Part I of the Plan, Condo Hotel Unit Owners must execute a Unit Management and Operation Agreement and retain Hotel Manager or its designee to maintain and operate such Condo Hotel Unit Owner's individual Condo Hotel Unit as part of the transient hotel which is operating within the Hotel Section. Purchasers are advised that the terms of the Unit Management and Operation Agreement may be changed from time to time; and may, at the option of Hotel Manager or its designee, be discontinued. Purchasers should consult their advisors as to the implications of executing the Unit Management and Operation Agreement. If any Condo Hotel Unit Owner fails or refuses to execute, acknowledge or deliver the Unit Management and Operation Agreement and Memorandum of Unit Management and Operation Agreement within ten (10) days after receipt of a written request therefore, then at the request of the Transient Hotel Unit Owner (or its designee), an officer of the Hotel Board (or its designee) is authorized as attorney-in-fact for such Condo Hotel Unit Owner, coupled with an interest, to execute, acknowledge and deliver the Unit Management and Operation Agreement with respect to such Condo Hotel Unit in the name of such Unit Owner and such document shall be binding on such Condo Hotel Unit Owner.

Together with the execution, acknowledgement and delivery of the Unit Management and Operation Agreement upon taking title to a Condo Hotel Unit, each Condo Hotel Unit Owner shall also execute, acknowledge and deliver to the Transient Hotel Unit Owner a Memorandum of Unit Management and Operation Agreement in recordable form as set forth in an exhibit to the Unit Management and Operation Agreement.

## 33. Intellectual Property

Each of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor (as defined in the Declaration) may, from time to time either own or obtain licenses to rights in certain trademarks, trade names, copyrights and/or other intellectual property, including, without limitation, for example, THE PLAZA, the "PP Design" and/or derivations thereof or successor corporate identifiers (collectively, "Plaza Intellectual Property"). Except as expressly provided herein, in no event shall: (i) any Hotel Unit Owner (other than the Transient Hotel Unit Owner) or the Hotel Board, without the express consent of the Transient Hotel Unit Owner; (ii) any Occupant of the Accessory Unit, without the express consent of the Accessory Unit Owner; (iii) any Occupant of the Club Unit, without the express consent of the Club Unit Owner; or (iv) any Residential Unit Owner, Occupant of any Residential Unit, or the Residential Board, without the express consent of the Residential Sponsor, use any of the Plaza Intellectual Property in connection with any advertisement, promotion, rental or sale of any such Unit (or portion thereof or interest therein) or any business being operated therein of therefrom or in any other commercial manner. The consent requirements of the preceding clauses "(i)-(iv)" shall not apply in the event that a Person (as defined in the Declaration) subject to such clauses (i)-(iv) is using only the name of the Building, the Residential Section, the Hotel Section or the name 'The Plaza' (*i.e.*, excluding any logos or other proprietary elements of the Plaza Intellectual Property) in a descriptive manner in conjunction with the sale or rental of its Unit or the provision of any services therein or therefrom. Without limiting any other right or remedy available at law or in equity, the foregoing may be enforced by an action for specific performance and/or injunctive relief. Under no circumstances shall the Plaza Intellectual Property be deemed part of the Property or an appurtenance of any Unit or any Person subject to the foregoing. The Plaza Intellectual Property shall at all times remain the sole and exclusive property of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor or their licensors.

Each of the Persons subject to clauses (i)-(iv) above shall, to the extent and for the duration that such Person is permitted to use the Plaza Intellectual Property hereunder, maintain and/or operate the portion(s) of the Property that such Person(s) own and/or for which such Person(s) is/are responsible as well as any services within the control of such Person(s) that are associated with such portion(s) of the Property, in accordance with a standard of quality, service and appearance as are consistent with or exceed such standards as are then being maintained by the hotel being operated in the Transient Hotel Unit.

## 34. FF&E

All Condo Hotel Units offered for sale under the Plan are being offered for sale furnished (such furnishings shall include, with respect to each Condo Hotel Unit, all furniture, fixtures, equipment, carpeting, case goods, soft goods, linens and/or decorations, the "FF&E"). The

FF&E shall be conveyed to a Purchaser at the closing of title pursuant to a Bill of Sale, the form of which can be found in Exhibit 14 in Part II of the Plan. Accordingly, the purchaser of a Condo Hotel Unit will be purchasing personal property in addition to real property, and a portion of the purchase price, (calculated as $65.00 per square foot (as indicated in Schedule A) of the Condo Hotel Unit), for each Condo Hotel Unit is allocable to the FF&E. Purchasers will be obligated to pay any sales or other federal, state or county tax or fee applicable to the sale of the FF&E at the closing of title to the Condo Hotel Unit. A description of the FF&E for each Condo Hotel Unit as well as the configuration of the FF&E (the "Configuration Plan") within each Condo Hotel Unit will be determined in consultation with Hotel Manager so that each Condo Hotel Unit is furnished in such as way as to maintain the hotel standard set forth in the Unit Management and Operation Agreement. Such list of FF&E and the Configuration Plan will be disclosed in an amendment to the Plan prior to the First Condo Hotel Closing and will be available for inspection at the Sales Office (and also will be available for inspection at the Department of Law). Sponsor reserves the right to substitute all or any portion of the FF&E with comparable or better items. Prior to the closing of title to a Condo Hotel Unit, the FF&E will be delivered to the Condo Hotel Unit in accordance with the Configuration Plan, although the absence of any item(s) of FF&E within the Unit and/or a deviation from the Configuration Plan shall not excuse a Purchaser from closing title to the Unit. A Purchaser may not choose to purchase a Condo Hotel Unit without the FF&E. (See Section A in Part I of Plan for further discussion.)

## 35. FF&E Reserve Fund

Each Condo Hotel Unit Owner, pursuant to the Unit Management and Operation Agreement, will be required to contribute each year towards a reserve fund in connection with the repairs and maintenance to the FF&E of such Condo Hotel Unit (the "FF&E Reserve Fund"). The amount of the annual contribution shall be fixed during each five (5) year period and shall be equal to twenty (20%) percent of the replacement value of the FF&E as of the commencement of such period, provided that (i) the annual amount so calculated and payable during the initial five (5) year period shall be $13.00 per square foot (as indicated in Schedule A) of the Unit, (ii)such initial five (5) year period shall be deemed to end as of December 31, 2011 and the replacement value of the FF&E and the calculation of the annual amount due shall be determined by Hotel Manager prior to the beginning of each subsequent five (5) year period; provided, however, that in any event such Condo Hotel Unit Owner shall be responsible for such replacement cost notwithstanding the amount contributed to the FF&E Reserve Fund. Each Condo Hotel Unit Owner, pursuant to the Unit Management and Operation Agreement, shall agree that the Condo Hotel Unit, including Terraces and Balconies, if any, and all furniture and furnishings, shall be kept and maintained in a "first-class condition", and in compliance with the hotel standard defined in the Unit Management and Operation Agreement (the "Standard"). Hotel Manager will, from time to time, require each Condo Hotel Unit Owner, at the Condo Hotel Unit Owner's expense, to replace FF&E in the Condo Hotel Unit in order to maintain same in a manner and condition suitable and as required by the Standard and which comply in kind, quantity and quality with the minimum requirements set forth by Hotel Manager for all of the Condo Hotel Units. Hotel Manager shall have the option, exercisable at its sole discretion upon notice to the Condo Hotel Unit Owner, to take such steps to maintain the interior of the Condo Hotel Unit in a first-class condition acceptable to Hotel Manager, and to undertake Condo Hotel

Unit Owner's obligations under the Unit Management and Operation Agreement, but at the sole cost of Condo Hotel Unit Owner.

**36. Board's Right of First Refusal**

With certain exceptions, any sale or lease (in excess of four (4) months) of a Condo Hotel Unit will be subject to a right by the Hotel Board to acquire or lease such Condo Hotel Unit, as the case may be, on the same terms as were offered by the Condo Hotel Unit Owner to the potential purchaser or lessee thereof. This right of first refusal in favor of the Hotel Board is not applicable to a sale or lease of the Unsold Condo Hotel Units. It is also not applicable to the sale or lease of the Residential Units, Club Unit or Accessory Unit. For a more complete discussion of the foregoing, see the Section entitled "Rights and Obligations of Condo Hotel Unit Owners and the Hotel Board" in Part I of the Plan.

**37. Additional Taxes**

Rentals of Condo Hotel Units will be subject to sales taxes and hotel occupancy tax. As of the filing of this Plan, New York State sales tax is at the rate of 4% and New York City sales tax is at the rate of 4.375%, for a combined rate of 8.375%; and the rate for the New York City hotel room occupancy tax is $2.00 per day per room (not including any bathroom) plus 5% of the daily occupancy charge. In addition, New York State imposes a hotel unit fee in the amount of $1.50 per unit per day. (Sponsor makes no representation or warranty that such tax rates will remain in effect for any period of time.) Pursuant to the Unit Management and Operation Agreement, Hotel Manager, along with collecting Unit payments and service charges, shall be responsible for paying the above referenced taxes to the appropriate agencies.

**38. Hotel Expenses**

As described in this Plan, the Transient Hotel Unit and the Condo Hotel Units (together with the Hotel Limited Common Elements) will be operated together as a luxury hotel. In connection therewith, as described more fully within the notes to the projected budget for the Hotel Section for the anticipated First Year of Hotel Section Operation (Section E of the Plan), the services to be provided to each Hotel Unit will include items not routinely associated with the operation of a typical residential condominium (such as overhead charges related to the operation of the business of the hotel as opposed simply to the maintenance of the Building or the Hotel Section); and accordingly the costs and expenses relating thereto, which will be included within the Hotel Common Charges payable by each Hotel Unit Owner, will result in annual common charges which are greater than those which might otherwise be found in a typical residential condominium. (See Schedule B-1 (and the notes thereto) in Part I of the Plan for further discussion).

**39. Engineering**

The existing foundation system of the Building, which includes the foundation, column footings, wall footings, foundation walls, various pits, the subsurface drainage system and related elements are not readily open to inspection. Sponsor makes no warranty with respect to possible deterioration of elements within the foundation; however, any defects adversely affecting the integrity of the Building or its structure discovered during the course of renovation will be

corrected. Additionally, as noted in the Description of Property and Building Condition included as Exhibit 4 in Part II of the Plan, there are no signs of foundation settlement or movement on any primary building framing elements and no signs of detrimental water penetration through the foundations, and the existing drainage systems appear to be in working order.

**40. Use of Certain Names**

The Transient Hotel Unit Owner may from time to time either own rights in certain trademarks, trade names, copyrights and/or other intellectual property, and/or enter into certain agreements providing it rights therein with respect to the use thereof in connection with the operation of the Transient Hotel Unit in association with a particular hotel brand or chain (such brand or chain, the "Hotel Flag"; such intellectual property, the "Hotel Flag Intellectual Property"; and the owner(s) thereof, the "Hotel Flag Intellectual Property Owner"). For so long as the Transient Hotel Unit is operating or being operated using the Hotel Flag Intellectual Property, the Transient Hotel Unit Owner can require that the Hotel Section be operated, managed and maintained at a minimum according to the standards of quality, service, character, appearance and image required by the Hotel Flag for hotels using the Hotel Flag Intellectual Property, as the same may be amended from time to time (or, if the Transient Hotel Unit is not flagged at such time, then such standards commensurate with those of the hotel being operated in the Transient Hotel Unit at the time in question) (the "Hotel Flag Standards").

**41. Per Use Expenses**

Hotel Common Charges do not include "per use" expenses. Per Use expenses will be paid by the Condo Hotel Unit Owners on the basis of actual occupancy of their Units. These expenses are for guest services which occur only when a guest room is occupied (including, for these purposes, owner occupancy), and accordingly these expenses vary directly with the actual nightly occupancy of the hotel. (See Schedule B-1 (and the notes thereto) in Part I of the Plan for further discussion.)

# PART I

## A. INTRODUCTION

The land and the building situated on the west side of Fifth Avenue between Central Park South and West 58th Street and known by the street address 768 Fifth Avenue, New York, New York 10019, formerly comprising the world-famous luxury hotel known as "The Plaza Hotel", which is undergoing a transformative interior and exterior renovation and rehabilitation, together with the appurtenances thereto, will constitute and be known as "The Plaza Condominium" (hereinafter, the "Condominium").*

As described more fully in this Plan, the single building constituting the Condominium will initially contain 152 Condo Hotel Units and a Transient Hotel Unit containing approximately 130 keys, 181 Residential Units, an Accessory Unit and a Club Unit. (See Section B below for more details.)

CPS 1 Realty LP ("Sponsor"), a limited partnership organized and existing under the laws of the State of Delaware and duly authorized to do business in the State of New York, hereby presents this Offering Plan (the "Plan") for the sale of the Condo Hotel Units at the Condominium, which, together with the Transient Hotel Unit and the Hotel Limited Common Elements appurtenant thereto, constitute the "Hotel Section".

No portion of the Condominium other than the Condo Hotel Units (and their appurtenant Common Interest) is offered for sale hereunder. The 181 Residential Units (hereinafter described) included in the Condominium are being offered for sale pursuant to a separate offering plan (the "Residential Plan") and are not offered for sale hereunder. The Transient Hotel Unit, the Accessory Unit and the Club Unit (all hereinafter described) to be included in the Condominium are not currently offered for sale hereunder or otherwise.

The purpose of the Plan is to set forth in detail all material terms of the offering by Sponsor of the Condo Hotel Units located in the Condominium and offered hereby. Sponsor may amend the Plan from time to time by filing an amendment with the Department of Law, a copy of which amendment will be served on all purchasers of Condo Hotel Units pursuant to executed Agreements who are not in default, and to all Condo Hotel Unit Owners and any other Offerees as may be required by applicable law or regulation.

The Plan is presented in two parts (in one volume) which together constitute the entire Plan. Part I of the Plan sets forth a general description of the offering and the rights and obligations of Sponsor and the Unit Owners. Part II includes the recorded Declaration which created the Condominium, the Condominium By-Laws and the Hotel By-Laws which govern the operation of the Building and the Hotel Section, respectively, as well as the additional basic documents necessary to effectuate the provisions of the Plan. Also included in Part II is a detailed physical description of the Property and certifications by Sponsor, Sponsor's architect

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* Each capitalized term used in Part I of the Plan shall have the meaning ascribed thereto in the section of the Plan entitled "Certain Definitions", unless otherwise clearly indicated or defined elsewhere.

and Sponsor's financial experts. In addition to the Plan, Sponsor has filed separately with the Department of Law certain exhibits to the Plan which are presented as Parts A (Certifications), B (General), C (Engineering) and D (Other Information).

The Plan, including all Schedules set forth herein, and Parts A, B, C and D of the exhibits, together constitute the entire offer of Sponsor to sell the Condo Hotel Units at the Condominium which are the subject of this Plan. Sponsor shall not make, and has not authorized any other party to make, any oral representations or statements concerning this Plan, and no such representations or statements shall be considered part of this Plan. No information, data or representations other than those contained herein or in the documents annexed hereto as exhibits in Part II of this Plan may be relied upon. Copies of the Plan and the exhibits will be available for inspection by prospective Purchasers without charge, and for copying at a reasonable charge, at the Sales Office by appointment.

The Condominium has been organized pursuant to Article 9-B of the Real Property Law of the State of New York, as amended, commonly known as and hereinafter referred to as the "Condominium Act." The Condominium is subject to and will comply with all statutes and regulations applicable to condominiums in the State of New York.

THE PURCHASE OF A CONDOMINIUM UNIT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL OF THE STATE OF NEW YORK STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING AN AGREEMENT TO PURCHASE A CONDOMINIUM UNIT.

## 1. The Property

Sponsor acquired the Land, an approximately 53,723 square foot parcel, and the existing improvements located at Fifth Avenue at Central Park South, New York, New York, on October 15, 2004. Sponsor is renovating such improvements in order to create an updated luxury building (the "Building") which, as more specifically described herein, upon completion of renovation, will constitute the Condominium. The Condominium will include:

(a) 152 individual hotel condominium apartments (the "Condo Hotel Units") located on portions of Floors 11 through 21 of the Building;

(b) (i) a single Commercial Unit (the "Transient Hotel Unit", not offered for sale hereunder) located on portions of Floor 2 and Floors 4 through 10 of the Building and configured as 130 transient hotel guest rooms; together with the entrance and the lobby on the First Floor at West 58th Street and certain other common elements (such as lobbies, hallways, corridors and other service areas) in the Building serving both the Transient Hotel Unit and the Condo Hotel Units (collectively, the "Hotel Limited Common Elements"; and, together with the Transient Hotel Unit and the Condo Hotel Units, the "Hotel Section") (See Section B below); all of which will be initially operated as a luxury hotel facility;

(c) 181 residential apartments (the "Residential Units") located on portions of Floors 1 through 21, together with the entrance and lobby on the First Floor at Central Park South and certain other common elements, which include, among other things, the

126 residential storage bins (collectively, the "Residential Limited Common Elements"), together with the Residential Units, the "Residential Section"), which will be operated as a luxury residential condominium;

(d) a Commercial Unit designated as the Accessory Unit, located principally on portions of the Lower Concourse C, Main Concourse A, and Floors 1 through 4 of the Building, including the Building Façade; containing hotel accessory space, restaurants, banquet and meeting facilities, retail space and the principal landmarked interior portions of the Building (such as the Edwardian Room and the Palm Court), accessed via Central Park South, Fifth Avenue and 58th Street (see Section B below); and

(e) a Commercial Unit designated as the Club Unit, located principally on Floor 4 of the Building (see Section B below);

Based upon the current schedule, unless delayed by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery and/or the inability to obtain on a timely basis or otherwise, materials or equipment, governmental restrictions, acts of god or other events beyond Sponsor's reasonable control, renovation of the Building will be sufficiently completed to permit the First Condo Hotel Closing to begin on or about January 2007. It is currently anticipated that the initial renovation of the Residential Section will be substantially complete by January 2007, the initial renovation of the Hotel Section will be substantially complete by June 2007 and the initial renovation of the Accessory Unit and the Club Unit will be substantially complete by October 2007, although each of these dates with respect to each such Unit and/or section of the Building is subject to change. Prospective Purchasers should note, however, that the Condo Hotel Units will be completed at differing times over a period that may begin prior to and/or extend significantly beyond January 2007. Sponsor will have no liability to any Purchaser, nor will a Purchaser be entitled to any credit, offset or reduction in the purchase price for his or her Unit or otherwise be relieved from any obligations under the Agreement, in the event that the First Condo Hotel Closing occurs earlier or later than the targeted date or the time to complete or to close title to such Purchaser's Unit is accelerated, delayed or postponed by Sponsor, provided, however, that in the event the actual or anticipated commencement date of the projected First Year of Hotel Section Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised Hotel Section budget with current projections and if: (i) such amended budget exceeds the projected Hotel Section budget set forth herein by 25% or more; or (ii) the First Condo Hotel Closing does not occur within 12 months after January 2007, the date set forth in Schedule B-1 as the commencement date for the projected First Year of Hotel Section Operation, then in either case Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period under their Agreements, if the Plan has been declared effective) the right to rescind their Agreements within not less than 15 days after the presentation date of the amendment containing such revised budget or after such 12-month period, as the case may be, and any Purchasers electing rescission pursuant to such offer will have their Deposit and any interest accrued thereon returned. Purchasers' rights as described in the preceding sentence are in lieu of any other rights or remedies which may be available pursuant to any applicable law, regulation, statute or otherwise, all of which shall be deemed to have been waived by all Purchasers. As set forth in the Section of this Plan entitled "Effective Date," no closing of title to any Condo Hotel Unit will take place prior to the Plan being declared effective.

As set forth in more detail in the Section entitled "Changes in Prices and Units" in Part I of the Plan, Sponsor reserves the right to change the number of Units from time to time by subdividing and/or combining Units, even after the Condominium is created, except with respect to a Unit as to which a binding Agreement has been entered into and remains in effect unless the Purchaser thereof consents in writing to such change.

Pursuant to a certain light and air easement made by Sponsor, as the owner of the property located at 22 Central Park South, New York, New York (designated as Block 1274, Lot 55 on the Tax Map of the City of New York, "22 CPS") which currently serves as a residential building and adjoining the Building to the west, Sponsor has granted in favor of the Building a perpetual and exclusive easement for unrestricted light and air over 22 CPS above a horizontal plane drawn at an elevation of 155.89 feet above the datum level used by the Topographical Bureau, Borough of Manhattan, which is 2.75 feet above the National Geodetic Survey Vertical Datum of 1929, mean sea level, Sandy Hook, New Jersey. Such easement: (i) prohibits the construction of any building structure, improvement, alteration or addition to 22 CPS that will infringe upon the easement; (ii) runs with the affected lands, buildings and improvements; (iii) benefits the owner of 768 Fifth Avenue, New York, New York (designated as Block 1274, Lot 25 on the Tax Map of the City of New York) and its successors and assigns thereof; and (iv) is binding on the owner of 22 CPS, and its successors and assigns. Such light and air easement is subordinate to the 22 CPS Lease (as defined in Special Risk #25) which expires on April 3, 2008.

A detailed description of the Property is contained in the Section entitled "Description of the Property and Improvements" in Part I, Section B of the Plan.

The statute concerning condominiums in effect in the State of New York pursuant to which the Condominium is organized is Article 9-B of the Real Property Law of the State of New York, as amended, commonly known as and hereinafter referred to as the "New York Condominium Act." The Property has been submitted to the provisions of said statute pursuant to the recording of the Declaration of Condominium (creating the various Units as aforesaid) dated as of March 13, 2006 in the Office of the City Register (on March 23, 2006 as CRFN 2006000164230) by CPS 1 Realty LP, as fee owner, as amended and restated by Amended and Restated Declaration dated as of March 13, 2006 (submitted to the Office of the City Register for recording as CRFN 2006040600067); and by deeds dated as of April 7, 2006, CPS 1 Realty LP conveyed: (i) the Residential Units to its affiliate Plaza Residential Owner LP; (ii) the Accessory Unit to its affiliate Plaza Accessory Owner LP; and (iii) the Club Unit to its affiliate Plaza Club Owner LP. Accordingly, as of the date of the filing of this Plan, the only Units owned by CPS 1 Realty LP (Sponsor) are the 152 Unsold Condo Hotel Units and the Transient Hotel Unit. The Condominium will comply with all statutes and regulations applicable to condominiums in the State of New York.

## 2. Features of Condominium Ownership

The ownership of a Condo Hotel Unit is similar in many respects to the ownership of a private home. Each Condo Hotel Unit Owner is the fee owner of his or her Unit outright and is entitled to exclusive possession of that Unit (subject to the Use Restrictions). Each such Unit Owner also owns, in common with the owners of all other Units, an undivided interest in the Common Elements which, as more particularly set forth herein and in the Declaration, generally

include all parts of the Property other than the Units themselves, including, without limitation, the Land, portions of the roofs, the foundations and supports of the Building, and all areas, equipment or facilities for the common use of two or more Units or two or more Unit Owners. Each Condo Hotel Unit Owner will also have certain rights with respect to certain Common Elements (i.e., the Hotel Limited Common Elements) which may be exclusive of all other Unit Owners (e.g., a Terrace) or of certain other Unit Owners (e.g., the common hallways exclusively serving the Hotel Units), as the case may be.

Use and occupancy of all Units is governed by the Declaration, the Condominium By-Laws and applicable Laws; and with respect to the Condo Hotel Units, also by the Hotel By-Laws, and the provisions of this Plan. Use of other portions of the Building may be subject to additional by-laws and/or rules and regulations applicable thereto (e.g., the Residential By-Laws with respect to the Residential Section).

As more particularly set forth in the Declaration, Condominium By-Laws and Hotel By-Laws and subject to all applicable Laws, the Condo Hotel Units may generally only be used as Hotel Accessory Quarters (i.e., living quarters which are not occupied by the Unit Owner thereof in excess of four months in the aggregate in any calendar year, and, when not occupied by such Unit Owner, are available for rental as a "Transient Hotel Room," i.e., a room or single suite of rooms used for transient occupancy and which may be rented on a daily basis as part of a transient hotel) and in compliance with the Building Department Letter as set forth in Exhibit 13 in Part II of the Plan. Where a Condo Hotel Unit is owned by an entity (*i.e.*, rather than by one or more natural person(s)), such entity shall designate in writing to the Hotel Board and Hotel Manager one individual as the primary occupant of such Unit, and the term "Unit Owner" as used in the preceding sentence and in connection with the conditions relating to the permitted use of such Unit as reflected therein shall mean such designated individual. As reflected in said Exhibit, Sponsor has updated the New York City Department of Buildings as to the current assortment of Condo Hotel Units, transient hotel rooms in the Transient Hotel Unit and the 181 Residential Units that are referenced in this Plan and the Residential Plan. The Condo Hotel Units may be made available for rental in compliance with the foregoing requirements: (i) pursuant to a hotel rental program; (ii) by the Unit Owner directly; or (iii) by a third party designated by the Unit Owner. As more particularly described in Article I(6) of the Unit Management and Operation Agreement, "Rental of Unit by the Public", aside from using the hotel rental program which may be made available from time to time by Hotel Manager, each Condo Hotel Unit Owner may use any licensed rental agent who appears on Hotel Manager's list of qualified agents that possess the objective minimum quality standards as reasonably set forth by Hotel Manager from time to time or alternatively, such Condo Hotel Unit Owner may submit his or her choice of rental agent to Hotel Manager for consideration based on the minimum quality standards. Purchasers should review the terms of any rental program (including terms with respect to priority of allocation of rentals) before enrolling therein. The 130 hotel guest rooms that comprise the Transient Hotel Unit shall be available for rental on a daily basis as part of the transient hotel; and transient guests seeking to stay at the hotel will have their choice to stay in such rooms, Condo Hotel Units made available for rental by Hotel Manager, and Condo Hotel Units made available for rental by their owners as otherwise provided above. Initially, the Transient Hotel Unit Owner shall be Sponsor. It is currently anticipated that FHR (NYC), LLC, an affiliate of Fairmont Hotels & Resorts (U.S.) Inc., will enter into certain agreement(s) with the Transient Hotel Unit Owner and the Hotel Board that permits, while such agreement(s) are in effect for FHR (NYC), LLC to serve as Hotel Manager for the Transient Hotel Unit.

The Hotel Board will not have the right to restrict or limit any of the uses of, or alterations in or to, the Residential Units, the Accessory Unit or the Club Unit (including the portions thereof facing the street or public area) which are permitted by applicable Laws, except as otherwise set forth in the Condominium By-Laws and Declaration. The Transient Hotel Unit will consist of 130 guest rooms, which together with the 152 Condo Hotel Units (and the Hotel Limited Common Elements) will serve as the Hotel Section and operate as a luxury hotel facility (subject to the Declaration, Condominium By-Laws and the Hotel By-Laws); the Residential Units (not offered hereby) may generally be used only for residential purposes and, subject to compliance with the Declaration, the Condominium By-Laws and the Residential By-Laws, for a lawful home occupation as defined in the Zoning Resolution. The Commercial Units (not offered hereby) may be used for any lawful purpose, including, without limitation, for retail, public event, restaurant, banking, commercial, residential, telecommunications, hotel, office, performing arts and utility purposes; the Transient Hotel Unit will initially be used for hotel purposes; the Accessory Unit will initially be used for purposes accessory to the Hotel Section such as hotel accessory space, restaurants, banquet and meeting facilities and retail space (subject to change as described in more detail in Sections B and C below); and the Club Unit will initially be used as a health club/fitness center, although no representation or warranty is made with respect to such initial or any subsequent uses of the Non-Condo Hotel Units or with respect to who the owner or tenant(s) of the Non-Condo Hotel Units may be at any time. No income derived from any use of the Non-Condo Hotel Units will constitute income to any of the Boards or any other Unit Owner(s). (See the Section in Part I below entitled "Non-Condo Hotel Units" for further discussion.)

Without limiting the foregoing, the Transient Hotel Unit Owner shall have the right (subject to the consent of its Registered Mortgagee (as defined in the Declaration), if otherwise required) to subdivide such Unit and, in the amendment to the Declaration effecting the same, designate any such newly created Unit as a new Condo Hotel Unit or as a new class of Unit (*e.g.*, fractional/timeshare ownership) and to amend the Declaration, the Condominium By-Laws and the Hotel By-Laws, and/or to create and record a fractional/timeshare ownership declaration with respect to such new classification of Units (including, among other things, by-laws and other related documents to address issues affecting only the administration and management of such Units and a plan of fractional/timeshare ownership with respect thereto).

With certain exceptions, any sale or lease (in excess of four (4) months) of a Condo Hotel Unit will be subject to a right by the Hotel Board to acquire or lease such Condo Hotel Unit, as the case may be, on the same terms as were offered by the Condo Hotel Unit Owner to the potential purchaser or lessee thereof. This right of first refusal in favor of the Hotel Board is not applicable to a sale or lease of the Unsold Condo Hotel Units. It is also not applicable to the sale or lease of the Residential Units, Club Unit or Accessory Unit. Notwithstanding the foregoing, all Condo Hotel Units may be used and occupied at all times only in accordance with the Declaration, the Condominium By-Laws, the Hotel By-Laws and all applicable Laws. The Condo Hotel Unit Owners shall at all times be permitted to rent their Condo Hotel Units on a transient rental basis, provided the same is in accordance with the Hotel By-Laws. For a more complete discussion of the foregoing, see the Section entitled "Rights and Obligations of the Unit Owners and the Boards" in Part I of the Plan.

The Hotel Board does not have a right to approve or disapprove prospective purchasers and there is no limit on the number of Condo Hotel Unit Owners who may purchase a Condo

Hotel Unit for investment, rather than personal occupancy purposes. As such there may always be a substantial percentage of Condo Hotel Unit Owners who are non-occupants of the Condominium. The Hotel By-Laws do not include a provision that after the expiration of the Initial Hotel Control Period a majority of the Hotel Board must be Condo Hotel Unit Owner-occupants or members of a Condo Hotel Unit Owner-occupant's household who are unrelated to Sponsor and its principals. Condo Hotel Unit Owner-occupants and non-occupant Condo Hotel Unit Owners, including Sponsor, may have inherent conflicts on how the Hotel Section should be managed because of their different reasons for purchasing, i.e., purchase for occupancy purposes as opposed to as an investment. Moreover, the Condo Hotel Units comprise only a portion of the space in the Building and a significant portion of the Hotel Section will continue to be used as transient hotel accommodations which will constitute the predominant use of the Transient Hotel Unit (although no representation is made with respect to such continued use or any subsequent use(s)). In addition, the Transient Hotel Unit Owner has the right, among other things, to alter and subdivide its Unit into any number of newly created condominium Units and to offer all or any portion thereof as additional Condo Hotel Units or as fractional/timeshare interests. To the best of Sponsor's knowledge, no subdivision of the Transient Hotel Unit into separate units for sale to the general public is currently contemplated by the Transient Hotel Unit Owner.

In addition, because Sponsor reserves the unconditional right to rent or lease the Condo Hotel Units, there is no commitment to sell more Condo Hotel Units than the fifteen (15%) percent (in number) necessary to declare this Plan effective and Condo Hotel Unit Owner-occupants may never gain effective control and management of the Hotel Section.

Each Hotel Unit Owner must pay Hotel Common Charges to cover the costs of operation and maintenance of the Condominium in accordance with Sections 339(i)(1)(iv) and 339(m) of the New York Condominium Act. The costs of operation and maintenance of the Condominium, including both those directly attributable to the Hotel Units and an allocated share of expenses attributable to the Condominium as a whole (such as expenses for insurance, repairs and maintenance of the Common Elements and various service contracts), will generally be borne by the Unit Owners in proportion to their respective Common Interests. The Non-Hotel Unit Owners, who will receive in certain instances greater or fewer services from the Condominium, will bear an allocated share of the expenses of the Condominium, all as described in Schedules A and B of the Plan and Article 6 of the Condominium By-Laws. The estimated Hotel Common Charges for each Hotel Unit for the projected First Year of Hotel Section Operation are set forth in Schedule A below.

Operation of the Condominium will be vested in the Condominium Board which will be elected by or on behalf of the Unit Owners and/or designated by Sponsor or otherwise as described in the Plan and the Condominium By-Laws, Hotel By-Laws and Residential By-Laws. As more particularly set forth in the Condominium By-Laws, the Condominium Board will determine the amounts of General Common Expenses for the Condominium as a whole, and the allocation of General Common Expenses among the Hotel Section, Residential Section, Accessory Unit and Club Unit. As more particularly set forth in the Hotel By-Laws, the Hotel Board will determine the amounts of Hotel Common Expenses for the Hotel Section (which will include that portion of the General Common Expenses allocated by the Condominium Board to the Hotel Section as well as additional Common Expenses arising solely out of the operation of such Hotel Section as determined by the Hotel Board) and the allocation of Hotel Common

Expenses among the Condo Hotel Unit Owners and the Transient Hotel Unit in the Hotel Section. Condo Hotel Unit Owners will pay Hotel Common Charges to the Hotel Board only. The Hotel Board will be required to pay to the Condominium Board the General Common Charges allocated by the Condominium Board to the Hotel Section, before application for any other purpose.

The Condo Hotel Unit Owners may not decorate or alter the interior of their Condo Hotel Units in any way other than pursuant to the terms of the Hotel By-Laws and the Unit Management and Operation Agreement. Hotel Manager will be responsible for maintaining, repairing and painting the Condo Hotel Units pursuant to the Unit Management and Operation Agreement, at the Condo Hotel Unit Owner's expense. The Condo Hotel Unit Owners will be responsible for complying with Laws applicable to their Condo Hotel Units, all at their own expense.

Condo Hotel Unit Owners must obtain the consent of the Hotel Board before altering their Condo Hotel Units in any way, subject to the further applicable provisions of the Hotel By-Laws and the Unit Management and Operation Agreement. The rights of the Non-Condo Hotel Unit Owners to decorate or alter their Units are provided in the Declaration and/or Condominium By-Laws (or Residential By-Laws in the case of the Residential Section and Hotel By-Laws in the case of the Transient Hotel Unit) and in any event are subject to applicable Laws.

Each Condo Hotel Unit Owner may mortgage his or her Unit with such lender and in such amount as he or she chooses, provided only that the Unit Owner satisfies all unpaid liens (other than any other permitted mortgages) against his or her Unit prior to making such mortgage. Each Unit is separate and is not subject to the lien of any mortgage placed by other Unit Owners on their respective Units.

After The City of New York assesses as a separate tax lot each Unit and bills each Unit Owner, the Unit Owner will be responsible for paying the real estate taxes and assessments imposed against such Unit, and no Unit Owner will be responsible for the payment of, nor will his or her Unit be subjected to any lien arising from the non-payment of, taxes and assessments imposed on other Units.

In the opinion of Kramer Levin Naftalis & Frankel LLP, Sponsor's Counsel, an individual Condo Hotel Unit Owner who itemizes deductions generally may, under the income tax laws and regulations in effect as of the date of this Plan, subject to certain limitations, deduct from his or her income for Federal, New York State and New York City income tax purposes:

(a) the annual real estate taxes assessed against his or her Condo Hotel Unit and paid or incurred by such Condo Hotel Unit Owner; and

(b) the annual interest paid or incurred by such Condo Hotel Unit Owner on mortgage indebtedness incurred to acquire or substantially improve his or her Condo Hotel Unit, provided that such Condo Hotel Unit is a qualified residence. A "qualified residence" generally is a person's principal residence and one other residence selected by the taxpayer provided that, if such residence is rented during the taxable year, the taxpayer must use such residence for personal purposes for a number of days which exceeds the greater of (i)14 days or (ii) 10% of the number

of days during such year for which such residence is rented at a fair value. For example, if a taxpayer rents a residence at a fair value for 180 days during a taxable year, the taxpayer would need to use the residence for personal purposes for more than 18 days in order for the residence to be a qualified residence.

To the extent that a Condo Hotel Unit Owner rents his or her Unit, the annual real estate tax and annual interest deductions otherwise allowable could be limited.

With respect to real estate taxes, Purchasers are advised that the New York City tax authorities may assess taxes against the Building in a different manner and in a different amount than that assumed by Sponsor's real estate tax consultant and, if so, Unit Owners may pay significantly different real estate taxes than those set forth on Schedule A.

Prospective Purchasers should refer to the Section entitled "Income Tax Deductions to Condo Hotel Unit Owners and Tax Status of Condominium" in Section V below, as well as to Sponsor's Counsel's Income Tax Opinion reproduced in Section W below for a more complete discussion.

The Condominium Board will be responsible for maintaining liability insurance, and casualty insurance with respect to the entire Building (including the physical structure of each Unit, but excluding the fixtures and betterments and improvements therein, and the furniture, furnishings or other personal property not constituting a part of such Unit), together with all service machinery contained therein, in accordance with the provisions of the Condominium By-Laws. Neither the Condominium Board nor the Hotel Board is required to obtain or maintain any insurance with respect to any personal property (including improvements, betterments, equipment, furniture, furnishings and the like) contained in or constituting part of a Condo Hotel Unit or any liability with respect to occurrences within or about a Condo Hotel Unit or the Hotel Limited Common Elements, if any appurtenant thereto. See the Sections entitled "The Condominium Board" and "Rights and Obligations of the Unit Owners and the Boards" in Part I for a more complete discussion. Consequently, except as otherwise provided in the then applicable form of Unit Management and Operation Agreement, all Condo Hotel Unit Owners are required to obtain and maintain personal property insurance and liability insurance as specified therein. Pursuant to the initial Unit Management and Operation Agreement, which each Condo Hotel Unit Owner shall be required to enter into, Hotel Manager, on behalf of each Condo Hotel Unit Owner, shall, at such Condo Hotel Unit Owner's sole expense, procure and maintain (a) property insurance coverage for all FF&E, improvements and betterments, in form and coverage commercially reasonable and available for luxury hotels comparable to the Hotel Section, and (b) comprehensive public liability insurance on an occurrence basis against claims for personal injury, death or property damage arising out of or connected with the operations of such Condo Hotel Unit Owner, Hotel Manager or other occupants of such Condo Hotel Unit, indemnifying and protecting such Condo Hotel Unit Owner and Hotel Manager in such amounts and to such extent as may from time to time be usual and prudent for companies operating or owning similar properties in equivalent locations. Condo Hotel Unit Owners will be responsible to obtain and maintain such coverages directly for their own account if Hotel Manager elects not to do so. Purchasers are also advised that the insurance policies to be maintained by or on behalf of the Condominium Board and/or Hotel Board will be on a "replacement cost" and will not cover losses to the extent that "market value" of a Unit may exceed its insured replacement cost. Further, as a result of current fluctuations in the insurance market, neither the Condominium

Board nor the Hotel Board will be required to obtain or maintain terrorism or mold coverage but may do so, and in such event, the cost thereof shall be a Common Expense as described in the Condominium By-Laws and/or Hotel By-Laws, as applicable.

## 3. Offering of Units for Sale

Sponsor hereby offers the 152 Condo Hotel Units for sale under the Plan. The Non-Condo Hotel Units are not being offered for sale hereunder. No representation or warranty is made as to who the owner(s) or tenant(s) of the Non-Condo Hotel Units may be or the uses to which such Units may be put at any time; and no income derived from any use of the Non-Condo Hotel Units will constitute income to any of the Boards or any other Unit Owner. Sponsor is offering the Residential Units (together with licenses for certain storage areas) pursuant to the Residential Plan, a copy of which is available in the Sales Office.

There are no limitations on who may purchase the Condo Hotel Units offered hereunder. However, Sponsor hereby reserves the right at any time and from time to time for any reason whatsoever, without the consent of the Condominium Board, the Hotel Board, any Unit Owner or mortgagee, to refuse to approve and execute an Agreement for any Unit; provided, however, that Sponsor shall not discriminate against any person because of race, creed, color, gender, sexual orientation, disability, age, marital status or national origin, or as otherwise prohibited by applicable Laws.

The prices for the Units offered under the Plan are listed on Schedule A, entitled "Schedule of Purchase Prices and Other Financial Details for January 1, 2007 to December 31, 2007, the Projected First Year of Hotel Section Operation." THESE PRICES HAVE BEEN SET BY SPONSOR AND ARE NOT SUBJECT TO REVIEW OR APPROVAL BY THE DEPARTMENT OF LAW OR ANY OTHER GOVERNMENTAL AGENCY.

The estimated Hotel Common Charges for each Condo Hotel Unit for the projected First Year of Hotel Section Operation are also set forth in said Schedule A. In addition to the payment of Hotel Common Charges, each Condo Hotel Unit Owner will be responsible for the payment of the real estate taxes which will be separately assessed against such Unit (although the Condominium By-Laws and Hotel By-Laws provide for a limited period of time following the recording of the Declaration when the Units may not be separately assessed), and interest and amortization payments on the mortgage, if any, which such Purchaser may obtain. Further, Condo Hotel Unit Owners may be responsible for additional charges for services which they choose to use at their option. (See the Section entitled "Available Services and Facilities" in Part I, Section B) and pursuant to the mandatory Unit Management and Operation Agreement described in "Unit Management and Operation Agreement Services" within the Section entitled "Description of the Property and Improvements" in Part I below, the initial form of which is reproduced as Exhibit 15 in Part II of the Plan.

Schedule A sets forth the estimate for the amount of real estate taxes which will be payable with respect to each Condo Hotel Unit during the anticipated First Year of Hotel Section Operation commencing January 2007. See Note 6 to Schedule A hereof with respect to the basis of such estimate.

Sponsor will endeavor in good faith to sell, but nevertheless reserves the unconditional right, to rent or lease, rather than sell, the Units offered hereunder. As a result, Purchaser may be acquiring a Condo Hotel Unit that has been previously occupied, but, unless otherwise specifically agreed to in writing by Sponsor and such Purchaser, such Unit will be delivered at closing free and clear of all leases and tenancies. In addition, there is no commitment to sell more Units than the 15 percent of Condo Hotel Units necessary to declare the Plan effective and, accordingly, owner-occupants may never gain effective control and management of the Hotel Section.

On April 7, 2006 Sponsor entered into a building loan agreement with Column Financial, Inc. ((on its own behalf and on behalf of other lenders participating from time to time) and any successor lender(s) pursuant to any refinancing, the "Construction Lender") in the amount of $60,939,136.30, advances under which are subject to Sponsor complying with certain standard covenants and conditions for loans of this type. In addition, the loan documentation requires that Sponsor market the Condo Hotel Units for sale and have received executed Agreements for at least 25% of the square footage of the Condo Hotel Units in order to obtain a partial release of any Condo Hotel Unit from the lien of the applicable mortgage. Such square footage condition, however, will not result in a requirement that Sponsor have executed Agreements for more than the 15% (in number) of the Condo Hotel Units required to declare this Plan effective. Additionally, Sponsor must make a minimum payment to Construction Lender in connection with the sale of each Unit in order for Construction Lender to release its lien from the Unit being sold.

Since the Construction Lender has (i) consented to the formation of the Condominium and acknowledged that its lien will be limited to Unsold Condo Hotel Units and (ii) subordinated the lien of its mortgage to the Declaration, accordingly, at the closing of title to any particular Unit, Construction Lender shall release its lien on the Unit being conveyed and its interest in the Common Elements.

**. FF&E**

All Condo Hotel Units offered for sale under the Plan are being offered for sale with the FF&E. The FF&E shall be conveyed to a Purchaser at the closing of title pursuant to a Bill of Sale, the form of which can be found in Exhibit 14 in Part II of the Plan. Accordingly, the purchaser of a Condo Hotel Unit will be purchasing personal property in addition to real property, and a portion of the purchase price, (calculated as $65.00 per square foot (as indicated in Schedule A) of the Condo Hotel Unit), for each Condo Hotel Unit is allocable to the FF&E. Purchasers will be obligated to pay any sales or other federal, state or county tax or fee applicable to the sale of the FF&E at the closing of title to the Condo Hotel Unit. The Configuration Plan within each Condo Hotel Unit will be determined in consultation with Hotel Manager so that each Condo Hotel Unit is furnished in such as way as to maintain the hotel standard set forth in the Unit Management and Operation Agreement. Such list of FF&E and the Configuration Plan will be disclosed in an amendment to the Plan prior to the First Condo Hotel Closing and will be available for inspection at the Sales Office (and also will be available for inspection at the Department of Law). Sponsor reserves the right to substitute all or any portion of the FF&E with comparable or better items. Prior to the closing of title to a Condo Hotel Unit, the FF&E will be delivered to the Condo Hotel Unit in accordance with the Configuration Plan, although the absence of any item(s) of FF&E and/or a deviation from the Configuration Plan

shall not excuse a Purchaser from closing title to the Unit. A Purchaser may not choose to purchase a Condo Hotel Unit without the FF&E. (See Section A of Part I of the Plan for further discussion.)

**5. Units Not Offered For Sale Hereunder**

None of the Transient Hotel Unit, the Club Unit, the Accessory Unit or the Residential Units (or the licenses for certain storage areas within the Residential Section) is offered for sale hereunder.

As the fee owner of the Property, Sponsor applied for and received from the Department of Law a "no-action" letter pursuant to which Sponsor: (A) recorded the Declaration and divided the Building into the various Units described herein, namely: (i) the 152 Condo Hotel Units (offered hereunder); (ii) the Transient Hotel Unit, the Accessory Unit and the Club Unit (none of which are offered for sale hereunder); and (iii) the 181 Residential Units (offered for sale under the Residential Plan and not offered hereunder); and (B) conveyed the Accessory Unit, Club Unit and Residential Units to its affiliate(s).

Pursuant thereto, the Declaration of Condominium (creating the various Units as aforesaid) dated as of March 13, 2006 was recorded in the Office of the City Register (on March 23, 2006 as CRFN 2006000164230) by CPS 1 Realty LP, as fee owner, as amended and restated by Amended and Restated Declaration dated as of March 13, 2006 (submitted to the Office of the City Register for recording as CRFN 2006040600067); and by deeds dated as of April 7, 2006, CPS 1 Realty LP conveyed: (i) the Residential Units to its affiliate Plaza Residential Owner LP; (ii) the Accessory Unit to its affiliate Plaza Accessory Owner LP; and (iii) the Club Unit to its affiliate Plaza Club Owner LP. Accordingly, as of the date of the filing of this Plan, the only Units owned by CPS 1 Realty LP (Sponsor) are the 152 Unsold Condo Hotel Units and the Transient Hotel Unit.

**6. Certain Definitions**

For convenience, general definitions of certain of the terms used in Part I of the Plan are set forth below, which definitions are subject, in many cases, to the more particular definitions of such terms set forth in the Declaration, Condominium By-Laws and Hotel By-Laws included in Part II of the Plan.

Accessory Unit: The Unit designated in the Declaration as the Accessory Unit.

Accessory Unit Owner: An owner of the Accessory Unit at the time in question.

Agreement: The agreement to purchase a Unit pursuant to the Plan, the form of which is set forth as Exhibit 1 in Part II of the Plan.

Balcony: Those certain decorative inaccessible balconies appurtenant to the Hotel Section or a Condo Hotel Unit as shown on the Floor Plans.

Boards: The Condominium Board, the Hotel Board and the Residential Board, collectively, or as the context may otherwise require.

Building: The building and other improvements to be located on the Land and commonly known as 768 Fifth Avenue, New York, New York.

Building Department Letter: That certain letter addressed to the New York City Department of Buildings dated May 24, 2005, as updated and modified by a subsequent letter to the New York City Department of Buildings ("DOB") dated March 9, 2006, together with a responsive letter from the DOB dated April 25, 2006, each of which describes permitted uses of the Units and other use restrictions in connection with the Condominium, copies of which are set forth in Part II of the Plan as Exhibit 13 (collectively, the "Building Department Letter").

Building Façade: The external nature of the Building, including window frames and window panes, as more particularly described in Section 7.5 of the Declaration.

By-Laws: The Condominium By-Laws, the Hotel By-Laws and the Residential By-Laws, collectively, or as the context may otherwise require.

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

Club Unit: The Unit designated in the Declaration as the Club Unit.

Commercial Unit Owner: An owner of any Commercial Unit at the time in question.

Commercial Units: The Units designated as the Accessory Unit, Club Unit and the Transient Hotel Unit in the Declaration, as the same may be subdivided or combined in accordance with the Declaration and/or Condominium By-Laws, or Hotel By-Laws as applicable.

Common Elements: The entire property, including the Land and all parts of the Building and other improvements thereon, other than the Units. The Common Elements include, among other things, the foundations, portions of the roofs and supports of the Building and all areas, equipment or facilities for the common use of all or some of the Units or all or some of the Unit Owners except for the Building Façade which is part of the Accessory Unit. The Common Elements include the General Common Elements, Hotel Limited Common Elements and Residential Limited Common Elements.

Common Interest: The proportionate undivided interest in fee simple absolute in the Common Elements appurtenant to each Unit, expressed as a numerical percentage and determined in accordance with the Declaration. The total Common Interest appurtenant to all Units equals 100%. As described more fully in the Condominium By-Laws, generally, the Common Interest is the basis of determining, among other things, a Unit Owner's voting power and general liability for a share of the Common Expenses.

The "Proportionate Share of Aggregage Hotel Section Common Interest" or "Hotel Common Interest" of each Condo Hotel Unit (as shown on Schedule A of the Plan and in the Declaration) refers to the Common Interest appurtenant to each Condo Hotel Unit expressed as a proportion to the Common Interest appurtenant to all Condo Hotel Units and the Transient Hotel Unit in the aggregate and whenever in this Plan (or in the Condominium By-Laws or Hotel By-Laws) it is stated that a certain percentage of Common Interest of all Condo Hotel Unit Owners

is required, such percentage shall be of the Hotel Common Interest of all Condo Hotel Unit Owners.

Condo Hotel Unit: Any Unit designated as a Condo Hotel Unit in the Declaration, and all such Condo Hotel Units, are, collectively, referred to as the "Condo Hotel Units."

Condo Hotel Unit Owner: An owner of a Condo Hotel Unit at the time in question.

Condo Hotel Unit Power of Attorney: The Condo Hotel Power of Attorney as set forth in Part II, Exhibit 2 of the Plan.

Condominium: The Plaza Condominium.

Condominium By-Laws: The by-laws governing the operation of the Condominium, the form of which is set forth in Part II of the Plan, including the General Rules and Regulations.

Condominium Managing Agent: The managing agent of the Condominium. It is anticipated that the managing agent of the Condominium will initially be El-Ad Properties NY LLC, an affiliate of Sponsor.

Construction Lender: Sponsor's construction lender in respect of the construction of the Condo Hotel Units from time to time and any successor lender(s) pursuant to any refinancing.

CPI Increase Factor: An increase proportionate to any increase in the cost of living from the date of the initial recording of the Declaration, as reflected by the change in the Consumer Price Index (CPI-U; All Items; 1982-84 = 100 standard reference base period) for New York, New York (or the smallest measured area including New York, New York), as published by the Bureau of Labor Statistics, United States Department of Labor or, if the same ceases to be published, a commonly used substitute therefor reasonably selected by the Condominium Board.

Declaration: The instrument creating the Condominium, more particularly described as Declaration of Condominium dated as of March 13, 2006, recorded in the Office of the City Register on March 23, 2006 as CRFN 2006000164230 by CPS 1 Realty LP, as fee owner, as amended and restated by Amended and Restated Declaration dated as of March 13, 2006, recorded in the City Register's Office on March 23, 2006 as CRFN 2006000164231, a copy of which is set forth in Part II of the Plan as Exhibit 6.

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

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

Environmental Law(s): all federal, state and local laws, rules, regulations, ordinances, requirements and orders whether now existing or hereafter enacted, promulgated or issued, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material and/or the protection of human health and the environment.

First Condo Hotel Closing: The first date upon which title to any Condo Hotel Unit is conveyed to a Purchaser under the Plan.

First Year of Hotel Section Operation. The 12-month period commencing on the date of the First Condo Hotel Closing, currently anticipated to be the period from January 1, 2007 to December 31, 2007.

Floor Plans: The floor plans of the Building, filed with, and approved by, the Real Property Assessment Bureau of The City of New York and the City Register's Office at the time the Declaration was recorded (as amended from time to time in accordance with the terms of the Declaration). The Floor Plans show the locations of the Units and the Common Elements in the Building.

General Common Charges: Assessments payable to the Condominium Board by or on behalf of the Unit Owners for the purpose of meeting General Common Expenses. The Hotel Common Charges payable by each Condo Hotel Unit Owner and the Transient Hotel Unit Owner will include a proportionate share (among all Condo Hotel Unit Owners and the Transient Hotel Unit Owner) of the portion of General Common Expenses allocated by the Condominium Board to the Hotel Section. (The Hotel Board will pay such General Common Charges to the Condominium Board on behalf of all Condo Hotel Unit Owners and the Transient Hotel Unit Owner.) The General Common Charges payable by the Club Unit Owner and the Accessory Unit Owner will be paid directly to the Condominium Board (and in the case of the Residential Section, paid to the Residential Board which will in turn pay the Condominium Board) and be based on the allocated share of those General Common Expenses incurred by the Condominium Board in furnishing services to, or in operating, maintaining and repairing those General Common Elements that are used by, the Club Unit Owner, the Accessory Unit Owner (or the Residential Section, as the case may be), in accordance with the provisions set forth in the Declaration and Condominium By-Laws.

General Common Elements: All of the Common Elements which are not Hotel Limited Common Elements or Residential Limited Common Elements, as more particularly described in the Declaration and as shown on the Floor Plans for the Building.

General Common Expenses: The costs and expenses in connection with the repair, maintenance, replacement, restoration, care, upkeep and operation of, and any alteration, addition or improvement to, the General Common Elements and the provision of services to all Unit Owners.

General Rules and Regulations: The rules and regulations of the Condominium, if any, that may be made and amended in accordance with the Condominium By-Laws from time to time.

Governmental Authority(ies): means the United States of America, the State of New York, The City of New York and any agency, department, commission, board, bureau, instrumentality, public authority or agency (whether governmental or quasi-governmental) or political subdivision of any of the foregoing, now existing or hereafter created (including, without limitation, the New York City Department of Buildings, the City Planning Commission and the boards of fire underwriters) having jurisdiction over the Property or any portion thereof.

Hotel Accessory Quarters: means living quarters which are not occupied by the Unit Owner thereof in excess of four months (in the aggregate) in any calendar year, and, when not

occupied by such Unit Owner, are available for rental as a "Transient Hotel Room," i.e., a room or single suite of rooms used for transient occupancy and which may be rented on a daily basis as part of a transient hotel. Where a Condo Hotel Unit is owned by an entity (*i.e.*, rather than by one or more natural person(s)), such entity shall designate in writing to the Hotel Board and Hotel Manager one individual as the primary occupant of such Unit, and the term "Unit Owner" as used in the preceding sentence and in connection with the conditions relating to the permitted use of such Unit as reflected therein shall mean such designated individual.

Hotel Board: The board of managers for the Hotel Section.

Hotel By-Laws: The by-laws governing the operation of the Hotel Section, the form of which is set forth as Exhibit 8 in Part II of the Plan.

Hotel Common Charges: Assessments payable to the Hotel Board by the Condo Hotel Unit Owners and Transient Hotel Unit Owner, pro rata, in accordance with their respective Hotel Common Interests (except as otherwise provided in the Declaration, the Condominium By-Laws or the Hotel By-Laws) for the purpose of meeting the Hotel Common Expenses, including without limitation, each Condo Hotel Unit Owner's share of General Common Charges as allocated by the Condominium Board to the Hotel Section.

Hotel Common Expenses: Those costs and expenses in connection with the repair, maintenance, replacement, restoration, care, upkeep and operation of, and any alteration, addition or improvement to, the Hotel Limited Common Elements and the business and affairs of the Hotel Section as determined by the Hotel Board, plus a portion of the General Common Expenses of the Condominium as allocated to the Hotel Section by the Condominium Board in accordance with the Condominium By-Laws.

Hotel Guest: A guest, invitee or licensee occupying on a transient basis a guest room or suite within the Hotel Section.

Hotel Limited Common Elements: Those Common Elements which consist of those portions of the Property designated on the Floor Plans as Hotel Limited Common Elements; and also those Common Elements (other than vertical shaftways and penetrations) which exclusively serve or exclusively benefit all or a combination of the Hotel Units or the Hotel Unit Owners whether or not designated as Hotel Limited Common Elements (or designated at all) on the Floor Plans (but excluding any items therein or in the Building which are not part of the Property, including, without limitation, any equipment, wiring and devices owned by telecom providers).

Hotel Manager: The operator and manager of the hotel in the Hotel Section, whether as the Transient Hotel Unit Owner, lessee of the Transient Hotel Unit, or as an agent, manager or independent contractor of, or otherwise on behalf of, the Transient Hotel Unit Owner or the Hotel Board, pursuant to a hotel management agreement or otherwise. Initially, it is anticipated that FHR (NYC), LLC, an affiliate of Fairmont Hotel & Resorts (U.S.) Inc., having an office at Canadian Pacific Tower, TD Centre, 100 Wellington St. W., Suite 1600, P.O. Box 40, Toronto, Ontario, Canada M5K1B7 will be Hotel Manager. Sponsor makes no representation whatsoever with respect to the continuation of such Hotel Manager or the identity of any subsequent Hotel Manager. The term "Hotel Manager" when used in the Plan with respect to any time after FHR

(NYC), LLC shall have been replaced as Hotel Manager shall mean such other entity then operating and managing the hotel within the Hotel Section.

Hotel Rules and Regulations: The rules and regulations of the Hotel Section, if any, that may be made and amended in accordance with the Hotel By-Laws from time to time.

Hotel Section: The Transient Hotel Unit, the Condo Hotel Units and the Hotel Limited Common Elements. .

Hotel Unit Owner: An owner of a Condo Hotel Unit or the Transient Hotel Unit at the time in question, each a Hotel Unit Owner and, collectively, the Hotel Unit Owners.

Hotel Units: The Condo Hotel Units and the Transient Hotel Unit at the time in question, collectively.

Initial Hotel Control Period: The period which shall end upon the later to occur of: (a) the fifth anniversary of the First Condo Hotel Closing; or (b) the closing of title by Sponsor to Condo Hotel Units representing at least 90%, both in number and in aggregate Common Interests, of all Condo Hotel Units.

Land: The land situated on the west side of Fifth Avenue between West 58th Street and Central Park South, New York, New York, comprising the parcel commonly known as 768 Fifth Avenue (and alternatively sometimes as One Central Park South), as further and more particularly described in the Declaration.

Laws: (or, if used individually, Law): All applicable laws, statutes and ordinances (including, without limitation, Environmental laws, and all building codes, zoning ordinances and all requirements and limitations with respect to certificate(s) of occupancy for the Property), case laws and the written orders, rules, regulations, directives, binding resolutions and requirements of all Governmental Authorities, whether in force as of the date hereof or hereafter, which are or become, or purport to be, applicable to the Property or any part thereof, all as more fully provided in the Condominium By-Laws.

Limited Common Elements: The Hotel Limited Common Elements and/or the Residential Limited Common Elements, as the context may require.

LPC: Landmarks Preservation Commission.

Memorandum of Unit Management and Operation Agreement: The memorandum of Unit Management and Operation Agreement, the form of which is attached to the Unit Management and Operation Agreement in Exhibit 15 of Part II of the Plan.

Non-Condo Hotel Unit: Any Unit other than a Condo Hotel Unit.

Non-Condo Hotel Unit Owner: An owner of any Non-Condo Hotel Unit at the time in question.

Non-Hotel Unit: Any Unit other than a Hotel Unit.

Non-Hotel Unit Owner: An owner of a Non-Hotel Unit at the time in question.

Occupant: means any Person from time to time entitled to the use and occupancy of all or any portion of any Condo Hotel Unit (or in the case of the Hotel Section, the Hotel Limited Common Elements; or in the case of the Condominium Board, the General Common Elements); in each case under an ownership right or any lease, sublease, license, concession, rental agreement, transient or other hotel occupancy arrangement, or any other similar agreement or arrangement.

Offeree: A Purchaser who has executed and delivered an Agreement to Sponsor or Selling Agent and whose Agreement is in effect, and a Condo Hotel Unit Owner.

Permitted Encumbrances: Those matters encumbering title to a Condo Hotel Unit subject to which a Purchaser agrees to take title, as more particularly itemized on Schedule A annexed to the form of Agreement in Exhibit 1 of Part II of the Plan.

Permitted Mortgage: A mortgage of a Condo Hotel Unit or Condo Hotel Units permitted to be placed thereon pursuant to the provisions of the Condominium By-Laws or Hotel By-Laws, as applicable.

Plan: This offering plan for the sale of the Condo Hotel Units which are being offered hereunder.

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

Property: The Land, the Building and the appurtenances thereto, including, without limitation, all Common Elements.

Purchaser: A purchaser of one or more of the Condo Hotel Units offered hereunder pursuant to an Agreement.

Registered Occupant: An Occupant of a Condo Hotel Unit registered with the hotel front desk as an Occupant thereof at the time in question.

Residential Board: The board of managers for the Residential Section.

Residential By-Laws: The by-laws governing the operation of the Residential Section, including the Residential Rules and Regulations.

Residential Limited Common Elements: Those Common Elements which serve or benefit exclusively one or more of the Residential Units or the Residential Unit Owners as more particularly described in the Declaration.

Residential Plan: A separate offering plan (a copy of which is available for inspection in the Sales Office) for the sale of the Residential Units (which are not being offered hereunder).

Residential Section: The Residential Units and Residential Limited Common Elements.

Residential Sponsor: Sponsor's affiliate, Plaza Residential Owner LP, which, pursuant to the Seventh Amendment to the Residential Plan (accepted for filing by the Department of Law as of April 7, 2006), is the sponsor with respect to the Residential Units offered for sale under the Residential Plan.

Residential Unit: Any Unit designated as a Residential Unit in the Declaration, and all such Residential Units are collectively referred to as the "Residential Units."

Residential Unit Owner: An owner of any Residential Unit at the time in question.

Sales Office: The sales office for the Condo Hotel Units, at a location to be designated by Selling Agent from time to time. The Sales Office will initially be located at One Central Park South, New York, New York 10019; Telephone (212) 588-8000.

Selling Agent: Stribling Marketing Associates LLC having an address at 924 Madison Avenue, New York, New York 10021.

Sponsor; Sponsor or its designee; or similar phrases: Sponsor, any affiliate of Sponsor or a designee of Sponsor. An affiliate of Sponsor shall be deemed to be: (i) a person or entity who or which owns 25% or more of the legal or beneficial interest of Sponsor; or (ii) an entity with respect to which Sponsor owns 25% or more of the legal or beneficial interest.

Sponsor's Counsel: Kramer Levin Naftalis & Frankel LLP, having an office at 1177 Avenue of the Americas, New York, New York 10036.

Sponsor's Office: The office of Sponsor located at c/o El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10022 or any other office regularly maintained by Sponsor in the City of New York.

Terrace: Any of the terraces appurtenant to a Condo Hotel Unit or the Hotel Section as shown on the Floor Plans.

Title Company: Fidelity National Title Insurance Company of New York (2 Park Avenue, Suite 1420, New York, New York 10016, Attn: Neil A. Clark, (212) 845-3103); Royal Abstract, (500 Fifth Avenue, Suite 1940, New York, New York 10110, Attn: Martin Kravet, (212) 376-0900); First American Title Insurance Company of New York, (633 Third Avenue, New York, New York 10017, Attn: Bruce J. Clay, (212) 850-0632); Title Associates (825 Third Avenue, 30th Floor, New York, New York 10022, Attention: Norman Sloan, (212) 758-0050), or such other or additional company/ies designated by Sponsor in an amendment to this Plan.

Transient Hotel Unit: The Unit designated in the Declaration as the Transient Hotel Unit.

Transient Hotel Unit Owner: The owner of the Transient Hotel Unit at the time in question.

Unit: Any space designated as a Condo Hotel Unit, Transient Hotel Unit, Residential Unit, Accessory Unit or Club Unit in the Declaration, consisting, generally, of the relevant

condominium unit in the Building and an appurtenant undivided interest in the Common Elements and, with respect to the Condo Hotel Units and Transient Hotel Units, the Hotel Limited Common Elements and, with respect to the Residential Units, the Residential Limited Common Elements. All of such Units are collectively referred to as the "Units."

Unit Management and Operation Agreement: The Unit Management and Operation Agreement, the initial form of which is set forth as Exhibit 15 in Part II of the Plan, which covers certain services provided to each Condo Hotel Unit Owner by Hotel Manager, but does not provide for the rental of the Condo Hotel Units.

Unit Management and Operation Agreement Fee: The administrative fee at the time in question charged to Condo Hotel Unit Owner in connection with the services provided under the Unit Management and Operation Agreement.

Unit Owner: The owner of a Unit at the time in question.

Unsold Condo Hotel Units: Any Condo Hotel Unit owned or retained, by way of lease or any other arrangement by which management and/or financial responsibility is retained, by Sponsor, Transient Hotel Unit Owner or any of their respective designees as the holder of one or more Unsold Condo Hotel Unit(s); any Condo Hotel Unit that is acquired, individually or collectively, by a principal of Sponsor, the Transient Hotel Unit Owner or a group of which Sponsor, Transient Hotel Unit Owner or one or more of its principals is a member; or a Condo Hotel Unit that is acquired, individually or collectively, by either the holder of a Permitted Mortgage given by Sponsor, Transient Hotel Unit Owner or the designee of a holder of such a Permitted Mortgage. All or any of such Condo Hotel Units are collectively referred to as the "Unsold Condo Hotel Units."

Use Restrictions: Certain restrictions regarding the use and occupancy of the Condo Hotel Units, which may vary from time to time, including but not limited to: (i) use of the Condo Hotel Units as Hotel Accessory Quarters; and (ii) compliance with the Building Department Letter.

Zoning Resolution: Zoning Resolution of The City of New York, effective as of December 15, 1961, as the same has been and hereafter may be amended from time to time.

74-711 Permit: The 74-711 permit is a special permit granted pursuant to the City's Uniform Land Use Review Procedure in connection with the retail use, banquet use, restaurant use and health club use in certain spaces of the Building as further described in Section C of the Plan.

All other capitalized terms used in Part I of the Plan which are not separately defined in Part I shall have the meanings ascribed thereto in the Condominium By-Laws, Hotel By-Laws or in the Declaration, as the case may be. Unless the context otherwise requires, words used in the singular include the plural and vice versa, and a reference herein to any one gender, masculine, feminine or neuter, includes the other two.

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## B. DESCRIPTION OF THE PROPERTY AND IMPROVEMENTS

The following is a general description of the Property, including the Land, Building, Units and Common Elements, as well as certain facilities and services anticipated to be provided at the Condominium. For a more detailed physical description of the Property, see "Description of Property and Specifications" in Part II of the Plan.

### 1. The Building

#### a. The Existing Structure

The Building is located on the Land, situated on the west side of Fifth Avenue in New York, New York between West 58th Street and Central Park South. The Land consists of Block 1274, Lot 25 on the Tax Map of the Borough of Manhattan. Originally constructed between 1905 and 1907, the Plaza Hotel was designed by renowned architect Henry J. Hardenbergh. Set back from Fifth Avenue, the Building is prominently sited behind Grand Army Plaza and occupies the entire blockfront along Fifth Avenue between 58th and 59th Streets. The 18-story structure is U-shaped in plan, with els extending 250 feet along 59th Street, 285 feet along 58th Street and a frontage of approximately 200 feet on Fifth Avenue. The 58th Street elevation was extended in 1921 according to the designs of Warren & Wetmore. The Building is organized in a classical tripartite composition with base, shaft and capital, and projecting pavilions at the corners. The French-renaissance styling of the Building is more simply interpreted in the 1921 extension. The three-story rusticated marble base is surmounted by a shaft clad in buff, glazed brick. The shaft is capped by a glazed terra-cotta balcony at the fourteenth story. The Building is crowned by a five-story mansard roof clad in green terra-cotta tiles marked with dormers clad in copper and terra-cotta, which terminate at the cheneau (ridge flashing) above the eighteenth story. Turrets flank each end of the Fifth Avenue façade and are terminated by copper-clad cupolas. Intricate copper cresting crowns the gables and finishes the ornate mansard roof against the surrounding skyline. Long recognized as a historic and architectural prize, The Plaza Hotel's unique status was further confirmed by its being declared a New York City Landmark in 1969 and a National Historic Landmark in 1986.

The Building is renowned around the world as the gateway to Central Park, world class shopping, Rockefeller Plaza, the Museum of Modern Art, and St. Patrick's Cathedral, has starred in award winning movies such as Breakfast at Tiffany's, The Great Gatsby, North by Northwest, and The Way We Were, and been recognized for its magnificence by countless authors, travelers and patrons.

#### b. The Renovated Structure

The Building is being renovated in such as way as to maintain the Plaza's distinctive features known throughout the world. The Building will consist of four below grade levels with varying heights (Mechanical Level, Lower Concourse C, Lower Concourse Mezzanine B and Main Concourse A), and there are 21 stories above grade (First Floor, Floor 2 through Floor 19, and two penthouse floors, Floors 20 and 21). The renovated Building will consist of a Hotel Section, Residential Section, certain accessory space and a health club/fitness facility. The primary entrance for the Building will be located on Fifth Avenue.

The primary entrance for the Hotel Section will be from the combined entrance on Fifth Avenue with a secondary dedicated entrance located on West 58th Street. The Hotel Section lobby will include a personalized reception area, concierge and valet functions and lounge. Three dedicated passenger elevators and two service elevators will serve the Hotel Section. It is anticipated that there will be 130 hotel guest rooms on Floors 4 through 10 (all part of the Transient Hotel Unit) and 152 Condo Hotel Units on Floors 11 through 21.

The primary entrance for the Residential Section will be located on Central Park South. This entrance and lobby will include the concierge desk, security and a valet. Four elevators are located in Residential Section lobby to serve the Residential Units. There will be 181 Residential Units located on Floors 1 through 19, with two floors of penthouses above Floor 19. The Residential Section will encompass approximately 428,000 gross square feet of the approximately 935,000 gross square feet of the Building.

Assuming Sponsor is granted the 74-711 Permit (See "Zoning" in Section C of Part I of Plan for further discussion of the 74-711 Permit), certain hotel accessory space (which shall include restaurant space, ballroom space, meeting room space and retail space) constituting par of the Accessory Unit and which is accessed via Central Park South, Fifth Avenue and West 58th Street and through interior convenience doors between the Hotel Section, the Residential Section and the Accessory Unit, will be utilized as a combination of hotel accessory space and retail space. The accessory space on the First Floor will be located between the Hotel Section and the Residential Section and will continue to have many of the Plaza restaurants and lounges that existed when the hotel was in operation prior to its recent closure for renovation (e.g., the Oak Room and Oak Bar, the Palm Court, the Edwardian Room and the Terrace Room). Floor 2 will contain the mezzanine portion of the Terrace Room along with some retail space. Floors 3 and 4 will serve as banquet and meeting facility space for the Hotel Section. The accessory space on the Main Concourse A will be converted into a retail galleria and the remaining accessory space on the Lower Concourse C will serve as retail storage and/or additional retail space. Additionally, there will be vitrines (display cases) located in certain portions of the Accessory Unit.

The transformation of the Building into the renovated structure described above will involve a major interior and exterior rehabilitation. The interior renovation will include a thorough restoration of all interior landmark spaces. In some spaces, the historic materials are largely intact and sound, and the required work is limited to cleaning and maintenance. However, deterioration related to the constant and heavy use of the spaces will require repair of some materials. In other spaces, interventions that detract from the historic character, design and/or materials will be removed wherever possible, and the original materials repaired. Mosaic floors will be cleaned and refinished, and repairs will be performed where the tessera are damaged or eroded, or grout cracked. Stone walls will be cleaned and repaired where necessary. Hardware, such as door handles and hinges, handrails, and grilles will be cleaned and restored, or new pieces matching the originals will be manufactured where the originals are broken or missing.

The exterior restoration will provide new waterproof roof systems while retaining the visual features of the existing roof. All existing terra-cotta tiles on the existing sloped Mansard and Pavilion (at the northwest, northeast and southeast building corners) roofs will be removed down to the existing concrete and tile roof decks. A new waterproof system will be installed

topped by new, 9" x 14" terra-cotta roof tiles colored to match the originals. Minimum 20 ounce copper will be used at all open valleys and flashings. All existing copper cladding on all Mansard and Pavilion roof dormers (except as noted below) will be removed and will be replaced by new, minimum 20 ounce copper cladding over a new waterproof system. The profiles of the new cladding will match those of the existing. Flashings will be a minimum of 20 ounce copper. All existing cheneau and ridge flashings will be replaced with minimum 20 ounce copper with profiles to match the existing. All existing parapet copings will be replaced with minimum 20 ounce copper with profiles to match the existing. Existing cresting on the three corner Pavilions will be replaced with profiles to match the existing and with minimum 20 ounce copper at the apron and curbing to permit installation of the new roofing, and will be repaired and coated at the decorative railing including piers and scrolls. New fiberglass finials, to match replaced originals in dimensions and configurations will be provided at the Pavilion corners. Selective existing copper, dormer cladding and other copper will be retained, repaired and coated. This includes existing cladding which is embedded in terra-cotta or brick masonry, exposed edges of existing copper gutters, water tower copper and other small, miscellaneous copper surfaces. Numerous original, decorative finials throughout the roof which are no longer on the Building will be replaced with new, fiberglass finials to match the original dimensions and configurations. Marble and limestone at the three-story building base will be selectively repaired and re-pointed. Marble at the 59th Street entrance will have obtrusive attachments removed, will be selectively patched and will be cleaned. The 58th Street, First Floor limestone façade will have more extensive patching and repair and additionally will be cleaned. An original, but now missing, service entrance will be re-created as will an original storefront. Stonework around both openings will match the existing. Non-original air-conditioning grilles in the 58th Street, Floor 3 cornice will be removed and new stone will fill the cornice where it was cut for the grilles. The 58th Street, Floor 5 air-conditioning grilles will be removed and the openings filled with glazed brick to match the existing. Selective 58th Street, Floor 8 displaced brick will be rebuilt. Fifth Avenue and 59th Street terra-cotta and brick at Floor 13 Balconies and above will be patched and re-glazed in numerous locations. Work at these areas will also include selective cleaning and re-pointing as well as joint repair. The west elevation, south wing brick will be re-pointed and will also have selective sill repair. The west elevation, north wing brick will be selectively patched and re-pointed. The 58th Street cast-iron marquee will be completely restored. All disassembled features will be repaired, with missing features replaced, and re-installed. All cast-iron will be painted with colors to match the original. Sponsor has no specific knowledge about problems with or needed repairs to the façade of the Building other than any items which will be corrected as part of the restoration of the Property contemplated hereby.

The LPC, on October 1, 1991, approved certain alterations to the roof on the north, east and south elevation. A new one-story addition (Floor 21) will be added above Floor 20. Such additional floor will serve as the upper level of the new duplex apartments and mechanical spaces. Additionally, there will be small additions at Floor 19 and Floor 20 on the north and east sides of the courtyard. The dormer window of the Floor 19 will be enlarged to match the size of the window on Floor 18. The existing copper cheneau (ridge flashing) will be removed and the existing mansard roof on the Building's north and east sides between the corner pavilions will be lowered by approximately three feet. A replica of the copper cheneau will be installed. The sloped roof of Floor 20 will be modified to include large skylight windows. Floor area will be added on Floor 19, 20 and 21 on the courtyard side of the north and east wing extending the Floor by 7'6".

Sponsor has engaged Costas Kondylis & Partners LLP, as architect of record. In addition, Flack & Kurtz has been retained as mechanical and electrical engineer, Cantor Seinuk, as structural engineer, and Tishman Construction as construction manager. (See "Identity of Parties" in Part I, Section Y.) The Plans and Specifications for the renovation of the Building have been prepared by Costas Kondylis & Partners LLP, in consultation with such other professionals.

Renovation of the Building, including the individual Units, will be completed substantially in accordance with the Plans and Specifications, and otherwise in accordance with the Zoning Resolution, the Building Code of The City of New York and all other applicable Laws.

Sponsor reserves the right, without prior notice to Purchasers or amendment of this Plan (but subject to obtaining any required approval(s) of any governmental authorities having jurisdiction), to: (i) amend from time to time any of the Plans and Specifications (including changes in layouts and designs, changes in the size or number of Units and/or their respective percentages of Common Interest, changes in the size or quality of the Common Elements and changes affecting the materials, appliances, equipment, fixtures and other construction details); and/or (ii) substitute materials, appliances, equipment and fixtures that are of equivalent or better quality and design in place of those described in the Plans and Specifications. Any such changes, if material (for example, variations in square footage in excess of 5%), shall be disclosed by Sponsor in a duly filed amendment to the Plan and, when applicable, to the Declaration. No such change will be made if the same would materially adversely affect any Purchaser under an Agreement which has been countersigned by Sponsor and returned to the Purchaser unless (i) the affected Purchaser consents; (ii) the Purchaser is in default or (iii) the same is dictated by construction conditions at the Property (such as coordination of Building systems, conflicts with structural members or elements, conforming with Laws, unforeseen events, etc. and, in all cases, in good faith, reasonably necessary due to factors not within Sponsor's reasonable control, and where no practicable alternative (in the exercise of sound construction management practices) exists), and in such event, Sponsor will, in the amendment disclosing such material adverse change, offer the affected Purchaser(s) the right, for at least 15 days, to rescind their Agreement(s) and receive a refund of their Deposit(s), together with all interest earned thereon. No material change will be made in the size or location of any of Units' other improvements or Common Elements if such changes affect the percentage of Common Interests or adversely affect the value of any Unit to which title has closed or for which an Agreement has been executed and is in effect unless all affected Unit Owners and contract vendees consent in writing to such change. However, as long as the layout and dimensions of a Condo Hotel Unit conform substantially to the Plans and Specifications, a Purchaser will not be excused from purchasing a Condo Hotel Unit by reason of a minor, non-material deviation or change and will not have any claim against Sponsor as a result thereof.

Sponsor will have no liability to any Purchaser, nor will any Purchaser be entitled to a credit, offset or reduction in the purchase price for his or her Unit or otherwise be relieved of any obligations under the Agreement, by virtue of a minor inaccuracy or error in the floor plans. With regard to size, such minor error would mean a decrease of 5% or less or any increase in the size of any Unit or room contained in a Unit.

The Building incorporates highly sophisticated mechanical equipment designed to provide for the physical comfort and convenience of the Building's occupants. During normal operation of this equipment, some occupants of Condo Hotel Units adjacent to or in the vicinity of the equipment floors and equipment areas of the Building may perceive noise and/or vibration from the equipment. The sole obligation of Sponsor and the Boards with respect to such noise and/or vibration shall be to install and operate such equipment in a manner consistent with commercially reasonable practices in typical luxury residential buildings and in compliance with applicable Laws, including the New York City Building Code.

Based upon the current schedule, unless delayed by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery and/or the inability to obtain on a timely basis or otherwise, materials or equipment, governmental restrictions, acts of god or other events beyond Sponsor's reasonable control, renovation of the Building will be sufficiently completed to permit the First Condo Hotel Closing to begin on or about January 2007. It is currently anticipated that the initial renovation of the Residential Section will be substantially complete by January 2007, the initial renovation of the Hotel Section will be substantially complete by June 2007 and the initial renovation of the Accessory Unit and the Club Unit will be substantially complete by October 2007, although each of these dates with respect to each such Unit and/or section of the Building is subject to change. Prospective Purchasers should note, however, that the Condo Hotel Units will be completed at differing times over a period that may begin prior to and/or extend significantly beyond January 2007. Sponsor will have no liability to any Purchaser, nor will a Purchaser be entitled to any credit, offset or reduction in the purchase price for his or her Unit or otherwise be relieved from any obligations under the Agreement, in the event that the First Condo Hotel Closing occurs earlier or later than the targeted date or the time to complete or to close title to such Purchaser's Unit is accelerated, delayed or postponed by Sponsor, provided, however, that in the event the actual or anticipated commencement date of the projected First Year of Hotel Section Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised Hotel Section budget with current projections and if: (i) such amended budget exceeds the projected Hotel Section budget set forth herein by 25% or more; or (ii) the First Condo Hotel Closing does not occur within 12 months after January 2007, the date set forth in Schedule B-1 as the commencement date for the projected First Year of Hotel Section Operation, then in either case Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period under their Agreements, if the Plan has been declared effective) the right to rescind their Agreements within not less than 15 days after the presentation date of the amendment containing such revised budget or after such 12-month period, as the case may be, and any Purchasers electing rescission pursuant to such offer will have their Deposit and any interest accrued thereon returned. Purchasers' rights as described in the preceding sentence are in lieu of any other rights or remedies which may be available pursuant to any applicable law, regulation, statute or otherwise, all of which shall be deemed to have been waived by all Purchasers. As set forth in the Section of this Plan entitled "Effective Date," no closing of title to any Condo Hotel Unit will take place prior to the Plan being declared effective.

Based upon the current schedule, it is projected that the entire Hotel Section will be substantially completed on or about June 2007 although such schedule is subject to change.

## 2. Condo Hotel Units

The Hotel Section will include a total of approximately 152 Condo Hotel Units located on portions of Floors 11 through 21 of the Building. The Condo Hotel Units will include studio, one-bedroom and two-bedroom apartments, which will average in size from approximately 500 square feet to approximately 1300 square feet. Each Condo Hotel Unit will include high speed communications and wireless technology. The telephone service will be provided by Verizon (or other provider) and the cable television service will be provided by Time Warner Cable Television of New York and/or another New York City franchised terrestrial cable services provider and satellite television. On demand services (such as guest account review automated check out, movies and games) will be provided by vendors such as LodgeNet Entertainment Corp., Inncom, OnCommand Corp. and KoolConnect (or equivalent). High speed internet access will be provided by either on-demand hospitality service vendors, wireless LECs or CLECs or by Sponsor's building network. Moreover, each Condo Hotel Unit Owner will be able to leave certain personal belongings in a locked closet located in such Unit Owner's Condo Hotel Unit, and such Unit Owner will have access to the closet when in occupancy of the Condo Hotel Unit; however, the security of such belongings shall be the sole responsibility (and risk) of the Unit Owner and such items will not be accessible when the Unit Owner is not in occupancy. Detailed descriptions of the Condo Hotel Units are set forth in the Declaration and in Exhibit 5 in Part II of the Plan.

All Condo Hotel Units offered for sale under the Plan are being offered for sale with the FF&E. The FF&E shall be conveyed to a Purchaser at the closing of title pursuant to a Bill of Sale, the form of which can be found in Exhibit 14 in Part II of the Plan. Accordingly, the purchaser of a Condo Hotel Unit will be purchasing personal property in addition to real property, and a portion of the purchase price, (calculated as $65.00 per square foot (as indicated in Schedule A) of the Condo Hotel Unit), for each Condo Hotel Unit is allocable to the FF&E. Purchasers will be obligated to pay any sales or other federal, state or county tax or fee applicable to the sale of the FF&E at the closing of title to the Condo Hotel Unit. The Configuration Plan within each Condo Hotel Unit will be determined in consultation with Hotel Manager so that each Condo Hotel Unit is furnished in such as way as to maintain the hotel standard set forth in the Unit Management and Operation Agreement. Such list of FF&E and the Configuration Plan will be disclosed in an amendment to the Plan prior to the First Condo Hotel Closing and will be available for inspection at the Sales Office (and also will be available for inspection at the Department of Law). Sponsor reserves the right to substitute all or any portion of the FF&E with comparable or better items. Prior to the closing of title to a Condo Hotel Unit, the FF&E will be delivered to the Condo Hotel Unit in accordance with the Configuration Plan, although the absence of any item(s) of FF&E within the Unit and/or a deviation from the Configuration Plan shall not excuse a Purchaser from closing title to the Unit. A Purchaser may not choose to purchase a Condo Hotel Unit without the FF&E. (See Section A of Part I of the Plan for further discussion.)

The height of the Condo Hotel Units, measured from the top of the floor slab to the bottom of the hung ceiling heights in the Condo Hotel Units, will generally be nine feet to eleven feet, varying from floor to floor. Ceiling heights in the kitchen, powder rooms and bathroom will be approximately nine feet but may vary. Ceiling heights in the public corridors will be approximately ten feet to fourteen feet but may vary. At beam drops and/or where there are

concealed mechanical pipes or ducts or dropped ceilings, heights may be lower than the above stated heights and may also vary slightly from room to room.

There will be no modifications or extras for any Condo Hotel Unit unless set forth in the Agreement for such Condo Hotel Unit. Moreover, Sponsor shall not be obligated to correct and shall have no liability or responsibility to any Purchaser for, and no Purchaser shall be entitled to any reduction in or credit against the purchase price of his or her Condo Hotel Unit or be otherwise relieved from performing his or her obligations under the Agreement as a result of minor or insubstantial inaccuracy or error in the floor plans for such Condo Hotel Unit as set forth in Part II of the Plan.

**3. Hotel Section and Transient Hotel Unit**

The Condo Hotel Units will be integrated into the Hotel Section, a five star luxury hotel facility consisting of approximately 130 hotel guest rooms within the Transient Hotel Unit together with the approximately 152 Condo Hotel Units and the Hotel Limited Common Elements. The primary entrance for the Hotel Section will be from the combined entrance on Fifth Avenue with a secondary dedicated entrance located on West 58th Street. The Hotel Section will be located on portions of the Lower Concourse C, Main Concourse A and First Floor through Floor 21. The Hotel Section lobby will include a reception area, concierge and valet functions, and lounge.

The Transient Hotel Unit will have approximately 130 guest rooms on Floors 4 through 10 of the Building and include a lounge area on Floor 2. Each guest room will average approximately 500 square feet. There will be three dedicated passenger elevators and two service elevators to serve the Hotel Section. Additionally, the Hotel Section will include approximately 18,000 square feet of "back-of-house" space dedicated to housekeeping, laundry, valet, security, storage, engineering, employee locker rooms and lounge/dining for the hotel employees. Several back-of-house functions such as loading docks, trash storage and removal, and building maintenance will share space and equipment with the Residential Section and the Accessory Unit and Club Unit

Sponsor entered into two agreements with the New York Hotel & Motel Trades Council, AFL-CIO (the "Union") in connection with Sponsor's development of the Hotel Section, Sponsor's use of employees in the Hotel Section and the development of other portions of the Building. Among other things, Sponsor and the Union reached an agreement on the following items: (i) maintaining approximately 131 hotel guest rooms (130 are currently planned) as a transient hotel and converting approximately 135 hotel guest rooms (152 are currently planned) into Condo Hotel Units and maintaining the Oak Bar, Oak Room, the Palm Court and the ballroom space(s) as hotel function and meeting areas; (ii) converting a portion of the Building into Residential Units for residential use; (iii) employee wages, hours and other terms of employment at the Hotel Section; (iv) lobbying efforts by Sponsor and Union with respect to certain legislation regarding hotel conversions; and (v) the structure of the Hotel Section and the Union's role in Sponsor's plans for the Hotel Section. The agreements with the Union do not set forth a term. The approximate size and number of hotel keys referenced in the Union agreements, as described above, substantially conform to Sponsor's currently contemplated plans for the Hotel Section referenced above.

Neither the Condominium Board, the Residential Board, or the Non-Hotel Unit Owners will have any interest in the rents, profits or revenues from the rental, use or sale of any space in the Hotel Section. In addition, subject to all applicable zoning regulations and the Declaration, Condominium By-Laws, and Hotel By-Laws, the Hotel Units may be sold, leased or subleased by the Unit Owners thereof, or subdivided by such Unit Owners into two or more separate units and such subdivided units sold or leased. (See "Non-Condo Hotel Units" in Part I of the Plan for more detail.)

Neither the Hotel Unit Owners, Accessory Unit Owner, Club Unit Owner, Hotel Board or Condominium Board will have an interest in the rents, profits or revenues from the rental, use of sale of any space in the Residential Section.

The Transient Hotel Unit Owner, which initially will be Sponsor, shall have the right to subdivide and create therefrom additional Condo Hotel Units and to amend the Declaration and Floor Plans as may be necessary in connection therewith. While it is currently anticipated that the Transient Hotel Unit will not be subdivided into individual hotel condominium units, no representation or warranty is made with respect to any subsequent subdivision or offering with respect to the Transient Hotel Unit. Sponsor will not offer any fractional/timeshare interests for sale without filing a separate offering plan and Sponsor shall not offer additional Condo Hotel Units for sale without an amendment to the Plan.

Sponsor entered into two agreements with the New York Hotel & Motel Trades Council, AFL-CIO (the "Union") in connection with Sponsor's development of the Hotel Section and Sponsor's use of employees in the Hotel Section. Among other things, Sponsor and the Union reached an agreement on the following items: (i) maintaining approximately 131 hotel guest suites (130 are currently planned) as a transient hotel and converting approximately 135 hotel guest suites (152 are currently planned) into Condo Hotel Units and maintaining the Oak Bar, Oak Room, the Palm Court and the Ballroom as hotel function and meeting areas; (ii) converting a portion of the Building into Residential Units for residential use (as set forth in the Residential Plan); (iii) employee wages, hours and other terms of employment at the Hotel Section; (iv) lobbying efforts by Sponsor and Union with respect to certain legislation regarding hotel conversions; and (v) the structure of the Hotel Section and the Union's role in Sponsor's plans for the Hotel Section. The agreements with the Union do not set forth a term. The approximate size and number of hotel keys referenced in the Union agreements, as described above, substantially conform to Sponsor's plans for the Hotel Section referenced above.

**4. Accessory Unit and Club Unit**

In addition to the Residential Section and the Hotel Section, the Condominium will include the Accessory Unit and Club Unit. None of the Hotel Unit Owners, the Residential Unit Owners, the Condominium Board, the Residential Board or the Hotel Board will have any interest in the rents, profits or revenues from the rental, use or sale of any space in the Accessory Unit or the Club Unit. In addition, subject to all applicable zoning regulations and the Declaration and Condominium By-Laws, the Accessory Unit and Club Unit may be sold, leased or subleased by the Unit Owners thereof, or subdivided by such Unit Owners into two or more separate units and such subdivided units sold or leased. (See "Non-Condo Hotel Units" in Part I of the Plan for more detail.)

Subject to all applicable zoning regulations, the Declaration, the Condominium By-Laws, and the Hotel By-Laws, each Non-Condo Hotel Unit may be sold, leased or subleased by the Unit Owner thereof, or subdivided by the Unit Owner thereof into two or more separate commercial condominium units and such subdivided units sold or leased. (See "Non-Condo Hotel Units" in Part I, Section G hereof.)

The Accessory Unit, currently hotel accessory space, can be used for any legal purpose, subject to all applicable zoning regulations, the Declaration and the Condominium By-Laws. Currently, approximately 75% of the accessory use space is within a R10-H zone and 25% is within a C5-2.5 zone. Without a 74-711 Permit, most of the accessory use space within the R10-H zone will remain accessory to the Hotel Section. This accessory space would include restaurant space, ballroom space, meeting room space and retail space. The remaining accessory space may be allocated to the enlargement of proposed residential units, the enhancement of residential amenity spaces, or possibly medical office space. Among the types of residential amenities that may be included would be banquet rooms, lounges, media rooms and storage facilities. The accessory use space that is currently in the C5-2.5 zone which includes most of the Terrace Room, most of the Ballroom, and the spaces to the south and west of these rooms, would be used as retail space at the First Floor and floor 2, banquet space at floor 2, retail at the Main Concourse A and medical office and/or back-of-house space at the Lower Concourse C.

In the event the 74-711 Permit is accepted, on the First Floor, the Palm Court and Oak Room/Oak Bar will operate as restaurants. The Edwardian Room will serve as either a restaurant or a shop. The circulation spaces including the Fifth Avenue lobby and the corridor leading around the Palm Court to the Oak Room will serve as public circulation to the commercial spaces. The Terrace Room will become retail along with the space adjoining it to the south. On floor 2, the space south of the Terrace Room will become retail and will be connected to the Terrace Room and retail space on the First Floor. The Main Concourse A will contain retail space as well as kitchens for the restaurants. The Lower Concourse C will contain a smaller retail space that may be storage or active retail, as well as back-of-house and storage space for the residential, hotel and commercial spaces. Floor 3 will contain the Ballroom and adjoining pre-function meeting room areas, which will operate as a banquet facility. Floor 4 will contain additional meeting rooms, which will be part of the banquet facility. Notwithstanding the foregoing, Sponsor makes no representation or warranty regarding the use of the Accessory Unit.

While it is anticipated that the Club Unit will contain a health club facility and/or spa which may be open to the public, Sponsor makes no representation or warranty regarding the use of such space. Furthermore, such Club Unit is not anticipated to be managed by Sponsor or be available for use by the Condo Hotel Unit Owners without payment of additional fees.

**5. Residential Section**

In addition to the Hotel Section, the Accessory Unit and the Club Unit, the Condominium includes the Residential Section. The Residential Section includes a total of approximately 181 Residential Units, located on portions of Floors 1 through 21. The Residential Units vary in size from studio apartments with 695 square feet to a four-bedroom residence with 6,316 square feet. The Residential Section will include certain Limited Common Element space which is anticipated to include storage bins, located in the Lower Concourse C of the Building. Licenses will be sold to individual Residential Unit Owners by Sponsor as set forth in the Residential

Plan. Such licenses are not being offered hereunder. A detailed description of the Residential Section is set forth in Residential Plan, a copy of which is available at the Sales Office.

**6. Terraces and Balconies**

As indicated in Schedule A, there are Terraces are appurtenant to certain Condo Hotel Units. Each such Terrace is a Hotel Limited Common Element. The Unit Owner of a Condo Hotel Unit having a Terrace shall have the exclusive use of the Terrace appurtenant thereto, subject to the right of the Hotel Board to regulate its use in accordance with the Hotel By-Laws; and such Condo Hotel Unit Owner having access thereto (or the managing agent of the Hotel Section as the case may be), at its own cost and expense, shall be responsible for all normal repairs and maintenance to such Terrace. Any structural or extraordinary repairs or replacements thereto (including leaks) shall be made by or for the Hotel Board and the cost and expense thereof (unless caused by or attributable to the Condo Hotel Unit Owner) shall be charged to all Hotel Unit Owners as a Hotel Common Expense.

The Hotel Board shall have the right to require a Condo Hotel Unit Owner to remove plantings, roof surfaces and other installations which have been placed on the Terraces appurtenant to such Condo Hotel Unit if the Hotel Board determines, in its sole discretion, that such plantings or other installations may adversely affect the integrity of the roof or other portion of the Building or is otherwise unsafe. In addition, the Condominium Board and the Hotel Board (or the Residential Board in the case of a terrace appurtenant to the Residential Section) shall each have the right, in connection with any repair or maintenance work in the Building, to erect scaffolding temporarily on any Terrace. In no event shall any Unit Owner of a Condo Hotel Unit having a Terrace be permitted to enclose or erect any structure on such Terrace. The Condominium Board and the Hotel Board may establish such other rules and regulations it deems necessary to protect the Common Elements and the Condo Hotel Units and to insure the integrity of the Building and the health and safety of the occupants.

The Balconies are merely decorative, are appurtenant to certain Condo Hotel Units on Floor 15 and may not be used by the Unit Owners in the appurtenant Units for any purpose.

**7. Common Elements**

As is set forth in more detail in the Declaration, the Common Elements consist of the entire Property including the Land and all parts of the Building and improvements thereon other than the Units. The Common Elements include, among other things, the foundations, roofs and supports of the Building and all areas, equipment or facilities (as defined in the Declaration) for the common use of the Units or all or some of the Unit Owners or which are necessary or convenient for the existence, maintenance, operation or safety of the Property (excluding, however, the Building Façade which shall be part of the Accessory Unit). The Common Elements are divided into the following separate categories: (a) the General Common Elements, which are, generally, those Common Elements which serve or benefit all the Units or Unit Owners; (b) the Hotel Limited Common Elements, which are generally those Common Elements which service or benefit the Hotel Section; and (c) the Residential Limited Common Elements, which are, generally, those Common Elements which serve or benefit exclusively the Residential Units or the Residential Unit Owners. The Common Elements cannot be divided or partitioned, except as provided in the New York Condominium Act. A Unit Owner's interest in the Common

Elements shall not be separated from the Unit to which it appertains. For a detailed description of the Common Elements, see Exhibit 5 in Part II of the Plan and Article 7 of the Declaration (Exhibit 6 in Part II of the Plan).

**a. General Common Elements**

The General Common Elements consist of all Common Elements other than the Limited Common Elements, and include, among other things, the following: (a) the Land, together with all easements, rights and privileges appurtenant thereto (except as otherwise expressly provided in the Declaration); (b) all foundations, foundation walls, roofs (except as otherwise expressly provided in the Declaration), footings, columns, girders, beams, supports, interior load-bearing walls, floor slabs and ceilings; and those portions of the exterior walls beyond the Unit side of the glass or concealed block work or other structural members of those walls (except those of the above items which are Limited Common Elements, and excluding, however, any of the same that are part of the Building Façade, which shall be part of the Accessory Unit); (c) those portions of the exterior walls of the Building and all canopies and attached fixtures beyond the Unit side of the glass or concealed block work or concealed structural members of those walls (including exterior glass surfaces), to the extent the same form a perimeter to, and are adjacent to, a General Common Element (except those of the above items which are Limited Common Elements, and excluding, however, any of the same that are part of the Building Façade, which shall be part of the Accessory Unit); (d) the water cooling towers, including the structure(s) provided for the water cooling towers; (e) all passages and corridors, mechanical and other utility rooms, all fire staircases, landings and stairs, areas and spaces located in the Building, which are not Limited Common Elements or included in any Unit; (f) central smoke and carbon monoxide alarm system; (g) any ventilation supply or exhaust system consisting of motors, ductwork, fans and controls, supply and return piping, serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit; (h) hot water, condenser water and chilled water systems; (i) all mechanical equipment and associated piping and controls serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit, and the Club Unit; (j) all electrical risers, feeders, lines and equipment, including incoming service, emergency generator main switchgear and distribution panelboards, conduits, wires, meters, transformers and panelboards serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit, excluding, however, all such items located within a Unit and serving only that Unit; (k) all plumbing fixtures, equipment for distribution of cold water and equipment for producing and distributing domestic hot water, including pumps, valves, heat exchangers, pressure reducers, meters and water heaters and chillers, excluding, however, all such items located within a Unit and serving only that Unit; (l) all fire protection equipment for distribution of sprinkler and standpipe systems including the water storage tank and the structure(s) provided for such tank; (m) all storm and sanitary sewer equipment and pipes (including vent lines, ejectors, interceptors, filters and valves), excluding, however, all such items located within a Unit and serving only that Unit; (n) all electric service rooms, gas, steam and water meter rooms, storage rooms, workrooms, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit; (o) all loading docks, if any, serving any combination of the Residential Units, Hotel Units, the Accessory Unit and the Club Unit; and (p) whether or not specifically identified as part of the General Common Elements (or identified at all) on the Floor Plans, all other parts of the Property and all other facilities (including shafts, pipes, wires, ducts, vents, flues, cables, conduits and lines) and equipment in

the Building or on the Property (other than those areas and/or items specifically identified on the Floor Plans or herein as part of a Unit and/or the Limited Common Elements) which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit, or the respective Unit Owners thereof. The Common Elements cannot be divided or partitioned, except as provided in the New York Condominium Act. A Unit Owner's interest in the Common Elements shall not be separated from the Unit to which it appertains. For a detailed description of the Common Elements, see Article 7 of the Declaration (Exhibit 6 in Part II of the Plan).

**b. Hotel Limited Common Elements**

The Hotel Limited Common Elements consist of those portions of the Property designated on the Floor Plans as Hotel Limited Common Elements; and also those Common Elements (other than vertical shaftways and penetrations) which exclusively serve or exclusively benefit all or a combination of the Hotel Units or the Hotel Unit Owners whether or not designated as Hotel Limited Common Elements (or designated at all) on the Floor Plans (but excluding any items therein or in the Building which are not part of the Property, including, without limitation, any equipment, wiring and devices owned by telecom providers). The Hotel Limited Common Elements include, without limitation, the following: (a) the hotel lobby and entrance located on the First Floor and entered from 58th Street; (b) all passages, corridors, storage rooms, housekeeping areas, all fire staircases, landings and stairs, mechanical and other rooms, areas and spaces (including their respective floors, ceilings and enclosing walls) located in the Building which exclusively serve or benefit the Hotel Units and are not part of any Unit; (c) the passenger elevators and the service elevators, in each case exclusively serve or benefit the Hotel Units and in each case including the shafts, elevator equipment, elevator pits and entrances and appurtenant facilities; (d) smoke and carbon monoxide alarm system, telephone system and cable television system exclusively serving the Hotel Section; (e) any ventilation supply or exhaust system consisting of motors, ductwork, fans and controls, supply and return piping, and the hot water, chilled water and condenser water systems serving or benefiting solely the Hotel Units; (g) all mechanical equipment and associated piping and controls serving or benefiting solely the Hotel Units; (h) all electrical risers, feeders, lines and equipment, including incoming service, main switchgear and distribution panelboards, conduits, wires, meters, transformers and panelboards serving or benefiting solely the Hotel Units; (i) all plumbing fixtures, equipment for distribution of cold water and equipment for producing and distributing domestic hot water, including pumps, valves, heat exchangers, pressure reducers, meters and water heaters, benefiting solely the Hotel Units; (j) all storm and sanitary sewer equipment and pipes (including vent lines, ejectors, interceptors, filters and valves), serving or benefiting solely the Hotel Units; (k) all fire protection equipment for distribution of sprinkler and standpipe systems benefiting solely the Hotel Units; (l) all electric service rooms, gas, steam and water meter rooms, workrooms, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting solely the Hotel Units; (m) all loading docks, if any, exclusively serving the Hotel Units; (n) all Building storage rooms, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting only the Hotel Units; (o) all security monitors and equipment and other security facilities serving or benefiting solely the Hotel Units; (p) the balcony or terrace appurtenant to any particular Hotel Unit (although the benefited Hotel Unit Owner shall have the responsibilities with respect thereto as are set forth in the Hotel By-Laws) (excluding, however, any of the same that are part of the Building Façade, which shall be part of

the Accessory Unit); and (q) whether or not specifically identified as part of the Hotel Limited Common Elements (or identified at all) on the Floor Plans, all other parts of the Property and all other facilities (including shafts, pipes, wires, ducts, vents, flues, cables, conduits and lines) and Equipment in the Building or on the Property (other than those areas and/or items specifically identified on the Floor Plans or herein as part of a Unit and/or the General Common Elements or Residential Limited Common Elements), which serve or benefit or are necessary or convenient or existing for the common use, existence, maintenance, operation or safety of the Hotel Section only, or any combination of the Hotel Units or the respective Unit Owners thereof.

**8. Available Services and Facilities**

Generally, all services normally associated with the operation and maintenance of a luxury, full service condominium hotel will be provided to Condo Hotel Unit Owners at no cost other than Hotel Common Charges; these are described below in the Section entitled "Hotel Section Standard Services and Facilities". There will be a variety of other services offered which will be available to Condo Hotel Unit Owners at their option. (See "Optional Services" described below). In addition, all services normally associated with the operation and maintenance of a luxury hotel room will be provided to Condo Hotel Unit Owners at a cost more particularly described on Schedule A and Schedule B-1; these are described below in the Section entitled "Unit Management and Operation Agreement Services." Notwithstanding the foregoing, however, the Hotel Board shall at all times maintain, operate and staff the Building in compliance with, and subject to, all applicable Laws.

**a. Hotel Section Standard Services and Facilities** (provided to all Condo Hotel Unit Owners at no cost other than the Hotel Common Charges payable by Condo Hotel Unit Owners):

(i) Doorman. A doorman will be on duty at the street entrance to the lobby twenty-four hours per day seven days a week. The doorman is expected to open doors, hail taxicabs and assist residents with packages and luggage.

(ii) Concierge. There will be a concierge on duty in the Hotel Section lobby area and available 24 hours per day/seven days per week. The concierge will provide general information; make restaurant and entertainment recommendations and arrange reservations; reserve theater, sporting and entertainment tickets; arrange housekeeping, valet, limousine and transportation services; and arrange various other services. Such concierge services will be available to Registered Occupants of the Condo Hotel Units on the same basis as may be offered from time to time to Hotel Guests. (The costs of any goods or services provided will be at the expense of the requesting party).

(iii) Elevator Service. The passenger elevators will be automatically operated and therefore will be in service as necessary, 24 hours per day, seven days per week. The service elevator will be available to Condo Hotel Unit Owners or tenants by prior arrangement with Hotel Manager and otherwise in accordance with established policies.

(iv) Communications Facilities, Intercom Service, and Internet connection. Each Condo Hotel Unit will be equipped with a "telephone" type dial intercom system. The jack for this telephone with be a standard wall telephone jack. This system will

enable the occupants of each Condo Hotel Unit to communicate directly with the concierge and/or front desk regarding the admission of guests, visitors and, in the case of Building personnel, prior notice of their imminent arrival. All new communications wiring will be UTP (unshielded twisted pair) wire capable of providing digital telecommunications and high speed internet service to various parts of the Condo Hotel Unit.

(v) Package Room. There will be a package room located in the service corridor adjacent to the lobby. The valet (or, after hours, the concierge) will accept deliveries of packages and store them temporarily in the package room until picked up by the Unit Owner or occupant.

(vi) Mail. All incoming mail will be held by the front desk and/or the administrative offices, or forwarded upon request by a Condo Hotel Unit Owner.

(vii) Maintenance Personnel. Building personnel will include a Hotel Manager and handymen, porters and cleaning staff as may be necessary for the proper maintenance and cleaning of the common areas.

(viii) Refuse Disposal. Refuse will be picked up by the maid/housekeeping service daily. Building staff will transfer the compressed refuse to the sidewalk or loading dock area as needed pending collection by the City of New York Department of Sanitation. Recycling bins on each floor will be emptied as necessary by Building staff.

(ix) Other Service Contracts. Certain additional services covered by third-party contracts, such as elevator maintenance are included in Building standard services.

(x) Security Procedures. All entrances to the Building will be monitored by employees of the Condominium and/or electronic alarm systems. Purchasers are advised that certain portions of the Hotel Section will be regularly used for parties and functions, and/or as a restaurant or other similar facilities, that are open to the public and that a significant number of non-Hotel Guests will likely be in the building at any time and therefore no representation or warranty is made and no assurance is given that the security systems and procedures of the Building will prevent personal injury or damage to or loss of personal property.

(xi) Reception Desk. Hotel Manager will provide staff who will be on duty at the reception desk in the Hotel Section lobby 24 hours a day, 7 days per week to handle registration, issue room keys and deliver messages on the same basis as to Hotel Guests. For security purposes and to monitor occupancy in connection with the New York State and New York City hotel occupancy and sales taxes, each Registered (or other) Occupant of a Condo Hotel Unit, including a Condo Hotel Unit Owner or employee or relative of a Condo Hotel Unit Owner or guests or tenants of a Condo Hotel Unit Owner, must register with the front desk and leave a valid credit card upon commencing any occupancy. The Registered (or other) Occupant of a Condo Hotel Unit, including the Condo Hotel Unit Owner or employee or relative, will be issued a specially-encoded room key at that time.

(xii) Bell Staff. Attendants will be available 24 hours a day, 7 days per week, to transport baggage and packages to and from the Condo Hotel Units.

(xiii) Cable Television. Each Condo Hotel Unit will be connected to cable television service provided by one or more services provided; the cable service offers a variety of stations. Premium movie channels and a pay-per-view service offering entertainment specials and sporting events will be available at an additional per-use or similar charge.

(xiv) Telephone Service. Telephone operator service is provided 24 hours a day, 7 days per week, for assistance with incoming call routing, message service, wake-up call service and outside operator connections. Condo Hotel Unit occupants will also be able to make outgoing calls by (DID) direct dial service, at the Unit Owner's expense. Telephone company charges for local and long-distance calls from each Unit will be charges at the hotel's posted rates separately from Hotel Common Charges and will be based on usage. All Registered Occupants of a Condo Hotel Unit will be required to leave a valid credit charge authorization and execute Hotel Manager's associated hotel services agreement for each stay to secure timely payment of charges, including but not limited to, telephone and other per-use of discretionary charges incurred during any occupancy period.

(xv) Licensing. The Hotel Board and/or Hotel Manager will procure and maintain in effect all licenses and permits consistent with its operation of a hotel at the Property. Pursuant to the Unit Management and Operation Agreement, Hotel Manager shall be responsible for collecting and remitting to the appropriate taxing authorities the applicable sales and hotel room occupancy taxes with respect to usage by Unit Owners and other occupants.

(xvi) Tax Filings. Rentals of Condo Hotel Units will be subject to sales taxes and hotel occupancy tax. As of the filing of this Plan, New York State sales tax is at the rate of 4% and New York City sales tax is at the rate of 4.375%, for a combined rate of 8.375%; and the rate for the New York City hotel room occupancy tax is $2.00 per day per room (not including any bathroom) plus 5% of the daily occupancy charge. In addition, New York State imposes a hotel unit fee in the amount of $1.50 per unit per day. (Sponsor makes no representation or warranty that such tax rates will remain in effect for any period of time.) Additional sales tax and/or hotel occupancy tax may be payable with respect to charges under the Unit Management and Operation Agreement. Pursuant to the Unit Management and Operation Agreement, Hotel Manager, along with collecting Unit payments and service charges, shall be responsible for paying the above referenced taxes to the appropriate agencies.

**b. Optional Services.**

These services will be the responsibility of Hotel Manager to administer for those Condo Hotel Unit Owners who will be receiving the same at their option upon payment of an additional fee. Such additional fee shall be the same for occupants of the Condo Hotel Units as for occupants of the Transient Hotel Unit.

(i) Valet and Laundry Service. It is anticipated that valet service will be available on site in the lobby through an independent valet operator and/or through the hotel manager or concierge. The rates charged for these services will be approximately

equivalent to those charged under similar circumstances at other quality locations elsewhere in New York City. Such charges will be payable directly to the valet operator by the Unit Owner, tenant or occupant using such service. On a fee for service basis, it is anticipated that the valet will assist occupants with services such as arranging for professional laundry and dry cleaning, tailoring and alterations, shoe repair, reservations and bookings for car and limousine services, restaurant reservations, referrals to spa and beauty services providers, referrals to clerical services, dog walking and pet boarding services, babysitting referrals, reserving theater, sporting and entertainment tickets, catering and party services and the like. At no per-use cost, the valet service attendant will accept deliveries of packages and store them temporarily until picked up by the Condo Hotel Unit Owner or occupant. Purchasers are advised that not all of these services may be offered and those that are offered may not be available at all times. In the event the third-party vendor pays the Condominium for the right to operate and offer its services in the Building, such amounts shall serve to defray the Condo Hotel Unit Owners' Common Expenses.

(ii) Room Service. It is anticipated that room service will be available. Charges for such service will be payable directly to the provider by the occupant.

(iii) Concierge Direct. Condo Hotel Unit Owners will have touch screens in each Unit with the ability to control and automate certain functions in the Unit including, but not limited to, lighting, dining reservations and ordering and heating and cooling systems.

**c. Unit Management and Operation Agreement Services.**

All Condo Unit Owners must execute and deliver the Unit Management and Operation Agreement substantially in the form set forth in Exhibit 15 in Part II of the Plan (the "Unit Management and Operation Agreement") to Hotel Manager. The execution of the Unit Management and Operation Agreement is mandatory. Together with the execution, acknowledgement and delivery of the Unit Management and Operation Agreement upon taking title to a Condo Hotel Unit, each Condo Hotel Unit Owner shall also execute, acknowledge and deliver to Hotel Manager a Memorandum of Unit Management and Operation Agreement in recordable form as set forth in an exhibit to the Unit Management and Operation Agreement.

Each Condo Hotel Unit Owner, pursuant to the Unit Management and Operation Agreement, will be required to contribute each year towards the FF&E Reserve Fund (as defined in Special Risk #35). The amount of the annual contribution shall be fixed during each five (5) year period and shall be equal to twenty (20%) percent of the replacement value of the FF&E as of the commencement of such period, provided that (i) the annual amount so calculated and payable during the initial five (5) year period shall be $13.00 per square foot (as indicated in Schedule A) of the Unit, (ii)such initial five (5) year period shall be deemed to end as of December 31, 2011 and the replacement value of the FF&E and the calculation of the annual amount due shall be determined by Hotel Manager prior to the beginning of each subsequent five (5) year period; provided, however, that in any event such Condo Hotel Unit Owner shall be responsible for such replacement cost notwithstanding the amount contributed to the FF&E Reserve Fund. Each Condo Hotel Unit Owner, pursuant to the Unit Management and Operation Agreement, shall agree that the Condo Hotel Unit, including Terraces and Balconies, if any, and

all furniture and furnishings, shall be kept and maintained in a "first-class condition", and in compliance with the Standard. Hotel Manager will, from time to time, require each Condo Hotel Unit Owner, at the Condo Hotel Unit Owner's expense, to replace FF&E in the Condo Hotel Unit in order to maintain same in a manner and condition suitable and as required by the Standard and which comply in kind, quantity and quality with the minimum requirements set forth by Hotel Manager for all of the Condo Hotel Units. Hotel Manager shall have the option, exercisable at its sole discretion upon notice to the Condo Hotel Unit Owner, to take such steps to maintain the interior of the Condo Hotel Unit in a first-class condition acceptable to Hotel Manager, and to undertake Condo Hotel Unit Owner's obligations under the Unit Management and Operation Agreement, but at the sole cost of Condo Hotel Unit Owner.

The Unit Management and Operation Agreement to be executed in conjunction with the closing of title to each Condo Hotel Unit outlines the services to be provided by Hotel Manager. Such services include, but are not limited to: (i) managing occupancy pursuant to reservations for use of the Condo Hotel Units; (iii) enforcing check-in and check-out procedures; (iii) procuring and maintaining certain insurance coverages; and (iv) collecting payments and service charges. Additionally, and as set forth in the Unit Management and Operation Agreement, each Condo Hotel Unit Owner shall waive any right to terminate the Unit Management and Operation Agreement as a result of Hotel Manager's default.

Hotel Manager shall receive from each Condo Hotel Unit Owner, as an administrative fee for its services, the amount of $25.00 per night of occupancy by Other Guests (as such term is defined in the Unit Management and Operation Agreement) to be charged to such Condo Hotel Unit Owner's account, as more particularly described in the Unit Management and Operation Agreement (the "Unit Management and Operation Agreement Fee"). The Unit Management and Operation Agreement Fee shall be adjusted as of January 1 of each calendar year in the manner set forth in the Unit Management and Operation Agreement. As a condition to the Unit Management and Operation Agreement, each Condo Hotel Unit Owner shall be required to furnish and equip the applicable Unit with the FF&E. As of the initial conveyance of a Condo Hotel Unit from Sponsor to a Purchaser, the FF&E (which are included with the purchase of all Condo Hotel Units) will conform with the requirements of the Unit Management and Operation Agreement; however, the requirements with respect thereto may be changed at the discretion of Hotel Manager from time to time.

The services covered by the Unit Management and Operation Agreement will include among other services, routine housekeeping and cleaning services. Such service shall be coordinated directly by Hotel Manager, at the Unit Owner's expense. It is anticipated that the rates charged for such housekeeping service will be set by the service provider at rates approximately equivalent to those charged for similar services at other similar premier quality locations elsewhere in New York City. An estimate of such charges is more particularly set forth Schedule B-1 (and such charges shall be subject to sales taxes and/or hotel occupancy taxes, as applicable). Condo Hotel Unit Owners may not arrange housekeeping services for their Condo Hotel Units with other third-party services. Additionally, certain ordinary maintenance and repair services will be included as a part of the Unit Management and Operation Agreement services, and will be arranged and coordinated directly by Hotel Manager, at the Unit Owner's expense.

The Hotel Board must approve any revisions or amendments proposed by Hotel Manager to the then approved form of Unit Management and Operation Agreement which approval may not be unreasonably withheld, conditioned or delayed.

**d. Spa Treatments.**

The Club Unit anticipated to be featured within The Plaza Condominium is expected to offer a variety of relaxation and beauty treatments. These services will be available to Condo Hotel Unit Owners and their guests subject to advance booking on a restricted/ availability basis at charges determined by the Club Unit operator. (Sponsor currently anticipates that such services will initially be available within approximately twelve months after the anticipated First Condo Hotel Closing.)

**e. General Provisions Concerning Services and Facilities.**

No representation or warranty is made as to the continued operation of any of the foregoing services or facilities and neither Sponsor nor the Condominium Board, the Hotel Board, or Hotel Manager shall have any liability with respect to or arising from any Condo Hotel Unit Owner's, tenant's or occupant's use of any of the foregoing or the amount of the fees charged therefor. Furthermore, all of the services and facilities related to the Hotel Section (e.g. housekeeping service, valet service and food service) will be provided by Hotel Manager (or for Hotel Manager by a third-party food and beverage operator) under the Unit Management and Operation Agreement or Hotel Board Management Agreement (as described in Section X of Part I of the Plan); not Sponsor or the Hotel Board. Therefore, such services will only be provided at the discretion of Hotel Manager, as agent for the Hotel Board.

In all likelihood, the nature of the services listed above, the hours during which they are provided and the rates charged for same will change from time to time, in the discretion of the Hotel Board, Hotel Manager or other party providing the service. However, all services required by law will be provided at all times. Neither Sponsor, Hotel Manager, Selling Agent, the Condominium Board nor the Hotel Board will in any event be liable for the availability, interruption, discontinuance or quality of any of such services, including, but not limited to, any services provided by any outside company or person, other than Building personnel, or for any injury to person or damage to property resulting from any act or omission of such company or persons or their employees or agents, except to the extent that any such injury or damage occurs as a result of the gross negligence or willful misconduct of Sponsor, Hotel Manager, Selling Agent, the Condominium Board nor the Hotel Board, as the case may be.

Although Sponsor anticipates that many of the services described above will be available at the time of the First Condo Hotel Closing, prospective Purchasers should note that some of these services (such as a full staff of personnel) may not be available until the later of: (i) twelve months after the First Condo Hotel Closing; or (ii) the closing of title to and occupancy of at least 50% of the Condo Hotel Units. In addition, certain of the amenities described in the Plan may not be arranged or available until after such interim period. However, it is anticipated that at all times after the First Condo Hotel Closing, the Hotel Section lobby will be attended 24 hours per day, seven days per week, and there will be at least one elevator servicing every floor on which there are occupied Condo Hotel Units. The interim level of staffing will at all times during this period be commensurate with the levels of occupancy from time to time and adequate

to properly maintain the Building. Purchasers are also advised that during such period and beyond, various systems, including, but not limited to, water supply, air conditioning, heating, cooling, ventilating and elevators, may be incomplete and may be disrupted temporarily and from time to time. See the Special Risks entitled "Interim Service Period" and "Additional Building Work" above.

Purchasers are further advised to note that renovation in general is a complicated process which requires the coordination of numerous concurrent tasks, contractors and suppliers and the balancing of complex mechanical and architectural systems, all of which is subject to unanticipated delays and difficulties and necessarily involves noise, disruption, construction dust, debris and inconvenience. Thus, for a period of time following the First Condo Hotel Closing through, including and beyond the closing of title to any particular purchaser's Condo Hotel Unit, work should be expected to be undertaken and continue by or on behalf of: (i) Sponsor to complete the balance of the Building; and (ii) the Non-Condo Hotel Unit Owners to complete renovation, build-out, furnishing and equipping their Units. During at least the First Year of Operation, construction workers and related personnel of Sponsor and others will be at the Property from time to time performing construction work, making adjustments and performing various other tasks related to the completion of renovation, fitting out of, and moving into, the Condo Hotel Units and other portions of the Building which may compromise the security of the Building from time to time. Hotel Section elevators and personnel may be taken out of service and diverted to facilitate renovation and exterior hoists may be in place during at least the year following the First Condo Hotel Closing, and from time to time thereafter, as needed, in connection with construction being performed in Condo Hotel Units by the Unit Owners thereof. Sponsor may not fully complete the decoration or finishing of the lobby, corridors, elevator finishes and other portions of the Building, including, but not limited to, installing light fixtures, painting, hanging wall coverings or laying carpeting, until that particular floor is fully occupied by Unit Owners or, if additional construction within a Unit is anticipated, for some period thereafter. All of the foregoing work and conditions will create a noisy and otherwise disruptive condition in the Building during the period such work is being performed. Certain portions of the Common Elements may be completed before or after completion of any particular Purchaser's Unit. As a result, certain amenities and benefits anticipated to be available to Condo Hotel Unit Owners may not be available until such other portions of the Building are completed and fully operational. Sponsor shall have no liability whatsoever in the event these services are delayed, not made available, or discontinued or disrupted. Further, the Hotel Board and/or Sponsor may refuse to permit a Condo Hotel Unit Owner to perform alterations in a Condo Hotel Unit until such time as the Building has been completed and permanent certificate(s) of occupancy have been obtained therefor. Even where such alterations are permitted, the Hotel Board and/or Sponsor may impose conditions and deadlines upon the planning, performing and completion of such work. No assurance can be given with regard to the accuracy of any projected schedules or completion dates set forth herein or with respect to the duration of any interim service period or periods of potential disruption to the Residential Unit Owners and their tenants or occupants, all such dates and timetables, to the extent provided, being only good faith estimates.

Sponsor and its designee(s) shall have the right, until the tenth anniversary of the First Condo Hotel Closing, to use, without charge, portions of the Building, including the Common Elements and the Hotel Limited Common Elements, for exhibitions, events, promotional functions (e.g., with respect to any sales programs for Unsold Condo Hotel Units) or otherwise.

## C. LOCATION AND AREA INFORMATION

### 1. Location and Services

The Condominium is situated at 768 Fifth Avenue, New York, New York, on the west side of Fifth Avenue on a portion of the block between West 58th Street and Central Park South.

New York City is one of the leading cultural centers of the world, with many of the finest universities, museums, libraries, theaters and cultural institutions, attracting millions of national and international tourists. New York City is the nation's center for communications, publishing, advertising, the stock market and other financial services, visual and performing arts and the fashion industry.

New York City is served by three major airports -- LaGuardia Airport, John F. Kennedy International Airport and Newark International Airport, located approximately 8, 14 and 17 miles from the Condominium, respectively. Passenger railroad service is provided from Pennsylvania Station, located at Seventh Avenue and 33rd Street, and from Grand Central Terminal, located at Lexington Avenue and 42nd Street.

Transportation to and from the Building, and throughout New York City, is readily available by taxi, limousine, private automobile, subway or bus. A number of commercial parking garages are located nearby including one on West 58$^{th}$ Street directly across from the Building.

Central Park, located at the doorstep of the Property, is an 840-acre tract of land which combines beautifully landscaped areas with a large variety of recreational facilities, such as tennis courts, a bridle path, running paths, bicycle routes, an ice skating rink, theatrical performances, musical concerts and a zoo.

Significant shopping destinations such as Tiffany's, Henri Bendel, Bergdorf Goodman, Cartier, Saks Fifth Avenue, Chanel, Hermes, Escada, Gucci, Buccellati, Fendi, Rockefeller Center and Trump Tower are all located within walking distance of the Property. Also nearby are the offices of some of the country's most significant business such as Sony Corp., Columbia Pictures, Merrill Lynch, AT&T, Coca Cola, IBM, Citibank, General Motors and Warner Brothers/Time Warner.

Within a five-block radius of the Condominium there are, in addition to luxury retailers and corporate offices, luxury hotels, luxury-class cooperative apartment residences, private clubs, philanthropic institutions, museums, art galleries, schools, houses of worship and banks.

Among the nearby museums are the Museum of Modern Art, the Metropolitan Museum of Art, the Museum of Natural History, New York Historical Society, Whitney Museum of American Art, Guggenheim Museum, the Frick Museum and the Museum of American Folk Art. Carnegie Hall and Lincoln Center for the Performing Arts (which includes the New York State Theater, the Metropolitan Opera House, Avery Fisher Hall and Vivian Beaumont Theater), all of which are within walking distance of the Condominium, are the focal point of the music life of the City. The Broadway theater district, a cultural and intellectual magnet, begins about six blocks south of the Building. Noted schools in the area include the Julliard School, Rockefeller

University, a premier scientific research institute, Columbia University, New York University and Fordham University.

Major world famous medical centers, such as Lenox Hill Hospital, New York Hospital-Cornell Medical Center, Memorial Sloan Kettering and Columbia Presbyterian Medical Center, are readily accessible.

All public services, including schools, police protection, library, street maintenance, social services and fire protection are provided by The City of New York. The Property is located at 768 Fifth Avenue, between West 58th Street and Central Park South, which are dedicated New York City roads. The nearest police precinct headquarters is located on West 54th Street at Eighth Avenue, approximately one-half mile from the condominium. Fire protection is provided from the firehouse situated on West 58th Street, a few hundred feet from the Building. The main branch of the world famous New York City public library system is located at Fifth Avenue and 42nd Street. Many religious faiths have congregations within walking distance of the Property.

**2. Zoning**

The Condominium is located in an area zoned R10-H and C5-2.5 under the New York City Zoning Resolution. Hotel use is: (i) as-of-right in the C5-2.5 zoning district; and (ii) allowed with a special permit from the City Planning Commission ("CPC") in the R10-H district; however, because the Plaza Hotel was built prior to the enactment of the Zoning Resolution, its hotel use is a legal non-conforming use in the R10-H district. Restaurant uses and retail uses that are not accessory to the hotel are: (i) as-of-right in the C5-2.5 district; and (ii) allowed with a special permit from CPC in the R10-H zoning district.

The special permit referenced above with respect to the restaurant and retail uses, the 74-711 Permit, must be approved pursuant to the City's Uniform Land Use Review Procedure ("ULURP"). The 74-711 Permit is needed for the three uses contemplated for the Accessory Unit and Club Unit (retail use, banquet and restaurant use, and health club use that is open to the general public) because the Property is located partially in a C5-2.5 zoning district (approximately 25%) and partially in a R10-H zoning district. While the uses referenced above are permitted as-of-right in the C5-2.5 zoning district (although a health club will require a special permit from the Board of Standards & Appeals), they are not permitted as-of-right in the R10-H zoning district.

A 74-711 Special Permit also requires a report from the LPC that a program has been established for the continuing maintenance of the landmark and such maintenance and restoration that may be performed will result in the preservation of the landmark. The LPC issued the report required for Sponsor to seek the Special Permit on April 11, 2006 and The 74-711 Special Permit application was certified as complete by the City Planning Commission on April 24, 2006. An Environmental Assessment Statement was certified with the application, and a negative declaration was issued concluding that, if it is granted, the 74-711 Special Permit will have no adverse impact on the environment.

The ULURP process must be completed within the following time frames: the Community Board has 60 days after certification to issue an advisory opinion to CPC (the

Community Board issued their opinion supporting the application on May 12, 2006); the Borough President has 30 days after receiving the Community Board's recommendation to provide his advisory recommendation to CPC (the Borough President issued his recommendation supporting the application on June 15, 2006); CPC has 60 days after receiving the Borough President's recommendation to approve or disapprove the action (CPC interprets ULURP as giving it 150 days from certification to act, no matter when it receives the Borough President's recommendation); if CPC approves, the City Council may elect to review the 74-711 Permit, and if it so elects it has 50 days after the CPC approval to approve, disapprove, or modify CPC's approval. Where the City Council seeks to modify the CPC approval, an extra 15 days is added. While the total maximum statutory period of consideration for a ULURP application is thus 215 days, plus a few extra days for mailings, in practice, it is often less, because the maximum allotted times are not always taken. The ULURP process can begin and conclude before the LPC approves any interior design plans.

The retail space sought by the 74-711 Permit is located in the Lower Concourse C, Main Concourse A and the First Floor, First Floor mezzanine and Floor 2. In the event the 74-711 Permit application is denied, the space could be used either as, residential accessory space community facility space, or a portion of such space as residential units. (See Section B for further discussion.)

The Building has been designated an individual landmark by the New York City Landmarks Preservation Commission. Therefore, the Property is subject to the restrictions provided for in Chapter 8-A of the New York City Charter. Prior to performing any construction work at the Property requiring a building alteration permit issued by the New York City Department of Buildings, application must be made to, and approved by, the LPC for either: (i) a Certificate of No Effect; or (ii) Certificate of Appropriateness. The LPC has designated the following interior spaces in the Building as landmarks: the First Floor interior consisting of the Fifth Avenue vestibules, the lobby, the corridor to the east of the Palm Court, the Palm Court, the Terrace Room, the corridor to the north of the Palm Court which historically has connections to the 59th Street lobby and the Oak Room, foyers to the Edwardian Room from the corridor to the north of the Palm Court and the 59th Street lobby, the Edwardian Room, 59th Street lobby and vestibule, the Oak Room and Oak Bar, corridor to the east of the Oak Room, corridor to the south of the Palm Court, the staircases connecting First Floor to floor 2, floor 2 interior consisting of the Terrace Room corridor, floor 2 foyer, Terrace Room balcony, Terrace Room and fountain, the staircase connecting floor 2 to the floor 3 Grand Ballroom Foyer, floor 3 interior consisting of the Grand Ballroom foyer, Grand Ballroom Corridor, Grand Ballroom and stage, Grand Ballroom boxes, and the fixtures and interior components of these spaces, including but not limited to, wall surfaces, ceiling surfaces and floor surfaces, murals, mirrors, chandeliers, all lighting fixtures, attached furnishings, doors, exterior elevator doors and grilles, railings and balustrades, decorative metalwork and attached decorative elements.

This designation imposes special restrictions on current work being done as part of the alteration as well as upon the construction, alteration, demolition and reconstruction of the Building in the future. In the event any such construction, alteration, demolition or reconstruction of the Building would affect the exterior of the Building or protected areas of the interior, the Condominium will have to apply to the LPC for permission to perform such work. The LPC, before approving the work, could impose additional requirements or conditions, which could increase the cost and time required to complete the work. In addition, where proposed work in

the Building requires a building permit, notwithstanding the fact that such work does not affect the protected exterior or protected interior portions of the Building, the LPC requires that a "certificate of no effect on protected architectural features" be issued.

On October 26, 2005, the LPC issued a certificate of appropriateness to modify the existing West 58th Street garage door opening, install a new garage door opening, replace the 58th Street storefront, restore the 58th Street doors, modify a window opening to create a barrier free entrance, create new window openings, construct an addition in the courtyard, modify the chimney and install new rooftop HVAC equipment. The LPC denied a proposal to enlarge the windows in the South and North turrets.

The LPC has already issued the Certificate of Appropriateness required for the exterior of the Building and the report required for Sponsor to seek the 74-711 Permit. LPC issued the report required for Sponsor to seek the 74-711 Permit on April 11, 2006. An application was made on April 25, 2006 seeking a Certificate of Appropriateness to make changes to the interior designated spaces.

A copy of the zoning regulations and variances with respect to the Project are on file at Sponsor's office.

## D. SCHEDULE A

**THE PLAZA HOTEL - CONDOMINIUMS**
**768 Fifth Avenue, New York, New York 10019**

**SCHEDULE OF OFFERING PRICES & OTHER RELATED INFORMATION[1]**

**FOR THE PERIOD FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2007**
**THE PROJECTED FIRST YEAR OF HOTEL SECTION OPERATION**

| Unit | Number of Bedrooms/ Bathrooms | Approximate Unit Area (in sq.ft.) (2) | Approximate Terrace area (in sq. ft.) (2) | Unit Price (3) | Percent of Common Interest (4) | Proportionate Share of Aggregate Hotel Section Common Interest (4) | Projected Monthly Common & Overhead Charges (5) | Projected Monthly Real Estate Taxes (6) | Projected Annual Real Estate Taxes (6) | Projected Total Monthly Common and Overhead Charges and Real Estate Taxes |
|---|---|---|---|---|---|---|---|---|---|---|
| 1126 | Palm Suite / 1 Bth | 580 | | $1,585,000 | 0.0962% | 0.3003% | $3,795 | $968 | $11,616 | $4,763 |
| 1127 | Edwardian / 1.5 Bth | 924 | | $2,440,000 | 0.1532% | 0.4785% | $6,046 | $1,490 | $17,881 | $7,536 |
| 1129 | Edwardian / 1.5 Bth | 839 | | $2,395,000 | 0.1391% | 0.4344% | $5,490 | $1,463 | $17,552 | $6,953 |
| 1130 | Edwardian / 1.5 Bth | 904 | | $2,460,000 | 0.1499% | 0.4681% | $5,915 | $1,502 | $18,028 | $7,418 |
| 1131 | Edwardian / 1.5 Bth | 857 | | $2,445,000 | 0.1421% | 0.4438% | $5,608 | $1,493 | $17,918 | $7,101 |
| 1132 | Palm Suite / 1 Bth | 537 | | $1,565,000 | 0.0891% | 0.2781% | $3,514 | $956 | $11,469 | $4,470 |
| 1133 | Rose Suite / 1 Bth | 606 | | $1,750,000 | 0.1005% | 0.3138% | $3,965 | $1,069 | $12,825 | $5,034 |
| 1134 | Rose Suite / 1 Bth | 711 | | $2,000,000 | 0.1179% | 0.3682% | $4,652 | $1,221 | $14,657 | $5,874 |
| 1135 | Rose Suite / 1 Bth | 638 | | $1,840,000 | 0.1058% | 0.3304% | $4,175 | $1,124 | $13,484 | $5,298 |
| 1136 | Palm Suite / 1 Bth | 504 | | $1,495,000 | 0.0836% | 0.2610% | $3,298 | $913 | $10,956 | $4,211 |
| 1137 | Palm Suite / 1 Bth | 476 | | $1,420,000 | 0.0789% | 0.2465% | $3,115 | $867 | $10,406 | $3,982 |
| 1138 | Palm Suite / 1 Bth | 529 | | $1,650,000 | 0.0877% | 0.2739% | $3,461 | $1,008 | $12,092 | $4,469 |
| 1139 | Edwardian / 1.5 Bth | 1,061 | | $2,835,000 | 0.1759% | 0.5494% | $6,943 | $1,731 | $20,776 | $8,674 |
| 1140 | Edwardian / 1.5 Bth | 941 | | $3,100,000 | 0.1560% | 0.4873% | $6,157 | $1,893 | $22,718 | $8,051 |
| 1141 | Palm Suite / 1 Bth | 580 | | $1,730,000 | 0.0962% | 0.3003% | $3,795 | $1,057 | $12,678 | $4,852 |
| 1221 | Edwardian / 1.5 Bth | 905 | | $2,900,000 | 0.1501% | 0.4686% | $5,922 | $1,771 | $21,252 | $7,693 |
| 1223 | Plaza Suite / 2 Bth | 1,476 | | $4,600,000 | 0.2448% | 0.7643% | $9,658 | $2,809 | $33,711 | $12,467 |
| 1226 | Rose Suite / 1.5 Bth | 713 | | $1,880,000 | 0.1182% | 0.3692% | $4,665 | $1,148 | $13,777 | $5,814 |
| 1227 | Rose Suite / 1 Bth | 697 | | $2,030,000 | 0.1156% | 0.3609% | $4,561 | $1,240 | $14,877 | $5,800 |
| 1229 | Rose Suite / 1 Bth | 730 | | $2,130,000 | 0.1211% | 0.3780% | $4,777 | $1,301 | $15,610 | $6,077 |
| 1230 | Edwardian / 1.5 Bth | 904 | | $2,515,000 | 0.1499% | 0.4681% | $5,915 | $1,536 | $18,431 | $7,451 |
| 1231 | Edwardian / 1.5 Bth | 857 | | $2,495,000 | 0.1421% | 0.4438% | $5,608 | $1,524 | $18,284 | $7,131 |
| 1232 | Palm Suite / 1 Bth | 537 | | $1,595,000 | 0.0891% | 0.2781% | $3,514 | $974 | $11,689 | $4,488 |
| 1233 | Rose Suite / 1 Bth | 606 | | $1,785,000 | 0.1005% | 0.3138% | $3,965 | $1,090 | $13,081 | $5,055 |
| 1234 | Rose Suite / 1 Bth | 711 | | $2,045,000 | 0.1179% | 0.3682% | $4,652 | $1,249 | $14,987 | $5,901 |
| 1235 | Rose Suite / 1 Bth | 638 | | $1,885,000 | 0.1058% | 0.3304% | $4,175 | $1,151 | $13,814 | $5,326 |
| 1236 | Palm Suite / 1 Bth | 504 | | $1,525,000 | 0.0836% | 0.2610% | $3,298 | $931 | $11,176 | $4,229 |
| 1237 | Palm Suite / 1 Bth | 476 | | $1,450,000 | 0.0789% | 0.2465% | $3,115 | $886 | $10,626 | $4,000 |
| 1238 | Palm Suite / 1 Bth | 529 | | $1,675,000 | 0.0877% | 0.2739% | $3,461 | $1,023 | $12,275 | $4,484 |
| 1239 | Edwardian / 1.5 Bth | 1,061 | | $2,905,000 | 0.1759% | 0.5494% | $6,943 | $1,774 | $21,289 | $8,717 |
| 1240 | Edwardian / 1.5 Bth | 941 | | $3,150,000 | 0.1560% | 0.4873% | $6,157 | $1,924 | $23,085 | $8,081 |
| 1241 | Palm Suite / 1 Bth | 580 | | $1,770,000 | 0.0962% | 0.3003% | $3,795 | $1,081 | $12,971 | $4,876 |
| 1321 | Edwardian / 1.5 Bth | 905 | | $2,805,000 | 0.1501% | 0.4686% | $5,922 | $1,713 | $20,556 | $7,635 |
| 1323 | Plaza Suite / 2 Bth | 1,476 | | $4,440,000 | 0.2448% | 0.7643% | $9,658 | $2,712 | $32,538 | $12,370 |
| 1326 | Rose Suite / 1.5 Bth | 713 | | $1,800,000 | 0.1182% | 0.3692% | $4,665 | $1,099 | $13,191 | $5,765 |
| 1327 | Rose Suite / 1 Bth | 697 | | $1,960,000 | 0.1156% | 0.3609% | $4,561 | $1,197 | $14,364 | $5,758 |
| 1329 | Rose Suite / 1 Bth | 730 | | $2,045,000 | 0.1211% | 0.3780% | $4,777 | $1,249 | $14,987 | $6,026 |
| 1330 | Edwardian / 1.5 Bth | 904 | | $2,420,000 | 0.1499% | 0.4681% | $5,915 | $1,478 | $17,735 | $7,393 |
| 1331 | Edwardian / 1.5 Bth | 857 | | $2,[redacted]000 | 0.1421% | 0.4438% | $5,[redacted] | $1,469 | $17,625 | $7,076 |
| 1332 | Palm Suite / 1 Bth | 537 | | $1,[redacted]00 | 0.0891% | 0.2781% | $3,[redacted] | $937 | $11,249 | $4,451 |
| 1333 | Rose Suite / 1 Bth | 606 | | $1,725,000 | 0.1005% | 0.3138% | $3,965 | $1,053 | $12,642 | $5,019 |
| 1334 | Rose Suite / 1 Bth | 711 | | $1,965,000 | 0.1179% | 0.3682% | $4,652 | $1,200 | $14,400 | $5,852 |

## D. SCHEDULE A

**E PLAZA HOTEL - CONDOMINIUMS**
**768 Fifth Avenue, New York, New York 10019**

**SCHEDULE OF OFFERING PRICES & OTHER RELATED INFORMATION[1]**

**FOR THE PERIOD FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2007**
**THE PROJECTED FIRST YEAR OF HOTEL SECTION OPERATION**

| Unit | Number of Bedrooms/ Bathrooms | Approximate Unit Area (in sq.ft.) (2) | Approximate Terrace area (in sq. ft.) (2) | Unit Price (3) | Percent of Common Interest (4) | Proportionate Share of Aggregate Hotel Section Common Interest (4) | Projected Monthly Common & Overhead Charges (5) | Projected Month;y Real Estate Taxes (6) | Projected Annual Real Estate Taxes (6) | Projected Total Monthly Common and Overhead Charges and Real Estate Taxes |
|---|---|---|---|---|---|---|---|---|---|---|
| 1335 | Rose Suite / 1 Bth | 638 | | $1,815,000 | 0.1058% | 0.3304% | $4,175 | $1,108 | $13,301 | $5,283 |
| 1336 | Palm Suite / 1 Bth | 504 | | $1,470,000 | 0.0836% | 0.2610% | $3,298 | $898 | $10,773 | $4,196 |
| 1337 | Palm Suite / 1 Bth | 476 | | $1,400,000 | 0.0789% | 0.2465% | $3,115 | $855 | $10,260 | $3,970 |
| 1338 | Palm Suite / 1 Bth | 529 | | $1,700,000 | 0.0877% | 0.2739% | $3,461 | $1,038 | $12,458 | $4,500 |
| 1339 | Edwardian / 1.5 Bth | 1,061 | | $2,790,000 | 0.1759% | 0.5494% | $6,943 | $1,704 | $20,446 | $8,646 |
| 1340 | Edwardian / 1.5 Bth | 941 | | $3,200,000 | 0.1560% | 0.4873% | $6,157 | $1,954 | $23,451 | $8,112 |
| 1341 | Palm Suite / 1 Bth | 580 | | $1,705,000 | 0.0962% | 0.3003% | $3,795 | $1,041 | $12,495 | $4,836 |
| 1421 | Edwardian / 1.5 Bth | 905 | | $2,865,000 | 0.1501% | 0.4686% | $5,922 | $1,750 | $20,996 | $7,671 |
| 1423 | Plaza Suite / 2 Bth | 1,476 | | $4,535,000 | 0.2448% | 0.7643% | $9,658 | $2,770 | $33,234 | $12,428 |
| 1426 | Rose Suite / 1.5 Bth | 713 | | $1,845,000 | 0.1182% | 0.3692% | $4,665 | $1,127 | $13,521 | $5,792 |
| 1427 | Rose Suite / 1 Bth | 697 | | $2,000,000 | 0.1156% | 0.3609% | $4,561 | $1,221 | $14,657 | $5,782 |
| 1429 | Rose Suite / 1 Bth | 730 | | $2,090,000 | 0.1211% | 0.3780% | $4,777 | $1,276 | $15,316 | $6,053 |
| 1430 | Edwardian / 1.5 Bth | 904 | | $2,490,000 | 0.1499% | 0.4681% | $5,915 | $1,521 | $18,248 | $7,436 |
| 1431 | Edwardian / 1.5 Bth | 857 | | $2,460,000 | 0.1421% | 0.4438% | $5,608 | $1,502 | $18,028 | $7,110 |
| 1432— | Palm Suite / 1 Bth | 537 | | $1,570,000 | 0.0891% | 0.2781% | $3,514 | $959 | $11,506 | $4,473 |
| 1433 | Rose Suite / 1 Bth | 606 | | $1,760,000 | 0.1005% | 0.3138% | $3,965 | $1,075 | $12,898 | $5,040 |
| 1434 | Rose Suite / 1 Bth | 711 | | $2,010,000 | 0.1179% | 0.3682% | $4,652 | $1,228 | $14,730 | $5,880 |
| 1435 | Rose Suite / 1 Bth | 638 | | $1,860,000 | 0.1058% | 0.3304% | $4,175 | $1,136 | $13,631 | $5,311 |
| 1436 | Palm Suite / 1 Bth | 504 | | $1,500,000 | 0.0836% | 0.2610% | $3,298 | $916 | $10,993 | $4,214 |
| 1437 | Palm Suite / 1 Bth | 476 | | $1,425,000 | 0.0789% | 0.2465% | $3,115 | $870 | $10,443 | $3,985 |
| 1438 | Palm Suite / 1 Bth | 529 | | $1,750,000 | 0.0877% | 0.2739% | $3,461 | $1,069 | $12,825 | $4,530 |
| 1439 | Edwardian / 1.5 Bth | 1,061 | | $2,865,000 | 0.1759% | 0.5494% | $6,943 | $1,750 | $20,996 | $8,692 |
| 1440 | Edwardian / 1.5 Bth | 941 | | $3,500,000 | 0.1560% | 0.4873% | $6,157 | $2,137 | $25,649 | $8,295 |
| 1441 | Palm Suite / 1 Bth | 580 | | $1,740,000 | 0.0962% | 0.3003% | $3,795 | $1,063 | $12,751 | $4,858 |
| 1521 | Edwardian / 1.5 Bth | 905 | | $2,925,000 | 0.1501% | 0.4686% | $5,922 | $1,786 | $21,436 | $7,708 |
| 1523 | Plaza Suite / 2 Bth | 1,476 | | $4,630,000 | 0.2448% | 0.7643% | $9,658 | $2,828 | $33,931 | $12,486 |
| 1526 | Rose Suite / 1.5 Bth | 713 | | $1,895,000 | 0.1182% | 0.3692% | $4,665 | $1,157 | $13,887 | $5,823 |
| 1527 | Rose Suite / 1 Bth | 697 | | $2,045,000 | 0.1156% | 0.3609% | $4,561 | $1,249 | $14,987 | $5,810 |
| 1529 | Rose Suite / 1 Bth | 730 | | $2,140,000 | 0.1211% | 0.3780% | $4,777 | $1,307 | $15,683 | $6,084 |
| 1530 | Edwardian / 1.5 Bth | 904 | | $2,535,000 | 0.1499% | 0.4681% | $5,915 | $1,548 | $18,578 | $7,463 |
| 1531 | Edwardian / 1.5 Bth | 857 | | $2,515,000 | 0.1421% | 0.4438% | $5,608 | $1,536 | $18,431 | $7,144 |
| 1532 | Palm Suite / 1 Bth | 537 | | $1,605,000 | 0.0891% | 0.2781% | $3,514 | $980 | $11,762 | $4,494 |
| 1533 | Rose Suite / 1 Bth | 606 | | $1,800,000 | 0.1005% | 0.3138% | $3,965 | $1,099 | $13,191 | $5,065 |
| 1534 | Rose Suite / 1 Bth | 711 | | $2,060,000 | 0.1179% | 0.3682% | $4,652 | $1,258 | $15,097 | $5,910 |
| 1535 | Rose Suite / 1 Bth | 638 | | $1,900,000 | 0.1058% | 10.3304% | $4,175 | $1,160 | $13,924 | $5,335 |
| 1536 | Palm Suite / 1 Bth | 504 | | $1,535,000 | 0.0836% | 0.2610% | $3,298 | $937 | $11,249 | $4,235 |
| 1537 | Palm Suite / 1 Bth | 476 | | $1,460,000 | 0.0789% | 0.2465% | $3,115 | $892 | $10,699 | $4,006 |
| 1538 | Palm Suite / 1 Bth | 529 | | $1,850,000 | 0.0877% | 0.2739% | $3,461 | $1,130 | $13,558 | $4,591 |
| 1539 | Edwardian / 1.5 Bth | 1,061 | | $2,930,000 | 0.1759% | 0.5494% | $6,943 | $1,789 | $21,472 | $8,732 |
| 1540 | Edwardian / 1.5 Bth | 941 | | $3,600,000 | 0.1560% | 0.4873% | $6,157 | $2,199 | $26,382 | $8,356 |
| 1541 | Palm Suite / 1 Bth | 580 | | $1,780,000 | 0.0962% | 0.3003% | $3,795 | $1,087 | $13,045 | $4,882 |

## D. SCHEDULE A

**THE PLAZA HOTEL - CONDOMINIUMS**
**768 Fifth Avenue, New York, New York 10019**

**SCHEDULE OF OFFERING PRICES & OTHER RELATED INFORMATION[1]**

**FOR THE PERIOD FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2007**
**THE PROJECTED FIRST YEAR OF HOTEL SECTION OPERATION**

| Unit | Number of Bedrooms/ Bathrooms | Approximate Unit Area (in sq.ft.) (2) | Approximate Terrace area (in sq. ft.) (2) | Unit Price (3) | Percent of Common Interest (4) | Proportionate Share of Aggregate Hotel Section Common Interest (4) | Projected Monthly Common & Overhead Charges (5) | Projected Monthly Real Estate Taxes (6) | Projected Annual Real Estate Taxes (6) | Projected Total Monthly Common and Overhead Charges and Real Estate Taxes |
|---|---|---|---|---|---|---|---|---|---|---|
| 1621 | Edwardian / 1.5 Bth | 905 | | $2,980,000 | 0.1501% | 0.4686% | $5,922 | $1,820 | $21,839 | $7,742 |
| 1623 | Plaza Suite / 2 Bth | 1,476 | | $4,735,000 | 0.2448% | 0.7643% | $9,658 | $2,892 | $34,700 | $12,550 |
| 1626 | Rose Suite / 1.5 Bth | 713 | | $1,945,000 | 0.1182% | 0.3692% | $4,665 | $1,188 | $14,254 | $5,853 |
| 1627 | Rose Suite / 1 Bth | 697 | | $2,090,000 | 0.1156% | 0.3609% | $4,561 | $1,276 | $15,316 | $5,837 |
| 1629 | Rose Suite / 1 Bth | 730 | | $2,195,000 | 0.1211% | 0.3780% | $4,777 | $1,340 | $16,086 | $6,117 |
| 1630 | Edwardian / 1.5 Bth | 904 | | $2,595,000 | 0.1499% | 0.4681% | $5,915 | $1,585 | $19,017 | $7,500 |
| 1631 | Edwardian / 1.5 Bth | 857 | | $2,580,000 | 0.1421% | 0.4438% | $5,608 | $1,576 | $18,907 | $7,183 |
| 1632 | Palm Suite / 1 Bth | 537 | | $1,645,000 | 0.0891% | 0.2781% | $3,514 | $1,005 | $12,055 | $4,518 |
| 1633 | Rose Suite / 1 Bth | 606 | | $1,840,000 | 0.1005% | 0.3138% | $3,965 | $1,124 | $13,484 | $5,089 |
| 1634 | Rose Suite / 1 Bth | 711 | | $2,110,000 | 0.1179% | 0.3682% | $4,652 | $1,289 | $15,463 | $5,941 |
| 1635 | Rose Suite / 1 Bth | 638 | | $1,945,000 | 0.1058% | 0.3304% | $4,175 | $1,188 | $14,254 | $5,363 |
| 1636 | Palm Suite / 1 Bth | 504 | | $1,565,000 | 0.0836% | 0.2610% | $3,298 | $956 | $11,469 | $4,254 |
| 1637 | Palm Suite / 1 Bth | 476 | | $1,485,000 | 0.0789% | 0.2465% | $3,115 | $907 | $10,883 | $4,022 |
| 1638 | Palm Suite / 1 Bth | 529 | | $1,950,000 | 0.0877% | 0.2739% | $3,461 | $1,191 | $14,290 | $4,652 |
| 1639 | Edwardian / 1.5 Bth | 1,061 | | $2,995,000 | 0.1759% | 0.5494% | $6,943 | $1,829 | $21,949 | $8,772 |
| 1640 | Edwardian / 1.5 Bth | 941 | | $3,700,000 | 0.1560% | 0.4873% | $6,157 | $2,260 | $27,115 | $8,417 |
| 1641 | Palm Suite / 1 Bth | 580 | | $1,825,000 | 0.0962% | 0.3003% | $3,795 | $1,115 | $13,374 | $4,910 |
| 1721 | Edwardian / 1.5 Bth | 903 | | $3,035,000 | 0.1497% | 0.4676% | $5,909 | $1,853 | $22,242 | $7,762 |
| 1723 | Plaza Suite / 2 Bth | 1,473 | | $4,825,000 | 0.2443% | 0.7627% | $9,638 | $2,947 | $35,360 | $12,585 |
| 1726 | Rose Suite / 1.5 Bth | 713 | | $1,990,000 | 0.1182% | 0.3692% | $4,665 | $1,215 | $14,584 | $5,881 |
| 1727 | Palm Suite / 1 Bth | 598 | | $1,895,000 | 0.0992% | 0.3096% | $3,913 | $1,157 | $13,887 | $5,070 |
| 1729 | Rose Suite / 1 Bth | 767 | | $2,360,000 | 0.1272% | 0.3972% | $5,019 | $1,441 | $17,295 | $6,460 |
| 1730 | Edwardian / 1.5 Bth | 904 | | $2,655,000 | 0.1499% | 0.4681% | $5,915 | $1,621 | $19,457 | $7,537 |
| 1731 | Edwardian / 1.5 Bth | 790 | | $2,425,000 | 0.1310% | 0.4091% | $5,169 | $1,481 | $17,771 | $6,650 |
| 1732 | Palm Suite / 1 Bth | 537 | | $1,680,000 | 0.0891% | 0.2781% | $3,514 | $1,026 | $12,312 | $4,540 |
| 1733 | Rose Suite / 1 Bth | 733 | | $2,280,000 | 0.1216% | 0.3796% | $4,796 | $1,392 | $16,709 | $6,189 |
| 1734 | Rose Suite / 1 Bth | 711 | | $2,155,000 | 0.1179% | 0.3682% | $4,652 | $1,316 | $15,793 | $5,968 |
| 1735 | Palm Suite / 1 Bth | 511 | | $1,625,000 | 0.0847% | 0.2646% | $3,344 | $992 | $11,909 | $4,336 |
| 1736 | Palm Suite / 1 Bth | 504 | | $1,600,000 | 0.0836% | 0.2610% | $3,298 | $977 | $11,725 | $4,275 |
| 1737 | Rose Suite / 1 Bth | 773 | | $2,400,000 | 0.1282% | 0.4003% | $5,058 | $1,466 | $17,588 | $6,524 |
| 1738 | Palm Suite / 1 Bth | 529 | | $2,050,000 | 0.0877% | 0.2739% | $3,461 | $1,252 | $15,023 | $4,713 |
| 1739 | Edwardian / 1.5 Bth | 738 | | $2,135,000 | 0.1224% | 0.3821% | $4,829 | $1,304 | $15,646 | $6,133 |
| 1740 | Edwardian / 1.5 Bth | 941 | | $3,800,000 | 0.1560% | 0.4873% | $6,157 | $2,321 | $27,848 | $8,478 |
| 1741 | Palm Suite / 1 Bth | 524 | | $1,685,000 | 0.0869% | 0.2713% | $3,429 | $1,029 | $12,348 | $4,458 |
| 1821 | Edwardian / 1.5 Bth | 903 | | $3,095,000 | 0.1497% | 0.4676% | $5,909 | $1,890 | $22,681 | $7,799 |
| 1823 | Palm Suite / 1 Bth | 598 | | $2,155,000 | 0.0992% | 0.3096% | $3,913 | $1,316 | $15,793 | $5,229 |
| 1825 | Palm Suite / 1 Bth | 620 | | $1,960,000 | 0.1028% | 0.3210% | $4,057 | $1,197 | $14,364 | $5,254 |
| 1826 | Rose Suite / 1.5 Bth | 713 | | $2,0[redacted]000 | 0.1182% | 0.3692% | $4,6[redacted] | $1,246 | $14,950 | $5,911 |
| 1827 | Palm Suite / 1 Bth | 574 | | $1[redacted]00 | 0.0952% | 0.2972% | $3[redacted] | $1,111 | $13,338 | $4,867 |
| 1829 | Rose Suite / 1 Bth | 691 | | $2,[redacted]000 | 0.1146% | 0.3578% | $4,522 | $1,301 | $15,610 | $5,822 |
| 1830 | Edwardian / 1.5 Bth | 904 | | $2,715,000 | 0.1499% | 0.4681% | $5,915 | $1,658 | $19,897 | $7,573 |

## D. SCHEDULE A

**E PLAZA HOTEL - CONDOMINIUMS**
**768 Fifth Avenue, New York, New York 10019**

**SCHEDULE OF OFFERING PRICES & OTHER RELATED INFORMATION[1]**

**FOR THE PERIOD FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2007**
**THE PROJECTED FIRST YEAR OF HOTEL SECTION OPERATION**

| Unit | Number of Bedrooms/ Bathrooms | Approximate Unit Area (in sq.ft.) (2) | Approximate Terrace area (in sq. ft.) (2) | Unit Price (3) | Percent of Common Interest (4) | Proportionate Share of Aggregate Hotel Section Common Interest (4) | Projected Monthly Common & Overhead Charges (5) | Projected Month;y Real Estate Taxes (6) | Projected Annual Real Estate Taxes (6) | Projected Total Monthly Common and Overhead Charges and Real Estate Taxes |
|---|---|---|---|---|---|---|---|---|---|---|
| 1831 | Edwardian / 1 Bth | 732 | | $2,250,000 | 0.1214% | 0.3790% | $4,790 | $1,374 | $16,489 | $6,164 |
| 1832 | Palm Suite / 1 Bth | 537 | | $1,715,000 | 0.0891% | 0.2781% | $3,514 | $1,047 | $12,568 | $4,561 |
| 1833 | Rose Suite / 1 Bth | 670 | | $2,085,000 | 0.1111% | 0.3469% | $4,384 | $1,273 | $15,280 | $5,657 |
| 1834 | Rose Suite / 1 Bth | 711 | | $2,205,000 | 0.1179% | 0.3682% | $4,652 | $1,347 | $16,159 | $5,999 |
| 1835 | Palm Suite / 1 Bth | 510 | | $1,625,000 | 0.0846% | 0.2641% | $3,337 | $992 | $11,909 | $4,330 |
| 1836 | Palm Suite / 1 Bth | 504 | | $1,625,000 | 0.0836% | 0.2610% | $3,298 | $992 | $11,909 | $4,290 |
| 1837 | Rose Suite / 1 Bth | 731 | | $2,290,000 | 0.1212% | 0.3785% | $4,783 | $1,399 | $16,782 | $6,182 |
| 1838 | Palm Suite / 1 Bth | 529 | | $2,150,000 | 0.0877% | 0.2739% | $3,461 | $1,313 | $15,756 | $4,774 |
| 1839 | Edwardian / 1.5 Bth | 659 | | $1,910,000 | 0.1093% | 0.3412% | $4,312 | $1,166 | $13,997 | $5,479 |
| 1840 | Edwardian / 1.5 Bth | 941 | | $3,900,000 | 0.1560% | 0.4873% | $6,157 | $2,382 | $28,581 | $8,539 |
| 1841 | Palm Suite / 1 Bth | 517 | | $1,685,000 | 0.0857% | 0.2677% | $3,383 | $1,029 | $12,348 | $4,412 |
| 1930 | Edwardian / 1.5 Bth | 904 | | $2,780,000 | 0.1499% | 0.4681% | $5,915 | $1,698 | $20,373 | $7,613 |
| 1931 | Edwardian / 1.5 Bth | 1,160 | | $3,615,000 | 0.1924% | 0.6007% | $7,590 | $2,208 | $26,492 | $9,798 |
| 1932 | Palm Suite / 1 Bth | 537 | | $1,750,000 | 0.0891% | 0.2781% | $3,514 | $1,069 | $12,825 | $4,583 |
| 1933 | Palm Suite / 1 Bth | 541 | | $1,750,000 | 0.0897% | 0.2801% | $3,540 | $1,069 | $12,825 | $4,609 |
| 1934 | Rose Suite / 1 Bth | 711 | | $2,255,000 | 0.1179% | 0.3682% | $4,652 | $1,377 | $16,526 | $6,030 |
| 1935 | Rose Suite / 1 Bth | 702 | | $2,215,000 | 0.1164% | 0.3635% | $4,593 | $1,353 | $16,232 | $5,946 |
| 1936 | Palm Suite / 1 Bth | 504 | | $1,700,000 | 0.0836% | 0.2610% | $3,298 | $1,038 | $12,458 | $4,336 |
| 1937 | Palm Suite / 1 Bth | 508 | | $1,645,000 | 0.0842% | 0.2630% | $3,324 | $1,005 | $12,055 | $4,329 |
| 1938 | Palm Suite / 1 Bth | 529 | | $2,250,000 | 0.0877% | 0.2739% | $3,461 | $1,374 | $16,489 | $4,836 |
| 1940 | Edwardian / 1.5 Bth | 941 | | $4,000,000 | 0.1560% | 0.4873% | $6,157 | $2,443 | $29,314 | $8,600 |
| 1941 | Palm Suite / 1 Bth | 548 | | $1,805,000 | 0.0909% | 0.2838% | $3,586 | $1,102 | $13,228 | $4,688 |
| PH2030 | Terrace Suite / 2Bth | 1,532 | 135 | $5,595,000 | 0.2652% | 0.8282% | $10,466 | $3,417 | $41,002 | $13,883 |
| PH2032 | Terrace Suite / 2Bth | 1,393 | 264 | $5,250,000 | 0.2529% | 0.7897% | $9,979 | $3,206 | $38,474 | $13,185 |
| PH2034 | Terrace Suite / 2Bth | 1,359 | 201 | $5,050,000 | 0.2420% | 0.7557% | $9,550 | $3,084 | $37,008 | $12,634 |
| PH2036 | Terrace Suite / 2Bth | 1,305 | 238 | $4,900,000 | 0.2361% | 0.7374% | $9,318 | $2,992 | $35,909 | $12,310 |
| PH2038 | Terrace Suite / 2Bth | 1,501 | 248 | $5,820,000 | 0.2695% | 0.8414% | $10,633 | $3,554 | $42,651 | $14,187 |
| PH2040 | Terrace / 2.5Bth | 2,148 | 528 | $9,350,000 | 0.4000% | 1.2489% | $15,783 | $5,710 | $68,521 | $21,493 |
| Total for Condo Hotel Units: | | 116,528 | 1,614 | $365,555,000 | 19.4577% | 60.7568% | $767,772 | $223,245 | $2,678,939 | $991,017 |
| | | | | | | | | | | |
| Transient Hotel Unit: | | | | | 12.5678% | 39.2432% | | | | |
| | | | | | | | | | | |
| **Total for All Hotel Units:** | | | | | 32.0255% | 100.0000% | | | | |

## NOTES TO SCHEDULE A

(1) Amounts are projected on the assumption that the First Year of Hotel Section Operation will be the year from January 1, 2007 to December 31, 2007. The actual First Year of Hotel Section Operation may begin earlier or later than that year.

(2) Any floor plan or sketch or schedule shown to a prospective Purchaser is only an approximation of the square foot area and layout of the Condo Hotel Unit in question. However, any material change will be set forth in an amendment to the Plan, and no material change (for example, a reduction in square footage in excess of 5% will be made in the size (i.e., decrease), configuration, or layout of a Unit for which an Agreement which has been countersigned by Sponsor and returned to the Purchaser unless the same is dictated by construction conditions at the Property (such as coordination of Building systems, conflicts with structural members or elements, conforming with Laws, unforeseen events, etc. and, in all cases, in good faith, reasonably necessary due to factors not within Sponsor's reasonable control, and where no practicable alternative (in the exercise of sound construction management practices) exists), and in such event, Sponsor will, in the amendment disclosing such change and delivered to the Purchasers, offer the materially adversely affected Purchaser(s) the right, for at least 15 days, to rescind their Agreements and receive a refund of their Deposits, together with all interest earned thereon. An increase in the size of a room or Unit will not on its own give rise to a right of rescission. (See also the Section entitled "Changes in Prices" in Part I of the Plan for further details concerning and certain limitations applicable to Sponsor's rights with respect to changes in the renovation of the Units and the Common Elements.)

The approximate square foot area of each Unit is measured horizontally on each of one or more floors from the exterior side of the exterior walls, at the Building line and/or Property line to the midpoint of the interior walls and partitions separating one Unit from another Unit, or the midpoint of the interior walls and partitions separating a Unit from public corridors, stairs, elevators and other mechanical equipment spaces or any Common Elements. Columns and mechanical pipes (whether along the perimeter or within the Unit), with the exception of specific major shafts, are not deducted from the square foot area of the Units. Outdoor floor areas of a Balcony and/or Terrace appurtenant to a Unit are not included in the Unit's indoor floor area. Measured vertically, each Unit will consist of the volume from the top of the floor slab below (located under the finished flooring and sub-floor materials) to the underside of the floor slab above.

Any Common Elements located within or appurtenant to any Unit shall not be considered as part of that Unit.* The square foot areas determined using the methodology set forth above, as shown

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* Each Condo Hotel Unit includes, and each Condo Hotel Unit Owner shall be responsible for, all fixtures, equipment and other items of personalty, including, without limitation, all plumbing and heating fixtures and equipment, and other appliances as may be contained in, affixed, attached or appurtenant to such Condo Hotel Unit, other than as may constitute part of the Common Elements. Plumbing and heating fixtures and equipment as used in the preceding sentence shall include exposed gas and water pipes attached to fixtures, appliances and equipment and the fixtures, appliances and equipment to which they are attached, and any special
(footnote continued)

in Schedule A in Part I of the Plan, will significantly exceed the actual interior useable floor area of the Units. The stated method of measurement used is applicable to all Units. The room count for each Condo Hotel Unit was determined by Sponsor's architect in accordance with industry practice for new construction condominiums and does not necessarily conform to the zoning room count or the method utilized by the Real Estate Board of New York.

(3) Sponsor has reserved the right to change the purchase prices (as well as other terms of sale) of Units not subject to executed Agreements, so Purchasers may pay different prices for similar Units. (See the Section entitled "Changes in Prices" below for further discussion.) The purchase prices and other terms of the Agreements may be subject to negotiation with Sponsor. In addition to paying the purchase prices of their Units, Purchasers will be responsible for paying certain closing adjustments and closing costs, including, without limitation, the obligation to contribute to the Working Capital Fund. Purchasers are advised to consult with their attorneys as to the exact closing costs they will incur in purchasing their Condo Hotel Units. (See the Section of the Plan entitled "Unit Closing Costs and Adjustments" below for further discussion.)

(4) The Common Interest of each Hotel Unit has been determined, pursuant to Section 339-i(1)(iv) of the Condominium Act. In accordance with such method of calculation, the Common Interests have been determined based primarily upon a comparison of the floor areas of the Hotel Units, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Hotel Unit, the availability of the Common Elements for exclusive or shared use and the overall dimensions of the particular Hotel Unit. As to any Hotel Unit with an appurtenant Balcony or Terrace, 50% of the square footage of such terrace has been added to the square footage of the Hotel Unit itself for purposes of computing the Common Interest of that Hotel Unit. The aggregate Common Interest of all the Units in the Hotel Section equals 32.0255%. (The remaining 67.9745% of the overall Common Interest of all Units in the Building is attributable to the Residential Units, the Accessory Unit and the Club Unit.)

The "Proportionate Share of Aggregate Hotel Section Common Interest" represents each Hotel Unit's relative proportion of the total Common Interest attributable to the Hotel Section in the aggregate; and such proportion generally forms the basis of each Hotel Unit Owner's share of the expenses of the Hotel Section (subject to the more particular terms of the Hotel By-Laws and as otherwise described in this Plan). The proportionate share of the Hotel Section's aggregate Common Interest that is attributable to the Condo Hotel Units equals 60.7568% and the

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pipes or equipment which a Condo Hotel Unit Owner may install within a wall or ceiling, or under the floor, but shall not include water or other pipes, conduits, wiring or ductwork within the walls, ceiling or floors. Except as otherwise expressly set forth herein, each Condo Hotel Unit shall also include all lighting and electrical fixtures and appliances within the Condo Hotel Unit and any special equipment, fixtures or facilities affixed, attached or appurtenant to the Condo Hotel Unit to the extent located within such Condo Hotel Unit and serving or benefiting only that Condo Hotel Unit.

proportionate share of the Hotel Section's aggregate Common Interest that is attributable to the Transient Hotel Unit equals 39.2432% (for a total of 100%).

(5) These projections have been based upon the projections contained in "Projected Budget for First Year of Hotel Section Operation -- Schedule B-1" (set forth in Section E below), which were made based on the assumption that the First Year of Hotel Section Operation will be from January 1, 2007 to December 31, 2007. The actual first year of operation may be earlier or later. In the event the actual or anticipated commencement date of the First Year of Hotel Section Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised budget with current projections. If the amended budget exceeds this projected budget by 25% or more, Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period, if the Plan has been declared effective) the right to rescind their Agreements within not less than 15 days after the presentation date of the amendment containing such revised budget, and any Purchasers electing rescission pursuant to such offer will have their Deposit and any interest accrued thereon returned.

As discussed in "Available Services and Facilities" in Section B above and in Special Risk #9, the full range of services and facilities described in this Plan may not be provided until move-ins are finished and construction work within and on the Building is completed. To the extent that any service or facility provided during such interim period benefits particular Condo Hotel Units, to the exclusion of other Condo Hotel Units, and the cost of the same is readily identifiable, the Hotel Common Charges necessary to provide such service or facility will be borne exclusively by the owners of the benefited Condo Hotel Units, in proportion to their respective Common Interests.

The amount of the Hotel Common Charges necessary to defray the cost of the interim services and facilities described in the preceding paragraph, as well as the manner of allocating such Hotel Common Charges among any Condo Hotel Unit Owners who are exclusively benefited by any of the same, will be determined by the Hotel Board, which will be controlled by Sponsor during such period. However, such allocation will be made in compliance with Section 339-m of the New York State Real Property Law, and in no event will Purchasers be assessed Hotel Common Charges during such interim period that are more than the Hotel Common Charges listed in Schedule A as the same may theretofore have been amended.

In addition to the payment of Hotel Common Charges, each Unit Owner will incur additional expenses for, among other things:

(a) mortgage payments under any loan or loans obtained to finance the purchase of the Unit;

(b) the cost of interior repairs, compliance with Laws and maintenance, painting and decoration in, to or of, the Unit, including, without limitation, the equipment, furnishings and appliances contained in the same, and any appurtenant Limited Common Elements subject in each case to the rights of the Transient Hotel Unit Owner with respect to same and as may be provided under the Unit Management and Operation Agreement;

(c) the cost of any insurance that the Unit Owner may be required to (or desire to) carry covering the furniture, belongings, equipment and other personal property in the Unit, as well as the cost of any insurance the Unit Owner may be required to carry covering liability to others for personal injury or property damage as a result of occurrences in the Unit;

(d) real estate taxes (see footnote 6 below)

(e) certain telephone and cable television charges (to the extent not otherwise included within Hotel Common Charges or under the Unit Management and Operation Agreement); and

(f) any costs required pursuant to the Unit Management and Operation Agreement.

(6) The projection of the real estate taxes that will be payable for each of the Condo Hotel Units during the projected First Year of Hotel Section Operation is based upon a letter prepared by The Leitner Group, Inc., Sponsor's real estate tax consultant, and takes into account the following assumptions and projections:

(a) a projected assessed value for the Condo Hotel Units for the 2007/2008 tax year of approximately $23,227,966 which is based upon assumed full assessment following substantial completion of renovation of the Condo Hotel Units; and

(b) an assumed tax rate of $11.533 per $100 of assessed valuation for the Condo Hotel Units for the 2007/2008 tax year.

After the City of New York assesses each Condo Hotel Unit as a separate tax lot and bills each Condo Hotel Unit Owner, the Condo Hotel Unit Owner will be responsible for paying the real estate taxes and assessments imposed against his or her Condo Hotel Unit, and no Condo Hotel Unit Owner will be responsible for the payment of, nor will his or her Condo Hotel Unit be subjected to any lien arising from the non-payment of, taxes and assessments imposed on other Units.

No warranty, guaranty or assurance is given that:

(i) any projected or estimated amount set forth above (including, without limitation, the estimates of the assessed valuations of the Property (or any portion thereof) during the First Year of Hotel Section Operation, the estimates of the portions of such assessed valuations that will be allocable to the Units, or classes of Units, and the projection of the average real estate tax rates that will be in effect during such First Year of Hotel Section Operation;

(ii) the New York City Real Estate Tax Assessment Bureau will allocate the Property's aggregate assessed valuation between the Condo Hotel Units and the other Units in accordance with the values and method used by The Leitner Group, Inc. for such purpose, or that such bureau will allocate the aggregate assessed valuation attributable to the Condo Hotel Units among the different Condo Hotel Units as described above; or

(iii) any of the projections or estimates made above and in Schedule A are accurate.

Until the Condo Hotel Units are separately assessed, the Condominium Board will pay all real estate taxes with respect to the Property to the Department of Finance of the City of New York (or directly to Sponsor if and to the extent Sponsor has paid such taxes), and each Condo Hotel Unit Owner will pay to the Hotel Board a share of the Property's real estate taxes for the period in question calculated as follows: (i) the real estate taxes for the entire Property will be allocated by the Condominium Board to the Hotel Section in proportion to its aggregate Common Interest as described in the Condominium By-Laws; (ii) the total real estate taxes allocated for the Hotel Section will then be allocated among the Condo Hotel Units and the Transient Hotel Unit on the basis of approximately 61% of such taxes to the Condo Hotel Units and 39% of such taxes to the Transient Hotel Unit. These allocation percentages reflect the relative approximate Common Interest of each of these Units or classes of Units. (iii) The share so allocated to the Condo Hotel Units in the aggregate will then be pro-rated to each individual Condo Hotel Unit on the basis of the ratio that the initial offering price for each such Unit set forth in Schedule A above bears to the total initial offering prices of all Condo Hotel Units set forth in Schedule A. The Hotel Board will pay (or cause to be paid) such real estate taxes timely to the Department of Finance of The City of New York, or directly to Sponsor if such party has paid such taxes, so that no lien will be placed on any portion of the Hotel Section or on any Condo Hotel Unit. If Sponsor fails to pay real estate taxes attributable to any Unsold Condo Hotel Unit in a timely manner and as a result of such failure a lien is placed on the Hotel Section and/or any other Unit, Sponsor will immediately cause such lien to be removed at its sole cost and expense. If any Hotel Unit Owner fail to pay its pro rata share of real estate taxes as set forth above, the Hotel Board will be entitled to assess late charges and/or place a lien on such Unit Owner's Unit as if such unpaid share were Hotel Common Charges. (See "Collection and Lien for Non-Payment of Hotel Common Charges" in the Section of Part I entitled "Rights and Obligations of the Unit Owners and the Boards" for further discussion.) A Unit Owner will not be responsible for the payment of, and will not be subject to any lien arising from the non-payment of, real estate taxes assessed against any other Units. At such time as a Unit is separately assessed and separate tax bills are issued, the Unit Owner will pay such taxes directly to the taxing authority.

There is no assurance that the proration of taxes described in the paragraph above will equal the actual amount of real estate taxes which will be assessed against the Condo Hotel Units, and the actual amounts may vary considerably from the method set forth above. Sponsor will amend the Plan to disclose the actual amount of real estate taxes assessed against the Units promptly after the same are assessed.

In the opinion of Sponsor's Counsel, the tax laws existing on the date of this Plan in general permit, subject to certain limitations, a Condo Hotel Unit Owner who itemizes his or her deductions to deduct from income for the purposes of Federal, New York State and New York City income taxes, any real estate taxes actually paid by such Condo Hotel Unit Owner with respect to his or her Condo Hotel Unit. To the extent that a Condo Hotel Unit Owner rents his or her Unit, the annual real estate tax deduction otherwise allowable could be limited. However, the amount of such deductions may vary from year to year due to changes in the amount of the real estate taxes payable by the Condo Hotel Unit Owner (which might result from changes in the assessed valuation of the Condo Hotel Unit, in the tax rate and/or in the manner of assessing

real property). Prospective Purchasers should refer to the Sections of Part I of the Plan entitled "Income Tax Deductions to Condo Hotel Unit Owners and Tax Status of Condominium" and "Opinions of Counsel" below for further discussion.

Although the projected First Year of Hotel Section Operation is anticipated to include six months (i.e., January 2007 through June 2007) of the 2006/2007 tax year and six months (i.e., July 2007 through December 2007) of the 2007/2008 tax year, since the real estate taxes for the 2006/2007 tax year are anticipated to be assessed on a partially reduced basis due to the partially renovated status of the Building as of January 2006, the estimated taxes during the full 2007/2008 tax year (i.e., July 1, 2007 through June 30, 2008), which are anticipated to reflect a full assessment of the Building, have been used for purposes of presenting the estimated real estate taxes during the First Year of Hotel Section Operation. On that basis, the projection of the real estate taxes that will be payable during the First Year of Hotel Section Operation in respect of the Condo Hotel Units, in the aggregate is therefore approximately $2,678,939.

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# E. SCHEDULES B-1 AND B-2

## SCHEDULE B-1

### THE PLAZA HOTEL
PROJECTED BUDGET FOR FIRST YEAR OF HOTEL SECTION OPERATION
January 1, 2007 to December 2007 (Note 1)
HOTEL COMMON BUDGET

| | BUDGET TOTAL | ALLOCATION PROCEDURE | TRANSIENT HOTEL UNIT | CONDOMINIUM HOTEL UNIT |
|---|---|---|---|---|
| ESTIMATED INCOME | | | | |
| Hotel Common Charges - Transient Hotel Unit | $ 8,815,604 | | | |
| Hotel Common Charges - Hotel Condo Units | $ 9,206,656 | | | |
| TOTAL ESTIMATED INCOME (Note 2) | $ 18,022,260 | | | |
| OPERATING COMMON CHARGES | | | | |
| Payroll and Related Wages | | | | |
| Administration and General (Note3) | $ 3,068,737 | Available Rooms | $ 1,308,069 | $ 1,760,667 |
| Property Operation and Maintenance (Note4) | $ 1,063,706 | Occupied Rooms | $ 571,733 | $ 491,973 |
| TOTAL COMMON PAYROLL | $ 4,132,442 | [redacted] | $ 1,879,802 | $ 2,252,640 |
| Utilities | | | | |
| Electricity (Note 5) | $ 558,446 | Common Interest | $ 219,153 | $ 339,293 |
| Steam (Note 6) | $ 508,398 | Common Interest | $ 199,513 | $ 308,885 |
| Water Charges and Sewer Rent (Note 7) | $ 172,954 | Common Interest | $ 67,873 | $ 105,081 |
| Gas | $ 47,060 | Common Interest | $ 18,468 | $ 28,592 |
| TOTAL UTILITIES | $ 1,286,858 | [redacted] | $ 505,007 | $ 781,851 |
| Building Maintenance | | | | |
| Repairs Supplies and Maintenance (Note 8) | $ 770,430 | Available Rooms | $ 355,163 | $ 415,267 |
| TOTAL BUILDING MAINTENANCE | $ 770,430 | [redacted] | $ 355,163 | $ 415,267 |
| Administrative Costs | | | | |
| Insurance (Note 9) | $ 522,449 | Common Interest | $ 205,027 | $ 317,422 |
| Legal and Audit (Note 10) | $ 151,140 | Available Rooms | $ 69,674 | $ 81,466 |
| Operating and Misc. Administrative (Note 11) | $ 418,652 | Available Rooms | $ 192,996 | $ 225,656 |
| General Common Charges (Note 12) | $ 793,470 | Common Interest | $ 311,384 | $ 482,086 |
| TOTAL ADMINISTRATIVE | $ 1,885,711 | [redacted] | $ 779,081 | $ 1,106,630 |
| TOTAL OPERATING COMMON CHARGES | $ 8,075,442 | [redacted] | $ 3,519,053 | $ 4,556,389 |
| OVERHEAD COMMON CHARGES (Note 13) | | | | |
| Payroll and Related Expenses (Note 14) | $ 7,161,371 | Occupied Rooms | $ 3,849,176 | $ 3,312,195 |
| Administration and General Operating (Note 15) | $ 235,356 | Various Factors | $ 114,752 | $ 120,604 |
| Operating Rooms Expenses (Note 16) | $ 732,800 | Various Factors | $ 494,865 | $ 237,935 |
| Operating Sales Expenses (Note 17) | $ 1,817,291 | Available Rooms | $ 837,758 | $ 979,533 |
| TOTAL OVERHEAD COMMON CHARGES | $ 9,946,818 | [redacted] | $ 5,296,551 | $ 4,650,267 |
| TOTAL COMMON CHARGES (Notes 18 and 19) | $ 18,022,260 | [redacted] | $ 8,815,604 | $ 9,206,656 |

## NOTES TO SCHEDULE B-1

Projected Budget For
First Year Of Hotel Section Operation
The Plaza Hotel – Condominiums

1. Amounts are projected on the assumption that the First Year of Hotel Section Operation will be the year from January 1, 2007 to December 31, 2007. The actual First Year of Hotel Section Operation may be earlier or later than such year. In the event the actual or anticipated commencement date of the First Year of Hotel Section Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised budget with current projections. If the amended budget exceeds this projected budget by 25% or more, Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period, if the Plan has been declared effective) the right to rescind their Purchase Agreements within not less than fifteen days after the presentation date of the amendment containing such revised budget, and any Purchasers electing rescission pursuant to such offer will have their Deposits, together with interest earned, returned.

   The Hotel Common Charge budget does not include "per use" charges which are directly attributable to and incurred based on nightly use. Such charges include nightly housekeeping, turn down service, nightly cleaning and amenity replenishment. The details of these charges may be found in Note 18 below. Such charges together with applicable occupancy and/or sales taxes are directly deducted and collected from of the gross nightly rental charges or, in the case of an owner occupant, are carried on the monthly expense report as an additional expense.

2. These amounts represent the total Hotel Common Charges to be levied against the Units in the Hotel Section and collected from the Hotel Unit Owners during the projected First Year of Hotel Section Condominium Operation. The Hotel Common Charges will be utilized by the Hotel Board to defray the operational expenses of the Hotel Section. The method of allocation of the various expenses set forth in Schedule B-1 are more particularly described in Notes 3 through 19 below.

   After operation of the Hotel Section has commenced, it is anticipated that the methods of allocation of the expenses may be periodically adjusted as provided in Section 6.1.2 of the By-Laws, but not more frequently than once each year, to reflect the differing proportions fairly attributable to the then amount of usage of the services and the Hotel Limited Common Elements in question. If any category of Hotel Unit Owners contends that any method of allocation determined by the Hotel Board is inequitable, the dispute may be submitted to arbitration as provided in, and subject to the terms and conditions of, the Hotel By-Laws.

3. Administration and General $3,068,737

   This estimate assumes that Hotel Manager will provide certain services on behalf of the Hotel Section using employees of the Transient Hotel Unit Owner or its manager and

includes the wages, workers compensation, disability insurance, welfare and pension costs, payroll taxes and the cost of sick days, personal days, holidays and vacation pay and other fringe benefits costs for such employees. For all payroll categories in the Hotel, salaries have been evaluated based on the Hotel Motel Trades Council Agreement or, if the position is management and not covered by the agreement, by competitive rates for similar positions in the New York City hospitality industry.

Due to the much higher level of service and the complexity of operating a hotel, staffing levels are considerably higher than for a customary residential condominium building. The costs listed here are not anticipated to vary considerably due to changes from time to time in the levels of hotel occupancy as these costs are considered to be the core management and service staff necessary to operate a quality hotel of the size of The Plaza.

These wages have been allocated as between the Condo Hotel Units, as a group, and the Transient Hotel Unit based on the number of guest rooms ("keys") in each category ("Available Rooms"). (Based on 130 guest rooms in the Transient Hotel Unit and 152 guests rooms in the Condo Hotel this allocation results in a ratio of 46.1% and 53.9% allocable to such categories respectively.) However, the wages for the Hotel Section's Condominium Accountant, Assistant Condominium Accountant and Condominium Clerk, which total $231,232.63 inclusive of benefits, have been allocated fully to the Condominium Hotel Units.

The details of the Administration and General payroll budget are detailed as follows:

## Total Hotel Administration and General Payroll Budget

| Job Category | Number of Positions | Total Depart. Category |
|---|---|---|
| General Manager | 1.00 | |
| Administrative Assistant | 1.00 | |
| Total Executive Office | | $ 283,449 |
| Comptroller | 1.00 | |
| Assistant Comptroller | 1.00 | |
| Credit Manager | 1.00 | |
| Payroll Manager | 1.00 | |
| AR Clerk | 1.00 | |
| Income Auditor | 1.00 | |
| Payroll Clerk/Genl Cashier | 1.00 | |
| AP Manager | 1.00 | |
| Condo Accountant | 1.00 | |
| Assistant Condo Accountant | 1.00 | |
| Condo Clerk | 1.00 | |
| Total Accounting/Wages/Condo Clerk | | $ 710,937 |
| HR Director | 1.00 | |
| Assistant Director | 1.00 | |
| HR Clerk | 2.00 | |
| Total Human Resources | | $ 324,454 |
| Manager IT | 1.00 | |
| Total IT | | $ 72,312 |
| Director Security | 1.00 | |
| Assistant Director | 1.00 | |
| Security Officer | 6.00 | |
| Security Supervisor | 4.00 | |
| Total Security | | $ 616,537 |
| Purchasing Manager | 1.00 | |
| Receiver | 1.00 | |
| Storeroom Clerk | 2.00 | |
| Total Purchasing | | $ 179,580 |
| **Benefits** | | **$ 881,469** |
| **Total** | | **$ 3,068,737** |

4. Property Operation and Maintenance Wages $1,063,706

This category includes engineering and maintenance services for the Hotel Section. Property Operation and Maintenance ("POMEC") wages have been allocated between the Condo Hotel Units and the Transient Hotel Unit based on the estimated number of annual

occupied rooms in each category. It has been estimated that the Condo Hotel Units will operate at a 68% occupancy rate while the Transient Hotel Unit will operate at a 79% occupancy rate. This estimate of occupancy rates is made for budgeting purposes only and does not constitute a projection or prediction of actual events or a representation of any kind.

The details of the POMEC payroll budget are as follows:

**Total Hotel Property Operation and Maintenance Wages**

| | Number of Positions | Total Depart. Category |
|---|---|---|
| Director of Pomec | 1.00 | |
| Assistant Director | 1.00 | |
| Engineer | 10.90 | |
| Subtotal | [redacted] | $ 760,116 |
| Benefits | | $ 303,590 |
| **Total POMEC Wages** | | **$ 1,063,706** |

5. Electricity $558,446

Electricity is provided by Consolidated Edison. The amount of electricity to be consumed within the Hotel Section as a whole has been estimated by the engineering firm of Flack and Kurtz in a letter, dated January 11, 2006. There are no separate meters or submeters for the individual Hotel Units or the Hotel Limited Common Elements. Electricity costs attributable to the Hotel Section (*i.e.,* the Hotel Units and the Hotel Limited Common Elements) are allocated among the Hotel Units on the basis of each Hotel Unit's proportionate Common Interest.

6. Steam $508,398

Steam is provided by Consolidated Edison and is used for heating and air conditioning. The amount of steam to be consumed within the Hotel Section as a whole has been estimated by the engineering firm of Flack and Kurtz in a letter, dated January 11, 2006 at a rate of $34.11 per thousand pounds of steam as more particularly set forth in such letter. There are no separate meters or submeters for the individual Hotel Units or the Hotel Limited Common Elements. Steam costs attributable to the Hotel Section are allocated among the Hotel Units on the basis of each Hotel Unit's proportionate Common Interest.

7. Water and Sewer Charges and Gas $220,014

Water charges and sewer services are provided by the City of New York. Gas is provided by Consolidated Edison. The estimated consumption and cost of these services are based on the analysis provided the by the engineering firm of Flack and Kurtz in a letter, dated January 11, 2006 at a rate of $1.75 per 100 cubic feet for water and at a rate of $2.78 per 100 cubic feet for sewer as more particularly set forth in such letter. There are no separate meters or submeters for the individual Hotel Units or the Hotel Limited Common Elements. Both water and sewer costs, and gas costs attributable to the Hotel Section are allocated among the Hotel Units on the basis of each Hotel Unit's proportionate Common Interest.

8. Repairs, Supplies and Maintenance $770,430

This estimate includes painting, maintenance and repair costs of the Hotel Limited Common Elements. Hotel Unit Owners are directly responsible for the cost of the repairs, supplies and maintenance in the interior of their Units. With respect to the Condo Hotel Units, certain of such services are anticipated to be provided by Hotel Manager pursuant to the terms of the applicable Unit Management and Operation Agreement. The cost of repairs, supplies and maintenance covered by this budget category are allocated between the Transient Hotel Unit and the Condo Hotel Units (as a group) on the basis of Available Rooms ("keys").

The detailed budget for Repairs, Supplies and Maintenance is as follows:

## Repairs, Supplies and Maintenance Budget

| Category | Total | Allocation Procedure | Transient Hotel Unit | Condo Hotel Units |
|---|---|---|---|---|
| Uniform Purchases | $ 20,741 | Available Rooms | $ 9,561 | $ 11,179 |
| Uniform Cleaning | $ 42,172 | Available Rooms | $ 19,441 | $ 22,731 |
| Building | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Contract Services | $ 116,400 | Available Rooms | $ 53,660 | $ 62,740 |
| Curtains | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Electrical | $ 23,280 | Available Rooms | $ 10,732 | $ 12,548 |
| Elevators | $ 194,000 | Available Rooms | $ 89,433 | $ 104,567 |
| Engineering Supplies | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Flooring Coverings | $ 5,820 | Available Rooms | $ 2,683 | $ 3,137 |
| Furniture | $ 5,820 | Available Rooms | $ 2,683 | $ 3,137 |
| Grounds | $ 58,200 | Available Rooms | $ 26,830 | $ 31,370 |
| HVAC | $ 32,010 | Available Rooms | $ 14,756 | $ 17,254 |
| Kitchen Equipments | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Life Safety | $ 29,100 | Available Rooms | $ 13,415 | $ 15,685 |
| Light Bulbs | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Keys and Locks | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Painting | $ 23,280 | Available Rooms | $ 10,732 | $ 12,548 |
| Waste Removal | $ 118,340 | Available Rooms | $ 54,554 | $ 63,786 |
| Telecom | $ 5,820 | Available Rooms | $ 2,683 | $ 3,137 |
| Plumbing | $ 23,280 | Available Rooms | $ 10,732 | $ 12,548 |
| Laundry and Dry Cleaning | $ 2,328 | Available Rooms | $ 1,073 | $ 1,255 |
| **TOTAL OPERATING EXPENSES** | **$ 770,430** | [redacted] | **$ 355,163** | **$ 415,267** |

9. Insurance $522,449

The quoted insurance premium for the Hotel Section is based on a letter, dated January 24, 2006, from Tanenbaum-Harber Co., Inc. setting forth the proposed coverages.

| Coverage | Limits Provided |
|---|---|
| **Property** | |
| Business Personal Property "All Risk," maximum 80% coinsurance – Cost Deductible - $5,000 | $3,900,000 |
| All Risk Business Income/Rents and additional expenses/Actual loss sustained/72 Hours for Business Interruption | $33,191,000 |
| Demolition/Increased Cost of Construction | n/a |

| Coverage | Limits Provided |
|---|---|
| Earthquake & Flood | $5,000,000 |
| Deductible – TBD | $25,000,000 Flood and Quake |
| **Commercial General Liability** | |
| General Aggregate - Per Location | $2,000,000 |
| Each Occurrence | $1,000,000 |
| Personal & Advertising Injury | $1,000,000 |
| Products/Completed Operations Aggregate | $ Included |
| Fire Damage Legal Liability | $50,000 |
| Medical Payments - each person | $5,000 |
| Hired Car/Non-Owned Automobiles | $1,000,000 |
| Water Damage Legal Liability | Included, $3,000 deductible per occurrence |
| Notice and Knowledge of Occurrence | Included |
| Unintentional Errors & Omissions | Included |
| Self Insured Retention | $10,000 per occurrence |
| **Workers Compensation** | Statutory Limits |
| **Boiler & Machinery** | |
| Comprehensive Form | |
| Blanket Combined Limit - Property Damage/Business Income including Rental Value | $TBA |
| Repair and Replacement, Service Interruption | |
| Deductible - $2,500 Property Damage | |
| **Directors & Officers Liability** | |
| Wrongful Act/Aggregate | $1,000,000 |
| Retention - $1,000 | |
| **Commercial Crime** | |
| Employee Dishonesty | $1,000,000 |
| Deductible - $50,000 | |

| Coverage | Limits Provided |
|---|---|
| **Commercial Umbrella**<br>Occurrence/Aggregate<br>(Includes excess Directors & Officers Liability for Condominiums and Cooperatives) | $100,000,000 |
| Total Annual Premium: | **$522,449** |

As described in the Plan, the Condominium By-Laws and the Hotel By-Laws, property insurance with respect to the overall Building will be obtained and maintained by the Condominium Board; and the Hotel Section shall pay to the Condominium Board an allocated portion of the premium as part of its share of General Common Charges. The Hotel Board shall obtain and maintain, or cause the Condominium Board on its behalf to obtain and maintain, property insurance policy/ies with respect to the Hotel Limited Common Elements. While a policy of public liability insurance will be obtained by or on behalf of the Hotel Board on or before the First Condo Hotel Closing, this and the other coverages herein described do not include coverage for claims for personal injury or property damage resulting from occurrences in individual Hotel Units, nor do they include coverage of the betterments, improvements, furniture, fixtures and equipment within the Condo Hotel Units or any other personal property of any Unit Owners.

This quotation (including limits, deductibles and premiums) is based on coverage at current rates and availability; and is also based on the extension of the Terrorism Risk Insurance Act (TRIA) which is due to expire on December 31, 2007. In the event that TRIA is not extended, the Hotel Board (and the Condominium Board) may or may not elect, in its sole and absolute discretion, to purchase additional terrorism insurance and it should be noted that the expiration of TRIA may adversely affect the pricing of certain insurance premiums. Because conditions in the insurance marketplace are volatile, it is not possible to predict what the actual premiums will be for the First Year of Hotel Section Operation. Purchasers should be aware of the possibility of rate increases and/or changes in limits, deductibles and availability of certain coverages. It is anticipated that mold coverage will not be included. The cost of the foregoing insurance is allocated among the Hotel Units on the basis of proportionate Common Interests.

The property liability insurance provides that each Unit Owner is an additional insured party. The insurance carrier will not cancel its insurance coverage without giving the Boards notice of cancellation. The insurance coverage for the Building shall include a waiver of subrogation, a waiver of invalidity because of the acts of the insured and Unit Owners and a waiver of pro-rata reduction if Unit Owners obtain additional coverage.

See "Insurance" in Section S in Part I of the Plan regarding the requirement that each Unit Owner is to maintain its own casualty and liability insurance policies.

10. Legal and Audit $151,140

These expenses provide auditing and accounting fees in connection with the preparation of the audited financial statements for the Hotel Section's first year of operation. This cost is based upon the estimate of Paritz & Company, as set forth in a letter, dated January 16, 2006 and its federal, state and city income tax returns. The balance of the budgeted amount has been estimated to provide for minor legal services to be rendered in connection with the operation of the Hotel Section. Costs for estimated legal and audit services are to be allocated among the Hotel Units on the basis of key count.

11. Operating and Miscellaneous Administrative Expenses $418,652

These expenses concern miscellaneous administrative expenses, including, without limitation, dues and subscriptions, administrative supplies, phone service charges, printing, postage, stationary. All costs for operating and miscellaneous administrative services are to be allocated among the Hotel Units on the basis of Available Rooms ("keys").

Details of this category are as follows:

**Operating And Miscellaneous Administrative Expenses**

| Category | Total | Allocation Procedure | Transient Hotel Units | Condo Hotel Units |
|---|---|---|---|---|
| Music, Entertainment, Flowers | $ 194,000 | Available Rooms | $ 89,433 | $ 104,567 |
| Dues | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Info Systems | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| Telecom | $ 13,968 | Available Rooms | $ 6,439 | $ 7,529 |
| Conferences | $ 4,365 | Available Rooms | $ 2,012 | $ 2,353 |
| Travel | $ 29,100 | Available Rooms | $ 13,415 | $ 15,685 |
| Postage | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| P and S | $ 11,640 | Available Rooms | $ 5,366 | $ 6,274 |
| HR Expenses | $ 72,459 | Available Rooms | $ 33,403 | $ 39,056 |
| All Other Operating | $ 58,200 | Available Rooms | $ 26,830 | $ 31,370 |
| | | | $ - | |
| **Total** | **$ 418,652** | [redacted] | **$ 192,996** | **$ 225,656** |

12. General Common Charges $793,470

A portion of the Hotel Common Charges payable by the Hotel Unit Owners represents the Hotel Section's allocated portion of General Common Charges assessed by the Condominium Board against the Hotel Section in accordance with the Condominium By-Laws. The expenses for the Hotel Condominium also include a management fee of $75,000 for services provided to the Hotel Board. This category of budget expense is allocated among the Hotel Units on the basis of proportionate Common Interest. Please refer to Schedule B-2 and the Notes thereto for further details.

13. Overhead Common Charges

These charges are distinguished from Operating Common Charges (as described in Notes 3 through 11 above) in that they relate solely to the operating of the business of the Hotel (which includes, and therefore serves and benefits, the Hotel Units) and not to the maintenance of the Building or the Hotel Section. In general, these charges tend to vary somewhat more than the Operating Common Charges as they are relatively more reflective of and dependent upon variations in hotel occupancy due to factors such as seasonal variation, business cycles and competitive cycles.

All Hotel Unit Owners (the Transient Hotel Unit Owner and all Condo Hotel Owners) are required to pay the overhead charges, even when a Hotel Unit Owner chooses to not use the Hotel Operator as an agent to rent out a Unit. The items covered in the overhead charge categories of this budget relate to services that all transient guests and owners in occupancy receive the benefit of, such as telecommunications, guest relocation, security, debt collection, sales, promotion and marketing.

Allocations between the Transient Hotel Unit and the Condo Hotel Units (as a group) are based on a variety of factors depending on the category of expense. These factors are detailed below within the description of each applicable expense category.

14. Payroll and Related Expenses $7,161,371

This budget item includes salaries for employees who service transient guests and employees who market the Hotel. As such, the entire executive portion of the Rooms Department is included in this budget, as well as all positions allocated to the Sales Department. This expense item has been allocated as between the Condo Hotel Units, as a group, and the Transient Hotel Unit based an estimate of occupied rooms in each category. For estimating purposes, an occupancy rate of 68% has been used for the Condominium Hotel Units while an occupancy rate of 79% has been used for the guest rooms within the Transient Hotel Unit. While these rates are for budgeting purposes only and do not reflect any projection or guarantee of, or representation of any kind with respect to actual revenue or occupancy, their difference is based on the larger units which constitute the Condo Hotel section.

The details of this budget are as follows:

# Total Hotel Overhead Payroll

| Category | Number | | |
|---|---|---|---|
| Rooms Payroll | | | |
| Director of Rooms | 1.00 | | |
| Front Office Manager | 1.00 | | |
| Assistant Front Office Manager | 6.00 | | |
| Night Manager | 1.00 | | |
| Guest Relations/FRC Manager | 2.00 | | |
| Exec. Housekeeper | 1.00 | | |
| Assistant Executive Housekeeper | 3.00 | | |
| Housekeeping Coordinator | 1.00 | | |
| Chief Concierge | 1.00 | | |
| Front Office Agent | 7.00 | | |
| Administrative Assistant | 0.00 | | |
| Front Office Supervisor | 1.00 | | |
| Butlers | 11.00 | | |
| Housemen | 5.00 | | |
| Housemen Public Areas | 2.00 | | |
| Housekeeping Supervisor | 5.00 | | |
| Linen/Uniform Supervisor | 1.00 | | |
| Valet Pressing Seamstress | 1.00 | | |
| Public Area Attendants | 5.00 | | |
| Linen Sorter | 1.00 | | |
| Head Butler | 1.00 | | |
| AM PM Attendants | 5.00 | | |
| Royal Service Supervisor | 3.00 | | |
| Royal Service Agent | 9.00 | | |
| Bell Captain | 3.00 | | |
| Doorman | 6.00 | | |
| Bellman | 4.00 | | |
| Concierge | 3.00 | | |
| Benefits | [redacted] | $ | 2,082,633.06 |
| Total | [redacted] | $ | 6,273,041.63 |
| Sales Payroll | | | |
| Director of Sales | 1.00 | | |
| Manager of Sales | 5.00 | | |
| Administrative Assistant | 1.00 | | |
| Benefits | [redacted] | $ | 294,923.07 |
| Total | [redacted] | $ | 888,329.64 |
| TOTAL OVERHEAD PAYROLL | | $ | 7,161,371.27 |

15. Administration and General Operating Expense $235,356

This budget covers costs attributable to non personal expenses for room operation. Loss and Damage, Credit Collection and Bad Debts have been allocated based on the percentage occupied rooms in the Transient and Condo Hotel sections of the hotel. This is because these costs occur only with occupancy. These percentages have been estimated at 68% for the Condo Hotel and 79% for the Transient Hotel. The different rates are attributable to the larger rooms in the Condominium section of the hotel (and the estimation that such rooms rent less frequently but at a higher rates.) This estimation has been made for budget purposes only and does not necessarily reflect what will actually occur. Costs attributable to Security operations have been allocated on the basis of Available Rooms as security costs are ongoing regardless of occupancy. Costs are allocated on the basis of key count. The allocation of Technical Services Recovery between the Condominium Hotel Units and the Transient Hotel Units has been made on the basis of estimated income. These estimated rates are for budgeting purposes only and do not reflect any projection or guarantee of, or representation of any kind with respect to actual revenue or frequency of occupancy.

The details of this budget are as follows:

## ADMINSTRATION AND GENERAL OPERATING EXPENSE

| Category | Total | Allocation Procedure | Transient Hotel Unit | Condo Hotel Unit |
|---|---|---|---|---|
| Security | $ 3,492 | Available Rooms | $ 1,610 | $ 1,882 |
| Loss and Damage | $ 23,280 | Occupied Rooms | $ 12,513 | $ 10,767 |
| Credit and Collection | $ 11,640 | Occupied Rooms | $ 6,256 | $ 5,384 |
| Bad Debts | $ 55,401 | Occupied Rooms | $ 29,777 | $ 25,623 |
| Tech Services Recovery | $ 141,543 | Estimated Revenue | $ 64,596 | $ 76,947 |
| TOTAL | $ 235,356 | [redacted] | $ 114,752 | $ 120,604 |

16. Operating Rooms Expenses $732,800

Charges for cable, contract services, telecom, printing and stationery, and other items have been allocated on the basis of available rooms. Charges for complimentary guest stays, guest transportation, guest relocation and decorations are allocated on the basis of occupied rooms. For estimating purposes, an occupancy rate of 68% has been used for the Condo Hotel Units while an occupancy rate of 79% has been used for the Transient Hotel Unit.

The details of the Operating Rooms Expense line item are as follows:

## OPERATING ROOMS EXPENSES

| Category | | Total | Allocation Procedure | | Transient Hotel Unit | | Condo Hotel Unit |
|---|---|---|---|---|---|---|---|
| Cable and AMX Maintenance | $ | 143,980 | Available Rooms | $ | 66,374 | $ | 77,606 |
| Group Commissions | $ | 121,470 | Estimated Revenu | $ | 121,470 | | |
| Contract Services | $ | 49,085 | Available Rooms | $ | 22,628 | $ | 26,457 |
| Complementary Guest Expenses | $ | 43,473 | Occupied Rooms | $ | 23,366 | $ | 20,107 |
| Guest Relocation | $ | 31,110 | Occupied Rooms | $ | 16,721 | $ | 14,389 |
| Guest Transportation | $ | 1,382 | Occupied Rooms | $ | 743 | $ | 639 |
| Central Reservations Recovery | $ | 147,342 | Estimated Revenu | $ | 147,342 | | |
| Telecom | $ | 51,850 | Available Rooms | $ | 23,902 | $ | 27,948 |
| Postage and Stationary | $ | 32,493 | Available Rooms | $ | 14,979 | $ | 17,514 |
| Decorations | $ | 82,961 | Occupied Rooms | $ | 44,591 | $ | 38,370 |
| Other Operating | $ | 27,654 | Available Rooms | $ | 12,748 | $ | 14,906 |
| TOTAL | $ | 732,800 | [redacted] | $ | 494,865 | $ | 237,935 |

17. Operating Sales Expenses $1,817,291

This expense item has been allocated among the Hotel Units on the basis available rooms. The funds allocated for Sales Expenses are directed toward promotion of the hotel and achieving both high occupancy and rate, regardless of the source of the transient guest.

18. Per Use Expenses $6,017,134

Hotel Common Charges do not include "per use" expenses. Per Use expenses will be paid by the Condo Hotel Unit Owners on the basis of actual occupancy of their Units. These expenses are for guest services which occur only when a guest room is occupied (including, for these purposes, owner occupancy), and accordingly these expenses vary directly with the actual nightly occupancy of the hotel. An estimate of annual per use costs has been presented based on estimated occupancies of 68% in the Condo Hotel Units and 79% in the Transient Unit Hotel. These occupancy estimates are for budgeting purposes only and do not necessarily reflect what the actual total and relative occupancies may be. Lower assumed occupancies in the Condo Hotel Units are attributable to the larger room sizes of those Units.

Actual charges will be made for each night a room is occupied. The budget shown herein reflects the total amount costs for these services based on the estimated occupancy rates for both the Hotel Condominium and the Transient Hotel. The estimated nightly average costs for the average Condominium Hotel room will be $86.50. This cost may vary from time to time based on the demand for services from hotel guests and Hotel Manager's desire to achieve the highest possible rate. However, each room will vary

slightly based on factors to such as maid service credits, as established by the Hotel Motel Trades Service Agreement and other factors, such as the number of windows, the size of the unit, the number of bathrooms and powder rooms and other unique factors.

The details are of the nightly budget are as follows:

## "PER USE" NIGHTLY BUDGET (18)

PAYROLL

| Position | Positions | | |
|---|---|---|---|
| Butlers | 15 | | |
| Housemen | 3 | | |
| Housekeeping Supervisor | 3 | | |
| Public Area Attendants | 3 | | |
| AM and PM Attendants | 33 | | |
| Bell Captain. | 1 | | |
| Bellman | 3 | | |
| Concierge | 3 | | |
| Benefits | | $ | 1,405,557 |
| Total Per Use Payroll | | $ | 4,233,640 |

OPERATING EXPENSES

| Category | Total | Transient Hotel Unit | Allocation Procedure | Hotel Condo Unit |
|---|---|---|---|---|
| Laundry | $ 546,849 | $ 293,927 | Occupied Rooms | $ 252,922 |
| Linen | $ 137,576 | $ 73,946 | Occupied Rooms | $ 63,630 |
| Guest Supplies | $ 827,533 | $ 444,792 | Occupied Rooms | $ 382,741 |
| Cleaning Supplies | $ 29,036 | $ 13,385 | Available Rooms | $ 15,651 |
| Complementary Guest | $ 242,500 | $ 130,342 | Occupied Rooms | $ 112,158 |
| Total Operating Expenses | $ 1,783,494 | $ 956,392 | | $ 827,103 |
| Total Payroll Expenses | $ 4,233,640 | $ 1,814,966 | Occupied Sq. Ft. | $ 2,418,674 |
| TOTAL PER USE BUDGET (19) | $ 6,017,134 | $ 2,771,357 | | $ 3,245,777 |

19. Administrative Fee

An Administrative Fee of $25.00 will be charged to the Condo Hotel Unit Owner for each night a room is occupied by a guest who is not the owner or the owner's guest. The fee relates to the operation and management of the Hotel. Condo Hotel Unit Owners who choose to retain Hotel Manager as their rental agent by execution of a Rental Management Agreement will instead pay for these services separately. In addition, it is estimated that all hotel rooms (whether in the Transient Hotel Unit or a Condo Hotel

Unit) will require renovation as well as an update of furnishings at sometime in the future. To cover the anticipated expenses attributable to a future renovation, Hotel Manager will establish a reserve which will be collected during the years prior to the actual expense incurred. Details concerning this reserve are to be found in the Unit Management and Operation Agreement. (See Section B of Part I of the Plan and Article IV(5) of the Unit Management and Operation Agreement for further discussion).

## SCHEDULE B-2

**The Plaza Condominium**
**Projected Budget for First Year of Condominium Operation**
**January 1, 2007 to December 31, 2007 (See Note 1)**

**ESTIMATED INCOME (Note 2)**
**See also "Allocation of Estimated General Common Expenses below"**

| | |
|---|---|
| General Common Charges – Residential and Storage | $1,114,344 |
| General Common Charges – Hotel Section | $ 718,470 |
| General Common Charges – Accessory | $ 414,298 |
| General Common Charges – Club | $ 32,887 |
| **Total Estimated General Common Charges** | **$2,280,000** |

**ESTIMATED EXPENSES** (Note 3)

| | |
|---|---|
| Insurance (Note 4) | $1,680,000 |
| Management Fee (Note 5) | $100,000 |
| Reserves for Repairs and Improvements (Note 6) | $500,000 |
| **Total Estimated Expenses** | **$2,280,000** |

**Allocation of Estimated General Common Expenses**

| | Method of Allocation | Residential | Hotel Section | Accessory | Club | Total |
|---|---|---|---|---|---|---|
| Insurance | % Interest | 821,096 | 529,399 | 305,272 | 24,233 | 1,680,000 |
| Management Fee | % Interest | 48,875 | 31,512 | 18,171 | 1,442 | 100,000 |
| Repairs and Improvements | % Interest | 244,374 | 157,559 | 90,855 | 7,212 | 500,000 |
| | | **1,114,344** | **718,470** | **414,298** | **32,887** | **2,280,000** |

The Notes to Schedule B-2 below are an integral part of this Schedule and should be read in conjunction herewith.

## NOTES TO SCHEDULE B-2

(1) Amounts are projected on the assumption that the First Year of Condominium Operation will be the year form January 1, 2007 to December 31, 2007. The actual First Year of Plaza Condominium Operation may be earlier or later than that year. In the event the actual or anticipated commencement date of the First Year of Condominium Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised budget with current projections. If the amended budget exceeds this projected budget by 25% or more, Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period, if the Plan has been declared effective) the right to rescind their Agreements within not less than 15 days after the presentation date of the amendment containing such revised budget, and any Purchasers electing rescission pursuant to such offer will have their Deposit and any interest accrued thereon returned.

(2) These amounts represent the total General Common Charges to be levied against and collected from the Residential Units, Condo Hotel Units, Transient Hotel Unit, Accessory Unit and Club Unit during the projected First Year of Condominium Operation. The General Common Charges will be utilized by the Condominium Board to defray the operational expenses of the Condominium. Generally, General Common Expenses have been allocated on the basis of proportionate Common Interest, for a total of 100%.

(3) General Common Expenses include the costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the General Common Elements and the provision of services to Unit Owners in general, such as: certain insurance coverages for the General Common Elements, the managing agent for the Condominium and repairs and replacements for the General Common Elements.

(4) **Insurance - $ 1,680,000**

The quoted insurance premium is based on a letter, dated May 24, 2005 from Tanenbaum – Harber Co., Inc. setting forth the proposed coverages. In the event that TRIA is not extended, the Condominium Board may or may not elect, in its sole and absolute discretion, to purchase additional terrorism insurance and it should be noted that the expiration of TRIA may adversely affect the pricing of certain insurance premiums. It is anticipated that mold coverage will not be included.

The property liability insurance provides that each Unit Owner is an additional insured party. The insurance carrier will not cancel its insurance coverage without giving the Board notice of cancellation. The insurance coverage for the Building shall include a waiver of subrogation, a waiver of invalidity because of the acts of the insured and Unit Owners, and a waiver of pro-rata reduction if Unit Owners obtain additional coverage.

| Coverage | Limits Provided |
|---|---|
| **Property** | |
| Blanket Real & Personal Property/Building Ordinance - | $337,500,000 |

| Coverage | Limits Provided |
|---|---|
| "All Risk", Agreed Amount Replacement Cost.<br>Deductible - $50,000 | |
| All Risk Business Income/Rents and additional expenses | Not included |
| Demolition/Increased Cost of Construction | $25,000,000 |
| Earthquake & Flood<br>Deductible – TBD | $Policy Deductible. |
| **Commercial General Liability** | |
| General Aggregate - Per Location | $2,000,000. |
| Each Occurrence | $1,000,000. |
| Personal & Advertising Injury | $1,000,000. |
| Products/Completed Operations Aggregate | $ Included. |
| Fire Damage Legal Liability | $ 100,000. |
| Medical Payments - each person | $1,000,000. |
| Hired Car/Non-Owned Automobiles | $1,000,000. |
| Water Damage Legal Liability | Included |
| Notice and Knowledge of Occurrence | Included |
| Unintentional Errors & Omissions | Included |
| **Workers Compensation** | Statutory Limits |
| **Boiler & Machinery**<br>Comprehensive Form<br>Blanket Combined Limit - Property Damage/Business<br><br>Income including Rental Value<br>Repair and Replacement, Service Interruption<br>Deductible - $2,500 Property Damage | $Included in Property. |
| **Directors & Officers Liability**<br>Wrongful Act/Aggregate<br>Retention - $1,000 | $5,000,000. |
| **Commercial Crime**<br>Employee Dishonesty<br>Deductible - $50,000. | $1,000,000 |
| Total Annual Premium: | **$1,680,000** |

| Coverage | Limits Provided |
|---|---|
| **Commercial Umbrella**<br>Occurrence/Aggregate<br>(Includes excess Directors & Officers Liability for Condominiums and Cooperatives) | $100,000,000. |

(5) **Condominium Management Fee - $ 100,000**

The duties to be performed by the Condominium Managing Agent include such duties as billing and collecting General Common Charges, maintaining General Common Elements, maintaining records for the Condominium Board, preparing and submitting annual operating budgets for the Condominium to the Condominium Board for its consideration and generally attending to the needs and comforts of all the Unit Owners, all as described more specifically in Part I, Section X. The management fee will be allocated among the Residential Units, Transient Hotel Unit and Condo Hotel Units, Accessory Unit and Club Unit in proportion to their respective Common Interests. The Condominium Managing Agent will be an affiliate of Sponsor (which may be, but need not be, El-Ad Properties NY LLC) and the cost of the above referenced services is substantially the same as the prevailing costs for similar services.

(6) **Reserves for Repairs and Improvements - $ 500,000**

Although the Building will be newly renovated, it will still require repairs, maintenance and capital improvements which may be rather expensive because of the Building's age and landmark status. A reserve for repairs and improvements will be set aside for this purpose.

In the opinion of Gumley Haft LLC, the projected income for the Condominium is sufficient to meet the estimated expenses for the First Year of Condominium Operation, assuming that such first year is the fiscal year commencing January 1, 2007. The budget, is not intended, and should not be taken, as a guarantee by anyone that the annual General Common Charges for the first or any subsequent year of operation of the Condominium will be as set forth in the budget. In fact, it is likely that the actual income and expenses for the Condominium will vary from the amounts shown in the budget.

## F. COMPLIANCE WITH REAL PROPERTY LAW SECTION 339(i)

GUMLEY-HAFT
REAL ESTATE

415 Madison Avenue New York, NY 10017 (212) 371-2525 FAX: (212) 371-2896

January 18, 2006

CPS 1 Realty LP
c/o El-Ad Properties NY LLC
575 Madison Avenue
New York, New York 10022

Re: The Plaza Hotel -- Condominiums
768 Fifth Avenue
New York, New York 10019

Gentlemen:

Gumley Haft Realty is a licensed real estate brokerage and management firm and has been engaged in the management and sales of over one hundred properties over the past fifteen years. The undersigned has no beneficial interest in Sponsor or the profitability of the subject project.

The undersigned has reviewed the allocation of common interests as shown on the Schedule A to be included in the Condominium described in the offering plan for the subject project.

The common interests amount the Units have been allocated to each based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Unit, in accordance with Section 339-i(1)(iv) of the New York State Real Property Law. This allocation utilizes measurements and calculations of net square footage made by Costas Kondylis & Partners LLP, Sponsor's Architect.

Very truly yours,

Gumley Haft Realty

By: _____
Name: Sanford Abelson
Title: Chief Executive Officer

Sworn to before me this
20th day of Jan, 2006

_____
Notary Public
JAMES STASIO
Notary Public State of New York
No. 24-4833663
Qualified in Kings County
Commission Expires Feb. 28, 2011

KLJ:249024.1

## G. NON-CONDO HOTEL UNITS

### 1. General

Each of the Non-Condo Hotel Unit Owners will be obligated to pay its share of the expenses that are incurred by the Condominium Board (or the Residential Board in the case of the Residential Section, or the Hotel Board in the case of the Transient Hotel Unit) in furnishing services, and operating, maintaining and repairing the applicable Common Elements, to the extent the same are utilized by or benefit such Non-Condo Hotel Unit Owner. As more fully set forth in the "Notes to Schedule B-1" and "Notes to Schedule B-2" above, each of the Non-Condo Hotel Unit Owners will therefore pay only allocated percentages of only certain expenses, which percentages may be less (or more) than in proportion to their Common Interest. The allocated percentages represent a projection of the proportionate usage of the services and facilities in question by each of the Non-Condo Hotel Unit Owners, as estimated by Gumley Haft Realty, an independent expert retained by Sponsor with respect to Schedule B-2 (as among the Residential Section, Hotel Section, Accessory Unit and Club Unit), or by Lodging Investment Advisors with respect to Schedule B-1 (as between the Transient Hotel Unit and the Condo Hotel Units). It is the opinion of these experts, as more fully set forth in the certifications appearing as part of Exhibit 11 in Part II, that the Common Charges payable by each of the Non-Condo Hotel Unit Owners are sufficient to cover the Common Expenses fairly attributable to such Unit Owner's Non-Condo Hotel Unit(s).

No unlawful use by any of the Non-Condo Hotel Unit Owners may be made of the Property or any portion thereof and all valid Laws relating to any portion of the Property shall be complied with at the sole cost and expense of the applicable Unit Owner or the applicable Board(s), whichever party has the obligation to maintain or repair such part of the Property, as set forth in the Declaration, the Condominium By-Laws, the Hotel By-Laws or the Residential By-Laws, as applicable.

### 2. Residential Units

There will be approximately 181 Residential Units, located on Floor 1 through Floor 21 of the Building, which, together with licenses to storage bins located in Lower Concourse C of the Residential Section, are being offered pursuant to the Residential Plan (and not hereunder), a copy of which Residential Plan is available at the Sales Office. Any revisions to the Residential Plan shall require an amendment to be filed with the Department of Law. Subject to certain restrictions set forth in the Declaration, Condominium By-Laws and the Residential By-Laws, a Residential Unit may generally be used only for residential purposes and for a lawful home occupation as defined in the Zoning Resolution.

The General Common Charges payable to the Condominium Board by the Residential Board on behalf of the Residential Unit Owners may be periodically adjusted, but not more frequently than once each year, to reflect the proportion properly attributable to the then amount of usage by the Residential Unit Owners. As set forth in more detail in the Condominium By-Laws and the Residential By-Laws, except with respect to the allocation of certain fixed costs, the Residential Board may seek to demonstrate that a change in usage or services provided warrant an adjustment to the relative assessments of General Common Charges. If the

Condominium Board and the Residential Board cannot agree on such adjustment, the dispute will be submitted to arbitration in accordance with Article 11 of the Condominium By-Laws.

No income derived from the use of any of the Residential Units will constitute income to any Board or any other Unit Owner (except as may be expressly provided in the Condominium By-Laws or Residential By-Laws to the contrary or pursuant to separate written agreement by or among the applicable parties).

**3. Transient Hotel Unit, Accessory Unit and Club Unit**

The Transient Hotel Unit, located on portions of Floor 2 and Floors 4 through 10 of the Building, will be integrated with the Condo Hotel Units together with entrances and lobbies on the First Floor at 58th Street and at Fifth Avenue and certain other Common Elements and be operated as a luxury hotel facility. The Accessory Unit, located principally on portions of the Lower Concourse C, Main Concourse A, and Floors 1 through 4 of the Building, and including the Building Façade, will initially contain hotel accessory space accessed via Central Park South, Fifth Avenue and 58th Street. The uses of the Accessory Unit may change upon the granting of certain zoning and other approvals which are, as of the date hereof, pending. See the more detailed discussion of such changed uses as described in the Sections entitled "Description of the Property and Improvements" and "Location and Area Information" above in Part I of the Plan. The Club Unit located on Floor 4 of the Building, accessed principally via common areas in the Building, will be used as a health club/fitness facility.

Subject to certain restrictions set forth in the Declaration, Condominium By-Laws and Hotel By-Laws, the Transient Hotel Unit, Accessory Unit and Club Unit may be used and operated for any legally permitted purpose (subject to compliance with all Laws, including, without limitation, the certificate of occupancy for such Unit and any applicable zoning regulations). No income derived from the use of any of the Commercial Units will constitute income to any of the Boards or any other Unit Owner (except as may be expressly provided in the Condominium By-Laws or Hotel By-Laws to the contrary or pursuant to separate written agreement by or among the applicable parties). The Unit Owner of a Commercial Unit may lease or license all or any portion of its Unit to one or more lessees (or may permit occupants or permittees to use all or any portion of its Unit) so long as the uses thereof are in conformance with all Laws, the Declaration, the Condominium By-Laws, and, with respect to the Transient Hotel Unit, the Hotel By-Laws.

The Transient Hotel Unit, together with the Condo Hotel Units will be used as a hotel (and ancillary uses), the Accessory Unit will initially be used for purposes accessory to the Hotel Section (and ancillary uses) and the Club Unit will initially be used as a health club/fitness facility and/or spa, although no representation or warranty is made with respect to such initial or any subsequent uses of such Units or with respect to who the owner or tenant(s) of such Units may be at any time.

The Transient Hotel Unit Owner has the right, among other things, to alter and subdivide its Unit into any number of newly created condominium Units and to offer all or any portion thereof as additional Condo Hotel Units or as fractional/timeshare interests. Sponsor will not offer any fractional/timeshare interests for sale without filing a separate offering plan with

respect thereto. To the best of Sponsor's knowledge, no subdivision of the Transient Hotel Unit into separate units for sale to the general public is currently contemplated by the Transient Hotel Unit Owner. Sponsor shall not offer additional Condo Hotel Units for sale without an amendment to the Plan.

After operation of the Condominium has commenced, it is anticipated that the General Common Charges payable by each of the Hotel Board, Residential Board, Accessory Unit Owner and Club Unit Owner may be periodically adjusted, but not more frequently than once each year, to reflect the proportion properly attributable to the then amount of usage by each of same. As set forth in more detail in the Condominium By-Laws, except with respect to the allocation of certain fixed costs, each such Board or Unit Owner, as the case may be, may seek to demonstrate that a change in usage or services provided warrant an adjustment to the relative assessments of General Common Charges. If the Condominium Board and such Board or Unit Owner, as applicable, cannot agree on such adjustment, the dispute will be submitted to arbitration in accordance with Article 11 of the Condominium By-Laws.

To the extent permitted by law, and subject to the Use Restrictions and certain other restrictions set forth in the Declaration and Condominium By-Laws (or the Hotel By-Laws in the case of the Hotel Section), each Commercial Unit Owner will each have the right with regard to its Unit, without the vote or consent of the Boards, Hotel Manager, other Unit Owners, or any other party, to mortgage or otherwise hypothecate its Unit, to decorate or make alterations, additions or improvements to its Unit (except that alterations, additions or improvements which would either in the course of performance or upon completion: (i) have a material adverse effect on the structural, mechanical, electrical or plumbing elements of the Building or would increase insurance premiums or maintenance costs for any other Unit or the Common Elements shall be subject to the approval, not to be unreasonably withheld, of the Condominium Board); or (ii) materially adversely affect any other Unit Owner's Unit, or the Residential Section, or the use thereof or access thereto, shall be subject to the approval of the affected Unit Owner, Residential Board or Hotel Board, as applicable), to change the size of its Unit by subdividing it into any desired number of condominium units (including, without limitation, subdividing the Transient Hotel Unit into individual hotel condominium units), or by combining any units resulting from such subdivision, and to reapportion among the newly created condominium units resulting from any subdivision (or combination) their appurtenant Common Interests, provided that any such changes are in compliance with Article 9-B, Section 339 of the New York Condominium Act. As more particularly provided in Article 10 of the Declaration, the Commercial Unit Owners will each have the right with regard to their respective Units to amend the Declaration in order to reflect such changes, or to cause the Condominium Board to do so. If any of the Commercial Units is subdivided or combined, the owner of each Unit resulting from a subdivision or combination will generally have all of the rights (without the consent of the Boards or other Unit Owners), set forth above in this paragraph and in the Declaration, described as pertaining to the Unit Owner of the original Unit or Units in question.

The Transient Hotel Unit Owner and/or its designee (and its respective successors and assigns) shall have an easement to erect, use, lease, license, maintain, repair, replace and operate a platform and other facilities for the purpose of erecting, using, leasing, licensing, maintaining, repairing, replacing and operating antennae, satellite dishes and other communications equipment on the roof of the Building (which is otherwise a Common Element). None of the

Condo Hotel Unit Owners, the Condominium Board, the Residential Board, the Hotel Board, or any other Non-Condo Hotel Unit Owner will have any interest in the rents, profits or revenues from the rental, use or sale of any such space pursuant to the aforementioned easements and rights. The Transient Hotel Unit Owner (and/or such designee) shall have the right to create additional units consisting of portions of its Unit, each of which shall have as an appurtenant easement to use a portion of its Unit platform and other facilities on the roof of the Building, upon which such additional unit owners (or its tenant or licensee) may erect, use, lease, license, maintain, repair, replace and operate antennae, satellite dishes and other telecommunications equipment. If such additional Units are created, the percentage interest in the Common Elements allocated to such units and the percentage interests of all other Units will remain unchanged.

All normal maintenance and repairs of the roof of the Building will be made by the Condominium Board and chargeable to all Unit Owners as a General Common Expense; except that if the holder(s) of the aforementioned easement utilizes the roof of the Building pursuant to such easement, then such party/ies will be responsible for the normal maintenance and repair of the portion of the roof(s) it utilizes. Capital repairs and replacements to such roofs, other than normal maintenance and repairs, will be charged to all Unit Owners as a General Common Expense except to the extent such costs are attributable to the use of areas utilized pursuant to the above-described easements or are necessitated by the exercise of such easements, in which case the holders of such easement shall be responsible for such costs.

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## H. CHANGES IN PRICES

The purchase prices set forth in Schedule A and other terms of payment (but not other terms of sale) with respect to a particular Condo Hotel Unit are negotiable and may be changed by Sponsor at any time and from time to time, both before and after the recording of the Declaration, without prior notice and without the consent of the Boards, any Unit Owner or mortgagee. However, no such change with respect to any Condo Hotel Unit for which an Agreement is then in effect may be made without the consent of the Purchaser thereunder, and no Agreement will be modified to waive any of the Purchaser's rights or abrogating any of Sponsor's obligations, under this Plan or Article 23-A of the New York General Business Law.

The Plan will be amended to disclose: (a) any increase (but not any decrease) in the purchase price of an offered Condo Hotel Unit; (b) any changes in either purchase prices (whether increases or decreases) or other financial terms of sale that are across-the-board changes affecting one or more lines or types of Condo Hotel Units; or (c) any changes in either purchase prices or other financial terms of sale that are to be advertised. Other than the changes described in (a) through (c) above, purchase prices and other terms of sale of one or more Condo Hotel Units which are not subject to executed Agreements may be changed without either notice or amendment of the Plan.

If Sponsor changes the purchase price of a Condo Hotel Unit, the Purchaser affected thereby may pay more or less than other Purchasers under the Plan for similar Units, but this will not affect any prior or subsequent sale of any other Condo Hotel Units, nor will the Common Interest of any Condo Hotel Unit be altered as a result of a price change for such Unit.

In order to meet the possible varying demand for the number and type of different units, or to meet particular requirements of prospective Purchasers, or for any other reason, Sponsor and its designees reserve the right (except to the extent prohibited by applicable law) at any time and from time to time, before and after the recording of the Declaration, without prior notice and without the consent of the Boards, any Unit Owner or mortgagee, to: (i) make alterations, additions or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon any Unsold Condo Hotel Unit; (ii) change the layout of, or number of rooms in, any Unsold Condo Hotel Unit; (iii) change the size and/or number of Unsold Condo Hotel Units by subdividing one or more such Units into two or more separate Units, combining separate Unsold Condo Hotel Units (including those resulting from a subdivision or combination or otherwise) into one or more Units, altering any boundary walls between any Unsold Condo Hotel Units, and/or incorporating within any Unsold Condo Hotel Unit the use of any portion of the Common Elements adjacent thereto (but only to the extent that such Common Elements are not required to be maintained as Common Elements based upon such alterations); (iv) if appropriate, reapportion among the Unsold Condo Hotel Units affected by such change, their Common Interests, provided, however, that after the recording of the Declaration, no change in any Unit's Common Interest will be made without obtaining the prior consent of all Condo Hotel Unit Owners affected by such change; and (v) change the permitted use of some or all of the Unsold Condo Hotel Units. Any such change described in subsections (ii) through (v) in the immediately preceding paragraph and additionally any material adverse change in the size or quality of any of the Hotel Limited Common Elements shall be disclosed by Sponsor in a duly filed amendment to the Plan and, when applicable, to the Declaration. In the event of any

such change after the Declaration is recorded, the Declaration and Floor Plans shall each be amended and such amendments duly recorded and disclosed in a duly filed amendment to the Plan. As more particularly provided in the Declaration, Sponsor or its designee will have the right to (or to cause the Condominium Board to) so amend the Declaration and Floor Plans, to the extent required, in order to reflect any such change affecting Unsold Condo Hotel Units. No such changes will be made if the same would materially adversely affect any Purchaser under an Agreement which has been countersigned by Sponsor and returned to the Purchaser unless: (i) the affected Purchaser consents; (ii) the Purchaser is in default; or (iii) the same is dictated by construction conditions at the Property (such as coordination of Building systems, conflicts with structural members or elements, conforming with Laws, unforeseen events, etc. and, in all cases, in good faith, reasonably necessary due to factors not within Sponsor's reasonable control, and where no practicable alternative (in the exercise of sound construction management practices) exists), and in such event, Sponsor will, in the amendment disclosing such material adverse change, offer the affected Purchaser(s) the right, for at least 15 days, to rescind their Agreement(s) and receive a refund of their Deposit(s), together with all interest earned thereon. No material change will be made in the size or location of any of Condo Hotel Units' other improvements or Common Elements if such changes affect the percentage of Common Interests or adversely affect the value of any Unit to which title has closed or for which an Agreement has been executed and is in effect unless all affected Condo Hotel Unit Owners and contract vendees consent in writing to such change.. However, as long as the layout and dimensions of a Condo Hotel Unit conform substantially to the Plans and Specifications, a Purchaser will not be excused from purchasing a Condo Hotel Unit by reason of a minor, non-material deviation or change and will not have any claim against Sponsor as a result thereof.

Sponsor will have no liability to any Purchaser, nor will any Purchaser be entitled to a credit, offset or reduction in the purchase price for his or her Unit or otherwise be relieved of any obligations under the Agreement, by virtue of a minor inaccuracy or error in the floor plans. With regard to size, such minor error would mean a decrease of 5% or less or any increase in the size of any Unit or room contained in a Unit.

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## I. INTERIM LEASES/TRANSIENT RENTAL

### 1. Interim Leases

Sponsor will endeavor in good faith to sell, but nevertheless reserves the unconditional right, prior to the date of closing title to a Condo Hotel Unit, to rent, rather than sell, such Unit to Purchasers and others. Unless otherwise specifically agreed to in writing by Sponsor and a Purchaser, such Purchaser's Condo Hotel Unit will be delivered at the closing vacant and free and clear of all rights of occupancy. No Purchaser shall have the right to occupy any Condo Hotel Unit prior to the closing unless Sponsor agrees to permit such occupancy under an interim rental or other written rental agreement.

Interim rentals of Condo Hotel Units will not be subject to the New York City Rent Law (rent control), the Emergency Tenant Protection Act of 1974, the New York City Rent Stabilization Law, the New York City Rent Stabilization Code, any rent regulatory scheme or code, rule or regulation promulgated under any of the foregoing, or any other rental protection laws.

If Sponsor agrees to any such interim rental, the rental will be for a rent and upon such other terms and conditions as may be agreed upon by Sponsor and the tenant; provided, however, that in the case of an interim rental to a Purchaser, such rental will provide that an uncured default by the Purchaser under the Agreement (that is, a default not cured within 30 days after the sending of written notice thereof) will constitute a default under the rental entitling the landlord (i.e., Sponsor), at its sole option, to immediately terminate such rental. The Agreement will contain a similar provision entitling Sponsor to terminate the Agreement and retain the Deposit (and any interest thereon) as liquidated damages, and not as a penalty, in the event the Purchaser fails to cure a default under such Purchaser's lease, if any, within the applicable grace period (if any).

No portion of the rental paid under any such interim rental will be credited towards the Purchase Price of a Condo Hotel Unit unless the rental agreement therefor expressly so provides.

In the event of any amendment to the Plan which discloses a material adverse change to the Plan pursuant to which the Purchaser is allowed to rescind an Agreement, if a Purchaser who is an occupant under an interim rental duly elects to rescind, the interim rental made with such Purchaser shall be cancelled and possession of the Unit must be surrendered within ten (10) days thereafter free of all occupants. A Purchaser shall be liable to Sponsor for any and all damages, costs and expenses incurred by Sponsor by reason of any failure to vacate within said 10-day period. If such failure to timely vacate occurs prior to the First Condo Hotel Closing, the Purchaser shall be liable for use and occupancy in an amount equal to twice the rent under the interim rental agreement. If such failure to timely vacate occurs after the First Condo Hotel Closing, the Purchaser shall be liable for twice the costs of carrying the Unit (such as Hotel Common Charges and real estate taxes allocable to such Unit) as calculated by Sponsor. In addition, irrespective of when such failure to timely vacate occurs, such Purchaser shall be liable to Sponsor for loss of profit and all costs and expenses incurred by Sponsor to obtain possession of the Unit, including the cost of litigation and reasonable attorneys' fees and expenses.

In the event the Plan is abandoned, a Purchaser who has entered into an interim rental will have no right to remain in occupancy as a tenant after the abandonment of the Plan.

**2. Transient Rentals**

Sponsor may, from time to time prior to the closing of title to any Condo Hotel Unit, cause such Unit to be available for transient rental. Accordingly, Hotel Manager may, by arrangement with Sponsor, utilize the Unsold Condo Hotel Units in connection with the operation of the Hotel Section until the closing of title thereto. However, unless otherwise specifically agreed to in writing by Sponsor and a Purchaser, such Purchaser's Condo Hotel Unit will be delivered at the closing vacant and free and clear of all rights of occupancy. The use of Condo Hotel Units as transient hotel rooms is in conformity with the certificate of occupancy of the Building and all other Laws. The above referenced use of Condo Hotel Units by Sponsor as transient hotel rooms prior to the closing date of any such Condo Hotel Units does not relate to, nor does it limit Sponsor's rights to, arrange for interim rentals to Purchasers in contract to purchase Condo Hotel Units as further described above.

So long as the Hotel Section is being operated as a hotel, no Condo Hotel Unit Owner shall permit its Unit (or interest in a Unit) to be advertised or promoted through, or otherwise affiliated with, any reservation system or network by whatever means (e.g., internet, electronic or otherwise), that identifies or otherwise represents the Condo Hotel Unit (or interest therein) as being a part of an integrated hotel operation (as distinct from a transient rental of a privately owned Condo Hotel Unit (or interest)), unless such advertisement, promotion or reservation system or network is operated by Hotel Manager or Hotel Board or their designees; and no Condo Hotel Unit Owner (other than the Transient Hotel Unit Owner) may use any of the Hotel Flag Intellectual Property or trademarks, trade names, copyrights, or other intellectual property of the Transient Hotel Unit Owner (or its affiliates) in connection with any advertisement or other promotion or rental of any such Unit (or interest) or in any other commercial manner, without the express permission, as applicable, of the Hotel Flag Intellectual Property Owner or the Transient Hotel Unit Owner, respectively, in each instance. Without limiting any other right or remedy available at law or in equity, the foregoing may be enforced by an action for specific performance and/or injunctive relief.

Each of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor (as defined in the Declaration) may, from time to time either own or obtain licenses to rights in certain trademarks, trade names, copyrights and/or other intellectual property, including, without limitation, for example, THE PLAZA, the "PP Design" and/or derivations thereof or successor corporate identifiers (collectively, "Plaza Intellectual Property"). Except as expressly provided herein, in no event shall: (i) any Hotel Unit Owner (other than the Transient Hotel Unit Owner) or the Hotel Board, without the express consent of the Transient Hotel Unit Owner; (ii) any Occupant of the Accessory Unit, without the express consent of the Accessory Unit Owner; (iii) any Occupant of the Club Unit, without the express consent of the Club Unit Owner; or (iv) any Residential Unit Owner, Occupant of any Residential Unit, or the Residential Board, without the express consent of the Residential Sponsor, use any of the Plaza Intellectual Property in connection with any advertisement, promotion, rental or sale of any such Unit (or portion thereof or interest therein) or any business being operated therein of therefrom or in any other commercial manner. The consent requirements of the preceding clauses "(i)-(iv)"

shall not apply in the event that a Person (as defined in the Declaration) subject to such clauses (i)-(iv) is using only the name of the Building, the Residential Section, the Hotel Section or the name 'The Plaza' (*i.e.*, excluding any logos or other proprietary elements of the Plaza Intellectual Property) in a descriptive manner in conjunction with the sale or rental of its Unit or the provision of any services therein or therefrom. Without limiting any other right or remedy available at law or in equity, the foregoing may be enforced by an action for specific performance and/or injunctive relief. Under no circumstances shall the Plaza Intellectual Property be deemed part of the Property or an appurtenance of any Unit or any Person subject to the foregoing. The Plaza Intellectual Property shall at all times remain the sole and exclusive property of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor or their licensors.

Each of the Persons subject to clauses (i)-(iv) above shall, to the extent and for the duration that such Person is permitted to use the Plaza Intellectual Property hereunder, maintain and/or operate the portion(s) of the Property that such Person(s) own and/or for which such Person(s) is/are responsible as well as any services within the control of such Person(s) that are associated with such portion(s) of the Property, in accordance with a standard of quality, service and appearance as are consistent with or exceed such standards as are then being maintained by the hotel being operated in the Transient Hotel Unit.

A Condo Hotel Unit may be made available for rental by such Condo Hotel Unit Owner either: (i) pursuant to a hotel rental program; (ii) by the Unit Owner directly; or (iii) by a third party designated by the Unit Owner. As more particularly described in Article I(6) of the Unit Management and Operation Agreement, "Rental of Unit by the Public", aside from using the hotel rental program which may be made available from time to time by Hotel Manager, each Condo Hotel Unit Owner may use any licensed rental agent who appears on Hotel Manager's list of qualified agents that possess the objective minimum quality standards as reasonably set forth by Hotel Manager from time to time or alternatively, such Condo Hotel Unit Owner may submit his or her choice of rental agent to Hotel Manager for consideration based on the minimum quality standards. The 130 hotel guest rooms that comprise the Transient Hotel Unit shall be available for rental on a daily basis as part of the transient hotel. Initially, the Transient Hotel Unit Owner shall be Sponsor. It is currently anticipated that FHR (NYC), LLC, an affiliate of Fairmont Hotels & Resorts (U.S.) Inc., will enter into certain agreement(s) with the Transient Hotel Unit Owner and the Hotel Board that permits, while such agreement(s) are in effect for FHR (NYC), LLC to serve as Hotel Manager for the Transient Hotel Unit.

In any event, any interim lease or transient rental shall also be subject to the Use Restrictions, including, but not limited to, the Building Department Letter.

## J. PROCEDURE TO PURCHASE

### 1. Execution of Documents

Any party desiring to purchase a Condo Hotel Unit will be required to execute four original counterparts of an Agreement, in the form set forth as Exhibit 1 in Part II of the Plan, for each such Condo Hotel Unit desired. The Agreement sets forth in detail the terms of sale with respect to the Condo Hotel Units offered hereunder and should be read carefully by each prospective Purchaser. In the event of any conflict or ambiguity between the Plan and the Agreement, the provisions of the Plan shall control.

No signed Agreement will be accepted from a prospective Purchaser for three business days following such Purchaser's receipt of a copy of the Plan, including all amendments thereto. For the convenience of some Purchasers, however, Sponsor will have the right, at its sole option, to accept an Agreement prior to the expiration of such period of three business days; and in such event, and only in such instance, such Purchaser will have the right to rescind such Agreement by written notice sent to Sponsor by certified or registered mail, return receipt requested, or by personal delivery within seven (7) days of such Purchaser's submission of the Agreement, whereupon Sponsor will refund, without interest (notwithstanding any provision of this Plan regarding interest to the contrary), the Deposit received by Sponsor from such Purchaser in connection with such Agreement.

A Purchaser shall deliver to Selling Agent, together with the four signed original counterparts of the completed Agreement, the following: three completed and signed copies of either Form W-9 (Request for Taxpayer Identification Number and Certification), Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding), or other applicable Form W-8, as appropriate, in the form required by law (the forms currently required by law are reproduced as Exhibits 1A and 1B in Part II of this Plan); and a deposit as set forth below.

Agreements will not be binding on Sponsor until approved and executed by Sponsor. Sponsor will have thirty (30) days after delivery by the Purchaser of an executed Agreement, together with the amounts and other items described above within which to accept or reject such Agreement. Sponsor reserves the right to request thorough identification and financial information concerning any prospective Purchaser, subject to any limitations and requirements imposed by law. Each Purchaser shall and shall in all events be deemed to represent and warrant that the Deposit and all sums deposited by Purchaser pursuant to the Agreement are such Purchaser's own funds and that no other party has any right thereto. If an Agreement is not accepted by Sponsor within such 30-day period, the Agreement shall be deemed to have been rejected and cancelled and all sums deposited by such prospective Purchaser in connection therewith shall be promptly returned, together with any accrued interest. Sponsor reserves the right to reject any prospective Purchaser without cause or explanation, provided that such rejection is not based on race, creed, color, age, gender, sexual orientation, disability, marital status, national origin, ancestry, or any other ground proscribed by law, and to refuse to execute an Agreement for any Unit, or an Agreement or Agreements, as the case may be, for more than one Unit to any one person or entity.

## 2. Deposits/Escrow

As set forth above, a prospective Purchaser shall deliver to Selling Agent, together with the four signed original counterparts of the completed Agreement, a deposit (any of the following amounts, the "Initial Deposit") in an amount equal to: (a) 10% of the purchase price; or (b) 50% of the purchase price if the Purchaser is a foreign government, a resident representative of a foreign government or other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity). A prospective Purchaser who, in accordance with the previous sentence, was only required to make an Initial Deposit equal to 10% of the purchase price will be required to make, in addition to the Initial Deposit, an additional deposit equal to 10% of the purchase price of such Purchaser's Unit (the "Additional Deposit") due and payable no later than the earlier to occur of four (4) months after the date of the Agreement or 15 days after Sponsor serves Purchaser with written notice of an amendment to the Plan declaring the Plan effective, but in no event later than the Closing. No Additional Deposit shall be required if the Purchaser is a foreign government or other person or entity referenced in (b) of the first sentence of this paragraph and who or which has made a 50% Initial Deposit as described above. The term "Deposit", as used in this Plan, refers to both the Initial Deposit and, if the same has been paid at the time in question, the Additional Deposit. All such payments shall be made by unendorsed check drawn only on a member bank of the New York Clearing House Association made payable to "Kramer Levin Naftalis & Frankel LLP, as escrow agent." All such checks shall be subject to collection and if any such check is returned for insufficient funds or for any other reason, Sponsor shall have the right, among other things, to deem such Agreement to be cancelled and of no further force or effect, and to retain any Deposit and other amounts previously deposited.

With respect to any check or other instrument that is dishonored or fails of collection, the Escrow Agent is authorized to deliver to Sponsor the dishonored or uncollected instrument and Sponsor will have the choice of remedies set forth in the Plan and in the Agreement with respect to an Event of Default (which includes suing on such dishonored or uncollected instrument or (at Sponsor's option) canceling this Agreement and returning the instrument to Purchaser without affording Purchaser a grace period to cure such default).

All deposits, Deposits or advances received by Sponsor will be held in escrow by Sponsor's Counsel (the "Escrow Agent") and placed in the Escrow Account (as hereinafter defined) in conformity with the procedure set forth herein. Sponsor will comply with the escrow and trust fund requirements of General Business Law Sections 352-e(2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto, and the provisions of Lien Law Section 71-a(3), as applicable.

All Deposits or advances made by Purchasers prior to closing of each individual transaction will be placed, within five business days after the Agreement is signed by all necessary parties, or within five business days after receipt, in the case of deposits, Deposits or advances made subsequent to the execution of the Agreement, in a segregated special escrow account (the "Escrow Account") of Sponsor's Counsel, the Escrow Agent, whose address is 1177 Avenue of the Americas, New York, New York 10036, and whose telephone number is 212-715-9100. The signatories on the Escrow Account authorized to withdraw funds are any one of Jay A. Neveloff, Jonathan H. Canter, Paul S. Pearlman, Neil R. Tucker, James Godman,

Robert Heller and Howard J. Rothman. The name of the Escrow Account will be "The Plaza Hotel -- Condominiums Attorney Escrow Account" or similar name, located at HSBC Bank USA, 452 Fifth Avenue, New York, NY 10018 (the "Bank"), or such other substitute bank and/or account type and/or title as may be designated in an amendment to the Plan. The Bank is covered by federal bank deposit insurance up to a maximum of $100,000 per individual depositor. Deposits made by a Purchaser in excess of $100,000 in the aggregate in connection with the purchase of a Unit or Units will not be federally insured.

The Escrow Account will be interest-bearing and, unless the Purchaser defaults, interest will be credited to the Purchaser at closing. The interest rate to be earned will be the prevailing rate paid by the Bank for such accounts from time to time (although no representation or guarantee is made as to the actual rate of interest that will be earned on such funds). Interest, if any, will begin to accrue within five (5) business days after the Agreement is fully executed by Sponsor and Purchaser and delivered to Purchaser and payment in respect of the Deposit is tendered to Escrow Agent, provided that the Purchaser has delivered the required number of completed and signed Forms W-9 (Request for Taxpayer Identification Number) in the form reproduced as Exhibit 1A in Part II of the Plan or Forms W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding) in the form reproduced as Exhibit 1B in Part II of the Plan (or other applicable Form W-8), as appropriate, to Sponsor or Selling Agent at the time Purchaser tenders the Deposit and the Agreement. If a Purchaser does not deliver the Form W-9 or Form W-8BEN, as applicable, the Deposit will be deposited in a non-interest-bearing escrow account at the aforesaid bank until the Form W-9 or Form W-8BEN has been delivered, and neither Sponsor, Selling Agent, the Escrow Agent nor the Bank shall be liable for interest for the period prior to the delivery of such form.

Sponsor is required by law to submit a Form 1099-INT to the Internal Revenue Service reporting interest earned on the Deposit, if any. Purchaser will be taxed accordingly on such interest, whether or not Purchaser ultimately receives the interest in accordance with the terms of its Agreement or the Plan. Before funds are transferred to a new Escrow Account, or if the Escrow Agent is replaced, the Plan must be amended to provide the same full disclosure with respect to the new account, the Escrow Agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may be substituted for the Escrow Account only after the Attorney General approves in writing the use of such alternate form of security.

Within 10 business days after delivery by Sponsor of the Initial Deposit to Escrow Agent, Escrow Agent will notify the Purchaser that such funds have been deposited into the Escrow Account and will provide the account number and the initial interest rate. If the Purchaser does not receive notice of such deposit within 15 business days after delivery by Sponsor of the Initial Deposit to the Escrow Agent, the Purchaser may cancel the purchase and rescind the Agreement so long as the right to rescind is exercised within 90 days after tender of the Initial Deposit. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited and requisite notice was timely mailed to the Purchaser in conformity with the Attorney General's regulations. Except as set forth above in this paragraph, the Escrow Agent will hold funds in escrow until otherwise directed in: (i) a writing signed by both Sponsor and the Purchaser, (ii) a determination of the Attorney General pursuant to the dispute resolution procedures contained in the Attorney General's regulations, or (iii) a judgment or order of a court of competent jurisdiction.

If there is no written agreement between the parties to release the escrowed funds, the Escrow Agent will not pay the funds to Sponsor until the Escrow Agent has given the Purchaser written notice of not fewer than 10 business days. Thereafter, the funds may be paid to Sponsor unless the Purchaser has already made application to the Department of Law pursuant to the dispute resolution provisions of the Attorney General's regulations and has so notified the Escrow Agent in accordance with such provisions.

Sponsor will not object to the release of the escrowed funds to: (i) a Purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an amendment to the Plan; or (ii) all Purchasers after an amendment abandoning the Plan is accepted for filing by the Department of Law.

Purchasers and the Escrow Agent may apply to the Attorney General in the event of a dispute for a determination on the disposition of the escrowed funds and any interest thereon. Sponsor must avail itself of this procedure if there is a dispute that needs to be resolved. A form for this purpose is set forth in Part II of the Plan. The party applying for a determination must send all other parties a copy of the application. Pending the determination of the Attorney General to grant or deny the application, Sponsor, the Purchaser and the Escrow Agent shall abide by any interim directive issued by the Attorney General. If an application permitting release of the escrowed funds is granted, the escrowed funds and any interest thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted. The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons. If the application seeking the release of funds is denied, the Escrow Agent shall continue to hold the deposit and any interest earned thereon until: (i) both Sponsor and the Purchaser direct payment to a specified party in accordance with a written direction signed by both Sponsor and the Purchaser; (ii) a judgment or order of a court of competent jurisdiction is served on the Escrow Agent; or (iii) the Escrow Agent deposits the disputed amount into Court. In no event shall the Escrow Agent release funds in dispute, other than a payment of such funds into court, until such dispute is finally resolved either by determination of the Attorney General or by order or judgment of a court of competent jurisdiction or by written agreement of Sponsor and Purchaser. Under no circumstances shall Sponsor apply for release of the escrowed funds of a defaulting Purchaser until after consummation of the Plan, and consummation of the Plan does not relieve Sponsor of its obligations pursuant to General Business Law 352-h. A copy of the escrow agreement which incorporates the terms of the Attorney General's regulations is set forth in Part II of the Plan.

Sponsor has agreed to indemnify and hold the Escrow Agent harmless from any and all losses, damages, claims, liabilities, judgments and other costs and expenses which may be claimed against or incurred by the Escrow Agent by reason of its acceptance of, and/or its performance under, the escrow agreement (other than those ultimately determined to have arisen out of the willful misconduct or gross negligence of the Escrow Agent), including, without limitation, attorneys' fees either paid to retained attorneys or amounts representing the fair value of legal services rendered to itself.

The Escrow Agent will maintain all records concerning the Escrow for seven years after the release of funds.

The Escrow Agent shall be permitted to act as counsel to Sponsor in any dispute as to the disbursement of the Deposit or any other dispute between Sponsor and a Purchaser whether or not the Escrow Agent is in possession of the Deposit and continues to act as the Escrow Agent.

Any provision of any contract or agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the Escrow Agent holding trust funds is absolutely void. The provisions of the Attorney General's regulations concerning escrow and trust funds shall prevail over any conflicting or inconsistent provision in this Plan or in an Agreement. Purchasers shall not be obligated to pay any legal or other expense of Sponsor in connection with the establishment, maintenance or defense of obligations arising from the handling or disposition of trust funds.

**3. Date of the First Condo Hotel Closing**

In the event the actual or anticipated commencement date of the projected First Year Hotel Section Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised Hotel Section budget with current projections therefor, and if: (i) such amended budget exceeds the projected budget set forth herein by 25% or more; or (ii) the First Condo Hotel Closing does not occur within 12 months after January 2007, the date set forth in Schedule B-1 as the commencement date for the projected First Year of Hotel Section Operation, then in either case Sponsor will offer all Purchasers (other than Purchasers who are then in default under their Agreements, if the Plan has been declared effective) the right to rescind their Agreements within not less than 15 days after the presentation date of the amendment containing such revised budget or such 12 month period, as the case may be, and any Purchasers electing rescission pursuant to such offer will have their Deposits and any interest accrued thereon returned. Purchasers' rights as described in the preceding sentence are in lieu of any other rights or remedies which may be available pursuant to any applicable law, regulation, statute or otherwise, all of which shall be deemed to have been waived by all Purchasers.

**4. Default**

In the event that a Purchaser fails to close title on the date set for closing or otherwise fails to perform any other obligation under his or her Agreement, and such default is not cured within 30 days after Sponsor gives written notice to such Purchaser of the default, Sponsor, at its option, (i) may cancel such Agreement and retain as liquidated damages the Deposit made by the Purchaser, together with all interest earned thereon; or (ii) bring an action against the Purchaser for specific performance, in which event the Purchaser could be compelled to complete the purchase of the Unit. In such case, all rights, obligations and liabilities of Sponsor and the Purchaser to each other shall cease and terminate and Purchaser shall have no further liability to Sponsor in respect of the Agreement (except for those matters expressly specified therein or herein to survive the termination thereof); however, such Purchaser shall not have any right whatsoever to the return of all or any portion of its Deposit (or any interest thereon). The payment of the deposit (including all interest) as liquidated damages is not intended to be a forfeiture or penalty, but is intended to constitute liquidated damages to Sponsor. (See

"Deposits/Escrow" of this Section of the Plan for further discussion regarding the Attorney General's dispute resolutions for deposits.)

Purchasers are advised that notwithstanding the foregoing, nothing herein shall be deemed to grant Purchaser any right of rescission and/or right to the return of all or any portion of a Deposit except as expressly set forth in the Plan. In the event Sponsor elects not to cancel the Agreement as a result of the failure of the Purchaser to close on the date specified by Sponsor, or if Sponsor approves a request from the Purchaser to adjourn the closing date, then Sponsor may require that: (a) the Purchaser pay Sponsor interest at a rate of 0.04% per day (or such lower daily rate which is the legal limit, if 0.04% per day exceeds the legal limit) on the total purchase price, computed from the original closing date until the transaction is actually closed; and (b) all apportionments between Sponsor and the Purchaser be made as of the original closing date.

**Time is of the essence** with respect to the Purchaser's obligation to close title on the date set for closing and to pay, perform or observe all of his or her other obligations under the Agreement, and to cure a default within 30 days after Sponsor gives notice to the Purchaser of such default. Therefore, a Purchaser who defaults under his or her Agreement and who does not cure such default within such 30-day period may not be permitted any additional time to cure such default.

As provided in the form of Agreement, which is set forth in Part II of the Plan as Exhibit 1, the following occurrences, without limitation of any other term or provision thereof or of the Plan, shall constitute an event of default under a Purchaser's Agreement: (a) Purchaser's assignment of any of Purchaser's property for the benefit of creditors, or Purchaser's filing a voluntary petition in bankruptcy; (b) the appointment of a non-bankruptcy trustee or receiver over Purchaser or Purchaser's property, or the filing of an involuntary petition in bankruptcy against Purchaser; or (c) the filing of a judgment or tax lien against Purchaser which Purchaser does not pay or bond within 30 days after the filing thereof.

**5. Risk of Loss**

The risk of loss to any Purchaser's Unit by fire or other casualty until the closing of title to such Unit (or an earlier taking of possession by the Purchaser) is assumed by Sponsor, but Sponsor has no obligation or liability to repair or restore any Unit. If a Unit is damaged or destroyed by fire or other casualty prior to the closing of title, but after the signing of an Agreement, and Sponsor gives written notice to the Purchaser of Sponsor's election to repair or restore the Unit, then the Agreement shall continue in full force and effect, and the Purchaser shall not have the right to reject title or receive a credit against, or abatement in, the purchase price. Sponsor shall be entitled to a reasonable period of time within which to complete the repair or restoration, and any proceeds received from insurance or in satisfaction of any claim or action in connection with such loss shall, subject to the rights, if any, of the Condominium Board, the Hotel Board and other Unit Owners, belong entirely to Sponsor.

However, if Sponsor notifies the Purchaser in writing that it does not elect to repair or restore the Unit, or if the Unit Owners entitled to make such determination do not resolve to make such repair or restoration pursuant to the Condominium By-Laws or the Hotel By-Laws

(See the Section entitled "Rights and Obligations of the Unit Owners and the Boards" in Part I of the Plan), the Agreement shall be deemed terminated, Sponsor shall return to the Purchaser the entire Deposit, together with interest earned thereon, and the parties shall be released and discharged from all rights, obligations and liability under the Agreement and this Plan, except that if the Purchaser is then in default under the Agreement beyond any applicable grace period, Sponsor may retain such Purchaser's Deposit, together with interest earned thereon.

**6. Financing**

Although a Purchaser may obtain financing from any lending institution or any other source, the Purchaser's obligation pursuant to an Agreement to purchase a Condo Hotel Unit pursuant to an Agreement shall not be contingent on the Purchaser obtaining a commitment for financing or actually obtaining financing for such purchase. In other words, a Purchaser shall remain obligated under an Agreement to purchase his or her Unit whether or not he or she is able to obtain financing. Neither Sponsor nor Selling Agent makes any representations as to the terms or availability of any mortgage financing. Prospective Purchasers are, therefore, advised to finalize their financing arrangements before signing an Agreement. However, prospective Purchasers should be aware that even if a loan commitment is obtained, its term may be limited, and it could expire before the closing date, and Sponsor shall have no liability as a result of any scheduling, rescheduling or adjournment of closing beyond the expiration of a loan commitment.

**7. Transfer (and Mansion) Taxes**

As described more fully in Section P below, Purchasers shall be responsible for the payment at closing of all New York City Real Property Transfer Tax and New York State Real Estate Transfer Tax, notwithstanding that these taxes are by law principally the obligation of the seller. For purposes of calculating the taxes payable, the amounts of such taxes will be included in the consideration subject to such tax. Purchasers shall also be obligated to pay the so-called "Mansion Tax," currently 1% of the consideration paid when the consideration is $1,000,000 or more, which tax by law is the primary obligation of the Purchaser.

**8. Foreign Missions; Required Notification and Waiver of Diplomatic or Sovereign Immunity**

Any Purchaser that is a foreign mission, as such term is defined under the Foreign Missions Act, 22 U.S.C. 4305, must notify the United States Department of State prior to purchasing a Unit and provide a copy of such notice to Sponsor. Sponsor will not be bound under any Agreement with a foreign mission unless and until the earlier to occur of: (i) receipt of a notification of approval from the Department of State; or (ii) 60 days after receipt of such Purchaser's notice by the Department of State.

Any Purchaser that is a foreign government, a resident representative of a foreign government or other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity) shall expressly and voluntarily waive such immunity and consent to any suit action or proceeding arising out of or relating to the Agreement being brought in any state or Federal court in the State of New York. Any such purchaser shall designate C.T. Corporation System, having its offices, at the date hereof, at 111

Eighth Avenue, 13th Floor, New York, New York 10011 as its duly authorized and lawful agent to receive process for and on behalf of Purchaser in any state or Federal suit, action or proceeding in the State of New York based on, arising out of or connected with the Agreement.

**9. Notice of Effectiveness**

After the Plan has been declared effective, Sponsor will, from time to time, fix dates for closing title to all Units for which Agreements have been executed by serving notice on each Purchaser stating the date of the First Condo Hotel Closing and setting such Purchaser's closing date. Such notice will be served in compliance with applicable law no less than thirty (30) days before the date set for the closing of the Units. Purchasers may agree to waive said thirty (30) day notice.

**10. Condo Hotel Unit Power of Attorney and Unit Management and Operation Agreement**

Each Purchaser must execute (i) a Condo Hotel Unit Power of Attorney at or prior to closing in the form set forth as Exhibit 2 in Part II of the Plan; and (ii) a Unit Management and Operation Agreement and Memorandum of Unit Management and Operation Agreement in the form set forth as Exhibit 15 in Part II of the Plan. If any Condo Hotel Unit Owner fails or refuses to execute, acknowledge or deliver the Unit Management and Operation Agreement and Memorandum of Unit Management and Operation Agreement within ten (10) days after receipt of a written request therefore, then at the request of the Transient Hotel Unit Owner (or its designee), an officer of the Hotel Board (or its designee) will be authorized as attorney-in-fact for such Condo Hotel Unit Owner, coupled with an interest, to execute, acknowledge and deliver the Unit Management and Operation Agreement with respect to such Condo Hotel Unit in the name of such Unit Owner and such document shall be binding on such Condo Hotel Unit Owner. Together with the execution, acknowledgement and delivery of the Unit Management and Operation Agreement, upon taking title to a Condo Hotel Unit, each Condo Hotel Unit Owner shall also execute, acknowledge and deliver to Hotel Manager a Memorandum of Unit Management and Operation Agreement in recordable form as set forth in an exhibit to the Unit Management and Operation Agreement.

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## K. ASSIGNMENT OF AGREEMENTS

An Agreement may not be assigned by the Purchaser thereunder. If a Purchaser desires to assign its rights under an Agreement or to take title in the name of an affiliate of, or entity related to, or controlled by, the Purchaser that differs from the name on the Agreement, or to add, delete or substitute the name of a member of the Purchaser's family, then, if such assignment, alteration, addition, deletion or substitution is permitted by Sponsor (in Sponsor's sole discretion), the Purchaser will be required to deliver to Selling Agent or Sponsor's Counsel, four signed assignments of the Agreement (to be prepared by Sponsor's Counsel at Purchaser's expense and in form and content acceptable to Sponsor, in its sole discretion), as well as three completed and signed copies of either Form W-9 (Request for Taxpayer Identification Number and Certification), Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding) or other applicable Form W-8, as appropriate, in the form required by law. Upon each assignment or other change permitted by Sponsor (in its sole discretion), the assignments and Forms W-9 or Forms W-8BEN, as applicable, must be delivered to Selling Agent or Sponsor's Counsel, together with a personal certified check, or an official bank or cashier's check, in the amount of $850 made payable to "Kramer Levin Naftalis & Frankel LLP" (for services rendered in connection with the assignment), not less than 20 days prior to the date scheduled for the Purchaser's closing. In no event will the Purchaser (or its assignee or any added or substituted party) have the right to adjourn or postpone the closing as a result of such change or assignment. Sponsor is not obligated to consent to any such change or assignment and, if Sponsor refuses to consent, the Purchaser will not be excused from his or her obligations under the Agreement; and the prohibition against advertising or listing any Unit(s) for sale or resale with any broker or otherwise advertising, promoting or publicizing the availability of such Unit(s) for sale shall remain in effect.

In connection with the foregoing, if Purchaser is a corporation, any sale, assignment, transfer, pledge, encumbrance or other disposition of any of the stock of Purchaser, or if Purchaser is a partnership, a limited liability company or other entity, any sale, assignment, transfer, pledge, encumbrance or other disposition of any interest in such partnership, limited liability company or other entity shall be considered an assignment and shall be subject to the provisions, prohibitions and terms of the Plan concerning assignment, except that a sale of less than 50% of the stock, or in the case of a partnership, limited liability company or other entity, less than 50% of the ownership interests, of Purchaser which does not result in a change in control of Purchaser shall not be considered an assignment. For purposes of the preceding sentence only, "control" shall mean the ownership of 51% or more of the interests in such entity or possession of the power to direct the management and policies of such entity and the distribution of its profits.

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## L. EFFECTIVE DATE

The offering by Sponsor of the Condo Hotel Units under the Plan is contingent upon the Plan being declared effective and upon compliance with the relevant conditions and time periods set forth in the Plan.

The Plan may be declared effective, at Sponsor's option, when bona fide Agreements (including those executed by investors) have been executed and are in effect with respect to not less than 22 Condo Hotel Units, representing 15% (in number) of the Condo Hotel Units offered hereby. The Plan must, however, be declared effective when bona fide Agreements have been executed and are in effect with respect to at least 121 Condo Hotel Units representing 80% (in number) or more of such Units.

The Plan will not be declared effective based on an Agreement: (i) signed by a Purchaser who has been granted a right of rescission that has not yet expired or been waived; (ii) subject to the immediately preceding clause (i), signed by a Purchaser not afforded the three (3) business day period to review the Plan (prior to executing an Agreement) provided for in Part I, "Procedure to Purchase" hereof; or (iii) entered into with a Purchaser who is Sponsor, Selling Agent or Hotel Manager, or who is a principal of any of the foregoing or who is related to any of the foregoing or any principal thereof by blood, marriage or adoption or as a business associate, employee, shareholder or limited partner, except that such a Purchaser (other than Sponsor or a principal of Sponsor) may be included if Sponsor submits proof satisfactory to the Department of Law establishing that such Purchaser is bona fide. Except as otherwise limited by this Section of the Plan, all Condo Hotel Units shall be counted toward declaring the Plan effective.

The Plan will be declared effective either by: (i) an amendment to the Plan; or (ii) mailing or delivering personally to each Offeree a written notice to such effect, in which event Sponsor will submit an amendment to the Plan to the Department of Law confirming that the Plan was declared effective on a specified date within five days after such mailing or delivery. The First Condo Hotel Closing will not occur until the Plan is declared effective and the effectiveness amendment is accepted for filing by the Department of Law.

The Plan may be withdrawn or abandoned by Sponsor, at its option, for any reason whatsoever at any time prior to its being declared effective. Once the Plan has been declared effective, it may not be abandoned or withdrawn, except that prior to the First Condo Hotel Closing, the Plan may be abandoned at the option of Sponsor in the event of: (i) the existence of one or more defects in title (including violations of record or work orders of an insurance carrier) affecting any one or more Units and/or the Common Elements which cannot be cured, removed or complied with except through litigation or the expenditure of more than one-half of one percent of the total initial offering amount; (ii) substantial damage to or destruction of the Building (or any portion thereof) by fire or other casualty which cannot be cured or repaired for an amount which is less than one half of one percent of the total initial offering amount under this Plan; or (iii) a taking of all or a material portion of the Property by condemnation or eminent domain. In calculating the costs referred to in clauses (i) and (ii) above, any defects in title (including violations or work orders) that existed on the date the Condo Hotel Units were initially offered for sale under the Plan, and were either known to Sponsor or were a matter of public record, and attorneys' fees, shall be excluded.

In the event of a withdrawal or abandonment of the Plan, Sponsor will promptly submit an amendment to the Department of Law to such effect, together with such forms as may be required by law. Purchasers will be notified in writing of a withdrawal or abandonment of the Plan. All Deposits, together with any interest earned thereon, will be returned to Purchasers within 20 days following such withdrawal or abandonment, except that after the Plan has been declared effective, Sponsor may retain the Deposit, together with interest earned thereon, of any Purchaser who is then in default under his or her Agreement beyond the applicable grace period or whose Agreement has been cancelled due to such Purchaser's default, provided, however, that any requisite notice has been given to the Purchaser and any dispute with respect to the disposition of the Deposit has been determined in favor of Sponsor pursuant to the dispute resolution procedures provided by the regulations promulgated by the Department of Law. Upon the return or retention of the Deposit, together with interest earned thereon, the Agreement pursuant to which such Deposit was given will be null and void and Sponsor will have no further obligation or liability to the Purchaser under the Plan or such Agreement.

The loan documentation requires that Sponsor market the Condo Hotel Units for sale and have received executed Agreements for at least 25% of the square footage of the Condo Hotel Units in order to obtain a partial release of any Condo Hotel Unit from the lien of the applicable mortgage. Such square footage condition, however, will not result in a requirement that Sponsor have executed Agreements for more than the 15% (in number) of the Condo Hotel Units required to declare this Plan effective.

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## M. TERMS OF SALE

### 1. Prerequisites to Closing of Title

The term "closing" or "closing of title" as used in this Plan refers to Sponsor's conveyance of title to a Condo Hotel Unit to a Purchaser by the delivery of a deed, upon payment by the Purchaser to Sponsor of the balance of the purchase price for such Unit. The closing of title to each Unit shall take place only after or concurrently with the satisfaction of the following prerequisites:

(a) the Plan has been declared effective in accordance with its terms and the amendment to the Plan disclosing same has been accepted;

(b) a temporary or permanent certificate of occupancy for the Unit is in effect;

(b) the Declaration, Condominium By-Laws, Hotel By-Laws, Floor Plans and such other documents as may be required by law have been filed or recorded, as the case may be, or have been submitted to Sponsor's title insurance company for filing or recording;

(c) at least 30 days' prior written notice of the initial time and place of the closing of title has been given to the Purchaser (unless a Purchaser chooses to waive such 30-day notice);

(d) the Purchaser or Purchaser's designee has been given an opportunity to examine the Unit within the week prior to the closing; and

(e) the Unit and its appurtenant interest in the Common Elements have been released from the lien of all mortgages encumbering the Property.

### 2. Closing of Title; Payment of Balance of Purchase Price

At the closing of title to each Unit, Sponsor shall execute and deliver to the Purchaser a bargain and sale deed with covenant against grantor's acts, substantially in the form of the Condo Hotel Unit Deed set forth as Exhibit 3 in Part II of the Plan, conveying title to the Unit and its appurtenant Common Interest, free and clear of all liens, encumbrances and other title exceptions other than the Permitted Encumbrances. The Purchaser shall also sign the Condo Hotel Unit Deed.

Simultaneously with the delivery of the Condo Hotel Unit Deed, the Purchaser shall pay the balance of the purchase price and the closing apportionments and costs described in "Unit Closing Costs and Adjustments" in Part I below. Payments shall be by official bank or cashier's check or unendorsed certified check drawn on or issued by a bank or trust company which is a member of the New York Clearing House Association, payable to the direct order of Sponsor or to such other party or parties as Sponsor notifies the Purchaser prior to the closing. Purchasers are advised that uncertified attorney escrow checks and other non-conforming checks may not be accepted by Sponsor. Any delay in closing occasioned by the presentation of such checks shall be deemed to have been caused by Purchaser and may, at the option of Sponsor, constitute a default under the Agreement and/or give rise to additional costs or expenses to be borne by Purchaser.

### 3. Tax Returns, Condo Hotel Unit Power of Attorney and Unit Management and Operation Agreement

Each Purchaser will also be required to execute and deliver at the closing: (i) a New York City Real Property Transfer Tax Return and New York State Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, in the forms required to be filed by law; (ii) a Unit Management and Operation Agreement and Memorandum of Unit Management and Operation Agreement substantially in the form set forth in Part II of the Plan as Exhibit 15; and (iii) a Condo Hotel Unit Power of Attorney substantially in the form set forth in Part II of the Plan as Exhibit 2 to: (a) the persons who shall from time to time constitute the Hotel Board, designating the Hotel Board as the Purchaser's attorney-in-fact, for the purpose of acquiring or leasing in the name of the Hotel Board or its designee on behalf of all Hotel Unit Owners any Hotel Unit and to otherwise deal with the Hotel Section and the Hotel Limited Common Elements, all in accordance with the provisions of the Declaration, the Condominium By-Laws and the Hotel By-Laws; and after any such acquisition or leasing of any Condo Hotel Unit, to manage, convey, sell, lease, sublease, mortgage or otherwise deal with any such Unit so acquired or leased, as the case may be, and (b) the persons who shall from time to time constitute the Condominium Board, designating such Board as the Purchaser's attorney in fact, for the purpose of acquiring or leasing in the name of the Condominium or its designee on behalf of all Unit Owners any Non-Condo Hotel Unit and to otherwise deal with the Common Elements all in accordance with the Declaration, the Condominium By-Laws and the Hotel By-Laws; and after any such acquisition or leasing of any Non-Condo Hotel Unit, to manage, convey, sell, lease, sublease, mortgage, or otherwise deal with any such Non-Condo Hotel Unit so acquired or leased, as the case may be, all in accordance with the provisions of the Declaration, the Condominium By-Laws and the Hotel By-Laws, as the case may be.

### 4. Tax-Deferred Exchanges

The form of Agreement (Exhibit 1 in Part II of the Plan) provides that in the event a Unit is being acquired by a Purchaser as part of a tax-deferred exchange under §1031 of the Internal Revenue Code, Sponsor shall reasonably assist and cooperate in such tax-deferred exchange, provided, however, that: (i) any action taken in connection with such tax-deferred exchange or requested of Sponsor shall not result in any cost, expense or liability on the part of Sponsor or increased risk to Sponsor relating to the transaction (and, among other things, Purchaser acknowledges that a fee may be payable to Sponsor's Counsel in connection with the review of any documentation related to such tax-deferred exchange); (ii) no action or failure on the part of the Purchaser (or any other party to such tax-deferred exchange) or cooperation on the part of Sponsor in connection with or related to the tax-deferred exchange will frustrate the purpose of the Agreement or otherwise result in a reduction of Sponsor's rights, remedies and privileges under the Agreement or increase any of Sponsor's obligations or duties under the Agreement or otherwise; and (iii) Sponsor shall not be obligated, as part of such tax-deferred exchange, to convey any property (other than the applicable Unit), acquire any property, or accept any form of payment in respect of any of the amounts due under the Agreement other than as set forth therein or in the Plan. Purchaser shall indemnify, defend and hold Sponsor harmless from and against any and all costs, expenses, fees (including, without limitation, reasonable attorneys' fees and expenses) or liabilities incurred by Sponsor in connection with or resulting from the tax-deferred exchange, and such indemnity shall survive the closing of title to the Unit. Notwithstanding the

foregoing, Sponsor makes no representation and expresses no opinion with respect to the applicability of §1031 of the Internal Revenue Code to the purchase or acquisition of any Unit.

**5. Existing Mortgages and Construction Loans**

Since the Construction Lender has: (i) consented to the formation of the Condominium and acknowledged that its lien will be limited to Unsold Condo Hotel Units; and (ii) subordinated the lien of its mortgage to the Declaration, accordingly, at the closing of title to any particular Unit, Construction Lender shall release its lien on the Unit being conveyed and its interest in the Common Elements.

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## N. UNIT CLOSING COSTS AND ADJUSTMENTS

As more particularly set forth in the Agreement, in addition to the Purchaser's own legal fees, the Purchaser will pay the following closing costs at the time of the closing of title of such Purchaser's Unit:

1. Title Insurance: If the Purchaser elects to obtain fee title insurance, the Purchaser will pay the premium therefor, which premium will vary depending upon the amount of insurance purchased. A reduced rate for fee and mortgagee title insurance may be available if the Purchaser obtains a mortgage loan, and fee and mortgagee title insurance are ordered simultaneously. A Purchaser may obtain title insurance from any title insurance company selected by Purchaser. Sponsor makes no representation or warranty regarding the terms of any such insurance.

2. Recording Charges: The fees charged by the City Register's Office for recording the Condo Hotel Unit Deed, Condo Hotel Unit Power of Attorney and mortgage (if any), in the amount of $32.00 for each document, plus $5.00 per page (including the cover page), shall be payable by Purchaser, plus the $75.00 filing fee for the RP-5217 form shall be payable by the Purchaser. In addition, a Purchaser's title insurance company may charge various fees and service charges in connection with such recordings and filings, which shall be payable by Purchaser.

3. Transfer Taxes and Mansion Tax: The New York City Real Property Transfer Tax ("RPT Tax"), which currently, for the purchase of a single residential condominium unit, is 1% of the purchase price of a unit if such purchase price is $500,000 or less and 1.425% of the purchase price if such purchase price is over $500,000. The New York State Real Estate Transfer Tax ("NYS Tax"), presently $2 for each $500 (or part thereof) of the purchase price of a Unit.

For purposes of calculating the taxes payable, the amounts of such taxes which are the primary obligation of the seller but are paid by Purchaser will be included in the consideration subject to tax. Therefore, the steps to compute the taxes payable are:

(i) multiply the purchase price by the RPT Tax rate to compute the tentative RPT Tax;

(ii) multiply the purchase price by the NYS Tax rate to compute the tentative NYS Tax;

(iii) add the tentative RPT Tax and tentative NYS Tax to the purchase price;

(iv) multiply (iii) by the RPT Tax rate to determine the actual RPT Tax payable; and

(v) multiply (iii) by the NYS Tax rate to determine the actual NYS Tax payable.

As an example, in respect of a Condo Hotel Unit with a purchase price of $2,000,000 (excluding any adjustment for the value of FF&E) the transfer tax calculation is as follows: (i) $2,000,000 x 1.425% = $28,500; (ii) $2,000,000/$500 x $2 = $8,000; (iii) $2,000,000 + $28,500 + $8,000 = $2,036,500; (iv) $2,036,500 x 1.425% = $29,020.13; (v) $2,036,500/$500 x $2 = $8,146.

Under the current policies of the City of New York Department of Finance, where a purchaser purchases two or more Units that have not been physically combined into a single residence before the transfer, the RPT Tax will be imposed at non-residential rates, i.e., where the consideration is $500,000 or less the rate will be 1.425%, and the tax rate where the consideration is in excess of $500,000 will be 2.625%. This may be the case even if the Units are transferred to the purchaser pursuant to separate sales contracts with separate closing dates. For these purposes, the City of New York Department of Finance has taken the position that the consideration for the transfer of a Unit is not aggregated with the consideration for the transfer of other Units under separate deeds for purposes of determining total consideration. There is no guarantee that the City of New York will not change its positions with respect to the foregoing. In such event, Purchaser may be obligated to pay additional transfer taxes plus applicable interest and penalties.

There is also a risk that the New York City Department of Finance could assess tax at the higher nonresidential rates with respect to the purchase of a Condo Hotel Unit, which rates are 1.425% of the consideration where the consideration is $500,000 or less or 2.625% of the consideration where the consideration is greater than $500,000. In such event, Purchaser shall be obligated to pay the difference between the New York City real property transfer tax paid at the closing of title and the New York City real property tax later determined to be payable, including interest and penalties and such obligation of Purchaser shall survive the closing of title to the applicable Condo Hotel Unit.

Purchaser shall also pay the New York State Additional Tax pursuant to Article 31 of the Tax Law, commonly referred to as the "Mansion Tax," which is currently 1% of the purchase price (other than that the purchase price allocable to the FF&E, but including such taxes as are deemed part of the consideration).

4. Mortgage Tax Credit. In order to reimburse Sponsor for the mortgage recording tax previously paid in connection with any existing mortgage(s), if the Purchaser: (a) obtains a mortgage loan, the Purchaser will pay to Sponsor an amount equal to the partial mortgage tax credit which may be available pursuant to Section 339-ee(2) of the New York State Condominium Act; or (b) assumes or consents to the continuation of a mortgage lien encumbering only such Purchaser's Unit and as a result is entitled to an exemption of all or a portion of the mortgage tax otherwise payable, the Purchaser will pay to Sponsor an amount equal to such exemption, but in no event will the amount payable by the Purchaser to Sponsor exceed the amount of mortgage tax which would have been payable by the Purchaser to the taxing authority if such mortgage tax credit or exemption had not been available to the Purchaser.

5. Mortgage and Related Costs: If the Purchaser obtains a mortgage loan, the Purchaser will be responsible for the payment of all mortgage recording taxes (taking into account however any payments made pursuant to subparagraph (4) above) and closing costs and expenses in connection therewith, in amounts determined by Purchaser's lender, which closing costs may include, but are not limited to, the fees of such lender's counsel, recording charges and mortgage title insurance. Currently, the mortgage recording tax in New York City applicable to individual residential condominium units is 2.05% with respect to mortgages of less than $500,000 and 2.175% with respect to mortgages in the amount of $500,000 or more (less, in each case, a

$30.00 credit, if applicable). There is a risk that the New York City Department of Finance could assess tax at the higher nonresidential rate of 2.8% for mortgages in the amount of $500,000 or more ; for mortgages of less than $500,000, the rate is 2.05%, the same as for residential property (less, in each case, a $30.00 credit, if applicable). Mortgage lenders may require borrowers to pay deposits for Hotel Common Charges, real estate taxes, fire and casualty insurance premiums, assessments and water charges and sewer rents may be required by the Purchaser's lender. No representation or warranty is made with respect to the amounts of such closing costs and expenses or the availability or cost of mortgage financing from any sources. As previously stated in subparagraph 4 above, if a mortgage tax credit becomes available pursuant to Section 339-ee(2) of the Condominium Act, such credit will inure solely to the benefit of Sponsor and such Purchaser will cooperate with Sponsor in obtaining such credit. Accordingly, at Closing, each Purchaser utilizing mortgage financing will pay the full amount (but not in excess thereof) of the mortgage recording tax chargeable on the entire amount being financed and Sponsor will be reimbursed by Purchaser to the extent of any mortgage tax credit allowed.

6. Closing Fees: For each Unit, the sum of $1,850 payable to Sponsor's Counsel to reimburse Sponsor for a portion of its legal fees incurred in connection with the closing of title of the Purchaser's Unit. The sum of $250 for the preparation of ACRIS transfer documents required by the City of New York. If Purchaser obtains financing and the lender is unwilling to close at the offices of Sponsor's Counsel, or if the Purchaser otherwise requests the Closing to occur other than at the office of Sponsor's Counsel (or such other place as Sponsor may designate in its closing notice), the closing may be held elsewhere in New York City, provided that an additional travel fee is paid to Sponsor's Counsel equal to: (a) $500 if the closing is held elsewhere in Manhattan; and (b) $750 if the closing is held in a borough other than Manhattan. In addition: (i) if the closing is adjourned through no fault of Sponsor, the Purchaser will be required to pay to Sponsor's Counsel an additional fee of $600 for each adjournment to help defray the cost of preparing for and coordinating the new closing; (ii) if Sponsor, in its sole discretion, consents to a Purchaser's request for an assignment of the Agreement, or for the addition, deletion or substitution of names on the Agreement, a fee of $850, payable in advance, for preparation of an assignment agreement; and (iii) if Purchaser obtains mortgage financing, then Purchaser shall pay Sponsor's Counsel an additional fee of $700 to defray the additional costs associated therewith. Purchaser may be required to pay more than one fee pursuant to the preceding provisions of this paragraph with respect to a single Unit. Other additional charges may apply. At Sponsor's option (in its sole discretion), any one or more of the foregoing fees to be paid to Sponsor's Counsel shall be paid by Purchaser prior to closing upon notice to Purchaser.

7. Working Capital: A contribution to the Working Capital Fund of the Hotel Section in an amount equal to two months' Hotel Common Charges then in effect for the Unit pursuant to the budget in accordance with Schedule A hereto, as the same may be amended from time to time.

8. Sales Tax. All Condo Hotel Units offered for sale under the Plan are being offered for sale inclusive of the FF&E. Accordingly, each Purchaser will be purchasing personal property in addition to real property, and a portion of the purchase price, (calculated as $65.00 per square foot (as indicated in Schedule A) of the Condo Hotel Unit), for each Unit is therefore allocable to

the FF&E. Purchasers will be obligated to pay any sales or other federal, state or county tax or fee applicable to the sale of the FF&E. Currently, such combined New York State and New York City sales tax is at the rate of 8.375% of the applicable amount.

9. Hotel Common Charges: In addition to the contribution to the Working Capital Fund as described in paragraph 7 above, Purchaser will pay to the Hotel Board the Hotel Common Charges for the Unit for the first full month following the month in which title closes. If Purchaser is a foreign government, a resident representative of a foreign government or other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity), Purchaser shall pay to the Hotel Board an amount equal to the Hotel Common Charges for such Unit for a period of two years as security for the faithful observance by such Unit Owner of the terms, provisions and conditions of the Hotel By-Laws. In the event that such Unit Owner defaults in respect of the terms, provisions and conditions of the Hotel By-Laws, the Hotel Board may use, apply, or retain the whole or any part of the security so paid in advance to the extent required for the payment of any Hotel Common Charges or any other sum as to which such Unit Owner is in default; and such Unit Owner shall, within 30 days after notice from the Hotel Board, deposit with the Hotel Board the amount so applied or retained so that at the option of the Hotel Board, the Hotel Board shall have the full amount of said security on hand at all times.

The following table illustrates the projected closing costs (based on current rates assuming residential rates will apply) for a typical Condo Hotel Unit purchased by a Purchaser at a purchase price of $2,000,000.00, and FF&E valued at $46,215 assuming such Purchaser finances 80% (i.e., $1,600,000.00) of the purchase price:

| | |
|---|---|
| Fee Title Insurance (if purchased simultaneously with mortgage title insurance) | $6,973.00 |
| Fee for recording Condo Hotel Unit Deed (7 pages) and Condo Hotel Unit Power of Attorney (5 pages) | $124.00 |
| Mortgage Loan Closing Costs | |
| - recording mortgage (assuming 20 pages) | $132.00 |
| - Purchaser's mortgage recording tax (at 2.175% of $1,600,000, less $30.00 credit, if applicable) (Purchaser may be required to pay a portion of such tax directly to Sponsor) | $34,770.00 |
| - mortgage title insurance (if purchased simultaneously with fee insurance) | $1,255.00 |
| - other bank charges ("assuming points" of 1% of mortgage amount, an appraisal fee of $400 and legal fees of $800 and assuming further that the lender does not require Purchaser to deposit funds to establish a real estate tax escrow) | $17,200.00 |
| New York City Real Property Transfer Tax and New York State Deed Stamps | $37,166.13 |
| New York State Mansion Tax | $20,365.00 |
| Working Capital Payment | $9,304.00 |
| Sales Tax (assumes a Unit of 711 square feet) | $3,870.51 |
| Closing Fee (assuming the closing occurs at the offices of Sponsor's Counsel and assuming mortgage financing review fee and ACRIS preparation fee) and, other than in respect of a mortgage, Purchaser has not incurred any additional fees as set forth above) | $2,800.00 |
| Total | $133,959.64 |

The projected closing costs referred to above are approximate and are not guaranteed. The mortgage loan closing costs vary widely among different lenders and also will vary depending on the loan program chosen.

At the closing, adjustments will be made between Sponsor and the Purchaser with respect to: (a) real estate taxes and assessments, if any (including water charges and sewer rents if separately assessed) on the basis of the period for which assessed; (b) Hotel Common Charges for the month in which title closes; (c) accrued rent and any other charges pursuant to any interim lease or occupancy or other rental agreement affecting the Unit, if the Purchaser had been allowed to lease, occupy or rent such Unit prior to the closing; and (d) any closing adjustment related to the Unit Management and Operation Agreement. Real estate taxes will be adjusted at closing between Sponsor and each Purchaser based on the period for which real estate taxes have been prepaid by Sponsor either directly to the taxing authority or as part of the Hotel Common Charges to the Hotel Board. If real estate taxes have been separately assessed to each Unit as of the closing, then the adjustment shall be based on the Unit's actual taxes for such period. If the real estate taxes have not been separately assessed against each Unit as of the closing, then the adjustment shall be determined by allocating to the Unit a prorated portion of the actual taxes for the entire Property for such period determined as provided in the Condominium By-Laws and the Hotel By-Laws.

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## O. RIGHTS AND OBLIGATIONS OF SPONSOR

### 1. Construction

Sponsor will perform such work and supply such materials, or will cause the same to be performed and supplied, as is necessary in order to complete the renovation of the Hotel Section with a quality of construction comparable to the currently prevailing local standards and substantially in accordance with the Plans and Specifications for the work filed with the Department of Buildings of The City of New York and other appropriate governmental authorities.

Based upon the current schedule, unless delayed by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery and/or the inability to obtain on a timely basis or otherwise, materials or equipment, governmental restrictions, acts of god or other events beyond Sponsor's reasonable control, renovation of the Building will be sufficiently completed to permit the First Condo Hotel Closing to begin on or about January 2007. It is currently anticipated that the initial renovation of the Residential Section will be substantially complete by January 2007, the initial renovation of the Hotel Section will be substantially complete by June 2007 and the initial renovation of the Accessory Unit and the Club Unit will be substantially complete by October 2007, although each of these dates with respect to each such Unit and/or section of the Building is subject to change. Prospective Purchasers should note, however, that the Condo Hotel Units will be completed at differing times over a period that may begin prior to and/or extend significantly beyond January 2007. Sponsor will have no liability to any Purchaser, nor will a Purchaser be entitled to any credit, offset or reduction in the purchase price for his or her Unit or otherwise be relieved from any obligations under the Agreement, in the event that the First Condo Hotel Closing occurs earlier or later than the targeted date or the time to complete or to close title to such Purchaser's Unit is accelerated, delayed or postponed by Sponsor, provided, however, that in the event the actual or anticipated commencement date of the projected First Year of Hotel Section Operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised Hotel Section budget with current projections and if: (i) such amended budget exceeds the projected Hotel Section budget set forth herein by 25% or more; or (ii) the First Condo Hotel Closing does not occur within 12 months after January 2007, the date set forth in Schedule B-1 as the commencement date for the projected First Year of Hotel Section Operation, then in either case Sponsor will offer all Purchasers (other than Purchasers who are then in default beyond any applicable grace period under their Agreements, if the Plan has been declared effective) the right to rescind their Agreements within not less than 15 days after the presentation date of the amendment containing such revised budget or after such 12-month period, as the case may be, and any Purchasers electing rescission pursuant to such offer will have their Deposit and any interest accrued thereon returned. Purchasers' rights as described in the preceding sentence are in lieu of any other rights or remedies which may be available pursuant to any applicable law, regulation, statute or otherwise, all of which shall be deemed to have been waived by all Purchasers. As set forth in the Section of this Plan entitled "Effective Date," no closing of title to any Condo Hotel Unit will take place prior to the Plan being declared effective.

Sponsor reserves the right, without prior notice to Purchasers or amendment of this Plan (but subject to obtaining any required approval(s) of any governmental authorities having

jurisdiction), to: (a) amend from time to time any of the Plans and Specifications (including changes in layouts and designs, changes in the size or number of Units and/or their respective percentages of Common Interest, changes in the size or quality of the Common Elements and changes affecting the materials, appliances, equipment, fixtures and other construction details); and/or (b) substitute materials, appliances, equipment and fixtures that are of equivalent or better quality and design in place of those described in the Plans and Specifications. Any such changes, if material (for example, variations in square footage in excess of 5%), shall be disclosed by Sponsor in a duly filed amendment to the Plan and, when applicable, to the Declaration. No such change will be made if the same would materially adversely affect any Purchaser under an Agreement which has been countersigned by Sponsor and returned to the Purchaser unless (i) the affected Purchaser consents; (ii) the Purchaser is in default or (iii) the same is dictated by construction conditions at the Property (such as coordination of Building systems, conflicts with structural members or elements, conforming with Laws, unforeseen events, etc. and, in all cases, in good faith, reasonably necessary due to factors not within Sponsor's reasonable control, and where no practicable alternative (in the exercise of sound construction management practices) exists), and in such event, Sponsor will, in the amendment disclosing such material adverse change, offer the affected Purchaser(s) the right, for at least 15 days, to rescind their Agreement(s) and receive a refund of their Deposit(s), together with all interest earned thereon. No material change will be made in the size or location of any Condo Hotel Units' other improvements or Common Elements if such changes affect the percentage of Common Interests or adversely affect the value of any Condo Hotel Unit to which title has closed or for which an Agreement has been executed and is in effect unless all affected Condo Hotel Unit Owners and contract vendees consent in writing to such change. However, as long as the layout and dimensions of a Condo Hotel Unit conform substantially to the Plans and Specifications, a Purchaser will not be excused from purchasing a Condo Hotel Unit by reason of a minor, non-material deviation or change and will not have any claim against Sponsor as a result thereof.

The issuance of a temporary or new permanent Certificate of Occupancy for all or any portion of the Building shall be deemed presumptive evidence that the renovation of the Building or of such portion of the Building and its appurtenances and the Condo Hotel Units therein has been substantially completed in accordance with this Plan and the Plans and Specifications. However, notwithstanding the foregoing, Sponsor or its representatives will correct, repair or replace all defects in the renovation of the Hotel Section of the Building and its appurtenances and the Condo Hotel Units offered hereby, or in the installation or operation of any appliances, fixtures or equipment in the same, or will cause the same to be corrected, repaired or replaced, but only if such defects are due to improper workmanship or material substantially at variance with the Plans and Specifications, and Sponsor is notified by the Hotel Board or the affected Condo Hotel Unit Owner in writing of such defect: (i) as to the Common Elements, within one year from the date of substantial completion of the portion(s) of the Common Elements which is claimed to be defective with respect to patent defects and within six months from the time of discovery with respect to latent defects; or (ii) as to any Condo Hotel Unit, six months after the date of closing for such Unit with respect to patent defects and six months from the date of discovery with respect to latent defects.

Sponsor will correct such defect if notified in writing by the Unit Owner within one year from the earlier of the closing of title to such Unit or the commencement date of an interim lease

for such Unit. Notwithstanding the foregoing, Sponsor will not be responsible for correcting any defects in construction or installation or operation of any appliances, equipment or fixtures with respect to which assignable warranties or other undertakings (however denoted) from contractors, materialmen or others are assigned to the Hotel Board, the Condominium Board or Unit Owners; or for any condition resulting from normal wear and tear or natural deterioration or from normal settling or shifting of the Building, or for defects of an insubstantial nature, such as, without limitation, partial or total demise of any landscape improvements, nail pops, ridging on gypsum board or sheet rock walls, lumber shrinkage, doors or windows sticking due to weather, door warpage, imperfections of coloring, grouting cracks, scratches in formica or porcelain surfaces, bath and pantry tile grouting cracks, adjustment of any bi-fold doors, walls not square, electrical plates not straight, discolorations or shrinkages, normal settlement and deflection or any consequential damage resulting therefrom including, without limitation, cracks in any concrete roof pavers, or concrete cracks which do not impair the structural soundness of the Building, ceiling imperfections, slight separation in joints of pantry tile or wood flooring, warping, cupping or creaking of wood flooring or any nicks, scratches, gouges, imperfections or discolorations thereof, floors out of level, variations in width, length or tone of wood floor strips or other flooring or floor finishes, also, normal shrinkage or expansion of wood flooring due to changes in moisture content of wood, ceiling imperfections, painting defects, alignment of bathroom finishes, air infiltration from windows, any consequential damage resulting from settling (including, without limitation, concrete or drywall cracks which do not impair the structural soundness of the Building), normal plumbing, heating and air conditioning noises, or carpet discoloring and stretching; or for paint touch-ups or for repair of chips, mars, breaks or other defects in windows, and window sashes, sliding glass doors, lighting fixtures and globes, interior painted surfaces, sinks, tubs, bowls, shower doors, pantry cabinets, counter tops, vanity tops and bases, medicine cabinets, doors, mirrors, saddles, appliances, woodwork, doors, hardware, flooring and appliance cabinets, salting, or color variation in exterior colored mortar and deep colored brick, ponding and/or controlled drainage on the roof surface, or cracks in any pressure treated wood or redwood used or intended for use outside the Building. Sponsor shall be obligated to repair only abnormally chipped stone, formica and porcelain surfaces, which repair shall be made by filling the stone or formica or refinishing the porcelain, but Sponsor shall not be obligated to replace such stone, formica or porcelain surfaces. Except as expressly set forth herein, Sponsor has no obligation to make any repairs of any kind. In no event shall Sponsor be liable for special or consequential damages (whether based on negligence, breach of contract, warranty, or otherwise), it being intended that, notwithstanding anything to the contrary set forth herein, the sole and exclusive remedy of a Unit Owner for a defect in construction is to compel Sponsor to repair or, at Sponsor's option, replace (or cause to be repaired or replaced) any defective item of construction (whether arising as a result of defects in material or improper workmanship or material substantially at variance with the Plans and Specifications), subject to the terms and conditions set forth in this paragraph, provided, however, that in no event will Sponsor be liable for any losses or damages (whether actual, consequential, incidental, special, indirect or otherwise) based on negligence, breach of contract or implied warranty or otherwise resulting therefrom. Sponsor's obligation to correct, repair or replace any defect is subject to the notice requirements and other conditions set forth herein.

Sponsor shall not be obligated to correct and will not be liable to any Purchaser as a result of: (i) any insubstantial variations from the Plans and Specifications or the description of the Building or a Unit set forth in the Plan; or (ii) variations from the Plans and Specifications or

the description of the Building or a Unit set forth in the Plan which are neither in violation of applicable building codes, nor require the approval of any governmental authority having jurisdiction, provided such variations are of substantially similar or better quality than as set forth in the Plans and Specifications or description in this Plan. Any such variation which is material will be disclosed in a duly filed amendment to the Plan.

Each Unit offered hereby and the fixtures and personal property contained therein, are being sold and delivered "AS IS," as described in the Plan at the time of transfer of title to such Condo Hotel Unit, unless Sponsor and the Purchaser of such Unit otherwise agree in writing. The Purchaser of a Unit shall inspect such Unit prior to the closing date and shall execute at such time an inspection statement acknowledging the Purchaser's acceptance of the Unit in good condition and in accordance with the terms of the Plan. However, if a Purchaser finds that Sponsor's improvements as described in the Plan or in the Agreement for such Unit or other writing duly executed and delivered by Sponsor, have not been fully completed, although such improvements have been substantially completed, then Sponsor or its designated representative and the Purchaser will at the time of such execution agree upon and set forth in the inspection statement a list of the incomplete work to be completed in the Unit by Sponsor following the closing for such Unit.

Regardless of any previous statements, Sponsor is obligated to complete its renovations and construction in accordance with all applicable codes and filed building plans and specifications and the loan documents evidencing the construction financing by Construction Lender.

Regardless of any previous statements, Sponsor is obligated to complete its renovations and construction in accordance with all applicable codes and filed building plans and specifications and the loan documents evidencing the construction financing by the Construction Lender (it being understood that upon the conveyance of a Unit to a Purchaser, the Construction Lender will either: (i) consent to the formation of the Condominium and acknowledge that its lien will be limited to Unsold Condo Hotel Units; (ii) subordinate the lien of its mortgage to the Declaration; or (iii) at the closing of title to any particular Unit, release its lien on the Unit being conveyed and its interest in the Common Elements.

The Housing Merchant Implied Warranty Law (New York State General Business Law Article 36-B) does not apply to this offering.

## 2. Real Property Law §339-kk

Section 339-kk of the Real Property Law ("RPL"), a copy of which is set forth in Part II of the Plan, applies to all condominiums in the State of New York, and provides additional financial protection for a condominium association if the sponsor or other non-occupant Unit Owner of a Unit fails to make monthly payments for common charges, assessments and late fees due in connection with such owner's Unit(s).

With respect to unsold units of a condominium owned by a sponsor or by any other non-occupant Unit owner and occupied by a tenant, RPL §339-kk provides as follows:

(a) If payment of common charges, assessments or late fees by any non-occupant Unit owner is more than 60 days late after the expiration of any grace period within which they are due, payments from a tenant of such Unit may become directly payable to the condominium upon written notice by the condominium to the tenant and the non-occupant Unit owner. Where a majority of the condominium board has been elected by Unit owners who are in occupancy of their respective Units, the condominium board may elect not to require that the rental payments be paid to the condominium. Once the common charges, assessments and late fees of the non-occupant Unit owner have been brought current, the condominium board must notify the non-occupant Unit owners and tenant within three business days and thereafter the rental payments will be payable to the non-occupant Unit owner or a designated agent.

(b) Payment by a tenant of rent or the amount required pursuant to the tenant's lease or statutory tenancy to the condominium pursuant to the RPL §339-kk, relieves the tenant from the obligation to pay rent to the non-occupying Unit owner.

(c) Any rights existing under any other laws are not limited by RPL §339-kk.

(d) A non-occupant unit owner who disputes a condominium's claim to rental payments is entitled to present facts supporting such owner's position at the next scheduled meeting of the condominium board, which must be held within 30 days after receipt of notice that the Unit owner seeks to dispute the condominium's claim.

Sponsor makes no representation or guarantee that any Unit Owner (other than Sponsor), any tenant, or the Condominium, will in fact comply with RPL §339-kk, and Sponsor shall have no liability for their failure to do so.

In addition, Sponsor makes no representation as to (i) RPL §339-kk's effect on the lien priority of a loan heretofore or hereafter made to a non-occupant Unit Owner and secured by a Unit, or whether RPL §339-kk's enactment or compliance therewith by a tenant constitutes a default by the Unit Owner under said loan, (ii) RPL 339-kk's effect on assignments of leases and rents given by a non-occupant Unit Owner to mortgagee in connection with purchase-money financing or otherwise, (iii) the Condominium's remedies if a tenant fails or refuses to make rental payments to the Hotel Board after notice from the Hotel Board (in accordance with RPL §339-kk) to do so, (iv) the consequence of the Hotel Board's failure to give notice to a tenant, or (v) who is responsible for designating an agent to whom rental payments are to be made after the non-occupant Unit Owner is brought current in payment of Hotel Common Charges, assessments and late fees.

No representation is made about the tax effects of RPL §339-kk. Prospective Purchasers should review RPL §339-kk to determine its effect on their own situation.

**3. Payment of Expenses**

All costs and expenses in connection with the renovation of the Hotel Section and its appurtenances (including all sums properly due to contractors, subcontractors, suppliers and all others involved in such renovation for work performed and fixtures, material and equipment supplied or installed) will be paid by Sponsor. Sponsor will cause all mechanic's liens arising out of the renovation of the Hotel Section to be bonded or discharged promptly after Sponsor

receives notice of the filing of the same. Alternatively, Sponsor will cause the Title Company or the title insurance company insuring a Purchaser's title to a Unit to affirmatively insure against collection of such liens out of, or enforcement of the same against, such Unit by posting a bond or bonds or escrowing a sum of money. However, if a Purchaser's title insurance company refuses to grant such affirmative insurance and the Title Company would have been willing to grant the same at its regular rates without additional premium, neither such lack of affirmative insurance nor the existence of the liens in question will constitute a valid objection to title.

On April 7, 2006 Sponsor entered into a building loan agreement with Column Financial, Inc. ((on its own behalf and on behalf of other lenders participating from time to time) and any successor lender(s) pursuant to any refinancing, the "Construction Lender") in the amount of $60,939,136.30, advances under which are subject to Sponsor complying with certain standard covenants and conditions for loans of this type. In addition, the loan documentation requires that Sponsor market the Condo Hotel Units for sale and have received executed Agreements for at least 25% of the square footage of the Condo Hotel Units in order to obtain a partial release of any Condo Hotel Unit from the lien of the applicable mortgage. Such square footage condition, however, will not result in a requirement that Sponsor have executed Agreements for more than the 15% (in number) of the Condo Hotel Units required to declare this Plan effective. Additionally, Sponsor must make a minimum payment to Construction Lender in connection with the sale of each Unit in order for Construction Lender to release its lien from the Unit being sold.

Since the Construction Lender has: (i) consented to the formation of the Condominium and acknowledged that its lien will be limited to Unsold Condo Hotel Units; and (ii) subordinated the lien of its mortgage to the Declaration, accordingly, at the closing of title to any particular Unit, Construction Lender shall release its lien on the Unit being conveyed and its interest in the Common Elements.

Sponsor will bear all costs and expenses incurred by it in connection with the creation of the Condominium and the preparation of the Plan and all selling expenses and compensation payable to sales or other personnel of Sponsor.

**4. Assignment of Warranties**

In connection with the First Condo Hotel Closing, Sponsor will deliver, assign or otherwise grant to the Hotel Board, on behalf of all Hotel Unit Owners, the right to proceed under any assignable warranties and other undertakings received by Sponsor from its contractors, suppliers or others in connection with the renovation and equipping of the Hotel Section of the Building, except that warranties and undertakings received by Sponsor which relate to appliances, equipment or fixtures located in any Condo Hotel Unit shall be assigned to the Purchaser of such Unit on the date of closing of title thereto. Certain warranties with respect to the Building will be held by the Condominium Board on behalf of all Unit Owners and/or by the Non-Condo Hotel Unit Owners as to whose Units such warranties pertain.

## 5. Certificate of Occupancy

If, as of the First Condo Hotel Closing, only a temporary Certificate of Occupancy has been issued for the Building, Sponsor will use all reasonable diligence to cause the New York City Department of Buildings to continuously renew the temporary Certificate of Occupancy until a new permanent Certificate of Occupancy for the Building has been issued. Sponsor will, at its sole expense, do and perform, or cause to be done and performed, all such work (subject to events and circumstances beyond Sponsor's reasonable control, e.g., casualty, strikes, governmental restrictions, acts of god, etc.), and will supply, or cause to be supplied, all such materials, and will submit or cause to be submitted all such documentation, and shall pay all applicable fees required by the New York City Department of Buildings that shall be necessary in order to cause the temporary Certificate of Occupancy to be continuously renewed until a new permanent Certificate of Occupancy for the Building has been issued. Prospective Purchasers are advised that a permanent Certificate of Occupancy is required for permanent use of the Building, and that a temporary Certificate of Occupancy may be renewed only for a total of two years from the first date of issuance.

In the event that a new permanent Certificate of Occupancy has not been issued for the Building as of the First Condo Hotel Closing, Sponsor will place in escrow with Sponsor's Counsel, an unconditional irrevocable letter of credit issued by an institutional lender, a surety bond from an institutional lender or recognized bonding company acceptable to the Department of Law (and full disclosure of such letter of credit or bond will be referenced in an amendment to the Plan), or cash, in each case in an amount equal to the cost of the work remaining to be done by Sponsor in respect of the Hotel Section in order to obtain a permanent Certificate of Occupancy for the Building, as certified by a registered architect, certified engineer or construction manager selected by Sponsor. If Sponsor has placed cash in escrow, such funds will be held by Sponsor's Counsel in escrow in a separate bank account. All interest and income on such escrowed funds will be paid to Sponsor, as and when earned and collected. The escrow funds will be released to Sponsor from time to time, as the work progresses, upon delivery to Sponsor's Counsel of a certificate issued by Sponsor's registered architect, certified engineer or construction manager stating that the remaining amount is sufficient to complete the balance of the work remaining to be done by Sponsor in order to obtain such permanent Certificate of Occupancy. Sponsor's Counsel will rely entirely upon such certificate in releasing such funds and will not make any independent inquiry or evaluation. Any remaining balance of the escrow funds will be released to Sponsor upon the issuance of a permanent Certificate of Occupancy for the Building. If Sponsor has deposited a letter of credit or surety bond, it will be subject to periodic reduction in amount upon the same terms as described above for the reduction and release of a cash deposit.

Following the issuance of a new permanent Certificate of Occupancy for the Building, Sponsor will deliver to the Condominium Board and the Hotel Board a complete set of architectural drawings and a complete set of mechanical, electrical, plumbing and sprinkler "as-built" drawings for the Building.

## 6. Architect's Inspection and Certification

In accordance with Section 339-p of the New York Condominium Act, a registered architect or licensed professional engineer shall certify within reasonable tolerances that the Floor Plans are an accurate copy of portions of the plans of the Building as filed with appropriate governmental authorities. In addition, such architect or professional engineer shall make periodic inspections at various stages of renovation to determine that the Building is constructed in accordance with such plans. The inspection reports shall be available at Sponsor's Office and the Department of Law for examination by the Condominium Board and the Hotel Board for a period of six years from the date of the Plan.

## 7. Payment of Hotel Common Charges and Real Estate Taxes

Sponsor will pay all Hotel Common Charges, real estate taxes and special assessments attributable to the Unsold Condo Hotel Units in accordance with the provisions of the Condominium By-Laws and the Hotel By-Laws. Sponsor expects to have the financial resources to meet the aforesaid obligations with respect to Unsold Condo Hotel Units and fund same from income from projected sales, the rental or leasing of Unsold Condo Hotel Units and Sponsor's other financial resources. No bond or other security has been posted by Sponsor to secure its obligation to pay Hotel Common Charges, special assessments or real estate taxes with respect to Unsold Condo Hotel Units.

## 8. Insurance

Sponsor will initially cause the Condominium Board and/or the Hotel Board to procure, to take effect on or before the date of the First Condo Hotel Closing, the insurance relating to the Condominium and the Hotel Section, as applicable, which is required to be maintained in accordance with the provisions of the Condominium By-Laws and/or the Hotel By-Laws (see the Section entitled "Rights and Obligations of the Unit Owners and the Boards" in Part I of the Plan), the cost of which insurance has been reflected in the projected budget(s) set forth in Part I, Section E, as applicable. Such required coverage(s) may be satisfied by any so-called builder's risk policy obtained in connection with the renovation of the Building or by any blanket policy or policies, provided the limits and terms of coverage set forth in such budget(s) are provided under such policy/ies and the same otherwise comply with the applicable terms of the Condominium Documents. To the extent any such policy/ies obtained and paid for by Sponsor shall satisfy the insurance requirements of the Condominium Board and/or the Hotel Board, as applicable, in respect of any period following the First Condo Hotel Closing, the Condominium Board or Hotel Board, as applicable, shall reimburse Sponsor for its prorated share of the cost of such coverage.

## 9. Right of Access

Sponsor and its contractors, subcontractors, agents and employees will have a right of access to each Unit and to the Common Elements for the purpose of fulfilling Sponsor's obligations under the Plan, performing certain alterations and repairs in or about the Unsold Condo Hotel Units and exercising its other rights or performing its other obligations under the Plan. Sponsor will repair any damage caused as a result of such access and will use reasonable

efforts to exercise such access in such a manner as will not unreasonably interfere with the use of any Unit for its permitted purposes.

**10. Dissolution**

In the event of the dissolution or liquidation of Sponsor, or the transfer of ten (10) or more Condo Hotel Units or twenty percent (20%) or more of the total number of Condo Hotel Units in the Condominium, whichever is less, to a single Purchaser, the principals of Sponsor will provide financially responsible entities or individuals who will assume the status and all of the obligations of Sponsor for those Condo Hotel Units under the Plan and applicable Laws (including, without limitation, Sponsor's representation that it will endeavor in good faith to sell the Units offered hereunder but subject to the reservation of the unconditional right to rent or lease, rather than sell, such Units).

**11. General**

Sponsor's representations, warranties and covenants under this Section of the Plan will survive the delivery of the deeds to the respective Condo Hotel Units only for the time periods set forth in 1.a above. The obligations of Sponsor to pay Hotel Common Charges and to perform its other duties as a Condo Hotel Unit Owner with respect to any Unsold Condo Hotel Units will survive for as long as Sponsor owns the same.

Sponsor agrees to indemnify the Hotel Board and the Condo Hotel Unit Owners against, hold them harmless from and defend on their behalf any suits, proceedings, or claims arising out of any default by Sponsor in performing its obligations under this Plan or any breach of any representation expressly made by Sponsor in this Plan and resulting: (a) as to any Condo Hotel Unit, from any occurrence taking place prior to the closing of title to such Condo Hotel Unit; or (b) as to the Hotel Limited Common Elements, from any occurrence arising out of Sponsor's acts or omissions. However, Sponsor will not be liable for, or obligated to defend, any suits, proceedings or claims arising out of any occurrence taking place from and after the respective dates set forth above, except those arising out of any negligence or violation of Article 23A of the New York State General Business Law by Sponsor or as explicitly stated in this Plan.

The obligations of Sponsor hereunder shall be enforceable by the Hotel Board on behalf of all Condo Hotel Unit Owners. Obligations of Sponsor shall be enforceable by individual Condo Hotel Unit Owners if either: (i) the Hotel Board fails to take reasonable action to enforce such obligations within 90 days following the giving of notice of such claim by any Condo Hotel Unit Owner to the Hotel Board; or (ii) the applicable statute of limitations with respect to any claim by a Condo Hotel Unit Owner which would otherwise be enforceable by the Hotel Board will expire during the aforesaid 90-day period.

Sponsor has not furnished any bond or other security for the performance of the obligations of Sponsor under the Plan. Sponsor's ability to perform its obligations under the Plan will depend on its financial condition from time to time. No warranty is made that Sponsor will be financially able to perform all or any of such obligations.

## 12. Use of Unsold Condo Hotel Units

Sponsor and its designee reserve the right to use or occupy or to rent, hire or lease any Unsold Condo Hotel Unit to any Purchaser or non-purchasers at any time, both before and after the First Condo Hotel Closing (provided that a permanent or temporary Certificate of Occupancy covering each such Unsold Condo Hotel Unit has been obtained). Sponsor will endeavor in good faith to sell, but nevertheless, reserves the unconditional right, to rent or lease such Unsold Condo Hotel Units to Purchasers and others. As a result, a Purchaser may be acquiring a Unit that has been previously occupied, but, unless otherwise specifically agreed to in writing by Sponsor and such Purchaser, such Unit will be delivered at closing free and clear of all leases and tenancies and rights of occupancy.

Sponsor and its designee reserve the right, without prior notice or amendment to the Plan, to use Unsold Condo Hotel Units on any floor of the Building as sales offices and model units, or for any lawful use, subject in each case, however, to the provisions of the Declaration, the Condominium By-Laws and Article 6 of the Hotel By-Laws. Notwithstanding the foregoing or anything contained herein, in the Declaration, Condominium By-Laws, Hotel By-Laws, General Rules and Regulations or the Hotel Rules and Regulations to the contrary, Sponsor or its designee may, without the permission of the Condominium Board or the Hotel Board use or grant permission for the use of any Unsold Condo Hotel Unit for any purpose, including, but not limited to, as models and sales and/or promotion offices in connection with the sale or rental of the Units or for any other purpose, subject only to compliance with applicable governmental laws and regulations as to any such use.

## 13. Alterations of Unsold Condo Hotel Units

Sponsor shall have the right, pursuant (and subject) to the terms of the Declaration, the Condominium By-Laws and the Hotel By-Laws, as the same may be amended from time to time, without the approval of the Condominium Board, Hotel Board or any other Unit Owner or any Mortgagee, to make any alterations, additions, improvements or repairs in or to any Unsold Condo Hotel Units, whether structural or non-structural, interior or exterior, ordinary or extraordinary (including, without limitation, the right to combine two or more Unsold Condo Hotel Units, or to add more Units by subdividing Unsold Condo Hotel Units or to change the number of rooms in, as well as the size, layout and square foot area of any Unsold Condo Hotel Unit).

Sponsor reserves the right, without prior notice to Purchasers or amendment of this Plan (but subject to obtaining any required approval(s) of any governmental authorities having jurisdiction), to: (i) amend from time to time any of the Plans and Specifications (including changes in layouts and designs, changes in the size or number of Units and/or their respective percentages of Common Interest, changes in the size or quality of the Common Elements and changes affecting the materials, appliances, equipment, fixtures and other construction details); and/or (ii) substitute materials, appliances, equipment and fixtures that are of equivalent or better quality and design in place of those described in the Plans and Specifications. Any such changes, if material (for example, variations in square footage in excess of 5%), shall be disclosed by Sponsor in a duly filed amendment to the Plan and, when applicable, to the Declaration. No such change will be made if the same would materially adversely affect any

Purchaser under an Agreement which has been countersigned by Sponsor and returned to the Purchaser unless: (i) the affected Purchaser consents; (ii) the Purchaser is in default; or (iii) the same is dictated by construction conditions at the Property (such as coordination of Building systems, conflicts with structural members or elements, conforming with Laws, unforeseen events, etc. and, in all cases, in good faith, reasonably necessary due to factors not within Sponsor's reasonable control, and where no practicable alternative (in the exercise of sound construction management practices) exists), and in such event, Sponsor will, in the amendment disclosing such material adverse change, offer the affected Purchaser(s) the right, for at least 15 days, to rescind their Agreement(s) and receive a refund of their Deposit(s), together with all interest earned thereon. No material change will be made in the size or location of any of the Condo Hotel Units' other improvements or Common Elements if such changes affect the percentage of Common Interests or adversely affect the value of any Condo Hotel Unit to which title has closed or for which an Agreement has been executed and is in effect unless all affected Condo Hotel Unit Owners and contract vendees consent in writing to such change. However, as long as the layout and dimensions of a Condo Hotel Unit conform substantially to the Plans and Specifications, a Purchaser will not be excused from purchasing a Condo Hotel Unit by reason of a minor, non-material deviation or change and will not have any claim against Sponsor as a result thereof.

An initial purchaser of an Unsold Condo Hotel Unit shall have the right, without the approval of the Condominium Board or the Hotel Board, but subject to the provisions of the Condominium By-Laws and the Hotel By-Laws regarding the same, to make any alterations, additions, improvements or repairs in or to such Unit, provided that such purchaser obtains all necessary approvals required by law and that Sponsor has consented to the same in writing at or prior to the closing of title to such Unit, which consent Sponsor may withhold or condition in its sole and absolute discretion. Absent Sponsor's consent thereto, Purchasers shall have rights in respect of alterations as are set forth in Article 8 of the Condominium By-Laws and Article 6 of the Hotel By-Laws and described generally in the Section of the Plan entitled "Rights and Obligations of Condo Hotel Unit Owners and the Hotel Board" below; and in all events, subject to any applicable provisions of the Unit Management and Operation Agreement.

## 14. Historic Preservation Easements and Rehabilitation Credits

The Accessory Unit Owner has reserved for itself and/or its designee the exclusive right to apply for and/or grant a historic preservation easement or similar right with respect to the Building Façade. The granting of such an easement would have the effect of, among other things, limiting or restricting the ability of the Condominium Board to change the outward appearance of the Building. As further described in the Condominium By-Laws, the Condominium Board and/or the Hotel Board shall cooperate with the Accessory Unit Owner in granting any such easement. Sponsor is making no representation or warranty as to whether any such easement or right will be granted, or as to any tax or other benefits that might accrue to any Unit Owner, the Condominium or the Hotel Section as a result of any such grant. In furtherance of such reservation, the Building Façade is part of the Accessory Unit. None of the foregoing, however, shall increase any obligations of the Condo Hotel Unit Owners and the Hotel Board with respect to the Building Façade. The Condominium Board shall, on behalf of the Accessory Unit Owner, have the right and obligation to supervise and/or perform all maintenance, Alterations and Repairs necessary in connection with the Building Façade (including, without

limitation, in connection with the terms and conditions of any Historic Preservation Easement), and to insure (and to collect, use, apply, distribute and otherwise deal with the proceeds of insurance, or condemnation awards, with respect to) the Building Façade, in each case, as and to same extent as if the same were a General Common Element; and subject to the terms of the Condominium Documents with respect to allocations, etc., all costs and expenses incurred by the Condominium Board in connection with the Building Façade shall be deemed to be General Common Expenses.

Sponsor (and its designee) has reserved for itself and/or its designee the exclusive right to claim any rehabilitation tax credit available to it as a result of "qualified rehabilitation expenditures" incurred by it in connection with the rehabilitation of the Building. To the extent Sponsor claims a tax credit with respect thereto, no qualified rehabilitation expenditures may be treated as incurred by the Purchaser of a Unit. Sponsor is making no representation or warranty as to whether any Unit Owner will be entitled to claim or receive the benefit of any rehabilitation tax credit with respect to any qualified rehabilitation expenditures incurred by Sponsor but with respect to which Sponsor does not claim any rehabilitation tax credit. Prospective Purchasers should note that Kramer Levin Naftalis & Frankel LLP has not opined whether any Purchaser will be eligible to claim or receive the benefit of the rehabilitation tax credit.

**15. Miscellaneous**

The Transient Hotel Unit Owner and/or its designee (and its respective successors and assigns) shall have an easement to erect, use, lease, license, maintain, repair, replace and operate a platform and other facilities for the purpose of erecting, using, leasing, licensing, maintaining, repairing, replacing and operating antennae, satellite dishes and other communications equipment on the roof of the Building (which is otherwise a Common Element). None of the Condo Hotel Unit Owners, the Condominium Board, the Residential Board, the Hotel Board, or any other Non-Condo Hotel Unit Owner will have any interest in the rents, profits or revenues from the rental, use or sale of any such space pursuant to the aforementioned easements and rights. The Transient Hotel Unit Owner (and/or such designee) shall have the right to create additional units consisting of portions of its Unit, each of which shall have as an appurtenant easement to use a portion of its Unit platform and other facilities on the roof of the Building, upon which such additional unit owners (or its tenant or licensee) may erect, use, lease, license, maintain, repair, replace and operate antennae, satellite dishes and other telecommunications equipment. If such additional Units are created, the percentage interest in the Common Elements allocated to such units and the percentage interests of all other Units will remain unchanged.

Sponsor and its designees shall have the right, until the tenth anniversary of the First Condo Hotel Closing, to use portions of the Building, without charge, for exhibitions or for other promotional functions with respect to Sponsor's sales program or otherwise.

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## P. CONTROL BY SPONSOR

Until the first annual meeting of the Hotel Unit Owners (the "First Annual Hotel Meeting"), the Hotel Board shall consist of three persons – two of whom shall be designated by Sponsor and one of whom shall be designated by the Transient Hotel Unit Owner (which initially shall be Sponsor), all three of which shall also serve as the Hotel Section's three designees to the seven-member Condominium Board (described in the Section entitled "The Condominium Board" in Part I of the Plan below). Sponsor anticipates that the following persons will be designated as the initial Hotel Board members: (A) (i) Miki Naftali (a principal of El-Ad Properties NY LLC); and (ii) Orly Hackmon (a principal of Sponsor), as Sponsor's designees; and (B) Chuck Henry (President of Hotel Capital Advisers, an advisory firm retained by Kingdom (see "Identity of Parties" in Part I below) with respect to its hotel investment activities), as the designee of the Transient Hotel Unit Owner. Each of these persons are experienced in real estate matters and familiar with the Property. Sponsor will amend the Plan prior to the First Condo Hotel Closing in the event such three persons shall not constitute the initial Hotel Board members. The First Annual Hotel Meeting shall be held not later than 30 days after the later to occur of: (i) the second anniversary of the First Condo Hotel Closing; or (ii) the closing of title by Sponsor to Condo Hotel Units representing at least 50%, both in number and in aggregate Common Interests, of all Condo Hotel Units to Purchasers (see the Section of Part I of the Plan below entitled "The Hotel Board" for further discussion); and at such meeting the incumbent Hotel Board shall resign and a new five-member Hotel Board shall be elected and/or designated by the Condo Hotel Unit Owners (including Sponsor) and the Transient Hotel Unit Owner.

The Hotel By-Laws do not include a provision that after the expiration of the Initial Hotel Control Period a majority of the Hotel Board must be Condo Hotel Unit Owner-occupants or members of a Condo Hotel Unit Owner-occupant's household who are unrelated to Sponsor and its principals. Condo Hotel Unit Owner-occupants and non-resident Condo Hotel Unit Owners, including Sponsor, may have inherent conflicts on how the Hotel Section should be managed because of their different reasons for purchasing, i.e., purchase for personal use as opposed to as an investment.

In addition, because Sponsor reserves the unconditional right to rent the Condo Hotel Units, there is no commitment to sell more Condo Hotel Units than the fifteen (15%) percent (in number) necessary to declare this Plan effective and Condo Hotel Unit Owner-occupants may never gain effective control and management of the Hotel Section. Sponsor must receive consent from Construction Lender to rent, rather than sell the Condo Hotel Units. (See Special Risks Section 5).

The First Annual Hotel Meeting shall be held not later than 30 days after the later to occur of: (i) the second anniversary of the First Condo Hotel Closing; or (ii) the closing of title by Sponsor to Condo Hotel Units representing at least 50%, both in number and in aggregate Common Interests, of all Condo Hotel Units to Purchasers; and at such meeting a new Hotel Board shall be elected and/or designated by the Condo Hotel Unit Owners, Transient Hotel Unit Owner and Sponsor and the incumbent Hotel Board shall resign. From and after the First Annual Hotel Meeting, a new five member Hotel Board shall be elected and/or designated, as follows: three members shall be elected and or designated by the Condo Hotel Unit Owners

(including Sponsor) and two members shall be designated by the Transient Hotel Unit Owner. At meetings of the Hotel Unit Owners, Sponsor will have the right to vote all of the Common Interests appurtenant to the Condo Hotel Units owned by Sponsor as it sees fit. In addition, at elections of members to the Hotel Board held at and after the First Annual Hotel Meeting but before the expiration of the Initial Hotel Control Period, Sponsor and/or its designee will have the right to designate two of the three members of the Hotel Board that are otherwise to be elected by the Condo Hotel Unit Owners who may be persons related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owners and Sponsor, its designee and all other Condo Hotel Unit Owners shall have the right to elect the remaining one member of the Hotel Board to be elected by the Condo Hotel Unit Owners who shall not be related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owners. At elections of members to the Hotel Board held after the expiration of the Initial Hotel Control Period (which is the later to occur of: (a) the fifth anniversary of the First Condo Hotel Closing or (b) the closing of title by Sponsor to Condo Hotel Units representing at least 90%, both in number and in aggregate Common Interests, of all Condo Hotel Units) but while Sponsor and/or its designee still owns at least one Unsold Condo Hotel Unit, Sponsor will have the right to designate one of the three members of the Hotel Board (who may be related to or affiliated with Sponsor, such designee or other Unsold Unit Owner) that are otherwise to be elected by the Condo Hotel Unit Owners, Sponsor, its designee and all other Condo Hotel Unit Owners shall have the right to elect the remaining two members of the Hotel Board to be elected by the Condo Hotel Unit Owners, which members shall not be related to or affiliated with Sponsor, such designee or other Unsold Unit Owner. The Transient Hotel Unit Owner shall at all times have the right to designate the two remaining members of the Hotel Board. Accordingly, from and after the expiration of the Initial Hotel Control Period, Sponsor and/or its designee shall have the right to designate not more than one of the three members of the Hotel Board to be elected by the Condo Hotel Unit Owners (although if the Transient Hotel Unit Owner is Sponsor or an affiliate thereof, Sponsor shall also have the right to designate the two Hotel Board members that are to be designated by the Transient Hotel Unit Owner). There is no restriction on the right of Sponsor and its designee(s) or any Unsold Condo Hotel Unit Owner to vote for members of the Hotel Board who are not related to or affiliated with Sponsor or such designee or Unsold Condo Hotel Unit Owner; however, after the expiration of the Initial Hotel Control Period, neither Sponsor not its designee will designate a majority of the three members of the Hotel Board to be elected by the Condo Hotel Unit Owners.

Three of the five members of the Hotel Board shall also serve as the Hotel Board's representatives on the Condominium Board (and, until the expiration of the Initial Hotel Control Period, such three members shall be Sponsor's and/or the Transient Hotel Unit Owner's designees to the Hotel Board). After the expiration of the Initial Condo Hotel Control Period, the two Hotel Board members designated by the Transient Hotel Unit Owner and one of the Hotel Board members to be elected by the Condo Hotel Unit Owners and who is not designated by Hotel Sponsor and/or its designee shall be the three Hotel Board members who also serve on the Condominium Board.

Until Sponsor no longer designates or elects a majority of the members of the Hotel Board, Sponsor will, through its control of the Hotel Board, be able to determine the maintenance and operation of, and the services to be provided by, the Hotel Board, and also

(subject to any General Common Charges assessed by the Condominium Board) the determination of Hotel Common Charges to be paid by all Condo Hotel Unit Owners.

Prospective Purchasers should be advised that Condo Hotel Unit Owner-occupants and non-resident Condo Hotel Unit Owners, including Sponsor, may have inherent conflicts on how the Hotel Section should be managed because of their different reasons for purchasing, i.e., purchase for personal use as opposed to as an investment.

The Hotel Board may not, without the prior written consent of Sponsor or its designee: (i) make or approve any addition, alteration or improvement to the Hotel Limited Common Elements unless required by any Laws; (ii) assess any Hotel Common Charges for the creation of, addition to or replacement of all or any reserve, contingency or surplus fund in respect of the Hotel Section; (iii) increase or decrease the number of, or change the kind of, employees initially hired for the Hotel Section (and in no event has the right to hire employees), as provided for in Schedule B-1 "Projected Budget for First Year of Hotel Section Operation" (the "First Year's Budget") set forth in the Plan; (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the First Condo Hotel Closing or otherwise provide services in excess of those referred to in the Plan, except as is required to reflect normal annual increases in operating services; (v) borrow money on behalf of the Hotel Section, or unless such borrowing is approved by the owners of Units representing at least 66-2/3% in number and aggregate Common Interests of all Hotel Units); or (vi) exercise any right of first refusal to lease or purchase a Condo Hotel Unit. However, the Hotel Board may take any of the actions enumerated in subsections (i) through (v) above, without the consent of Sponsor if, and only if such action is necessary, and no other alternative is available, either to enable the Hotel Board to comply with any Law, or to remedy any notice of violation entered against the Hotel Section or the Building, or to comply with any proper work order by an insurer of the Hotel Section or the Building, or for the health and safety (but not the general conduct or welfare) of the occupants of the Hotel Section or the Building. Hotel Sponsor may not exercise veto power over expenses described in said Schedule B-1, or over expenses required: (i) to comply with applicable Laws; or (ii) to remedy any notice of violation; or (iii) to remedy any work ordered by an insurer. Sponsor, through its control over the Hotel Board, may not exercise veto power over expenses applicable exclusively to the Hotel Section as described in said Schedule B-1, or over expenses required to comply with any Laws applicable to the Building or the Hotel Section, or to remedy any notice of violation entered against the Building or the Hotel Section or to comply with any proper work order by an insurer of the Building or the Hotel Section. Sponsor may, however, exercise veto power over expenses other than those described in the preceding sentence, to the extent provided herein or in the Plan, for a period ending not more than five (5) years after the First Condo Hotel Closing or whenever the Unsold Condo Hotel Units constitute less than 25% of the Common Interest of all Condo Hotel Units, whichever is sooner, or as the Unit Owner of any one or more Non-Hotel Units.

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## Q. THE HOTEL BOARD

### 1. General

The affairs of the Hotel Section shall be governed by the Hotel Board, subject to any matters and authority vested in the Condominium Board as described in the Declaration, the Condominium By-Laws and the Hotel By-Laws. The Hotel Board shall initially consist of three members – two of which shall be designated by Sponsor (as the owner of the Unsold Condo Hotel Units) and one of which shall be designated by the Transient Hotel Unit Owner (which initially will also be Sponsor). At the First Annual Hotel Meeting, the incumbent Hotel Board so designated will resign and a new Hotel Board, consisting of five members, will be elected and/or designated by the Condo Hotel Unit Owners, the Transient Hotel Unit Owner and Sponsor, as described below. From and after the First Annual Hotel Meeting, three of the five members of the Hotel Board shall be elected and/or designated by the Condo Hotel Unit Owners (including Sponsor) and two members shall be designated by the Transient Hotel Unit Owner. In addition, until the expiration of the Initial Hotel Control Period (which is the later to occur of: (a) the fifth anniversary of the First Condo Hotel Closing; or (b) the closing of title by Sponsor to Condo Hotel Units representing at least 90%, both in number and in aggregate Common Interests, of all Condo Hotel Units), Sponsor and/or its designee will have the right to designate two of the three members of the Hotel Board that are otherwise to be elected by the Condo Hotel Unit Owners who may be persons related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owners, and Hotel Sponsor, its designee, and all other Condo Hotel Unit Owners shall have the right to elect the remaining one member of the Hotel Board to be elected by the Condo Hotel Unit Owners who shall not be related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owner. Following the expiration of the Initial Hotel Control Period but while Sponsor owns at least one Condo Hotel Unit, Sponsor will have the right to designate one of the three members of the Hotel Board (who may be related to or affiliated with Sponsor, such designee or other Unsold Unit Owner) that are otherwise to be elected by the Condo Hotel Unit Owners, and Sponsor, its designee and all other Condo Hotel Unit Owners shall have the right to elect the remaining two members of the Hotel Board to be elected by the Condo Hotel Unit Owners, which members shall not be related to or affiliated with Sponsor, such designee or other Unsold Condo Hotel Unit Owner. The Transient Hotel Unit Owner (which initially and may thereafter be Sponsor) shall at all times have the right to designate two of the five members of the Hotel Board. Accordingly, from and after the expiration of the Initial Hotel Control Period, Sponsor and/or its designee shall have the right to designate not more than one of the three members of the Hotel Board to be elected by the Condo Hotel Unit Owners (although, if the Transient Hotel Unit Owner is Sponsor or an affiliate thereof, Sponsor shall also have the right to designate the two Hotel Board members that are to be designated by the Transient Hotel Unit Owner).

The term of office of each of the five members comprising the Hotel Board elected or designated at the First Annual Hotel Meeting shall be fixed at such meeting as follows: (a) the two designees of the Transient Hotel Unit Owner will serve for a term of approximately one year; (b) two of the three remaining Hotel Board members will serve for a term of approximately two years; and (c) the one remaining member will serve for a term of approximately three years. Those members of the first five-member Hotel Board (other than the designees of the Transient Hotel Unit Owner) who receive the highest number of votes will serve for the longest terms of

office, but except as set forth in the Hotel By-Laws, any members designated by Sponsor or its designee as the owner of Unsold Condo Hotel Units shall serve for the shorter terms of office. At each annual meeting of the Hotel Unit Owners subsequent to the First Annual Hotel Meeting, the Condo Hotel Unit Owners shall elect and the Transient Unit Owner shall designate (and/or Sponsor shall designate, as the case may be) Hotel Board members to replace the Hotel Board members whose terms of office are then expiring, each to serve a term of office fixed at three years. Notwithstanding the expiration of the term of office of a member of the Hotel Board or anything contained herein to the contrary, such member of the Hotel Board (including any member designated by Sponsor) shall serve until his or her successor shall be elected (or designated) and qualified. Subject to the requirements described in the Section in Part I of the Plan entitled "Control by Sponsor", there shall be no limit on the number of terms of office, successive or otherwise, that a Hotel Board member (including any member of the Hotel Board designated by Sponsor) may serve.

Hotel Board members elected by the Condo Hotel Unit Owners shall at all times be: (i) individual Condo Hotel Unit Owners or Permitted Mortgagees of Condo Hotel Units; (ii) partners or employees of a partnership owning, or holding a mortgage encumbering, a Condo Hotel Unit; (iii) officers, directors, stockholders or employees of corporate owners or corporate Permitted Mortgagees of Condo Hotel Units; (iv) members or employees of a limited liability company owning, or holding a Permitted Mortgage encumbering, a Condo Hotel Unit; (v) fiduciaries or their beneficiaries who are owners or Permitted Mortgagees of Condo Hotel Units (or officers, directors or stockholders of corporate fiduciaries or partners or employees of partnership fiduciaries); (vi) adult family members or spouses of any of the foregoing individuals; or (vii) individuals designated by a sovereign government, consulate or other similar entity that is a Condo Hotel Unit Owner or a mortgagee of a Condo Hotel Unit. No Hotel Board member shall continue to serve after he or she ceases to be qualified as set forth above. The foregoing requirements shall not apply to any Hotel Board member(s) designated by Sponsor or its designee, or to any Hotel Board member(s) designated by the Transient Hotel Unit Owner.

In no event shall any Condo Hotel Unit Owner (or its proxy) or another interested party be eligible for election to the Hotel Board, and any such Unit Owner (or its proxy) or other party may be removed as a Hotel Board member by a majority vote of the other Hotel Board members, if such Condo Hotel Unit Owner is then in arrears, beyond any applicable grace period, in the payment of Hotel Common Charges or any other amounts required by the Hotel Board. In addition, no member of the Hotel Board (or his or her proxy) may continue to participate as a member thereof after the Hotel Board has perfected a lien against its Unit, for so long as such lien remains unsatisfied.

Members of the Hotel Board shall serve without compensation. All Hotel Board members and employees of the Hotel Section will be bonded from and after the First Condo Hotel Closing under fidelity bonds in favor of the Hotel Section. Initially, the amount of such bonds shall be at least $250,000 for each loss. The cost of the bonds has been provided for in the estimate of the Hotel Common Charges contained in Schedule B-1 in Part I, Section E of the Plan.

**2. Powers and Duties of and Determinations by the Hotel Board**

Subject to any matters and authority vested in the Condominium Board as described in the Declaration, the Condominium By-Laws and the Hotel By-Laws, the Hotel Board shall have the powers and duties necessary for or incidental to the administration of the affairs of the Hotel Section other than those certain powers and duties delegated to Hotel Manager. As more fully set forth (and except as may otherwise be provided) in the Hotel By-Laws, all determinations required to be made by the Hotel Board shall be by majority of the votes cast at any meeting at which a quorum is present. As described in the Hotel By-Laws, among other things, adoption of the annual Hotel Section budget or any amendment thereto shall require an affirmative 66-2/3% vote of the Hotel Board.

The Hotel Board shall make reports to the Condo Hotel Unit Owners on a regular basis, but at least annually, regarding the actions taken and matters coming before the Hotel Board.

**3. Meetings and Votes of Condo Hotel Unit Owners**

After the First Annual Hotel Meeting as described above, annual meetings of the Hotel Unit Owners will be held within approximately four weeks of the anniversary of the First Annual Hotel Meeting, on a date to be set by the Hotel Board. At each such meeting, the Hotel Unit Owners shall elect (or designate, as applicable) members to replace those members of the Hotel Board whose terms have expired. In addition, special meetings may be held from time to time pursuant to the Hotel By-Laws. Except as otherwise provided in the Hotel By-Laws: (i) the presence in person or by proxy of Condo Hotel Unit Owners owning Hotel Units to which appertain at least 35% of the aggregate Common Interests attributable to all Condo Hotel Units; and (ii) the presence of the Transient Hotel Unit Owner shall constitute a quorum at all meetings of Hotel Unit Owners; and, except as otherwise provided in the Hotel By-Laws or the Declaration, a majority of votes cast at any such meeting at which a quorum is present or is not required shall be binding on all Hotel Unit Owners.

Each Condo Hotel Unit Owner, upon obtaining title, will in accordance with Section 339-e of the Real Property Law, automatically have the right to vote at all meetings of the Hotel Unit Owners, based upon the Common Interest appurtenant to each of the Condo Hotel Unit(s) owned by such Unit Owner, and at all such meetings, each such Unit Owner (or his or her proxy) entitled to vote thereat (including Sponsor or its designee with respect to Unsold Condo Hotel Units) shall be entitled to cast one vote for each .0001% of interest in the Common Elements (proportionate among the Common Interest attributable to all Hotel Units) appurtenant to his or her Condo Hotel Unit(s).

**4. Officers**

The principal officers of the Hotel Board will be the President, Vice President/Treasurer and Secretary, all of whom shall be elected by the Board. The Board may also appoint additional officers as the Hotel Board in its judgment may deem advisable.

None of the officers of the Hotel Board need be Condo Hotel Unit Owners or officers/employees of the Transient Hotel Unit Owner or have any interest therein or be members of the Hotel Board; except that, from and after the first organizational meeting of the Hotel

Board after the First Annual Hotel Meeting, the President of the Hotel Board must be a member of the Hotel Board.

Upon the affirmative vote of a majority of the members of the Hotel Board, present in person or by proxy at a regular meeting of such Board, or at a special meeting of such Hotel Board called for such purpose, at which a quorum is present or is otherwise not required, any officer may be removed, either with or without cause, and his or her successor shall be elected.

**5. Designation of Members to the Condominium Board**

Three of the five members of the Hotel Board shall also serve as the Hotel Board's representatives on Condominium Board (and, until the expiration of the Initial Hotel Control Period, such three members shall be Sponsor's and/or the Transient Hotel Unit Owner's designees to the Hotel Board). After the expiration of the Initial Hotel Control Period, the two Hotel Board members designated by the Transient Hotel Unit Owner and one of the Hotel Board members to be elected by the Condo Hotel Unit Owners and who is not designated by Hotel Sponsor and/or its designee shall be the three Hotel Board members who also serve on the Condominium Board.

**6. No Control of the Condominium Board by Hotel Section or Hotel Board**

As described more fully in the Condominium By-Laws, the powers and duties necessary for or incidental to the administration of the affairs of the Condominium generally (i.e., exclusive of matters relating exclusively to the Hotel Section) will be vested in the Condominium Board. The Hotel Section, the Residential Section and the Accessory Unit Owner will be represented on the Condominium Board, with the Hotel Section having the right to appoint three of the seven members of the Condominium Board. As a result, the members of the Condominium Board representing the Hotel Section will never control a majority vote thereon; and the Residential Section (whose appointees to the Condominium Board will initially and may thereafter be controlled by an affiliate of Sponsor) and the Accessory Unit Owner (which will initially and may thereafter also be an affiliate of Sponsor) will, in the aggregate, control a majority of the votes on the Condominium Board since four out of the seven members of the Condominium Board will always be designated by the Residential Section and the Accessory Unit Owner. Moreover, Sponsor (together with its affiliates) will initially and may thereafter control a majority vote on the Condominium Board since affiliates of Sponsor will initially own the Unsold Residential Units and the Accessory Unit and as a result, in addition to the rights reserved to Sponsor with respect to the election and/or designation of members of the Hotel Board, shall (through such affiliates) have the right to designate additional members of the Condominium Board. Condo Hotel Unit Owners shall not be entitled to vote in their individual capacities as Unit Owners at any meeting of the Condominium Board.

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## R. THE CONDOMINIUM BOARD

### 1. General

While the exclusive affairs of the Hotel Section will be governed by the Hotel Board (as described more fully above and in the Hotel By-Laws and Condominium By-Laws), such governance is subject and subordinate to the governance of the Condominium overall which is vested in the Condominium Board.

The Condominium Board shall consist of seven (7) members: (i) three members designated by or on behalf of the Hotel Board (as described in paragraph 5 of the Section above in Part I of the Plan entitled "The Hotel Board"); (ii) three members designated by the Residential Board; and (iii) one member designated by the Accessory Unit Owner. Sponsor will initially own the Transient Hotel Unit; and affiliates of Sponsor will initially own the Unsold Residential Units and the Accessory Unit and as a result, in addition to the rights reserved to Sponsor with respect to the election and/or designation of members of the Hotel Board, shall (through such affiliates) have the right to designate additional members of the Condominium Board. An affiliate of Sponsor will also initially own the Club Unit; however, the Club Unit Owner will not independently have the right to designate any member of the Condominium Board.

The term of office of each of the seven members of the Condominium Board will expire annually and, in general, the replacement of such member, which may be the same person, will be made by the Board or Unit Owner which designated such member. Notwithstanding the expiration of the term of office of a member of the Condominium Board, such member shall serve until a successor has been elected and qualified.

Members of the Condominium Board shall serve without compensation. All officers, Condominium Board members and employees of the Condominium will be bonded at all times under fidelity bonds in favor of the Condominium in amounts deemed appropriate by the Condominium Board. It is anticipated that such amount will initially be at least $250,000 for each loss. The cost of the bonds has been provided for in the estimate of the General Common Charges allocated to all Unit Owners contained in Schedule B-2 in Part I, Section E, of the Plan.

With respect to the Condominium Board members: (i) the qualifications set forth in the Hotel By-Laws (and described in the immediately preceding Section of Part I of the Plan entitled "The Hotel Board") for members of the Hotel Board shall apply to the Condominium Board members (other than those designated by Sponsor) representing the Hotel Section; and (ii) except as set forth in the Residential By-Laws in the case of the Residential Section, no restrictions shall apply as to which person the Residential Board or the Accessory Unit Owner may designate from time to time to the Condominium Board except that each Condominium Board member (and any proxy) must be a natural person and not an entity.

In no event shall any Unit Owner (or its proxy) be eligible for election to the Condominium Board if such Unit Owner is then in default, beyond any applicable grace period, in the payment of General Common Charges or any other amounts required by the Condominium Board to be paid. In addition, no member of the Condominium Board (or his or her proxy) may

continue to participate as a member thereof after the Condominium Board has perfected a lien against its Unit, for so long as such lien remains unsatisfied.

Prospective Purchasers are advised that Condo Hotel Unit Owners, Condo Hotel Unit occupants and non-resident Condo Hotel Unit Owners, including Sponsor and Non-Condo Hotel Unit Owners may have inherent conflicts on how the Condominium should be managed because of their different reasons for purchasing, i.e., for personal use vs. investment vs. for business/commercial purposes.

The Hotel Section as well as the Residential Section and the Accessory Unit Owner will be represented on the Condominium Board – with the Hotel Section having the right to appoint three of the seven members of the Condominium Board; the Residential Section having the right to appoint three members; and the Accessory Unit Owner having the right to appoint one member. As a result, the members of the Condominium Board representing the Hotel Section will never control a majority vote thereon; and the Non-Condo Hotel Unit Owners (which will initially and may thereafter include Sponsor or affiliates of Sponsor) will, in the aggregate, control a majority of the votes on the Condominium Board. Moreover, Sponsor (together with its affiliates) may initially control a majority vote on the Condominium Board since Sponsor's affiliate will initially own the Accessory Unit and another affiliate will initially own one or more of the Unsold Residential Units and shall, in each such capacity, have the right to designate additional members to the Condominium Board in addition to the rights reserved to Sponsor with respect to the election and/or designation of members of the Hotel Board. Condo Hotel Unit Owners shall not be entitled to vote in their individual capacities as Unit Owners at any meeting of the Condominium Board.

**2. Powers and Duties of and Determinations by the Condominium Board**

The Condominium Board shall have the powers and duties necessary for or incidental to the administration of the affairs of the Condominium. Subject to such authority of the Condominium Board, generally, but subject to Declaration and Condominium By-Laws provisions governing the same, all determinations, which do not (to more than an immaterial extent) relate to or affect or involve the Condominium generally or the General Common Elements, and: (A) do not affect (to more than an immaterial extent) any portion of the Building other than the Residential Section, shall be made by the Residential Board; and (B) do not affect (to more than an immaterial extent) any portion of the Building other than the Hotel Section shall be made by the Hotel Board. Any dispute between or among one or more of the Hotel Board, the Residential Board and the Condominium Board as to which Board shall be entitled to make a particular determination shall be settled by arbitration in the manner provided in the Condominium By-Laws. As more fully set forth (and except as may otherwise be provided) in the Condominium By-Laws, all determinations required to be made by the Condominium Board shall be by majority of the votes cast at any meeting at which a quorum is present.

For convenience of operation of the Condominium, the Hotel Board may (with the Condominium Board's consent) designate the Condominium Board or the Transient Unit Owner or its Managing Agent to act as its agent with respect to any matters the determination of which is entitled to be made by the Hotel Board.

**3. Meetings and Votes of Unit Owners**

No joint annual meetings of the Hotel Unit Owners, Residential Unit Owners and all other Unit Owners will be held unless required by law, in which event such joint annual meeting will be held on the date specified by the Condominium Board. Special meetings may be called from time to time pursuant to the Condominium By-Laws. At all such joint meetings of Unit Owners, if any, the presence in person or by proxy of Unit Owners representing not less than 50% (in Common Interest) of all Unit Owners shall constitute a quorum; provided that the Transient Hotel Unit Owner and/or the Accessory Unit Owner shall each have the absolute right (except in the case of an Emergency (as defined in the Condominium By-Laws)) to require an adjournment of any such Unit Owners Meeting (notwithstanding the presence of a quorum) for a period not longer than thirty (30) days; and, except as otherwise provided in the Condominium By-Laws or Declaration, a majority of votes cast at any such meeting at which a quorum is present or is not required shall be binding on all Unit Owners.

Each Unit Owner, upon obtaining title, will in accordance with Section 339-e of the Real Property Law, automatically have the right to vote at all joint meetings of the Unit Owners, if any, based upon the Common Interest appurtenant to each of the Unit or Units owned by such Unit Owner, and at all such meetings, each Unit Owner (or his or her proxy) entitled to vote thereat (including Sponsor or its designee with respect to Unsold Condo Hotel Units) shall be entitled to cast one vote for each .0001% of interest in the Common Elements attributable to its, his or her Unit(s).

**4. Officers**

The principal officers of the Condominium will be the President, Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Condominium Board. The Condominium Board may also appoint additional officers as the Condominium Board in its judgment may deem advisable. None of the officers of the Condominium need be Unit Owners or have any interest therein or be Condominium Board members.

Except as otherwise determined by the Condominium Board, no officer shall receive any compensation for acting as such. Upon the affirmative vote of a majority of the members of the Condominium Board, any officer of the Condominium Board may be removed, either with or without cause, and his or her successor shall be elected, at any regular meeting of the Condominium Board or at any special meeting of the Condominium Board called for such purpose.

**5. Liability of Condominium Board and Unit Owners**

To the extent permitted by applicable law, Condominium Board members shall have no liability to the Unit Owners, except that a Condominium Board member shall be liable for his or her own bad faith, gross negligence or willful misconduct. The Condominium Board may contract or effect any other transaction with any Condominium Board member, any member of the Hotel Board, Residential Board, any Unit Owner, Sponsor or its designee, or any affiliate of any of them without incurring any liability for self-dealing, except in cases of bad faith, gross negligence or willful misconduct. All Unit Owners shall severally, to the extent of their

respective interests in their Units and their appurtenant Common Interests, indemnify each Condominium Board member against any liability or claim except those arising out of the bad faith, gross negligence or willful misconduct of such member.

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## S. RIGHTS AND OBLIGATIONS OF THE UNIT OWNERS AND THE BOARDS

### 1. Sales and Leases of Condo Hotel Units

Each Condo Hotel Unit Owner may: (i) sell his or her Condo Hotel Unit; or (ii) rent his or her Condo Hotel for any term and in all events subject to the Use Restrictions, the restrictions described herein and as set forth in the Declaration and Condominium By-Laws with respect to the use of the Condo Hotel Units (including, without limitation, the restrictions set forth in the Building Department Letter); provided, that in the case of a sale or a lease for a term of four months or greater, such Condo Hotel Unit Owner first gives the Hotel Board notice of intention to sell or lease, as applicable, accompanied by a fully executed copy of the contract of sale or lease. The Hotel Board shall then have the right to purchase the Unit at the same price, or lease the unit at the same rental, and in each case on the same terms as were offered in good faith by a prospective purchaser or lessee, as more specifically set forth in Article 8.1 of the Hotel By-Laws and the section entitled "Condo Hotel Units Acquired by the Hotel Board" of Section S. If the Hotel Board does not elect to purchase or lease the Condo Hotel Unit within 20 days after receipt of the notice, or waives such election in writing, the Condo Hotel Unit Owner will have 120 days thereafter to consummate the transaction set forth in the contract of sale or with the prospective purchaser or lessee, as the case may be, as more particularly set forth in Section 8.1 of the Hotel By-Laws. In the event that such sale or lease is not consummated, or if such contract or lease is renegotiated or modified in any way (whether orally, in writing or by a side agreement) to be on terms less favorable to the Condo Hotel Unit Owner, the Condo Hotel Unit Owner will be required again to offer the same first to the Hotel Board. Notwithstanding the foregoing provisions, the Condo Hotel Unit Owners shall at all times be permitted to rent the Condo Hotel Units on a transient rental basis or for lease terms of shorter than four months, provided the same is in accordance with Hotel By-Laws.

In addition to any other applicable provisions and restrictions contained in the Declaration, the Hotel By-Laws and the Hotel Rules and Regulations with respect to the lease of any Condo Hotel Unit, every such lease shall be required to have annexed to it and include a lease rider (the "Unit Lease Rider") (in form and substance as may be determined by the Hotel Board from time to time). All leases (in respect of all or any part of a Condo Hotel Unit) entered into after the date of the establishment of the Condominium and any renewals, extensions, modifications, amendments, sublets or assignments thereof, or of any existing lease, after such date, shall include the Unit Lease Rider; and no subsequent extension, modification or amendment of any such lease or of any existing lease may change the terms of the Unit Lease Rider once it has been so incorporated. The foregoing requirements shall also apply regardless of whether the lease or existing lease in question is to an affiliate or other party related to the leasing Unit Owner. The initial form of Unit Lease Rider shall include, subject to the right of the Hotel Board in its sole discretion to amend, modify, supplement or delete any of such requirements: (a) requirement of at least 5 business days prior written notice of the rental to Hotel Manager, including the identity of the renter, the times of arrival and departure; (b) the renter must present a credit card on arrival to front desk for use of hotel a la carte services and housekeeping service; and (c) a lease agreement addendum must advise renter in clear terms that: (i) the renter is renting a particular Unit from a private, third party rather than from Hotel Manager as a part of the hotel rental program; (ii) if the rental is not arranged through Hotel

Manager, Hotel Manager has no authority to relocate the renter to another room/suite or adjust rental charges or length of stay; (iii) the rent must be paid to the owner of the Unit; and (iv) a la carte services are payable to Hotel Manager directly. The foregoing requirements apply only to leases of four months or more, and not to transient rentals.

If a Condo Hotel Unit Owner is a corporation, any sale, assignment, transfer or other disposition of any of its stock or if a Condo Hotel Unit Owner is a partnership, limited liability company or other entity, any sale, assignment, transfer or other disposition of any interest in such partnership, company or other entity, in each case, other than through any recognized national securities exchange or "over-the-counter" market, which results in a change in the majority beneficial or legal ownership of such entity, shall also subject the Condo Hotel Unit owned by such entity to the requirement that such Unit first be offered to the Hotel Board.

Notwithstanding the foregoing, without complying with the foregoing restrictions, a Condo Hotel Unit Owner may sell, lease or convey his or her Unit to his or her spouse, domestic partner, adult children, parents, adult siblings or to any combination of them, or to a trust for the benefit of any one or more of them and/or any one or more minor children of any of them (collectively, "family members"), and the owner of any interest in a Condo Hotel Unit Owner which is a corporation, partnership, limited liability company or other entity, may sell, lease or convey such interest, or to any affiliate (an "affiliate" being defined as for purposes hereof as a person or entity that owns 50% or more of the legal and beneficial interest of such Unit Owner or owner of an interest in a Unit Owner, as the case may be, or an entity with respect to which such Unit Owner or owner of an interest in a Unit Owner owns 50% or more of the legal and beneficial interest); or convey a Condo Hotel Unit or interest in a Condo Hotel Unit Owner, as the case may be, by gift, or devise it by will, or have it pass by intestacy. Article 8 of the Hotel By-Laws more specifically describes the right of first refusal and those situations in which a Unit Owner may sell, lease or convey his or her Unit to a related or controlled individual or entity and the Declaration more specifically describes the permitted use of a Condo Hotel Unit.

Subject only to the restrictions with respect to the use of the Condo Hotel Units described in this Plan, the restrictions upon the sale or lease of Condo Hotel Units shall not apply to: (a) Sponsor or Transient Hotel Unit Owner or its respective designee(s) with respect to Unsold Condo Hotel Units; (b) any proper officer conducting the sale of a Condo Hotel Unit in connection with the foreclosure of a mortgage or other lien covering such Condo Hotel Unit or delivering a deed in lieu of such foreclosure; or (c) a Permitted Mortgagee or its nominee, who has acquired title to any Condo Hotel Unit at any foreclosure sale of its Permitted Mortgage or by deed in lieu of such foreclosure delivered in a bona fide transaction. Such Condo Hotel Units may be sold to anyone without first being offered for sale to the Hotel Board.

With respect to all Units, each conveyance of a Unit by the Owner thereof shall include as part of the property to be conveyed, such Unit Owner's: (i) undivided interest in the Common Elements; (ii) undivided interest in any Unit or Units acquired by the Hotel Board from Unit Owners (or the proceeds received at a foreclosure or other judicial sale of a Unit); and (iii) undivided interest in any other asset of the Condominium. No part of a Unit Owner's interest in the Common Elements or Hotel Limited Common Elements may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which

such interest appertains or as part of a sale, transfer or other disposition of the specific interest in the Common Elements or Hotel Limited Common Elements by all affected Unit Owners.

A Condo Hotel Unit may not be conveyed unless all unpaid Hotel Common Charges and liens against such Unit (other than Permitted Mortgages) are paid and satisfied at or prior to closing. In addition, the Hotel Board may establish reasonable fees for the processing of such offers for sale or lease, which shall be payable by the selling or leasing Condo Hotel Unit Owner to Hotel Manager.

**2. Use of Condo Hotel Units**

Except to the extent otherwise permitted by law and approved by the Hotel Board as set forth in the Hotel By-laws, each Condo Hotel Unit may only be used as Hotel Accessory Quarters and for no other purpose, and in all events subject to all Laws and to the further provisions of this Declaration, the Condominium By-Laws, the Hotel By-Laws and the Use Restrictions. As used in the Condominium Documents, "Hotel Accessory Quarters" means living quarters which are not occupied by the Unit Owner thereof in excess of four months (in the aggregate) in any calendar year, and, when not occupied by such Unit Owner, are available for rental as a "Transient Hotel Room," i.e., a room or single suite of rooms used for transient occupancy and which may be rented on a daily basis as part of a transient hotel. Where a Condo Hotel Unit is owned by an entity (*i.e.*, rather than by one or more natural person(s)), such entity shall designate in writing to the Hotel Board and Hotel Manager one individual as the primary occupant of such Unit, and the term "Unit Owner" as used in the preceding sentence and in connection with the conditions relating to the permitted use of such Unit as reflected therein shall mean such designated individual. Without limiting any other provision of the Condominium Documents, Condo Hotel Units may not be used in fact or in effect, as part of or in furtherance of any Occupancy Plan (as defined below) provided, however, if, as and when, and only for so long as, the Transient Hotel Unit is being used by the Unit Owner thereof or Hotel Manager in connection with an Occupancy Plan (and, for the avoidance of doubt, the use of Transient Hotel Unit as a transient hotel in the ordinary course shall not be considered "use in connection with an Occupancy Plan"), the Condo Hotel Units may be so used on the same basis.

There is no limit on the number of Condo Hotel Unit Owners who may purchase a Condo Hotel Unit for investment, rather than for personal occupancy, purposes. As such, there may always be a substantial percentage of Condo Hotel Unit Owners who are non-occupants of the Condominium.

Generally, no Condo Hotel Unit may be used in fact or in effect as part of or in furtherance of an Occupancy Plan (as defined below). For purposes of the foregoing requirement, an "Occupancy Plan" means a plan for the use, occupancy, marketing, advertising or promotion of one or more Units, including Condo Hotel Units, under any timeshare or fractional plan, residence, destination or luxury club, equity or non-equity program, interval exchange (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements through which a participant in the plan or arrangement acquires the right to use and occupy such Unit(s) or a portfolio of accommodations including such Unit(s). The foregoing prohibitions shall not apply to Condo Hotel Units that are owned or leased by, or any Occupancy Plan that is

operated by, Sponsor, the Transient Hotel Unit Owner, Hotel Manager or their affiliates, nor shall such prohibitions apply to the rental of Condo Hotel Units to other persons. Sponsor, or any other affiliated entity promoting an Occupancy Plan would be required to file a separate offering plan with the Department of Law prior to such use.

**3. General Provisions with Respect to Use**

No portion of a Condo Hotel Unit, other than the entire Condo Hotel Unit, may be rented. No nuisance or offensive or unlawful use shall be allowed in the Hotel Section or any portion thereof. All Laws relating to any portion of the Property, shall be complied with at the sole expense of whichever Unit Owners or Board shall, pursuant to the Declaration, Condominium By-Laws or Hotel By-Laws, have the obligation to maintain or repair such portion of the Property.

The Hotel Rules and Regulations concerning the use of the Condo Hotel Units may be amended from time to time by the Hotel Board, provided that copies thereof are furnished to each Condo Hotel Unit Owner prior to the time that they become effective. Further provisions with respect to the use of the Condo Hotel Units are set forth in the Declaration, the Condominium By-Laws, the Hotel By-Laws, the General Rules and Regulations and the Hotel Rules and Regulations. However, no amendment of the Hotel Rules and Regulations will apply to Sponsor or the Unsold Condo Hotel Units, unless agreed to by all the owners of same who are affected by such amendment.

**4. Mortgage of Condo Hotel Units by Condo Hotel Unit Owners**

Each Condo Hotel Unit Owner may mortgage his or her Condo Hotel Unit, in accordance with the provisions of Article 7 of the Hotel By-Laws, which requires that the Hotel Board be notified in writing of the making of such mortgage and receive a conformed copy of the note and mortgage and that the Condo Hotel Unit Owner first satisfy all unpaid liens against the Condo Hotel Unit, other than Permitted Mortgages. Each Non-Condo Hotel Unit Owner shall have the right to mortgage or otherwise encumber its Non-Condo Hotel Unit in accordance with the terms of the Condominium By-Laws and as applicable, the Hotel By-Laws.

**5. General Common Charges and Hotel Common Charges: Determination and Assessment**

As described in the Condominium By-Laws, the Condominium Board shall from time to time, but at least annually, prepare a budget setting forth its projections of General Common Expenses and will assess against the Hotel Board, in the manner described in the Condominium By-Laws, the General Common Charges necessary to meet the Hotel Section's allocated share of General Common Expenses. As described in the Hotel By-Laws, the Hotel Board shall from time to time, but at least annually, prepare or cause to be prepared a budget setting forth its projections of the Hotel Common Expenses for the next fiscal year of the Hotel Section, including, the Hotel Section's allocated share of the General Common Charges, and will allocate and assess to each Condo Hotel Unit Owner in proportion to such Condo Hotel Unit's percentage Common Interest compared to the total for all Hotel Unit Owners (or upon such other basis as may be permitted by law and as provided in the Hotel By-Laws), Hotel Common Charges to

meet the Hotel Common Expenses. (Under the Condominium By-Laws, the Hotel Common Charges collected by the Hotel Board shall, in all instances, first be payable by the Hotel Board to the Condominium Board in payment of the Hotel Section's allocated share of General Common Charges and before application for any other purpose. If such priority of payment fails to occur, the Condominium Board shall have the right, without limitation, and in addition to all other remedies available at law, to avail itself of the remedy of specific performance with respect to the obligations of the Hotel Board.) Generally, any Common Expenses incurred and related exclusively to the Hotel Limited Common Elements will be allocated and assessed to the Hotel Unit Owners. The respective Common Interests of the Units, as estimated by Sponsor, have been allocated to each Unit based upon floor space subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit, in accordance with Section 339-i(1)(iv) of the New York State Real Property Law.

The Hotel Board will furnish copies of the Condominium budget and the Hotel Section budget to all Condo Hotel Unit Owners and advise each Condo Hotel Unit Owner of the amount of Hotel Common Charges payable. Unless otherwise determined by the Hotel Board, Hotel Common Charges will be payable in monthly installments, in advance, on the first day of each month. The Condominium By-Laws contain a similar provision relating to the Residential Section.

The failure or delay of the Hotel Board to prepare a budget or adopt a Hotel Section Budget (as defined in the Hotel By-Laws) or to otherwise determine the Hotel Common Expenses for any fiscal year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof or a release of any Hotel Unit Owner from the obligation to pay Hotel Common Charges. The Hotel Board members shall grant or withhold their approval in writing within thirty (30) days after receipt (whether at a meeting of the Hotel Board or otherwise) of any proposed Hotel Section budget or amendment thereto, and any Hotel Board member that does not so grant or withhold his or her approval within said thirty (30) day period shall be deemed to have approved the proposed Hotel Section budget or amendment thereto. In the event that in respect of any fiscal year of the Hotel Section, a Hotel Section Budget is not adopted by the Hotel Board (which in each case (whether for a budget or any amendment thereto) shall require an affirmative 66-2/3% vote of the Hotel Board) as and when required, then, until such adoption, the Hotel Section Budget in effect for the then concluding (or concluded) fiscal year of the Hotel Section, increased by: (i) anticipated expenditures for applicable Mandatory Costs (as defined in the Hotel By-Laws); and (ii) the CPI Budget Factor (as defined in the Hotel By-Laws), shall remain in effect and shall be deemed to be the Hotel Section Budget for such fiscal year. No amended Hotel Section Budget shall have a retroactive effect on the Hotel Common Charges payable by the Hotel Unit Owners for any period prior to the adoption of such amended Hotel Section Budget, although a prior period's deficit may be included in Hotel Common Charges for a subsequent period or paid from a Special Assessment (as defined in the Hotel By-Laws) levied in accordance with the Hotel By-Laws.

**6. Collection and Lien for Non-Payment of Hotel Common Charges**

Condo Hotel Unit Owners may not exempt themselves from liability for Hotel Common Charges by waiving use of any of the Common Elements or by abandoning their Units. No Condo Hotel Unit Owner, however, will be liable for the payment of any part of the Hotel Common Charges assessed against his or her Unit subsequent to a permissible sale, transfer or other conveyance by him or her of such Unit. In addition, as more specifically set forth in Section 6.2 of the Hotel By-Laws, a Condo Hotel Unit Owner, by conveying his or her Unit (without consideration) to the Hotel Board and provided that such Unit is free and clear of liens and encumbrances other than the statutory lien for unpaid Hotel Common Charges (provided no amounts are owing under any such lien) and that no violation of the Declaration, the Condominium By-Laws, the Hotel By-Laws, the General Rules and Regulations or the Hotel Rules and Regulations then exists with respect to such Unit, may be exempt from Hotel Common Charges thereafter accruing.

On a resale of any Condo Hotel Unit, the purchaser will be liable for the payment of any unpaid Hotel Common Charges against such Unit; except that, to the extent then permitted by law, a Permitted Mortgagee acquiring a Condo Hotel Unit at a foreclosure sale will not be liable for a lien for the payment of Hotel Common Charges assessed against such Unit for the period following the recording of the Permitted Mortgage and prior to such Unit's acquisition by the Permitted Mortgagee (which provision may change in the event of statutory modification). In the event of a foreclosure by the Hotel Board of its lien on any Unit for unpaid Hotel Common Charges, or otherwise, if the net proceeds of the foreclosure sale are insufficient for the payment of such unpaid charges, or if a Unit is acquired by a mortgagee or purchaser in foreclosure, the previous Unit Owner can be sued for the unpaid balance. The Hotel Board will also have the right to assess such unpaid balance as a Hotel Common Charge among all Condo Hotel Unit Owners.

Pursuant to Section 339-z of the Real Property Law and under the provisions of the Hotel By-Laws, the Hotel Board, on behalf of all Condo Hotel Unit Owners will have a lien on each Condo Hotel Unit for unpaid Hotel Common Charges together with interest thereon, assessed against such Unit. All such liens, however, to the extent permitted by applicable Law, will be subordinate to the lien of any first Permitted Mortgage of record and to liens for real estate taxes on the particular Unit. Pursuant to Section 339-aa of the Real Property Law, any lien for unpaid Hotel Common Charges against a Condo Hotel Unit will be effective from and after filing of a verified notice thereof in the City Register's Office and until all sums secured thereby with interest accrued thereon shall have been fully paid, or until six years from the date of filing (unless foreclosure of such lien is started within such six-year period), whichever shall occur sooner. Such liens may be foreclosed by a suit brought in the name of the Hotel Board (acting on behalf of all Condo Hotel Unit Owners) in the same manner as the foreclosure of a mortgage on real property, or an action may be brought by the Hotel Board to recover unpaid Hotel Common Charges without foreclosing such lien. In addition, the Hotel Board may assess Condo Hotel Unit Owners a late charge of $.04 for each dollar of Hotel Common Charges which remains unpaid for more than 10 days after the date when due, and interest at the rate of 1.5% per month on such unpaid amounts (plus any "late charges" theretofore collected), plus all expenses of collection. Sponsor obligates itself to cause any members of the Hotel Board related to or affiliated with Sponsor to vote in favor of filing a lien against any Unsold Condo Hotel

Units owned by Sponsor with respect to which payments of Hotel Common Charges have not been made within 30 days after the date when due.

As provided in the Hotel By-Laws, the Hotel Board shall take prompt action to collect any Hotel Common Charges which remain unpaid for more than 30 days after the due date for payment thereof, including, without limitation, the institution of such actions and the recovery of interest and expenses. In the event the Hotel Board fails to take such action against a Unit Owner, then the Condominium Board may do so, in its own name or, if necessary, in the name of the Hotel Board.

**7. Obligations to Condominium Board for General Common Charges and Special Assessments**

As described in the Condominium By-Laws and in Article 6 of the Hotel By-Laws, under the Condominium By-Laws, and to the extent permitted by law, the Hotel Common Charges collected by the Hotel Board shall, in all instances, first be payable to the Condominium Board in payment of the Hotel Section's allocated share of General Common Charges, and before application for any other purpose. If such priority of payment fails to occur, the Condominium Board shall have the right, without limitation, and in addition to all other remedies available at law, to avail itself of the remedy of specific performance with respect to the obligations of the Hotel Board.

In addition, in the event the Condominium Board levies a special assessment, a portion of which is allocated to the Hotel Section, the Hotel Board may levy a special assessment to meet the Hotel Section's allocated share of any such special assessment levied by the Condominium Board.

**8. Borrowing by the Condominium Board**

Subject to the terms of the Condominium By-Laws, the Condominium Board shall have the power to borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of, or the making of Repairs or Alterations (each as defined in the Condominium By-Laws) of, the General Common Elements or otherwise in connection with any permitted action or activity of the Condominium Board, provided, however, that: (i) a 66-2/3% vote of the members of the Condominium Board shall be required for any borrowings for such purposes if such borrowings are in excess of $500,000 (subject to increase by the CPI Increase Factor) in total in any one fiscal year or $1,500,000 (subject to increase by the CPI Increase Factor) in the aggregate (including borrowings from prior periods) at any one time; and (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant Common Interest without the prior written consent of the owner of such Unit, or on the General Common Elements without the consent of all Unit Owners; and the power and right of the Hotel Board to borrow money pursuant to the provisions of the Hotel By-Laws is not limited or impaired by the foregoing.

**9. Borrowing by the Hotel Board**

The Hotel Board may, at any time, borrow money on behalf of the Hotel Section when required in connection with (i) the operation, care, upkeep and maintenance of, or the making of

repairs, restorations and replacements of, and alterations, additions, or improvements to the Hotel Limited Common Elements or (ii) any permitted action or activity of the Hotel Board; provided, however, that: (A) except as otherwise provided in the Hotel By-Laws, the consent of at least 66-2/3% of the total authorized votes of all Hotel Unit Owners shall be required for any borrowings for such purposes with respect to the Hotel Limited Common Elements, if such borrowings are in excess of $500,000 (subject to increase by the CPI Increase Factor) in total any one fiscal year or $1,000,000 (subject to increase by the CPI Increase Factor) in the aggregate (including borrowings from prior periods) at any one time; (B) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements (except to the extent permitted by applicable law) without the prior written consent of the owner of such Unit; and (C) no Unit Owner other than the Condo Hotel Unit Owners and the Transient Hotel Unit Owner shall be liable for the repayment of any such borrowing with respect to the Hotel Limited Common Elements exclusively, and the loan documentation in such case shall so provide. Any such debt may be secured by future income and Hotel Common Charges in which event the Hotel Common Charges shall be deemed trust funds for the purpose of paying such debt. The Hotel Board cannot secure such debt by a lien on the Common Elements, including the Hotel Limited Common Elements, without the consent of all affected Unit Owners.

In addition to the debt described above, the Hotel Board, without approval of the Unit Owners may, at any time, incur, or refinance, debt from time to time secured by a lien on any Unit acquired by the Hotel Board pursuant to the Declaration and/or Hotel By-Laws; provided, however, that no such financing or refinancing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Unit to be purchased together with its appurtenant interest in the Common Elements. If any sum borrowed by the Hotel Board is not repaid by the Hotel Board, a Unit Owner who pays to the creditor such proportion thereof as his or her interest in the Common Elements bears to the interest of all Condo Hotel 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, and all loan documentation entered into by or on behalf of the Hotel Board shall specifically so provide. The dollar amounts set forth above and all other dollar amounts referenced elsewhere in the Hotel By-Laws, shall be adjusted to reflect any increase in the cost of living, as reflected by an increase in the CPI Increase Factor (as described in the Hotel By-Laws).

**10. Repairs to and Maintenance of Condo Hotel Units and Common Elements**

Except as otherwise provided in the Declaration, the Condominium By-Laws or these Hotel By-Laws, all painting, decorating, maintenance, repairs and replacements, whether structural or non-structural, ordinary or extraordinary, and all maintenance, repairs and replacements of all plumbing, heating and lighting fixtures, heating and air-conditioning units and appliances: (i) in or to any Hotel Unit (excluding General Common Elements and Hotel Limited Common Elements therein, except as otherwise provided in the Declaration, these Hotel By-Laws or in the applicable Unit Management and Operation Agreement) and the interior side of entrance doors thereto, shall be made by the owner of such Hotel Unit at its sole cost and expense; provided that, except in the case of work to be done in Unsold Condo Hotel Units, the Hotel Unit Owner of a Hotel Unit utilizes only such contractors, workers or suppliers as are on the then approved list of the then managing agent of the Hotel Section, which list may change from time to time in the sole discretion of such managing agent or the Hotel Board and, to the

extent applicable, complies with the provisions of Section 6.7 hereof; and (ii) in or to the Hotel Limited Common Elements shall be made by Hotel Manager as agent for the Hotel Board and the cost and expense thereof shall be shared by all Hotel Unit Owners as a Hotel Common Expense, in proportion to their respective Common Interests.

The washing and cleaning of interior glass surfaces of windows in the Condo Hotel Units shall be the responsibility of Hotel Manager at Condo Hotel Unit Owners' expense. All window interiors shall be cleaned a minimum of five times per calendar year. The exterior glass surfaces will be washed and cleaned by Hotel Manager the cost thereof charged as a Common Expense of the Hotel Unit Owners.

All normal maintenance and repairs of any Common Element appurtenant to a particular Condo Hotel Unit (*e.g.*, Terraces) shall be made by the Condo Hotel Unit Owner having access thereto, at its own cost and expense; any structural or extraordinary repairs or replacements thereto (including leaks) shall be made by or for the Hotel Board and the cost and expense thereof shall be charged to all Condo Hotel Unit Owners as a Hotel Common Expense, unless due to the negligence, misuse, neglect or abuse of such Condo Hotel Unit Owner or its tenant, agent, invitee, licensee or guest, in which event such Condo Hotel Unit Owner shall bear the entire cost thereof, and the same shall, for all purposes hereunder, constitute part of the Hotel Common Charges payable by such Condo Hotel Unit Owner.

The Condominium By-Laws, Hotel By-Laws and Residential By-Laws provide that each Unit and all portions of the Common Elements shall be kept in a clean and sanitary condition, and in good working order (and all portions thereof exposed to public view shall be kept in a neat appearance and in luxury condition in accordance with the high quality, character and dignity of the Building), in each case, by the Unit Owners, the Condominium Board, the Hotel Board or the Residential Board, whichever is responsible, for the maintenance thereof. In the event that any Condo Hotel Unit Owner fails to keep his or her Unit in such condition, the Hotel Board, at the expense of such Unit Owner, may enter such Unit and perform such acts as are necessary to cure such default. (See subsection entitled "Rights of Access" below.)

In the event the Hotel Board fails to take action within after notice from the Condominium Board against a Condo Hotel Unit Owner who is in default beyond the expiration of any notice or cure period in or the performance of any other obligation under the Declaration, the Condominium By-Laws or the Hotel By-Laws, then the Condominium Board may do so, in its own name or, if necessary, in the name of the Hotel Board.

Any alteration, addition, improvement or repair in or to a Unit or any Common Elements must comply with all Laws.

**11. Representation on Condominium Board**

As described in Articles 2 and 3 of the Hotel By-Laws and in the Condominium By-Laws, Condo Hotel Unit Owners shall not be entitled to vote in their individual capacities as Unit Owners at any meeting of the Condominium Board. The Hotel Unit Owners shall be represented on the Condominium Board by the designees of the Hotel Section who shall serve as members thereon.

## 12. Alterations and Improvements of Condo Hotel Units

No Condo Hotel Unit Owner (other than Sponsor or its designee or other owner of Unsold Condo Hotel Units) may make any alteration, addition, improvement or repair in or to such Unit Owner's Unit that affects the structure of the Building and/or the Building's systems without the prior written approval of the Hotel Board and in certain circumstances, the Condominium Board. In addition, the Unit Management and Operation Agreement imposes additional restrictions on a Unit Owner's right to change, among other things, the layout, appearance and furnishings of the Condo Hotel Units. Except as otherwise permitted in the Condominium By-Laws and/or Hotel By-Laws, no Condo Hotel Unit Owner may make any alteration, addition, improvement or repair in or to the Common Elements without the prior written approval of the Condominium Board and/or the Hotel Board, as applicable. The Hotel Board may impose fees upon such Unit Owner to reimburse the Condominium and/or the Hotel Board for costs incurred in connection with the review or supervision of such Unit Owner's work. Notwithstanding the foregoing, the Transient Hotel Unit Owner shall not be subject to the limitations set forth above, and any such limitations on the Transient Hotel Unit shall be more particularly described in the Hotel By-Laws.

The Hotel Board or Hotel Manager, at its option, may require a Condo Hotel Unit Owner to execute an agreement in form and substance satisfactory to the Hotel Board setting forth the terms and conditions under which such alteration, addition, improvement or repair may be made. Additionally, as set forth in more detail in the Hotel By-Laws, any Condo Hotel Unit Owner making or permitting an alteration, addition, improvement or repair in its Condo Hotel Unit, to the extent permitted pursuant to Article IV(2) of the Unit Management and Operation Agreement (which states that a Condo Hotel Unit Owner shall not alter such Condo Hotel Unit in any way without the prior written consent of Hotel Manager), is required by the Hotel By-Laws to (i) obtain such insurance as the Hotel Board or Hotel Manager may require, (ii) indemnify the Hotel Board, the Condominium Board, all other Unit Owners and Hotel Manager against any liability arising from the work, (iii) reimburse the Hotel Board and the Condominium Board for its architectural, engineering and legal fees incurred in connection with such work, (iv) employ such architects, engineers, contractors, workers, suppliers and other laborers who are reasonably acceptable to the Hotel Board and Condominium Board and Hotel Manager; and (v) perform such work in a manner which will not interfere with, or cause any labor disturbances or stoppages (which may result from, among other things, the use of non-union labor) in, the work of Sponsor, the Condominium Board, the Hotel Section, the Residential Section, the Condo Hotel Unit Owners, or other contractors or subcontractors employed by such parties or otherwise in the Building. In addition, no work or change by or on behalf of a Condo Hotel Unit Owner will be permitted without the consent of the Hotel Board and Sponsor (which consent may be withheld or conditioned in their sole discretion if such work or change would result in a delay in obtaining a temporary or new permanent Certificate of Occupancy for the Building, or any amendment to, or extension of, the same if theretofore issued).

The foregoing restrictions affecting Condo Hotel Units shall not apply to Sponsor or its designee in respect of the Unsold Condo Hotel Units or to the Owner(s) of the Non-Condo Hotel Units. There are no restrictions on the ability of Sponsor or its designee to alter or improve any Unsold Condo Hotel Unit (including, without limitation, dividing, subdividing and combining one or more Unsold Condo Hotel Units or portions of same). Additionally, to the extent

permitted by law, and subject to certain restrictions set forth in the Condominium By-Laws and Declaration, the Non-Condo Hotel Unit Owners will each have the right with regard to its Unit, without the consent of the Condominium Board, the Hotel Board, the Residential Board (in the case of the Residential Section), the Residential Managing Agent, other Unit Owners, or any other party, to mortgage or otherwise hypothecate its Unit, to decorate or make alterations, additions or improvements to its Unit (except that alterations, additions or improvements which would affect the structural, mechanical, electrical or plumbing elements of the Building or the exterior appearance of the Building shall be subject to the approval, not to be unreasonably withheld, of the Condominium Board) and to combine or subdivide its Non-Condo Hotel Unit into one or more newly constituted Non-Condo Hotel Units.

Furthermore, an initial purchaser of an Unsold Condo Hotel Unit shall not have the right, without the approval of the Hotel Board, to make any alterations, additions, improvements or repairs in or to such Condo Hotel Unit, provided that such purchaser obtains all necessary approvals required by law and that Sponsor (and Hotel Manager, to the extent otherwise required under the Unit Management and Operation Agreement) has consented to the same in writing at or prior to the closing of title to such Condo Hotel Unit, which consent Sponsor may withhold or condition in its sole and absolute discretion.

Any alteration, addition, improvement or repair in or to a Unit or any Common Elements must comply with all Laws.

## 13. Alterations and Improvements of Common Elements

Generally, all alterations, additions or improvements in or to the Common Elements will be made by whichever Board or Unit Owner is required to maintain and repair such Common Elements. The costs of alterations, additions or improvements to the General Common Elements will be charged either to all Unit Owners as a General Common Expense; and costs attributable to the Hotel Limited Common Elements will be charged to all Hotel Unit Owners as a Hotel Common Expense in the proportion that their respective Common Interests bear to the aggregate Common Interests of all Hotel Unit Owners or the Hotel Unit Owner(s) responsible therefore, as the case may be. Whenever, in the judgment of the Hotel Board, the Hotel Limited Common Elements for which it is responsible require additions, alterations or improvements which are capital in nature and would cost more than $100,000 (subject to increase by the CPI Increase Factor) in any calendar year or $250,000 in the aggregate (subject to increase by the CPI Increase Factor), then such additions, alterations or improvements may not be made unless first approved by a majority in number and Common Interest of Hotel Unit Owners liable for the cost thereof, including Sponsor, if it then owns any Hotel Unit, at a duly constituted meeting of the Hotel Unit Owners, and by the Hotel Mortgagee Representatives, if any, appointed pursuant to the Hotel By-Laws, or unless the same is a non-capital repair or necessary to comply with applicable laws or regulations, to remedy any violation imposed against the Property, to comply with a proper work order of an insurer of the Property, or for the health or safety (but not the general comfort or welfare) of the residents or occupants of the Property. In any such event, the Hotel Board may, in its discretion, assess each Hotel Unit Owner liable therefor for his or her pro-rata share of the cost of such additions, alterations, or improvements, according to his or her Common Interest, as part of the Hotel Common Charges.

Any additions, alterations or improvements costing the amounts set forth above or less, in the aggregate, in any calendar year or which is a non-capital repair may be made by the Hotel Board without the approval of the Hotel Unit Owners or Hotel Mortgagee Representatives.

Notwithstanding the foregoing, elevator landings which serve fewer than three Condo Hotel Units may be decorated and/or furnished by the adjoining Condo Hotel Unit Owners as they desire, at their expense, provided that each such Condo Hotel Unit Owner consents in writing thereto, and the Hotel Board gives its written consent to such decoration and/or furnishing, which consent of the Hotel Board may granted or withheld in such board's sole discretion. After an elevator landing is decorated and/or furnished by the Condo Hotel Unit Owners serviced by the same, the owners of such Condo Hotel Units, and not the Hotel Board, will be responsible for keeping the decor and furnishings in a first class condition and state of repair and performing, at their joint expense, all repairs and maintenance necessary or desirable in order to accomplish the same.

In addition, as set forth in the Hotel By-Laws and to the extent permitted by law, the owner or owners of any one or more Condo Hotel Units, if such Condo Hotel Unit or Units are the only Condo Hotel Unit or Units serviced or benefited by any Hotel Limited Common Elements adjacent or appurtenant thereto (for example, that portion at the end of a hallway that is directly adjacent to the Condo Hotel Unit or Units located at the end of such hallway) and not affecting access or service (including, without limitation, heating, ventilating and air-conditioning) to any other Unit or to any other portion of the Hotel Limited Common Elements shall, with the consent of the Hotel Board (which consent shall not be unreasonably withheld or delayed and shall not be required if the Condo Hotel Unit Owner or Owners shall be Sponsor or their designees), have the right to use such Hotel Limited Common Elements exclusively (including the right, in the above example of a portion of a hallway, to enclose such portion), and no amendment to the Declaration or reallocation of Common Interests shall be made by reason thereof. In such an event, however, such owners shall, at their sole expense, (i) operate, maintain and repair such Hotel Limited Common Element for so long as such owners exercise such exclusive right of use and (ii) restore such Hotel Limited Common Element to its original condition, reasonable wear and tear excepted, after such owners cease to exercise such exclusive right of use.

**14. Rights of Access**

As more fully set forth in the Condominium By-Laws and the Hotel By-Laws, the Hotel Board, Hotel Manager, the Condominium Board and any managing agent, manager and other persons authorized by the foregoing will have a right of access to any Condo Hotel Unit for the purposes, among others, of: (a) making inspections of, or removing violations of Laws against, any part of the Property; (b) curing defaults under the Condominium By-Laws, the Hotel By-Laws, Declaration, General Rules and Regulations or Hotel Rules and Regulations, as applicable, by the owner of such Unit; (c) performing maintenance, installations, alterations, repairs or replacements to the mechanical, plumbing or electrical systems, or other portions of the Common Elements, located within such Unit or elsewhere in the Building; or (d) correcting any conditions originating in any Condo Hotel Unit and threatening another Unit or any Common Element. Additionally, in the case of an emergency affecting a Non-Condo Hotel Unit Owner or

its Unit, such Unit Owner will have a right of access to any Condo Hotel Unit for the purpose of curing or abating such emergency for so long as and only so long as such emergency shall exist.

**15. Compliance with Terms of Declaration, By-Laws and Rules and Regulations**

Each Condo Hotel Unit Owner must strictly comply with the provisions of the Declaration, Condominium By-Laws, General Rules and Regulations, Hotel By-Laws and Hotel Rules and Regulations (if any). Pursuant to Section 339(j) of the Condominium Act, failure to so comply will be grounds for an action for damages or injunctive relief, or both. The Condominium By-Laws and Hotel By-Laws, together with the General Rules and Regulations and Hotel Rules and Regulations (if any), were recorded as exhibits to the Declaration of Condominium dated as of March 13, 2006 in the Office of the City Register (on March 23, 2006 as CRFN 2006000164230) by CPS 1 Realty LP, as fee owner, as amended and restated by Amended and Restated Declaration dated as of March 13, 2006 (submitted to the Office of the City Register for recording as CRFN 2006040600067).

**16. Repair or Reconstruction after Fire or Other Casualty**

If any portion of the Property other than solely the Hotel Section is damaged or destroyed by fire or other casualty, or if any portion of the Hotel Section is damaged or destroyed together with any other portion of the Property, the provisions of the Condominium By-Laws shall control as to control over repair and restoration. In the event that solely the Hotel Section (i.e., the Hotel Units and/or Hotel Limited Common Elements) or any part thereof is damaged or destroyed by fire or other casualty (unless, in accordance with the Condominium By-Laws or these Hotel By-Laws, the Building is not to be repaired), the Hotel Board will arrange for the prompt repair and restoration of the Hotel Section (including each Hotel Unit, but excluding improvements, betterments, equipment, furniture, furnishings or other personal property in any such Unit) and the Hotel Board, or Insurance Trustee, as provided in the Condominium By-Laws or herein, shall disburse the proceeds of all applicable insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If only the Transient Hotel Unit 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 Transient Hotel Unit Owner will bear the entire amount of the deficit, or shall receive all of the surplus, as the case may be, in proportion to their respective Hotel Common Interests. Similarly, if only the Condo Hotel Units are damaged or destroyed by fire or other casualty and the insurance proceed are less than sufficient to cover, or exceed, the cost of repairs and restoration, the deficit or surplus, as the case may be, will be borne or shared entirely by all Condo Hotel Unit Owners in proportion to their respective Hotel Common Interests. If said damage or destruction by fire or other casualty affects the Hotel Limited Common Elements, or any combination of the Condo Hotel Units, the Transient Hotel Unit, then any deficit or surplus in insurance proceeds shall be borne or shared by all Hotel Unit Owners, or by the Unit Owners of the affected portions of the Building, as appropriate, in proportion to their respective Hotel Common Interests. Any surplus payable to any Unit Owner pursuant to subsection 6.5.1 of the Hotel By-Laws shall be lessened by such amounts as may be required to discharge unpaid liens (other than mortgages which are not Permitted Mortgages) on any such Unit in the order of priority of such liens.

If only the Hotel Section is damaged or destroyed by fire or other casualty and the insurance proceeds are less than sufficient to cover, or exceed, the cost of repairs and restoration, the deficit or surplus, as the case may be, will be borne as a Hotel Common Expense or profit, respectively, and shared by all Hotel Unit Owners in proportion to their respective Common Interests. Any surplus allocable to any Hotel Unit pursuant to subsection 6.5.1 of the Hotel By-Laws shall first be lessened by such amounts as may be required to discharge unpaid liens (other than mortgages which are not Permitted Mortgages) on any such Unit in the order of priority of such liens, and the remaining surplus, if any, shall then be paid to the owner of such Unit. If any portion of the Property other than solely the Hotel Section is damaged or destroyed by fire or other casualty, or if any portion of the Hotel Section is damaged or destroyed together with any other portion of the Property, the provisions of the Condominium By-Laws shall control as to any deficit or surplus in insurance proceeds.

## 17. Insurance

Under Article 11 of the Condominium By-Laws, until payment of the debt under the mortgage securing Sponsor's construction loan (the "Construction Mortgage") in full or assignment of such mortgage by Construction Lender to Sponsor's designee, whichever occurs first, the Hotel Board, the Residential Board and the Condominium Board must comply with the provisions of the Construction Mortgage which set forth each such Board's obligations with respect to the maintenance of insurance during such period. The insurance coverages described in Schedules B-1 and B-2 are satisfactory to the Construction Lender.

Furthermore, under Article 11 of the Condominium By-Laws, subject to the provisions of the preceding sentence, the Condominium Board is required to obtain and maintain, to the extent obtainable and to the extent determined by the Condominium Board to be appropriate, the following insurance: (a) fire insurance with coverage for special causes of loss, including, flood earth movement and seepage from sewers and drains and vandalism and malicious mischief endorsements, insuring the entire Building (including the physical structure of each Unit, but excluding fixtures, furniture, furnishings or other personal property not constituting a part of such Unit), together with all service machinery contained therein, and covering the interests of the Condominium, each Board and all Condo Hotel Unit Owners, the Transient Hotel Unit Owner and Permitted Mortgagees, as their respective interests may appear, in an amount equal to the full replacement value of the Building on a replacement cost basis (exclusive of foundation and footings), without deduction for depreciation; (b) business income, extra expense rent insurance in an amount equal to General Common Charges for one year; (c) workers' compensation and New York State disability benefits insurance; (d) boiler and machinery insurance; (e) collision insurance; (h) fidelity insurance covering all Condominium Board members, officers, directors and employees of the Condominium, the Hotel Section and any managing agents; (i) directors' and officers' errors and omissions coverage; and (j) such other insurance as the Condominium Board may from time to time determine. (Notwithstanding the foregoing, the Condominium Board will at all times maintain any insurance coverage required pursuant to any mortgage or other security instrument granted by Sponsor, or any affiliate thereof, prior to the First Condo Hotel Closing.)

The amount of fire insurance and all risk extended coverage to be maintained until the first meeting of the Hotel Board following the First Annual Meeting of the Condo Hotel Unit Owners shall be in at least the sum of $337,500,000.

All policies of physical damage insurance shall contain, to the extent obtainable, waivers of subrogation and waivers of any defense based on (i) co-insurance, (ii) other insurance, (iii) invalidity arising from any acts of the insured, or (iv) pro rata reduction of liability, and shall provide that such policies may not be cancelled or substantially modified without at least 10 days' prior written notice to the Condominium Board and to all of the insureds, including all Condo Hotel Unit Owners and Permitted Mortgagees, who have requested the same from the Condominium Board (or the Hotel Board, in the case of a Condo Hotel Unit Owner) in writing. Duplicate originals or certificates of insurance of all policies of insurance and of all renewals thereof, if obtainable, together with proof of payment of premiums, shall be delivered to the Hotel Board, in all events, and all Unit Owners and Permitted Mortgagees who have requested the same from the Condominium Board in writing. Renewals shall be obtained at least 10 days prior to the expiration of the then current policies.

The Condominium Board shall also be required to obtain and maintain, to the extent obtainable, commercial general liability insurance against claims for personal injury or bodily injury occurring in, on or about the Property, in such amounts as are carried by prudent owners of comparable properties in the City of New York as the Condominium Board may from time to time determine, covering (1) the Condominium Board and the Hotel Board, and the managing agent(s) thereof, and each Board member and each officer and employee of the Condominium, and the Hotel Section, and (2) each Condo Hotel Unit Owner except that such policy will not cover liability of a Unit Owner arising from occurrences within his or her own Unit or within the Common Elements, if any, exclusive to its Unit. In no event shall the commercial general liability insurance afford protection to the limit of less than $1,000,000 per occurrence. The insurance discussed above shall also include cross-liability claims of one insured against another.

Any insurance maintained by the Condominium Board may provide for such deductible amounts as the Condominium Board may determine. The premiums for all insurance referred to above shall be a General Common Expense and shall be borne by the Unit Owners, in such proportions between them, with consideration of the respective risks, liabilities and replacement values, as are equitable (determined by the respective insurance carriers) as part of General Common Charges.

In the event that the Terrorism Insurance Recovery Act is not extended, the Condominium Board may or may not elect, in its sole and absolute discretion, to purchase additional terrorism insurance (provided the same is commercially available) and it should be noted that the expiration of the Terrorism Insurance Recovery Act may adversely affect the pricing of certain insurance premiums. It is anticipated that mold coverage will not be included.

Neither the Condominium Board nor the Hotel Board is required to obtain or maintain any insurance with respect to any personal property (including improvements, betterments, equipment, furniture, furnishings and the like) contained in or constituting part of a Hotel Unit or any liability with respect to occurrences within or about a Hotel Unit or the Limited Common Elements, if any, appurtenant thereto. Consequently, in addition to any other required coverages

provided in the then applicable form of Unit Management and Operation Agreement, all Hotel Unit Owners are required, as specified in Section 11.5 of the Condominium By-Laws, to obtain and maintain liability insurance as specified therein. Subject to the requirements in the Hotel By-Laws, Hotel Unit Owners shall not be prohibited from carrying other insurance for their own benefit, and the Hotel Board shall not be prohibited from requesting or seeking to cause the Condominium Board to carry other insurance, or from carrying insurance itself, for the benefit of the Hotel Section or Hotel Unit Owners. To the extent any party is insured, or is required hereunder to be insured, for loss or damage to property, each party will look to its own insurance policies for recovery. In addition, pursuant to the Unit Management and Operation Agreement, which each Condo Hotel Unit Owner shall be required to enter into, Hotel Manager, on behalf of each Condo Hotel Unit Owner, shall, at such Condo Hotel Unit Owner's sole expense, procure and maintain (a) property insurance coverage for all FF&E, improvements and betterments, in form and coverage commercially reasonable and available for luxury hotels comparable to the Hotel Section, and (b) comprehensive public liability insurance on an occurrence basis against claims for personal injury, death or property damage arising out of or connected with the operations of such Condo Hotel Unit Owner, Hotel Manager or other occupants of such Condo Hotel Unit, indemnifying and protecting such Condo Hotel Unit Owner and Hotel Manager in such amounts and to such extent as may from time to time be usual and prudent for companies operating or owning similar properties in equivalent locations. Purchasers are also advised that the insurance policies to be maintained by or on behalf of the Hotel Board will be on a "replacement cost" and will not cover losses to the extent that market value may exceed such replacement cost.

Unit Owners may carry additional insurance, provided that any such policies shall contain waivers of subrogation, if available, and further provided that the liability of the carriers issuing insurance obtained by the Condominium Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

## 18. Liability of Hotel Board and Condo Hotel Unit Owners

Every contract made by the Hotel Board, any officer of the Hotel Section, or the managing agent thereof shall state that (a) it is being executed by such party only as agent for all Condo Hotel Unit Owners, and such Hotel Board members, officer or managing agent shall have no personal liability thereon (except in their capacities, if any, as Unit Owners) and (b) the liability of any Unit Owner with respect to such contract shall be limited to (i) such proportionate share of the total liability as the Common Interest of such Unit Owner bears to the aggregate Common Interests of all Condo Hotel Unit Owners, and (ii) to the extent permitted by Laws or as otherwise determined by the Hotel Board in its sole and absolute discretion, such Unit Owner's interest in his or her Unit and its appurtenant Common Interest.

To the extent permitted by applicable Laws, Hotel Board members shall have no liability to the Condo Hotel Unit Owners, except that a Hotel Board member shall be liable for his or her own bad faith or willful misconduct. The Hotel Board may contract or effect any other transaction with any Hotel Board member, any Unit Owner, Sponsor or its designee, or any affiliate of any of them without incurring any liability for self-dealing, except in cases of bad faith or willful misconduct. All Condo Hotel Unit Owners shall severally, to the extent of their respective interests in their Units and their appurtenant Common Interests, indemnify each Hotel

Board member against any liability or claim except those arising out of the bad faith or willful misconduct of such member.

## 19. Amendments to Condominium Documents

Generally, subject to certain exceptions, any provision of the Declaration, Condominium By-Laws or Hotel By-Laws affecting only the Condo Hotel Units or the Condo Hotel Unit Owners (and not affecting, *inter alia*, the General Common Elements) may be amended, added to or deleted by affirmative vote of at least 66-2/3% in Common Interest of the Hotel Unit Owners.

## 20. Termination of Condominium

The Condominium shall continue and the Property shall not be subject to an action for partition until: (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in the Condominium By-Laws; or (b) such time as withdrawal of the Property from the provisions of the New York Condominium Act is authorized by a vote of at least 80% both in number and aggregate of the Common Interests of all Unit Owners. No such vote shall be effective, however: (a) without the written consent (which consent shall not be unreasonably withheld or delayed) of a majority of the Condo Hotel Mortgagee Representatives, if any, and a majority of the Residential Mortgagee Representatives (as such term is defined in the Declaration), if any; and (b) without the written consent of Sponsor, Residential Sponsor or any other owner of Unsold Condo Hotel Units for so long as any such Person owns any Unsold Condo Unit(s), provided that in no event shall any such consents in this clause (b) be required more than five years after the earlier to occur of the First Condo Hotel Closing or the First Residential Closing (as such term is defined in the Condominium By-Laws).

To the fullest extent permissible under Laws, each Unit Owner shall be deemed to have waived any right to seek partition of the Property. In the event said withdrawal is authorized as aforesaid, and only to the extent the waiver contained in the preceding sentence shall be inapplicable or unenforceable, 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, together with the net proceeds of any applicable insurance policies, shall be divided among all Unit Owners: (i) first, by apportioning such proceeds among the Hotel Units (in the aggregate), the Residential Units (in the aggregate), the Club Unit and the Accessory Unit pursuant to an appraisal of fair market values to be performed by a panel of three independent appraisers (one of whom shall be selected by the Transient Hotel Unit Owner, one of whom shall be selected by the Residential Board and the third selected by the Accessory Unit Owner); and (ii) then, among the Unit Owners of each class of Unit 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 its share of such funds, such amounts as may be necessary to discharge all unpaid liens on its Unit (other than mortgages which are not Permitted Mortgages) in the order of the priority of such liens.

## 21. Condo Hotel Units Acquired by the Hotel Board

All Condo Hotel Units acquired or leased by the Hotel Board or its designee shall be held by the Hotel Board, or its designee, on behalf of all Condo Hotel Unit Owners. The rent or purchase price, closing costs and adjustments payable in connection therewith shall be assessed against all Condo Hotel Unit Owners. No Condo Hotel Units held by the Hotel Board shall carry any voting rights.

The purchase of any Condo Hotel Unit by the Hotel Board or its designee, on behalf of all Condo Hotel Unit Owners, may be made from the funds deposited in the capital and/or expense accounts of the Hotel Board by or on behalf of Condo Hotel Unit Owners. If the funds in such accounts are insufficient to effectuate any such purchase, the Hotel Board may levy an assessment against each Condo Hotel Unit in proportion to its respective Common Interest, as a Hotel Common Charge, and/or the Hotel Board may, in its discretion, finance the acquisition of such Unit, subject to the limitations on borrowing otherwise set forth herein, and in the Hotel By-Laws and Declaration, and provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Hotel Section (except to the extent permitted by law) other than the Unit to be purchased together with its appurtenant interest in the Common Elements.

## 22. Procedure to Review Real Estate Tax Assessments

The Hotel Board, on behalf of and as agent for all Condo Hotel Unit Owners, will be authorized to commence, pursue and settle certiorari proceedings to obtain reduced real estate tax assessments with respect to the Condo Hotel Units. All Condo Hotel Unit Owners will share the costs in connection therewith and the benefits derived therefrom. In the event any Condo Hotel Unit Owner individually seeks to have the assessed valuation of his or her Unit reduced by bringing a separate certiorari proceeding, the Hotel Board, if necessary for such proceeding, will execute any documents or other papers required for, and otherwise cooperate with such Unit Owner in pursuing such reduction, provided that such Unit Owner indemnifies the Hotel Board from all claims, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) resulting from such proceedings. Non-Condo Hotel Unit Owners shall pursue any such proceedings separately and not as part of the proceedings described in this paragraph in respect of the Condo Hotel Units.

## 23. Mechanics' Liens

Under the current provisions of the New York Condominium Act, no lien of any nature may arise or be created against any of the Common Elements, except with the unanimous consent of all Unit Owners. Liens may arise or be created against only the several Units and their respective Common Interests. Labor performed on, or materials supplied to, a Unit may not be the basis for a mechanic's lien against the Unit of a Unit Owner not expressly consenting to or requesting such work, except in the case of emergency repairs. No labor performed on, or materials furnished to, the Common Elements shall be the basis for a lien thereon but all General Common Charges or Hotel Common Charges received by the Condominium Board or the Hotel Board, as the case may be, shall constitute trust funds for the purpose of paying the cost of labor

performed or materials furnished at the request or with the consent of such Board or the managing agent acting on its behalf.

**24. Easements**

In order to facilitate the operation and maintenance of the Hotel Section and the sale or leasing of the Units therein, each of the Condo Hotel Units will be subject to certain easements, including, but not limited to, easements in favor of Sponsor. These easements, which are more particularly set forth in Article 15 of the Declaration, include an easement in favor of each Condo Hotel Unit Owner to install, operate, maintain, repair, alter, rebuild, restore and replace Common Elements and, generally, an easement of support and of necessity in favor of all Units and the Common Elements. Additionally, the Condominium Board, Sponsor and Sponsor's designee will each have an easement to install and maintain pipes, conduits, wires, ducts and other facilities in the space between the underside of each such floor slab and the top surface of each Unit's finished ceiling, without any need to obtain the consent of any Unit Owner with respect to the same. These easements shall be exercised in a manner that will not unreasonably interfere with the normal conduct of business of the tenants and occupants of the Units or with the use of such Units for their permitted purposes. As is set forth in more detail in the Declaration and Condominium By-Laws, each of the Non-Condo Hotel Unit Owners shall likewise have similar easements benefiting and burdening its Unit.

Pursuant to a certain light and air easement made by Sponsor, as the owner of the property located at 22 Central Park South which currently serves as a residential building and adjoining the Building to the west, Sponsor has granted a perpetual and exclusive easement for unrestricted light and air over 22 Central Park South, New York, New York (designated as Block 1274, Lot 55 on the Tax Map of the City of New York, "22 CPS") above a horizontal plane drawn at an elevation of 155.89 feet above the datum level used by the Topographical Bureau, Borough of Manhattan, which is 2.75 fee above the National Geodetic Survey Vertical Datum of 1929, mean sea level, Sandy Hook, New Jersey. Such easement (i) prohibits the construction of any building structure, improvement, alteration or addition to 22 CPS that will infringe upon the easement, (ii) runs with the affected lands, buildings and improvements, (iii) benefits the owner of 1 Central Park South, New York, New York (designated as Block 1274, Lot 25 on the Tax Map of the City of New York) and its successors and assigns thereof, and (iv) is binding on the owner of 22 CPS, and its successors and assigns. Such light and air easement is subordinate to the 22 CPS Lease which expires on April 3, 2008.

Additionally, Sponsor has entered into a Restatement Declaration of Easements, Covenants and Restrictions (the "Restatement") in order to restate, clarify and consolidate certain easements, covenants and restrictions (collectively, "EC&R's") documented in the 22 CPS Lease and certain recorded documents. The EC&R's relate to systems and operations of 22 CPS. The 22 CPS steam system and electrical service (for the basement of 22 CPS) are connected to and reliant upon the Building. Employees and personnel of the Building use space in the basement of 22 CPS for various reasons, including, but not limited to, (i) rooms for security and fire personnel, (ii) an employee entrance, (iii) an emergency exit and (iv) basement space necessary for maintenance and upkeep of ventilation/exhaust ducts. The easements imposed by the contemplated Restatement shall (a) run with the lands, buildings and

improvements affected thereby; and (b) inure to the benefit of and be binding upon the owner(s) of 22 CPS and the Building.

The Restatement provides for easements in favor of the owner of the Building ("Plaza Owner") for ingress and egress over portions of the basement areas of 22 CPS. 22 CPS Owner is entitled to the benefits of an Emergency Exit Agreement entered into between Plaza Owner and the New York City Transit Authority, providing an easement for emergency exit to 59th street. There is also egress through certain 22 CPS basement areas to the Hotel Section kitchen area. Such basement areas are used by the Building and 22 CPS for, among other things, emergency egress (from the Building to a landing located on 22 CPS) for employees and agents of Building and 22 CPS. Residential tenants of 22 CPS are not authorized and do not have access to such basement areas. In addition, the Restatement provides rights to Plaza Owner for (i) access to pipes and conduits located in 22 CPS in connection with the Building's providing steam (for heat and hot water) and electrical service to the basement of 22 CPS and (ii) maintenance and repairs of such areas. Upon a sale of 22 CPS, Plaza Owner shall have the option (within 180 days from the date of such sale) to discontinue (by written notice to the owner of 22 CPS ("22 CPS Owner")) steam service to 22 CPS. If such option is exercised, then 22 CPS Owner must procure, at its sole cost and expense, steam service from the public utility within one year from the date of such discontinuation notice. Plaza Owner is required to maintain commercial general liability and property insurance (naming 22 CPS Owner as an additional insured), insuring claims for bodily injury or property damage occurring on, in or about the easement areas. 22 CPS Owner is required to pay to Plaza Owner its allocated cost of the steam being provided to the Building to 22 CPS. 22 CPS Owner is also required to maintain property insurance coverage in sufficient amounts to rebuild and/or reconstruct the portions of 22 CPS necessary to all safe ingress, egress and unimpaired access through the easement areas. 22 CPS Owner has a right to terminate the easements in the Restatement if: (i) Plaza Owner ceases use of the easement areas for a continuous period of two years; (ii) the ground floor use of the Building changes from hotel or condominium use; or (iii) the Building is substantially destroyed by casualty and subsequently rebuilt. Notwithstanding the foregoing, the Restatement can only be changed, modified or amended by an instrument in writing executed by Plaza Owner and 22 CPS Owner, and approved by their respective mortgagees of record. Notwithstanding the fact that the Restatement runs with the lands, buildings and improvements affected thereby, Sponsor has no right to terminate the easements described herein and the Restatement does not allow the Plaza Owner to terminate any current means of egress from 22 CPS.

## 25. Lot Line Windows

The windows on the west façade on the southerly section of the Building from floor 8 through floor 13 will be provided with sprinklers due to the proximity and construction of the building on the adjacent lot to the west. These windows may be required to be reduced in size and/or be provided with sprinklers, where not currently provided, if 22 CPS is ever redeveloped with one or more buildings of different configurations than that now located on the same. The rooms having these windows have other windows that, under the existing building codes, will satisfy light, air and other requirements for the lawful use of such rooms for habitation purposes. These windows in the Condo Hotel Units are identified on the Floor Plans included as Exhibit 5 in Part II of the Plan.

The Property is benefited by a light and air easement, which protects the windows on the west façade on the northerly section of the Building, however these windows on floors 5-13 will be provided with sprinklers due to the proximity and construction of the adjacent building to the west. Any future development (alteration or new construction) on the adjacent lot would be required, by any governing authorities having jurisdiction, to respect the legal light and air for these windows and not create a non-conforming condition. These windows in the Condo Hotel Units are identified on the Floor Plans included as Exhibit 5 in Part II of the Plan.

Pursuant to a certain light and air easement made by Sponsor, as the owner of the property located at 22 Central Park South and adjoining the Building to the west, has granted a perpetual and exclusive easement for unrestricted light and air over 22 CPS above a horizontal plane drawn at an elevation of 155.89 feet above the datum level used by the Topographical Bureau, Borough of Manhattan, which is 2.75 fee above the National Geodetic Survey Vertical Datum of 1929, mean sea level, Sandy Hook, New Jersey. Such easement (i) prohibits the construction of any building structure, improvement, alteration or addition to 22 CPS that will infringe upon the easement, (ii) runs with the affected lands, buildings and improvements, (iii) benefits the owner of 1 Central Park South, New York, New York (designated as Block 1274, Lot 25 on the Tax Map of the City of New York) and its successors and assigns thereof, and (iv) is binding on the owner of 22 CPS, and its successors and assigns. Such light and air easement is subordinate to the 22 CPS Lease which expires on April 3, 2008.

## 26. Signage

There will be signs, notices, advertisements and illuminations (collectively "Signage") in various exterior portions of the Building, on or at windows and in interior public spaces of the Building, which may be affixed by Hotel Manager, the Hotel Board, the Condominium Board, the Residential Board and/or one or more of the Non-Condo Hotel Unit Owners, all as provided in the Condominium By-Laws. The Condominium By-Laws (which are presented as Exhibit 7 in Part II of the Plan) contain general guidelines governing Signage. Sponsor makes no representation and shall have no liability whatsoever with respect thereto. Such Signage may include, without limitation, the name of the Building and/or the Condominium, the identity of the stores occupying all or any portion of the Non-Condo Hotel Units. The Hotel Board will have approval rights and will control any signage proposed to be placed within or upon the Hotel Limited Common Elements and on the exterior windows of any Hotel Unit.

## 27. Intellectual Property

Each of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor (as defined in the Declaration) may, from time to time either own or obtain licenses to rights in certain trademarks, trade names, copyrights and/or other intellectual property, including, without limitation, for example, THE PLAZA, the "PP Design" and/or derivations thereof or successor corporate identifiers (collectively, "Plaza Intellectual Property"). Except as expressly provided herein, in no event shall: (i) any Hotel Unit Owner (other than the Transient Hotel Unit Owner) or the Hotel Board, without the express consent of the Transient Hotel Unit Owner; (ii) any Occupant of the Accessory Unit, without the express consent of the Accessory Unit Owner; (iii) any Occupant of the Club Unit, without the express consent of the Club Unit Owner; or (iv) any Residential Unit Owner, Occupant of any Residential Unit, or the

Residential Board, without the express consent of the Residential Sponsor, use any of the Plaza Intellectual Property in connection with any advertisement, promotion, rental or sale of any such Unit (or portion thereof or interest therein) or any business being operated therein of therefrom or in any other commercial manner. The consent requirements of the preceding clauses "(i)-(iv)" shall not apply in the event that a Person (as defined in the Declaration) subject to such clauses (i)-(iv) is using only the name of the Building, the Residential Section, the Hotel Section or the name 'The Plaza' (*i.e.*, excluding any logos or other proprietary elements of the Plaza Intellectual Property) in a descriptive manner in conjunction with the sale or rental of its Unit or the provision of any services therein or therefrom. Without limiting any other right or remedy available at law or in equity, the foregoing may be enforced by an action for specific performance and/or injunctive relief. Under no circumstances shall the Plaza Intellectual Property be deemed part of the Property or an appurtenance of any Unit or any Person subject to the foregoing. The Plaza Intellectual Property shall at all times remain the sole and exclusive property of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor or their licensors.

Each of the Persons subject to clauses (i)-(iv) above shall, to the extent and for the duration that such Person is permitted to use the Plaza Intellectual Property hereunder, maintain and/or operate the portion(s) of the Property that such Person(s) own and/or for which such Person(s) is/are responsible as well as any services within the control of such Person(s) that are associated with such portion(s) of the Property, in accordance with a standard of quality, service and appearance as are consistent with or exceed such standards as are then being maintained by the hotel being operated in the Transient Hotel Unit.

A Condo Hotel Unit may be made available for rental by such Condo Hotel Unit Owner either: (i) pursuant to a hotel rental program; (ii) by the Unit Owner directly; or (iii) by a third party designated by the Unit Owner. As more particularly described in Article I(6) of the Unit Management and Operation Agreement, "Rental of Unit by the Public", aside from using the hotel rental program which may be made available from time to time by Hotel Manager, each Condo Hotel Unit Owner may use any licensed rental agent who appears on Hotel Manager's list of qualified agents that possess the objective minimum quality standards as reasonably set forth by Hotel Manager from time to time or alternatively, such Condo Hotel Unit Owner may submit his or her choice of rental agent to Hotel Manager for consideration based on the minimum quality standards. The 130 hotel guest rooms that comprise the Transient Hotel Unit shall be available for rental on a daily basis as part of the transient hotel. Initially, the Transient Hotel Unit Owner shall be Sponsor. It is currently anticipated that FHR (NYC), LLC, an affiliate of Fairmont Hotels & Resorts (U.S.) Inc., will enter into certain agreement(s) with the Transient Hotel Unit Owner and the Hotel Board that permits, while such agreement(s) are in effect for FHR (NYC), LLC to serve as Hotel Manager for the Transient Hotel Unit.

**28. Use of Certain Names**

The Transient Hotel Unit Owner may from time to time either own rights in certain trademarks, trade names, copyrights and/or other intellectual property, and/or enter into certain agreements providing it rights therein with respect to the use thereof in connection with the operation of the Transient Hotel Unit in association with a particular hotel brand or chain (such brand or chain, the "Hotel Flag"; such intellectual property, the "Hotel Flag Intellectual

Property"; and the owner(s) thereof, the "Hotel Flag Intellectual Property Owner"). For so long as the Transient Hotel Unit is operating or being operated using the Hotel Flag Intellectual Property, the Transient Hotel Unit Owner can require that the Hotel Section be operated, managed and maintained at a minimum according to the standards of quality, service, character, appearance and image required by the Hotel Flag for hotels using the Hotel Flag Intellectual Property, as the same may be amended from time to time (or, if the Transient Hotel Unit is not flagged at such time, then such standards commensurate with those of the hotel being operated in the Transient Hotel Unit at the time in question) (the "Hotel Flag Standards").

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## T. REAL ESTATE TAXES

The projection of the real estate taxes that will be payable for each of the Condo Hotel Units during the projected First Year of Hotel Section Operation is based upon an estimate that the aggregate real estate taxes for the Condo Hotel Units for the 2007/2008 tax year will be approximately $2,678,939. This estimate has been based upon: (a) an estimate made by The Leitner Group, Inc., Sponsor's real estate tax consultant, that the approximate aggregate assessed value of the Condo Hotel Units upon completion of renovation of the Building during the 2007/2008 tax year will be $23,227,966; and (b) a projection that the tax rate in effect for the twelve month period commencing July 1, 2007 with respect to the Condo Hotel Units will average $11.533 per $100 of assessed valuation.

No guaranty or assurance is given: (i) that any of the assumptions, projections or estimates described above will be valid; (ii) that any projected or estimated amount set forth above (including, without limitation, the estimates of the assessed valuations during the projected First Year of Hotel Section Operation, the estimates of the portions of such assessed valuations that will be allocable to the Units and the projection of the average real estate tax rates that will be in effect during such First Year) will approximate the actual amount; (iii) with respect to the estimated or actual amount of assessed value of the Property, or any portion thereof, following the projected First Year of Hotel Section Operation and the taxes payable based upon such assessment (which may be significantly higher to the extent that a portion of the Property is not fully assessed during such First Year); or (iv) that the Real Estate Tax Assessment Bureau of the New York City Department of Finance will allocate the Property's aggregate assessed valuation between or among the Units or classifications of Units in accordance with the values used by Sponsor's real estate tax consultant for such purpose, or that such bureau will allocate the aggregate assessed valuation attributable to the Condo Hotel Units among such Units as described herein. Sponsor will amend the Plan promptly to disclose the same if it discovers that any of such assumptions are invalid as well as after the Condo Hotel Units have been separately assessed and the applicable tax rate determined.

Until the Condo Hotel Units are separately assessed, each Condo Hotel Unit Owner will pay to the Hotel Board a share of the Property's real estate taxes for the period in question calculated as follows: (i) the real estate taxes for the entire Property will be allocated by the Condominium Board to the Hotel Section in proportion to its aggregate Common Interest as described in the Condominium By-Laws; (ii) the total real estate taxes allocated for the Hotel Section will then be allocated among the Condo Hotel Units and the Transient Hotel Unit on the basis of approximately 61% of such taxes to the Condo Hotel Units and 39% of such taxes to the Transient Hotel Unit. These allocation percentages reflect the relative approximate Common Interest of each of these Units or classes of Units. (iii) The share so allocated to the Condo Hotel Units in the aggregate will then be pro-rated to each individual Condo Hotel Unit on the basis of the ratio that the initial offering price for each such Unit set forth in Schedule A above bears to the total initial offering prices of all Condo Hotel Units set forth in Schedule A. The Hotel Board will pay (or cause to be paid) such real estate taxes timely to the Department of Finance of The City of New York, or directly to Sponsor if Sponsor has paid such taxes, so that no lien will be placed on any portion of the Hotel Section or on any Condo Hotel Unit. If Sponsor fails to pay real estate taxes attributable to any Unsold Condo Hotel Unit in a timely manner and as a result of such failure a lien is placed on the Hotel Section and/or any other Unit, Sponsor will

immediately cause such lien to be removed at its sole cost and expense. If any Hotel Unit Owner fail to pay its pro rata share of real estate taxes as set forth above, the Hotel Board will be entitled to assess late charges and/or place a lien on such Unit Owner's Unit as if such unpaid share were Hotel Common Charges. (See "Collection and Lien for Non-Payment of Hotel Common Charges" in the Section of Part I entitled "Rights and Obligations of the Unit Owners and the Boards" for further discussion.) A Unit Owner will not be responsible for the payment of, and will not be subject to any lien arising from the non-payment of, real estate taxes assessed against any other Units. At such time as a Unit is separately assessed and separate tax bills are issued, the Unit Owner will pay such taxes directly to the taxing authority.

There is no assurance that the proration of taxes described in the paragraph above will equal the actual amount of real estate taxes which will be assessed against the Condo Hotel Units, and the actual amounts may vary considerably from the method set forth above.

Real estate taxes will be adjusted between Sponsor and each Purchaser at the closing of title to each Condo Hotel Unit based on the period for which real estate taxes have been prepaid by Sponsor either directly to the taxing authority or as part of the Hotel Common Charges to the Hotel Board. If real estate taxes have been separately assessed to each Unit as of the closing, then the adjustment shall be based on the Unit's actual taxes for such period. If the real estate taxes have not been separately assessed to each Unit as of the closing, then the adjustment shall be determined by allocating to the Unit in question a prorated portion of the actual taxes for the entire Hotel Section for such period determined as provided in the Hotel By-Laws.

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## U. INCOME TAX DEDUCTIONS TO CONDO HOTEL UNIT OWNERS AND TAX STATUS OF CONDOMINIUM

The following discussion of certain income tax consequences of the Plan was prepared by Sponsor based, in part, upon the opinion of Sponsor's Counsel, a copy of which opinion is included herein in Part I, Section V of the Plan. Prospective Purchasers should refer to such opinion letter itself for a more detailed discussion of the tax consequences summarized below.

Prospective Purchasers should note that the opinion letter addresses the tax consequences that would result from the ownership of a Condo Hotel Unit by an individual resident of New York for use as his or her own principal or secondary residence. It does not address, among other things, the tax consequences that might result from the ownership of a Condo Hotel Unit by a taxpayer that is not an individual or who is a foreign person. It also does not address, unless specifically noted, the tax consequences that might result from the ownership of a Condo Hotel Unit that is held by an individual taxpayer in connection with his or her trade or business, for investment, or for the production of income. Further, the opinion letter does not address the tax consequences that might result from the ownership of a Non-Condo Hotel Unit.

KRAMER LEVIN NAFTALIS & FRANKEL LLP IS COUNSEL TO SPONSOR AND NOT TO ANY PURCHASER UNDER THE PLAN. EACH PURCHASER SHOULD CONSULT WITH HIS OR HER OWN TAX COUNSEL, ACCOUNTANT OR OTHER FINANCIAL ADVISOR AS TO THE TAX CONSEQUENCES OF THE OWNERSHIP OF A CONDO HOTEL UNIT.

### 1. Deductibility of Real Estate Taxes and Mortgage Interest

Each Condo Hotel Unit Owner will own legal (fee simple) title to his or her Condo Hotel Unit, together with an undivided interest in the Common Elements. Subject to certain restrictions, each Condo Hotel Unit Owner may mortgage his or her Condo Hotel Unit, and thereby become individually liable for the payment of the principal and any finance charges or interest on such mortgage indebtedness. Additionally, each Condo Hotel Unit will be a separate tax lot for purposes of New York City real estate taxes and assessments. As a result, each Condo Hotel Unit Owner will be individually liable for the real estate taxes and assessments levied against his or her Condo Hotel Unit.

Generally, it is the opinion of Sponsor's Counsel that each Condo Hotel Unit Owner will, under the present income tax laws and regulations, for Federal, New York State and New York City income tax purposes, subject to certain qualifications and limitations discussed below, be entitled to a deduction for:

(a) the real estate taxes assessed against his or her Condo Hotel Unit and paid by such Condo Hotel Unit Owner; and

(b) "qualified residence interest" paid by such Condo Hotel Unit Owner with respect to such Residential Unit.

Qualified residence interest includes interest paid by the Condo Hotel Unit Owner on: (i) debt used to acquire, construct or substantially improve any "qualified residence," as defined

below, and secured by such residence, up to $1,000,000 ($500,000 in the case of a married individual filing a separate return); and (ii) other indebtedness secured by a qualified residence, up to $100,000 ($50,000 in the case of a married individual filing a separate return). Interest on home mortgage indebtedness in excess of these limitations is not deductible.

A "qualified residence" means: (i) the "principal residence" of the Condo Hotel Unit Owner and (ii) one secondary residence selected by the Condo Hotel Unit Owner which, if such residence is rented during the taxable year, the taxpayer must use for personal purposes for a number of days which exceeds the greater of (i)14 days or (ii) 10% of the number of days during such year for which such unit is rented at a fair value. For example, if a taxpayer rents a residence at a fair value for 180 days during a taxable year, the taxpayer would need to use the residence for personal purposes for more than 18 days in order for the residence to be a qualified residence.

Prospective Purchasers should note that no deduction will be allowed to a cash basis taxpayer in the year of payment for prepaid interest (except in the case of "points" paid under certain circumstances), and that the deductions for real estate taxes and qualified residence interest may be subject to the overall limitation on the allowance of itemized deductions which he or she uses for personal purposes for a number of days which exceeds the greater of (i)14 days or (ii) 10% of the number of days during such year for which such Unit is rented at a fair value.

**2. Taxation of the Condominium**

The Condominium Board (which governs the Property as a whole) will, from time to time, assess General Common Charges, and the Hotel Board (which governs the particular affairs of the Hotel Section) will, from time to time, assess Hotel Common Charges against the Hotel Unit Owners.

In certain circumstances, a condominium board may elect to be treated as a "homeowners association" within the meaning of Internal Revenue Code Section 528(c) and, therefore, could elect to be exempt from Federal income tax on common charges received from Condo Hotel Unit Owners ("exempt function income"). In order for a condominium board to qualify to make such election, Section 528 and the Treasury Regulations promulgated thereunder require, among other things, that at least 85% of the total square footage of all the units within the project be used by individuals for residential purposes, and that certain gross income and expenditure tests be met.

Neither the Hotel Board nor the Condominium Board will be eligible to elect to be treated as a homeowners association under Section 528 because less than 85% of the total square footage of all Condo Hotel Units and transient hotel guest rooms in the Hotel Section and all Units in the Condominium, respectively, will be used for residential purposes.

The status of a condominium board for Federal, New York State and New York City income tax purposes is uncertain if the condominium board does not qualify under Code Section 528, as will be the case with respect to the Condominium Board and the Hotel Board. Absent the application of Code Section 528, if the Condominium Board and the Hotel Board are deemed to be merely conduits for the Unit Owners and the Condo Hotel Unit Owners, respectively, all income earned by the Condominium Board and the Hotel Board, less the expenses incurred in

earning such income, would be deemed to constitute income to all Unit Owners and Condo Hotel Unit Owners, respectively, and be taxable to them. However, under this analysis, Hotel Common Charges might not be considered income to the Hotel Board and General Common Charges might not be considered income to the Condominium Board.

If each of the Condominium Board and the Hotel Board were to be treated as a separate entity, it is unclear whether they would be taxable as a corporation or treated as a partnership. If a Board is taxable as a corporation, it would be considered a separate taxpayer with respect to income and deductions and return filing requirements and would be subject to Federal corporate income tax, the New York State Corporation Franchise Tax and the New York City General Corporation Tax. If the Condominium Board or Hotel Board is treated as a partnership, the Unit Owners or Condo Hotel Unit Owners, respectively, (but not the Board) would be subject to Federal and New York State income tax on the taxable income of the Condominium Board or the Hotel Board. In addition, in that instance the Condominium Board or the Hotel Board may be subject to the New York City Unincorporated Business Tax. In determining the taxable income of the Condominium Board or the Hotel Board, the deductions attributable to furnishing services to Unit Owners or Condo Hotel Unit Owners, respectively, may be limited to membership income. Certain amounts expended for the benefit of Unit Owners, and possibly rebates, if any, to Unit Owners of excess membership dues, fees or assessments, may be treated as distributions to them.

No warranties are given that the Internal Revenue Service, the New York State Department of Taxation and Finance or the New York City Department of Finance will allow any of the deductions mentioned in this Section V or that the tax laws or the regulations or rulings issued thereunder, or any judicial interpretation thereof, upon which counsel to Sponsor bases its opinion, will not change. In addition, no warranties are given by Sponsor, counsel to Sponsor, Selling Agent, Hotel Manager or any other person connected with this offering, with respect to the tax consequences of the Plan or the tax consequences of ownership of any Units offered under the Plan, and no one has been authorized to give any such warranties.

**Internal Revenue Service Circular 230 Disclosure**. This discussion was written to support the promotion or marketing of the sale of Condo Hotel Units. To ensure compliance with requirements imposed by the Internal Revenue Service, we are informing you that this discussion was not intended or written to be used, and cannot be used, by any taxpayer, including purchasers of Condo Hotel Units, for the purpose of avoiding tax-related penalties that may be imposed on the taxpayer under the Code. Purchasers of Condo Hotel Units should seek advice based on their particular circumstances from an independent tax advisor.

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# V. OPINIONS OF COUNSEL
# TAX OPINION OF SPONSOR'S COUNSEL

June 9, 2006

CPS 1 Realty LP
c/o El-Ad Properties NY LLC
575 Madison Avenue
New York, New York 10022

Re: Offering Plan for The Plaza Hotel -- Condominiums at
The Plaza Condominium (the "Condominium")

To Whom It May Concern:

You have requested our opinion concerning (i) the deductibility, for Federal, New York State and New York City income tax purposes, of mortgage interest and real estate taxes paid by individuals who are residents of New York State and New York City for income tax purposes who purchase Condo Hotel Units pursuant to the above-referenced offering plan (the "Plan"), and (ii) the income tax treatment to the Hotel Board and the Condominium Board of the assessments payable by Condo Hotel Unit Owners to meet Hotel Common Expenses for the Hotel Section and Unit Owners to meet General Common Expenses of the Condominium ("Common Charges").

In connection with rendering this opinion, we have reviewed the Plan (including the exhibits thereto), relevant sections of the Internal Revenue Code of 1986, as amended (the "Code"), the New York State Tax Law, the New York City Administrative Code, the Regulations promulgated thereunder and such other material as we deemed relevant. The opinions expressed herein are based upon the assumptions that (1) the Plan becomes effective and is consummated in accordance with its terms, (2) condominium ownership of Condo Hotel Units located in the premises known as The Plaza Condominium is established under applicable law and (3) the legal consequences of the Plan are as described therein. Except where otherwise indicated, the terms used in this opinion have the same meaning as in the Plan.

The Plan provides for the establishment of condominium ownership of the land and building, and appurtenances thereto, comprising The Plaza Condominium, situated at 768 Fifth Avenue, New York, New York. The Condominium will be comprised of Condo Hotel Units, Non-Condo Hotel Units, and Common Elements. This opinion addresses certain of the Federal, New York State and New York City income tax consequences that would result from the ownership of a Condo Hotel Unit by an individual who is a resident for income tax purposes of New York State and New York City for use as his or her own principal or secondary residence. It does not address, among other things, the tax consequences of ownership of Non-Condo Hotel Units by any person or entity, and does not address the tax consequences of the ownership of Condo Hotel Units by corporations, other entities or foreign persons.

**Deductibility of Mortgage Interest and Real Estate Taxes**

Each Condo Hotel Unit Owner will own his or her Condo Hotel Unit and an undivided interest in the Common Elements in fee simple and, under New York State Law, each Condo Hotel Unit (including its undivided interest in the Common Elements) will be taxed as a separate parcel for real estate tax

purposes. Each Condo Hotel Unit Owner may mortgage his or her Condo Hotel Unit and become individually liable for the payment of the principal and any finance charges or interest on such mortgage indebtedness, and will be liable to the local tax authority for the tax assessment with respect to his or her interest in the Condo Hotel Unit. Under these circumstances, the Internal Revenue Service has ruled that the owner of a residential condominium unit who itemizes deductions in filing his or her Federal income tax returns may deduct interest paid on his or her mortgage indebtedness and the real estate taxes assessed and paid on his or her interest in the property. Rev. Rul. 64-31, 1964-1 (Part I) C.B. 300.

Based on the foregoing, and subject to the limitations expressed herein, it is our opinion that each individual Condo Hotel Unit Owner who itemizes deductions will be entitled under current law to deduct from his or her gross income for Federal, New York State and New York City income tax purposes, real estate taxes assessed against his or her Condo Hotel Unit and paid to the local authority, subject to an overall limitation on itemized deductions as set forth in section 68 of the Code, and applicable New York State and New York City limitations, provided, however, that as further discussed below, to the extent that a Condo Hotel Unit Owner rents his or her Unit, the annual real estate tax deduction otherwise allowable could be limited. Further, no deduction for real estate taxes is permitted for purposes of the Federal alternative minimum tax. Condo Hotel Unit Owners should consult their tax advisers regarding the applicability of the overall limitation on itemized deductions to the deductibility of real estate taxes, the effect of the alternative minimum tax, and the tax implications of renting their Condo Hotel Units.

A taxpayer generally is entitled to a deduction for Federal income tax purposes for interest paid during the taxable year on "acquisition indebtedness" or "home equity indebtedness" with respect to a "qualified residence" of the taxpayer. A "qualified residence" means the principal residence of the taxpayer and, in general, one other residence of the taxpayer selected by the taxpayer for the taxable year. "Acquisition indebtedness" means any indebtedness which is secured by any qualified residence of the taxpayer and which is incurred in acquiring, constructing or substantially improving the qualified residence (or which constitutes a refinancing thereof, to the extent that such indebtedness does not exceed the amount of the refinanced debt). The aggregate amount treated as acquisition indebtedness for any period cannot exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return). "Home equity indebtedness" means any indebtedness (other than acquisition indebtedness) secured by a qualified residence, up to the excess of the fair market value of such qualified residence over the amount of acquisition indebtedness with respect to such residence. The aggregate amount treated as home equity indebtedness for any period cannot exceed $100,000 ($50,000 in the case of a married individual filing a separate return). Accordingly, an owner of a Condo Hotel Unit who itemizes deductions and who uses such Condo Hotel Unit as a qualified residence will be entitled, under current law, to deduct from his or her gross income, subject to an overall limitation on itemized deductions as set forth in section 68 of the Code, for Federal income tax purposes, interest paid by him or her on (i) acquisition indebtedness incurred with respect to such Condo Hotel Unit to the extent that such indebtedness, when added to the amount of acquisition indebtedness incurred with respect to a second qualified residence (if any), does not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return) and (ii) home equity indebtedness with respect to such Condo Hotel Unit to the extent that such indebtedness, when added to the amount of home equity indebtedness incurred with respect to a second qualified residence (if any), does not exceed $100,000 ($50,000 in the case of a married individual filing a separate return). Since the rules and limitations regarding the deductibility of home mortgage interest are complex, purchasers are urged to consult their tax advisers regarding the application of such rules to them, as well as regarding the deductibility of interest with respect to their Condo Hotel Units for alternative minimum tax purposes (which at present is subject to rules different from those described above for regular tax purposes). In addition, as further discussed below, to the extent that a Condo Hotel Unit Owner rents his or her Unit, the annual interest deduction otherwise allowable could be limited. Owners of Condo Hotel Units should consult their tax advisers regarding potential limitations on the deductibility of points and

prepaid interest, if any, on their mortgage loans, the overall limitation on the allowance of itemized deductions and the tax implications of renting their Condo Hotel Units.

As discussed above, while the annual interest and real estate tax expenses are generally deductible, the Code may limit such expenses to the extent that a Condo Hotel Unit Owner rents his or her Unit. Code section 280A generally disallows certain expenses incurred in connection with the business use of a home. Such disallowance may occur if a Condo Hotel Unit Owner rents his or her Unit during the tax year and uses such Unit as a residence for the greater of (i)14 days or (ii) 10% of the number of days during such year for which such unit is rented at a fair value during the tax year. In general, the deductions allocable to rental use may not exceed the gross income derived from such use for the taxable year, but such excess deductions may be carried forward to offset future income.

The law is unclear as to how to allocate expenses between residential and rental use. Allocation may be made on the basis of days rented to days used (Proposed Treasury Regulation section 1.280A-3(d)(3)), days rented to days in the year (*see Bolton v. Comm'r*, 82-2 USTC ¶ 9699 (9th Cir. 1982); *McKinney v. Comm'r*, 83-2USTC ¶ 9655 (10th Cir. 1983)) or some other method. This opinion does not address tax consequences which may result with respect to any Condo Hotel Unit held in connection with a trade or business, or any Condo Hotel Unit held for purposes of investment or for the production of income. Condo Hotel Unit Owners should consult their tax advisers regarding the allocation of expenses and the other tax implications of renting their Condo Hotel Units.

Each owner of a Condo Hotel Unit who uses such Condo Hotel Unit as a residence will generally be entitled to the same deduction for interest and real estate taxes paid or accrued with respect to such Condo Hotel Unit for New York State and New York City income tax purposes as is allowed for Federal (regular) income tax purposes. However, under New York State and New York City income tax law, itemized deductions, such as interest and real estate tax deductions, are subject to reduction by as much as 50 percent in the case of individuals having income exceeding certain prescribed levels. Furthermore, purchasers should consult their tax advisers to determine the application, if any, of the New York State and New York City minimum tax to the deduction for interest and real estate taxes with respect to their Condo Hotel Units.

**Common Charges**

Under the Plan, the Condominium Board and the Hotel Board will, from time to time, assess Common Charges against the Unit Owners and the Condo Hotel Unit Owners, respectively, generally in proportion to their respective percentage interests in the Common Elements in order to pay the costs and expenses of operating, repairing, and maintaining the General Common Elements and Condo Hotel Limited Common Elements, respectively.

In certain circumstances, a condominium board may elect to be treated as a "homeowners association" within the meaning Code section 528(c) and, therefore, could elect to be exempt from Federal income tax on its exempt function income. In order for a condominium board to qualify to make such election, section 528 requires, among other things, that substantially all of the units in the condominium be used by individuals for residences. The Treasury Regulations promulgated under section 528 state that substantially all of the condominium units will be considered as used by individuals for residences if at least 85 percent of the total square footage of all the units within the project is used by individuals for residential purposes.

The Hotel Board will not be eligible to elect to be treated as a homeowners association under section 528 because less than 85 percent of the total square footage of all Condo Hotel Units and transient hotel guest rooms in the Hotel Section will be used for residential purposes. Similarly, the Condominium

Board will not be eligible to elect to be treated as a homeowners association because less than 85 percent of the total square footage of all Units in the Condominium will be used for residential purposes.

The status of a condominium board for Federal, New York State and New York City income tax purposes is uncertain if the board does not qualify under section 528, as will be the case with respect to the Condominium Board and the Hotel Board. Absent the application of section 528, the present state of the law is uncertain as to the proper reporting and tax treatment of the income of the Condominium Board and the Hotel Board derived from Unit Owners and Hotel Condo Unit Owners, respectively, ("membership income") and others ("nonmembership income") in excess of appropriate deductions and credits. It is possible that the Hotel Board and the Condominium Board could be viewed as an agent or conduit for Condo Hotel Unit Owners and Unit Owners, respectively, in which case each Condo Hotel Unit Owner and Unit Owner would be required to report his or her proportionate share of nonmembership and possibly membership income (and the deductions attributable thereto) directly on his or her own tax return. Alternatively, the Internal Revenue Service may take the position that each of the Condominium Board and Hotel Board should be treated as a separate entity. In that case, it is unclear whether the Hotel Board and the Condominium Board would be taxable as corporations or treated as partnerships. In the event the Condominium Board and/or the Hotel Board is taxable as a corporation, such Board would be considered a separate taxpayer with respect to income and deductions and return filing requirements and would be subject to Federal corporate income tax, the New York State Corporation Franchise Tax and the New York City General Corporation Tax. In the event the Condominium Board and/or the Hotel Board is treated as a partnership, the Unit Owners or the Condo Hotel Unit Owners, respectively, (but not the Boards) would be subject to Federal and New York State income tax on the taxable income of the Boards. In addition, in that instance the Condominium Board or the Hotel Board, as applicable, may be subject to the New York City Unincorporated Business Tax. In determining the taxable income of the Condominium Board and the Hotel Board, each Board's deductions attributable to furnishing services to Unit Owners and Condo Hotel Unit Owners, respectively, may be limited to its membership income. Certain amounts expended for the benefit of Unit Owners or Condo Hotel Unit Owners, as applicable, and possibly rebates, if any, to Unit or Condo Hotel Unit owners, as applicable, Owners of excess membership dues, fees or assessments, may be treated as distributions to them.

We express no opinion concerning (a) any Federal, New York State or New York City tax consequences not explicitly discussed in this opinion, (b) any other aspects of the Plan other than those consequences and aspects explicitly discussed in this opinion, or (c) the tax status and tax consequences of the Plan under the laws of any other state, local or foreign jurisdiction. This opinion does not address (i) tax consequences which may result with respect to any Condo Hotel Units held in connection with a trade or business, or any Condo Hotel Units held for purposes of investment or for the production of income, (ii) tax consequences which may result to a foreign Condo Hotel Unit Owner by reason of his or her foreign status or (iii) tax consequences which may result from the purchase of a Non-Condo Hotel Unit. This opinion also does not discuss the tax consequences which may arise if Condo Hotel Units or Common Elements are acquired and/or leased by the Condominium Board or the Hotel Board or the issue of whether a Condo Hotel Unit Owner may be deemed to be a resident of the United States, New York State, or New York City as a result of the ownership of a Condo Hotel Unit and the attendant income, estate or other tax consequences. We advise, therefore, that each person contemplating the purchase of a Condo Hotel Unit consult his or her own tax adviser concerning all such tax matters, as well as with respect to the matters discussed in this opinion.

It should be noted that this opinion is based solely on the facts and documents referred to above and is not binding on the Internal Revenue Service, the New York State Department of Taxation and Finance, or the New York City Department of Finance. Moreover, the Federal, New York State and New York City tax laws and regulations and the rulings and decisions thereunder may change and thereby affect the opinions stated above in whole or in part. We undertake no obligation to update, modify or

supplement this opinion in the event of any such change in applicable law, although we have advised Sponsor that it is obligated to do so.

This opinion is not a guarantee; it is based on existing rules of law applied to the facts and documents referred to above. No assurances can be given that the tax laws upon which we base this opinion will not change. In no event will Sponsor, we, the Condominium Board, the Hotel Board, Selling Agent, Hotel Manager or any other person be liable if there are changes in the facts on which we relied in issuing this opinion or if there are changes in the applicable statutes, regulations, rulings or decisions on which we relied which cause the Condo Hotel Unit Owners not to be entitled to the income tax deductions described above or which affect the tax treatment of the Condominium Board and the Hotel Board as described herein.

**Internal Revenue Service Circular 230 Disclosure**. This opinion was written to support the promotion or marketing of the sale of Condo Hotel Units. To ensure compliance with requirements imposed by the Internal Revenue Service, we are informing you that this opinion was not intended or written by us to be used, and cannot be used, by any taxpayer, including purchasers of Condo Hotel Units, for the purpose of avoiding tax-related penalties that may be imposed on the taxpayer under the Code. Purchasers of Condo Hotel Units should seek advice based on their particular circumstances from an independent tax advisor.

We hereby authorize the use of this opinion, or a reproduction thereof, in the Plan and references to our name in the Plan.

Very truly yours,

Kramer Levin Naftalis & Frankel LLP

KRAMER LEVIN NAFTALIS & FRANKEL LLP

**OPINION REGARDING ALLOCATION OF COMMON INTERESTS**

May 31, 2006

CPS 1 Realty LP
c/o El-Ad Properties NY LLC
575 Madison Avenue
New York, New York 10022

Re: Offering Plan for the Plaza Hotel – Condominiums
at The Plaza Condominium (the "Condominium")

To Whom It May Concern:

You have requested our opinion regarding the allocation of common interests to the Units at the Condominium as required by 13 NYCRR Section 20.3(y)(5). Except where otherwise indicated, the terms used in this opinion shall have the same meaning as set forth in the Offering Plan (the "Plan") for the sale of the Condo Hotel Units at the Condominium.

In connection with rendering this opinion we have reviewed the allocation of Common Interests as shown on Schedule A of the Plan and the proposed Declaration establishing the Condominium. We have also considered the relevant sections of the New York State Condominium Act and such other materials as we deemed relevant. Our opinion is based upon the factual determinations made by Gumley Haft Realty as set forth in its opinion contained in the Plan as required by NYCRR Section 20.3(i). We have made no independent investigation of the truth or accuracy of the factual determinations of Gumley Haft Realty.

Based upon our review of the foregoing, we have determined that Common Interests were allocated pursuant to the method set forth in Real Property Law ("RPL") Section 339-i(1)(iv), *i.e.*, based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit.

Accordingly, based on the foregoing it is our opinion that RPL Section 339-i has been complied with in assigning Common Interests to the Units. This opinion, while based upon existing rules of law applied to the facts and documents referred to above, is not a guarantee to Purchasers. In no event will Sponsor, Kramer Levin Naftalis & Frankel LLP, Selling Agent, the Condominium Board, the Hotel Board or the Managing Agent be liable if there are changes in the facts on which we have relied in issuing this opinion or if there are changes in RPL Section 339 or other applicable law.

Very truly yours,

Kramer Levin Naftalis & Frankel LLP

Kramer Levin Naftalis & Frankel LLP

KL3:2475358.7 1177 Avenue of the Americas New York NY 10036-2714 Phone 212.715.9100 Fax 212.715.8000 www.kramerlevin.com
also at 47 Avenue Hoche 75008 Paris France
in alliance with Berwin Leighton Paisner: London * Brussels

## W. WORKING CAPITAL FUND

The Purchaser of each Condo Hotel Unit shall be required to make a contribution at the closing of title to such Unit(s) to or in respect of the working capital fund of the Hotel Section (the "Working Capital Fund"). Such contribution shall be in an amount equal to two months' Hotel Common Charges then in effect for such Unit pursuant to the budget then in effect for the Hotel Section and in accordance with Schedule A hereto, as the same may be amended from time to time.

No reserve fund is being established for the Hotel Section. Sponsor has elected not to provide for a reserve fund to be used for capital replacements or repairs in respect of the Hotel Section because upon completion of the renovation to be performed by or on behalf of Sponsor as described herein, the Hotel Section will be substantially newly constructed.

In addition, although a reserve fund has been established for the Condominium in its budget for the projected First Year of Condominium Operation (Schedule B-2) to be used by the Condominium Board, which in general has principal responsibility for repairing and maintaining the General Common Elements (such as the roofs and various mechanical, and building systems), such reserve may prove insufficient. In such case or otherwise in the Condominium Board's discretion, subject to the terms of the Condominium By-Laws, the Condominium Board may decide in the future to enhance the reserve fund or pay for necessary repairs or capital items by special assessment or by increasing General Common Charges. Each Hotel Unit Owner would be individually liable for the amount of such special assessment against, or increase payable by, the Hotel Board to the extent of such Unit Owner's proportionate Common Interest among all Hotel Unit Owners.

At the First Condo Hotel Closing, Sponsor will apportion the following items with the Hotel Board as of the date preceding said closing:

(1) employees' wages, vacation and severance pay, pension and welfare benefits and all other payments or obligations relative to the employees of the Hotel Section;

(2) fees for assignable permits and licenses, if any;

(3) charges for steam, gas, electricity and other utilities;

(4) payments under assignable service, maintenance and concession contracts;

(5) water charges and sewer rents on the basis of the fiscal year for which assessed (unless separately assessed to individual Condo Hotel Units);

(6) cost of fuel and Building supplies on hand, at Sponsor's cost (plus sales tax);

(7) premiums for transferable insurance policies;

(8) common charges and other amounts prepaid to the Condominium Board in respect of the Hotel Section and/or Unsold Condo Hotel Units; and

(9) other customary adjustments.

If any of the foregoing items to be apportioned cannot be adjusted at the First Condo Hotel Closing because they are not fully ascertainable, they shall be apportioned and adjusted to the extent reasonably possible at the First Condo Hotel Closing, and final adjustment will be made as soon thereafter as the undetermined amounts are ascertained. No such adjustments or apportionments are expected to be substantial. Except as herein otherwise expressly provided, the customs in respect to title closings adopted by the Real Estate Board of New York, Inc., as amended, shall apply to apportionments and other matters herein mentioned.

The Working Capital Fund may be held or used for working capital, to make repairs and/or for such other appropriate purposes permitted under the Declaration and the Hotel By-Laws as will be determined by the Hotel Board, in its sole discretion; and may be augmented by allocations from monthly Hotel Common Charges collected by the Hotel Board. Other than as provided in the preceding sentence (with respect to monthly Hotel Common Charges), Sponsor will not separately contribute to the Working Capital Fund. However, while Sponsor controls the Hotel Board, the Working Capital Fund will not be used to reduce estimated Hotel Common Charges, and in no event shall any portion of the Working Capital Fund be used to pay any Hotel Common Charges attributable to Unsold Condo Hotel Units.

No representation is made that the Working Capital Fund, together with the Hotel Common Charges, will be, or is intended to be, adequate to cover expenses for the first or any subsequent year of operation, including, without limitation, the cost of any necessary repairs or replacements. If additional funds are required over and above the Working Capital Fund, it may be necessary to increase the Hotel Common Charges or to impose special assessments on Hotel Unit Owners.

**Neither the Department of Law nor any other governmental agency has passed upon the adequacy of the Working Capital Fund.**

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## X. MANAGEMENT AGREEMENT AND CONTRACTS

It is presently contemplated that at or prior to the First Condo Hotel Closing, the Hotel Board will enter into a "Hotel Board Management Agreement" (the "HBMA") with FHR (NYC), LLC, a Delaware limited liability company, an affiliate of Fairmont Hotels & Resorts (U.S.), Inc. ("Hotel Manager"), having an address at Canadian Pacific Tower, TD Centre, 100 Wellington St. W., Suite 1600, P.O. Box 40, Toronto, Ontario, Canada M5K1B7, on behalf of the Hotel Section to act as Hotel Manager with respect to the Hotel Section (excluding the Transient Hotel Unit).

It is contemplated that the HBMA will provide for an initial term of fifteen (15) years commencing on the date of opening of the Hotel Section for business as a Fairmont Hotel with up to five consecutive five-year renewal options.

Notwithstanding the foregoing, Sponsor makes no representation that Hotel Manager (whether it is FHR (NYC), LLC, Fairmont Hotels & Resorts (U.S.) Inc., its affiliate or another hotel operator) will continue to manage the Hotel Section. Sponsor will amend the Plan promptly to disclose a different hotel operator or any material change to the terms of the HBMA.

The duties and services to be rendered by Hotel Manager are anticipated to include, among others:

(a) Operation, care, supervision, upkeep and maintenance of; repair, restoration and/or replacement ("Repair") of, and; addition, alteration and/or improvement ("Alteration") to, in each case, the Hotel Limited Common Elements in accordance with the terms of the Hotel By-Laws and the Condominium By-Laws; and in the condition and otherwise in such a manner that maintains the standards of quality, service, image and appearance commensurate with those of the hotel being operated in the Transient Hotel Unit at the time in question;

(b) Collection of Hotel Common Charges and any special assessments from Condo Hotel Unit Owners and the Transient Hotel Unit Owner;

(c) Selection, supervision, direction, training, assigning of duties, determination of salary and wages and dismissal of the personnel necessary for the maintenance and operation of the Hotel Section and the provision of the services offered therein, subject, however, to any rights and obligations of the Transient Hotel Unit Owner with respect thereto;

(d) Making Repairs of, and Alterations to, the Hotel Limited Common Elements;

(e) Making Repairs of, and Alterations to, the Hotel Section (excluding the Transient Hotel Unit) or parts thereof damaged or destroyed by fire or other casualty or necessitated as a result of condemnation or eminent domain proceedings, all in accordance with the terms of the Hotel By-Laws and the Condominium By-Laws;

(f) Maintaining bank accounts on behalf of the Hotel Section (with respect to matters within its jurisdiction as provided in the Hotel By-Laws) and designating the signatories required therefor;

(g) Imposition, increase, decrease or elimination of move-in fees and charges, and transfer fees payable to the Hotel Board, or as such Board directs, in connection with the sale or lease of a Condo Hotel Unit, provided that no such fees or charges or any other conditions of transfer or lease may be imposed upon Hotel Sponsor or its designee or any Units bought, sold or leased by the Hotel Board;

(h) Contracting for necessary services and purchasing all supplies necessary to properly maintain and operate the Hotel Section (excluding the Transient Hotel Unit);

(i) Checking all bills received in connection with the maintenance and operation of the Hotel Section (excluding the Transient Hotel Unit) and causing all such bills and other expenses to be paid;

(j) Rendering monthly statements of receipts and disbursements to the Hotel Board or other designated entity, upon request;

(k) Maintaining payroll records and filing withholding tax statements for employees of the Hotel Section;

(l) Maintaining accurate sets of books for the Hotel Board;

(m) Cooperating with the Hotel Board's accountants in preparing and submitting annually to the Hotel Board an operating budget of the anticipated income and expenses of the Hotel Section (excluding the Transient Hotel Unit) for the ensuing year;

(n) Attending meetings of the Hotel Board and annual meetings of the Condo Hotel Unit Owners and the Transient Hotel Unit Owner, and preparing agendas and sending notices relating to such meetings, and if requested by the Hotel Section, provide a secretary, at the Hotel Board's expense to record the minutes of such meetings; and

(o) Perform all other acts deemed by the Hotel Board to be necessary, desirable or appropriate in order to ensure the proper Operation of the Hotel Section and the Hotel Board.

Except as set forth in paragraphs (d) and (e) above, Hotel Manager's responsibility under the HBMA shall not extend to supervising or managing major capital renovations or major capital improvements.

Hotel Manager shall receive as compensation for its services under the HBMA, an annual fee for each fiscal year (or portion thereof) that the HBMA is in effect (as prorated for partial fiscal years) equal to $75,000 (the "Management Fee"). The Hotel Board shall pay the Management Fee to Hotel Manager in advance on a monthly basis on the first ($1^{st}$) day of each month (or portion thereof) in an amount equal to $1/12^{th}$ of the annual Management Fee.

The Hotel Board will indemnify and hold Hotel Manager and its Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives (collectively, the "Hotel Manager Indemnified Parties") harmless from and against any and all liabilities, fines, suits, claims, obligations, damages, penalties, demands, actions, costs and expenses of any kind or nature (including, without limitation, legal fees) asserted by third parties and arising out of any action or omission or course of action on the part of a Hotel Manager Indemnified Party in the performance of its obligations under the HBMA or otherwise in connection with any obligation incurred by or instrument executed by a Hotel Manager Indemnified Party alone, a Hotel Manager Indemnified Party together with the Hotel Board or the Hotel Board alone, whether or not a Hotel Manager Indemnified Party shall be the signatory or one of its signatories on behalf of the Hotel Board and incurred or executed on behalf of the Hotel Board in connection with Hotel Manager's obligations under the HBMA; provided that the indemnity will not apply to any liabilities, fines, suits, claims, obligations, damages, penalties, demands, actions, costs and expenses resulting from the willful misconduct, gross negligence or bad faith of a Hotel Manager Indemnified Party or the willful breach by a Hotel Manager Indemnified Party of the terms and provisions of the HBMA. The Hotel Board acknowledges that employees at the Hotel Section are not employees of Hotel Manager and will not be deemed agents or representatives of Hotel Manager for the purposes of the indemnity (provided that the Core Executive Staff (as defined below) will be deemed to be Hotel Manager's agents solely for the purposes of the indemnity). Accordingly, with respect to the indemnity, Hotel Manager bears responsibility for the conduct of its employees (other than Core Executive Staff) or consultants only in the event that Hotel Manager has performed with gross negligence or willful misconduct in the hiring, engaging, supervision, or training of such employees or consultants. As used herein, the "Core Executive Staff" means, collectively, the following Transient Hotel Unit staff positions: General Manager, Comptroller/Chief Financial Officer and the Director of Sales and Marketing.

Notwithstanding anything to the contrary herein or in the Declaration, the Condominium By-Laws or the Hotel By-Laws, any action required by the Hotel Board to terminate Hotel Manager's rights and obligations under the HBMA (which rights and obligations shall be terminable solely in the event of a material default by Hotel Manager or in the event the Hotel Management Agreement is terminated pursuant to its terms) shall require the affirmative vote of a Super-Majority of Hotel Board; and any replacement Hotel Manager shall be retained only after being proposed by the Transient Hotel Unit Owner and approved by a 66-2/3% vote of the Hotel Board. Upon any termination of Hotel Manager, the Unit Management and Operation Agreement will inure to the benefit of the replacement Hotel Manager. As used herein, the term "Super-Majority of the Hotel Board" means more than 66-2/3% of the members of the Hotel Board.

In addition, as described in Schedule B-2 above and the notes thereto, it is presently anticipated that the Condominium Board will retain the services of an affiliate of Sponsor (which may be, but need not be, El-Ad Properties NY LLC), to act as managing agent of the Condominium under a Condominium Board Management Agreement. The duties and responsibilities of the Condominium Board which may be delegated to a managing agent are set forth in detail in the Condominium By-Laws, and they generally include the operation, care, upkeep, maintenance, repair and restoration of the General Common Elements and certain of the Limited Common Elements, the employment and dismissal of the personnel necessary for the

performance of such roles, and the collection of General Common Charges. The cost of such managing agent of the Condominium will be included as a General Common Expense and be borne by all Unit Owners as discussed above in Schedule B-2, "Projected Budget for First Year of Condominium Operation."

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## Y. IDENTITY OF PARTIES

### 1. Sponsor

Sponsor is CPS 1 Realty LP, a limited partnership organized and existing under the laws of the State of Delaware, duly authorized to do business in the State of New York, with an office c/o El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10022. Sponsor's general partner is CPS 1 Realty GP LLC, a Delaware limited liability company. The El-Ad Group, Ltd. indirectly owns 100% of Sponsor. Orly Hackmon is a principal of The El-Ad Group, Ltd. El-Ad Properties NY LLC, the managing agent of the Condominium, is owned by The El-Ad Group, Ltd. (51%) and Miki Naftali (49%). The President and Secretary of Sponsor, Miki Naftali and Orly Hackmon, respectively, are authorized signatories of El-Ad Properties NY LLC.

Orly Hackmon is a real estate developer, owner, operator and investor. Ms. Hackmon is a resident of New Jersey and has an office at 575 Madison Avenue, New York, New York 10022. She is also the Chairwoman of El-Ad Properties NY LLC. Prior to this Offering Plan, Ms. Hackmon has been a sponsor or principal of sponsor in several cooperative and condominium offering plans in New York City including offerings for buildings located at 65 East 96th Street (offering filed May 17, 2000); 151 West 17th Street (offering filed April 27, 2001); 224 West 18th Street (offering filed July 12, 2001); 21 Astor Place (offering filed April 9, 2003); 426 West 58th Street (offering filed September 22, 2003); 49 East 21st Street (offering filed November 5, 2003); 157 West 79th Street (offering filed July 30, 1987); 241 West 108th Street (offering filed September 19, 1984); 233 West 99th Street (offering filed April 2, 1984); 49 West 72nd Street (offering filed June 7, 1985); 225 Fifth Avenue (offering filed April 7, 2005, no closings have occurred to date); 655 Sixth Avenue (offering filed January 24, 2005, date of first unit closing, April 20, 2005); 310 West 52nd Street (offering filed June 3, 2005, no closings have occurred to date); and The Plaza Condominium Residences, One Central Park South (offering filed December 7, 2005, no closings have occurred to date). Other than as stated above, Ms. Hackmon has not been involved in any cooperative or condominium offerings in the State of New York within the past five years.

Miki Naftali is a real estate developer, operator and investor. He has been involved in real estate development and construction for over ten years. Mr. Naftali is a resident of New Jersey and has an office at 575 Madison Avenue, New York, New York 10022. He is also the President of El-Ad Properties NY LLC. Prior to this Offering Plan, Mr. Naftali has been a sponsor or principal of sponsor in the following cooperative or condominium offering plans: 51 West 17th Street (offering filed April 27, 2001); 224 West 18th Street (offering filed July 12, 2001); 21 Astor Place (offering filed April 9, 2003); 426 West 58th Street (offering filed September 22, 2003); 49 East 21st Street (offering filed November 5, 2003); 225 Fifth Avenue (offering filed April 7, 2005, no closings have occurred to date); 655 Sixth Avenue (offering filed January 24, 2005, date of first unit closing, April 20, 2005); 310 West 52nd Street (offering filed June 3, 2005, no closings have occurred to date); and The Plaza Condominium Residences, One Central Park South (offering filed December 7, 2005, no closings have occurred to date). Other than as stated above, Mr. Naftali has not been involved in any cooperative or condominium offerings in the State of New York within the past five years.

The El-Ad Group, Ltd. ("El Ad"), Sponsor and certain of their affiliates have entered into a Contribution and Purchase of Membership Interests Agreement (as amended and restated, the "Contribution Agreement") with Kingdom XXII (USA), Ltd., a Delaware corporation ("Kingdom"), an entity owned and controlled indirectly by a trust for the benefit of HRH Prince Alwaleed Bin Talal Abdulaziz Alsaud and members of his family. Under the Contribution Agreement, in exchange for certain capital contributions by Kingdom and satisfaction of certain obligations set forth therein, Kingdom received an indirect 49.9% ownership interest in the Transient Hotel Unit and an indirect 25% ownership interest in the Condo Hotel Units. Under the Contribution Agreement, certain affiliates of El Ad are causing the renovations of the Transient Hotel Unit and Condo Hotel Units in accordance with certain agreed upon plans and specifications, and Kingdom has no obligation to undertake completion of such renovations. Kingdom is not a principal of Sponsor because Kingdom does not have the right to direct decisions such as the number of Condo Hotel Units being offered, nor does Kingdom have a controlling interest in Sponsor.

Sponsor has not been involved in any cooperative or condominium offerings in the State of New York within the past five years and does not own 10% or more of the unsold residential units or unsold shares in any building.

The Secretary of State has been designated to receive service of process for Sponsor.

There have been no prior felony convictions of Sponsor, or any principals of Sponsor; and no prior convictions, injunctions and judgments against Sponsor, or any principals of Sponsor that may be material to the Plan or an offering of securities generally, that occurred within 15 years prior to the submission of this Plan.

**2. Attorneys for Sponsor**

Sponsor has retained the law firm of Kramer Levin Naftalis & Frankel LLP, having an office at 1177 Avenue of the Americas, New York, New York 10036 ("Sponsor's Counsel"), to represent it in connection with the Plan. Jay A. Neveloff, Esq. and Jonathan H. Canter, Esq. had principal responsibility for the preparation of the Plan, the Declaration, the Condominium By-Laws, the Hotel By-Laws and the forms of Agreement, Condo Hotel Unit Deed and Condo Hotel Unit Power of Attorney. Sponsor's Counsel has also rendered opinions with respect to the possible availability of income tax deductions to Purchasers of Condo Hotel Units and the allocation of Common Interests. Sponsor's Counsel will serve as Escrow Agent under the Agreements and will represent Sponsor in connection with Unit closings.

**3. Selling Agent**

The Selling Agent for the project is Stribling Marketing Associates LLC, having an office at 924 Madison Avenue, New York, New York 10021. In the past, Stribling Marketing Associates LLC has engaged in all phases of real estate sales and marketing, specializing in the sale and marketing of fine luxury residences throughout Manhattan, including off-site sales and rentals of cooperative and condominium apartments and lofts, on-site rental and coop and condominium sales, building sales and commercial leasing. In addition to the Plaza Condominium Residences, other recent projects include 47 East 91st Street, 270 Broadway, 1245

Hudson Street, The Fischer Mills Building at 62 Beach Street and The Porter House at 66 Ninth Avenue.

There have been no prior felony convictions of Selling Agent, or any principals of Selling Agent; and no prior convictions, injunctions and judgments against Selling Agent, or any principals of Selling Agent that may be material to the Plan or an offering of securities generally, that occurred within 15 years prior to the submission of this Plan.

**4. Hotel Manager**

FHR (NYC), LLC, an affiliate of Fairmont Hotel & Resorts (U.S.) Inc. having offices at Canadian Pacific Tower, TD Centre, 100 Wellington St. W., Suite 1600, P.O. Box 40, Toronto, Ontario, Canada M5K1B7, or its affiliate, is expected to serve as Hotel Manager.

**5. Condominium Budget Expert**

Gumley Haft Realty, having an address at 415 Madison Avenue, Fifth Floor, New York, New York 10017, reviewed all amounts of income and expenses in Schedule B-2, "Projected Budget for First Year of Condominium Operation," in consultation with Sponsor. Such budget expert has no financial interest in the Property, in Sponsor, in Hotel Manager, or in any other party interested in this transaction, except for its fees for services rendered in connection with the same.

**6. Hotel Section Budget Expert**

Lodging Investment Advisors, having an address at 730 Fifth Avenue, Ninth Floor, New York, New York 10019, estimated all amounts of income and expenses in Schedule B-1, "Projected Budget for First Year of Hotel Section Operation," in consultation with Sponsor. Such budget expert has no financial interest in the Property, in Sponsor, in Hotel Manager, or in any other party interested in this transaction, except for its fees for services rendered in connection with the same.

**7. Real Estate Tax Consultant**

The Leitner Group, Inc., 50 East 42nd Street, New York, New York 10017, has been engaged as a real estate tax consultant in connection with the Plan. The firm prepared a forecast of the assessed valuation of the Condo Hotel Units following construction and submission of the Property to a condominium regime of ownership that was used in preparing the provisions of Schedule A and other disclosures in the Plan regarding projected real estate taxes. The forecast was prepared by Joel Leitner, a principal of that firm. The real estate tax consultant has no financial interest in the Property, in Sponsor, in Hotel Manager, or in any other party interested in this transaction, except for its fees for services rendered in connection with the same.

**8. Hotel Condominium Consultant**

Charles Reiss has consulted with Sponsor in connection with formulating the hotel condominium structure set forth in the Plan. Mr. Reiss is currently representing many of the major hotel flags as well as important private developers with project locations across North

America. Prior to starting his own business, Charles Reiss served as President and Chief Operating Officer of The Sunshine Group and was Senior Vice President for development at The Trump Organization where he was responsible for a number of projects including the development of Trump International Hotel and Tower in Chicago and Trump International Hotel in New York. Prior to that Mr. Reiss was Director of the Columbia University Masters Program for Real Estate Development, CEO of Housing Futures, and held high-level positions in New York City's planning and housing agencies including serving as Deputy Commissioner of Housing.

**9. Construction Professionals**

Tishman Construction Corporation of New York, 666 5th Avenue Floor 36, New York, New York 10103, is the construction manager engaged to renovate the Building. Tishman Construction Corporation and its affiliates provide construction management, owner's representative, and project management services to a wide range of clients. Tracing its origins back to 1898, it has regional offices across the United States and the affiliated companies focusing on specific areas of expertise.

Costas Kondylis & Partners, LLP, 31 West 27th Street, New York, New York 10001, is the architect of record for the renovation of the Building. The principal of Costas Kondylis & Partners, LLP is Costas Kondylis, who has designed buildings such as 288 Central Park West, 1049 Fifth Avenue, The Horizon, Manhattan Place, The Promenade, Trump Park Avenue, Arcadia and Trump Place.

Walter B. Melvin Architects, LLC, 118 West 22nd Street, New York, New York 10011, has been retained specifically with respect to the historic restoration of the Building. Among the awards received by Walter B. Melvin Architects, LLC with respect to historic restorations are: Lucy G. Moses Preservation Award from the New York Landmarks Conservancy for its work on 780 West End, Avenue, The Frick Collection, Marymount School of New York, Alwyn Court, Cooper Union (Main Building), Bridgemarket at Queensboro Bridge and the Osborne Apartments; the Excellence in Conservation Award by Friends of The Upper East Side for its work on Bridgemarket at Queensboro Bridge, 6 East 80th Street, 778 Park Avenue; and the Large Scale Restoration Award from Landmarks West for its work on The Dorilton Apartments.

Flack & Kurtz Inc., 475 Fifth Avenue, New York, New York 10017, is the mechanical and electrical engineer for the Building and prepared the plumbing, mechanical and electrical report for the Building included in the Description of Property and Building Condition and the estimates of utilities consumption used in the preparation of Schedules B-1 and B-2 herein.

None of the construction professionals has a financial interest in the Property, in Sponsor, in Hotel Manager, or in any other party interested in this transaction, except for their respective fees for services rendered in connection with the same.

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## Z. REPORTS TO UNIT OWNERS

It is the obligation of the Hotel Board to give all Condo Hotel Unit Owners annually:

1. a financial statement of the Hotel Section prepared by a certified public accountant or public accountant, within 120 days after the end of each fiscal year of the Hotel Section. Such statement shall be certified while Sponsor is in control of the Hotel Board;

2. at least 30 days' prior notice of the annual Hotel Unit Owners' meeting; and

3. a copy of the proposed annual budget of the Hotel Section at least 30 days prior to the date set for adoption thereof by the Hotel Board;

4. a copy of the proposed annual budget of the Condominium at least 30 days prior to the date set for adoption thereof by the Condominium Board.

While Sponsor is in control of the Hotel Board, such budget shall be certified in compliance with Section 20.4(d) of the Regulations of the Department of Law.

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## AA. DOCUMENTS ON FILE

Pursuant to the provisions of Section 352-e of the New York General Business Law, copies of the Plan, all documents referred to herein and all Exhibits submitted to the Department of Law in connection with the filing of the Plan shall be kept on file and available for inspection without charge, and for copying at a reasonable charge, at Sponsor's office for a period of six years after the First Condo Hotel Closing. In addition, a set of Floor Plans showing the layout, locations and approximate dimensions of each Unit and its Unit number designation and tax lot number, certified by the appropriate governmental authority of The City of New York as conforming to the official tax lot number for each such Unit, will be filed in the City Register's Office when the Declaration is recorded, or in an amendment to the Declaration filed prior to the First Condo Hotel Closing and an additional set will be furnished to each of the Condominium Board and the Hotel Board at the time of the First Condo Hotel Closing.

The Declaration, the Condominium By-Laws and the Hotel By-Laws will be recorded in the City Register's Office prior to or concurrently with the First Condo Hotel Closing, and a copy thereof will be furnished to each of the Condominium Board and Hotel Board at such time.

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## BB. GENERAL

Except as set forth herein, there are no lawsuits, administrative proceedings or other proceedings, the outcome of which may materially affect the offering, the Property, Sponsor's capacity to perform all of its obligations under the Plan, the Condominium or the operation of the Condominium.

To the best of Sponsor's knowledge, the Property has not been the subject of any prior cooperative or condominium offerings filed with the Department of Law except that the Residential Units within the Property are being offered for sale pursuant to a separate offering plan filed with the Department of Law on December 7, 2005. No preliminary binding agreements in respect of the Units offered hereunder have been entered into nor has any money has been collected from prospective Purchasers as of the date of this Plan's acceptance for filing by the Department of Law.

Sponsor and Selling Agent each hereby represents that it will not discriminate against any person on the basis of race, creed, color, national origin, gender, sexual orientation, age, disability, marital status or other grounds prohibited by law.

The Plan does not knowingly omit any material fact or knowingly contain any untrue statement of any material fact. Sponsor believes that the Plan contains a fair summary of the material provisions of the documents referred to in the Plan, including those documents contained in Part II of the Plan. Exact copies are contained in Part II of the Plan of the proposed forms of Declaration, Condominium By-Laws, Hotel By-Laws, Agreement, Condo Hotel Unit Deed, Condo Hotel Unit Power of Attorney, Unit Management and Operation Agreement and other documents. Statements made in Part I of the Plan as to the provisions of such documents or any other document referred to herein, copies of which are on file with Sponsor, are necessarily not complete. Each such statement is qualified in all respects by the contents of such documents and, in the case of any such documents executed by or with the written consent of a Purchaser pursuant to the Plan, any rider or separate agreement changing or adding provisions to such document.

No party other than any Purchaser shall have any right or benefit herein or herefrom, including, without limitation, the right to insist upon or enforce against Sponsor the performance of all or any of Sponsor's obligations hereunder and no party other than any Purchaser shall be deemed to have received any benefit as a result of any of the provisions of the Plan.

Sponsor reserves the right, from time to time prior to the First Condo Hotel Closing, to substantially revise the terms and conditions upon which the Units offered hereunder are to be sold, including, without limitation, changes affecting the rights, obligations and liabilities of Sponsor and/or prospective Purchasers under the Plan. However, no such change with respect to any such Unit for which an Agreement is then in effect may be made without the consent of the Purchaser thereunder. All substantive or material revisions will be contained in a duly filed amendment to the Plan. If there is a material change that adversely affects any Purchasers, Sponsor shall grant such Purchasers a right to rescind their respective Agreements by written notice to Sponsor given within fifteen (15) days after the date of presentation of such

amendment. In such event, Sponsor shall direct the Escrow Agent to return the Deposit of any Purchasers who duly rescind their Agreements.

No person has been authorized to make any statement or representation or furnish any information not expressly contained herein. Any information, data, or representations not contained herein or in the documents and exhibits referred to herein must not be relied upon. The Plan may not be changed or modified orally.

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## CC. SPONSOR'S STATEMENT OF BUILDING CONDITION

Sponsor hereby adopts the "Description of Property and Building Condition" set forth as Exhibit 4 in Part II of the Plan.

Sponsor has exercised due diligence to obtain a detailed technical report on the condition of the Property as at a date contemporary with this Plan. Sponsor is not an architect or engineer, but believes and hereby represents that the Description of Property and Building Condition, with additional information by Sponsor, if any, as indicated, set forth in Part II of the Plan, represents accurately what will be the condition of the Building upon substantial completion. The firm preparing the Description of Property and Building Condition has no financial interest in the Property, Sponsor, the Condominium, Selling Agent, any affiliates thereof, or any other party interested in this transaction, except for the fee for services rendered. Sponsor knows of no facts or information inconsistent with the report.

Sponsor represents that it has no knowledge of any material defects or need for major repairs to the Building except as set forth in the Description of Property and Building Condition, the violations search and the inspection and other reports and materials set forth in Part II of the Plan. Prior to the closing of title to any Condo Hotel Unit, and as a condition precedent thereto, Sponsor shall obtain an ACP-7 certificate indicating that all asbestos and asbestos-containing materials therein have been abated. A copy of the ACP-7 certificate(s) covering the Condo Hotel Units shall be available for inspection at Sponsor's office.

Sponsor has no specific knowledge about problems with or needed repairs to the facade of the Building other than any items which will be corrected as part of the restoration of the Property contemplated hereby. Sponsor makes no representations as to the scope or nature of the work which may be required to maintain the facade in the future, provided, however, subject to the foregoing that Sponsor has no reason to believe that there is a problem with the structural integrity of the facade or that there is a need for any work to the facade except for routine building maintenance.

As more fully described in "The Property" in Section A above, and subject to the matters described therein, Sponsor anticipates that renovation of the Building will be sufficiently completed to allow the First Condo Hotel Closing to occur in or about October 2006. It is anticipated that a new Certificate of Occupancy will be issued for the Building when the renovation of the Building is complete.

SPONSOR:

CPS 1 REALTY LP

# PART II

**EXHIBIT 1**

AGREEMENT

**AGREEMENT**

_____

_____

Purchaser(s)

with

CPS 1 REALTY LP

Sponsor/Seller

_____

Condo Hotel Unit Number ____
The Plaza Hotel - Condominiums
768 Fifth Avenue
New York, New York 10019

**AGREEMENT**

**UNIT NO. ___**

**The Plaza Hotel - Condominiums**
**768 Fifth Avenue**
**New York, New York 10019**

(to be executed in quintuplicate)

AGREEMENT (this "Agreement"), made as of the ___ day of _____ 2006, between CPS 1 REALTY LP, a Delaware limited partnership, having an office at c/o El-Ad Properties NY LLC, 575 Madison Avenue, 23rd Floor, New York, New York 10022 (hereinafter, "Sponsor"), and

_____

_____

having an address at _____

_____ (hereinafter, "Purchaser").

W I T N E S S E T H:

1. **Definitions.** Terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in the Offering Plan for The Plaza Hotel - Condominiums, (such plan, together with any amendments thereto filed prior to the date hereof, is hereinafter referred to as the "Plan").

2. **The Unit.** Sponsor agrees to sell and convey, and Purchaser agrees to purchase, Unit No. ____ at the Condominium (as designated in the Declaration), together with the undivided _____% interest in the Common Elements appurtenant to such Unit (the "Unit"), upon and subject to the terms and conditions set forth herein.

3. **Purchase Price.**

3.1 The purchase price for the Unit (the "Purchase Price") is $_____ payable as follows:

(a) $_____ (the "Initial Deposit"), due upon the signing and submitting of this Agreement, receipt of which (subject to collection) is hereby acknowledged;

(b) $_____ (the "Additional Deposit"; the term "Deposit", as used herein, refers to both the Initial Deposit and, if the same has been paid at the time in question, the Additional Deposit), due upon the earlier to occur of: (i) _____ (the date which is four (4) months after the date of this Agreement); or (ii) fifteen (15) days after Sponsor serves Purchaser

with written notice of an amendment declaring the Plan effective, but in no event later than the closing of title, subject to collection;* and

(c) $_____ (the "Balance"), constituting the balance of the Purchase Price, at the closing as hereinafter provided.

3.2 All checks shall represent United States currency, be drawn on or issued by a New York bank which is a member of the New York Clearing House Association and shall be unendorsed. Checks for the Deposit shall be Purchaser's good check(s) or, at Sponsor's option, Purchaser's certified check(s) or an official bank check(s), made payable to the direct order of "Kramer Levin Naftalis & Frankel LLP, as Escrow Agent". The check or checks for the Balance and all other sums due Sponsor pursuant to this Agreement shall be good certified check of Purchaser or official bank or cashier's check, made payable to the direct order of "CPS 1 Realty LP" (or such other party as Sponsor directs to Purchaser, in writing, prior to the date of closing of title). If any check is returned, dishonored or fails collection for insufficient funds or for any other reason, the Escrow Agent is authorized to deliver such check to Sponsor and Sponsor will have the choice of remedies set forth in the Plan and in this Agreement with respect to an Event of Default (which shall include suing on such dishonored check or (at Sponsor's option) canceling this Agreement and returning the instrument to Purchaser without affording Purchaser a grace period to cure such default).

**4. Deposit.**

4.1 The Initial Deposit shall be deposited within five (5) business days after this Agreement is countersigned by or on behalf of Sponsor and returned to Purchaser, and the Additional Deposit shall be deposited within five (5) business days after its receipt by Sponsor or Sponsor's agents, employees or the Escrow Agent, in each case into a segregated special interest-bearing escrow account (the "Escrow Account") at HSBC Bank USA, 452 Fifth Avenue, New York, New York 10018 (the "Depository") entitled "The Plaza Hotel - Condominiums Escrow Account" subject to the provisions of the Plan with respect to the designation of a substitute bank and/or account type or title. The Deposit shall be held in trust in such account in conformity with Sections 352-e(2)(b) and 352-h of the New York General Business Law and the Attorney General's regulations promulgated pursuant thereto until such funds may be withdrawn in accordance with such laws and regulations and the terms of this Agreement and the Plan. While the same are being so held, such funds shall not be commingled with any other funds of Sponsor (except, at Sponsor's sole election, funds deposited by other purchasers under the Plan). The Escrow Account will be interest-bearing and, unless Purchaser defaults, interest will be credited to Purchaser at the closing. The interest rate to be earned will be the prevailing rate for these accounts. (No representation or guarantee is made as to the actual rate of interest that will be earned on such funds.) Interest, if any, will begin to accrue within five (5) business days after this Agreement is fully executed and tender for payment of the check representing the Deposit. Notwithstanding anything to the contrary contained herein, unless and until Purchaser has delivered to the Escrow Agent a completed and signed Form W-9 (Request for Taxpayer Identification Number and Certification) or Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding), whichever may be applicable, the Deposit will be deposited in a non-interest-bearing escrow account at the Depository.

4.2 The Deposit shall be held in the escrow account identified in Section 4.1 above until Kramer Levin Naftalis & Frankel LLP (the "Escrow Agent") is otherwise directed in: (a) a writing

* Omit if Purchaser 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 immunity).

signed by both Sponsor and Purchaser; or (b) a determination of the Attorney General pursuant to the dispute resolution procedures contained in the Attorney General's regulations; or (c) a judgment or order of a court of competent jurisdiction.

4.3 If there is no written agreement between the parties to release the escrowed funds, the Escrow Agent will not pay the funds to Sponsor until the Escrow Agent has given Purchaser written notice of not fewer than ten (10) business days. Thereafter, the funds may be paid to Sponsor unless Purchaser has already made application to the Department of Law pursuant to the dispute resolution provisions of the Attorney General regulations and has so notified the Escrow Agent in accordance with such provisions.

4.4 Sponsor will not object to the release of the escrowed funds to: (a) a purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an amendment to the Plan; or (b) all purchasers after an amendment abandoning the Plan is accepted for filing by the Department of Law.

4.5 Purchaser or the Escrow Agent may apply to the Attorney General in the event of a dispute for a determination on the disposition of the escrowed funds and any interest thereon. Sponsor must avail itself of this procedure if there is a dispute which needs to be resolved. A form for this purpose is attached as Exhibit 9 of Part II of the Plan. The party applying for a determination must send all other parties a copy of the application. Pending the determination of the Attorney General to grant or deny the application, Sponsor, Purchaser and the Escrow Agent shall abide by any interim directive issued by the Attorney General.

4.6 Sponsor and Purchaser hereby jointly direct the Escrow Agent as follows:

(a) if title to the Unit is transferred to Purchaser, the Deposit shall be paid to Sponsor, and any interest earned on the Deposit shall be paid to Purchaser; or

(b) if Purchaser becomes entitled to cancel this Agreement in accordance with the terms of this Agreement or the Plan, and actually cancels this Agreement as so provided, the Deposit and any interest earned on the Deposit shall be refunded in full.

4.7 Notwithstanding anything set forth in this Article 4 to the contrary, the Escrow Agent may release a portion of the Deposit to Sponsor, provided that prior to such release, such released funds shall be secured by a bond ("Bond") obtained by Sponsor from an insurance company to be named in an amendment to the Plan (the "Insurance Company") in favor of Purchaser in an amount equal to the amount released, together with interest, if any, which shall accrue thereon as hereinafter provided. Sponsor will secure the Bond in accordance with Sections 352-e(2)(b) and 352-h of the New York General Business Law and Section 71-a of the New York Lien Law. Simultaneously with the delivery of the released funds to Sponsor, Purchaser will receive the Bond, the form of which Bond will be set forth as an exhibit in an amendment to the Plan. The Bond shall apply to a loss by Purchaser of the released portion of the Deposit in the event Sponsor fails to complete the Unit and deliver a deed or convey title to the Unit pursuant to this Agreement or if for any reason Purchaser is entitled to receive the return of the Deposit. The extent of Purchaser's recovery under the Bond is the amount of the released portion of the Deposit actually received by Sponsor, together with any interest which has accrued thereon in accordance with this Agreement, and the liability of the Insurance Company under the Bond does not exceed the amount of the Bond. In order to recover such funds pursuant to the Bond, Purchaser must file a claim with the Insurance Company. In the event of a dispute Sponsor must apply and Purchaser or the Insurance Company may apply to the Attorney General for a determination on the disposition of the portion of the Deposit secured by the Bond. All funds received by Sponsor will be handled in accordance

with the provisions of Sections 352-e(2)(b) and 352-h of the New York General Business Law and shall be employed by Sponsor only in connection with the consummation of the Plan.

4.8 Sponsor is required by law to submit a Form 1099 to the Internal Revenue Service reporting any interest earned on the Deposit, if any. Purchaser will be taxed accordingly on such interest, whether or not Purchaser ultimately receives the interest in accordance with the terms of this Article or Article 8.

5. **Closing Date and Place**.

5.1 The closing of title shall be held at the offices of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 (or such other place in the City and State of New York as Sponsor may designate to Purchaser) and on such date and hour as Sponsor may designate to Purchaser on not less than thirty (30) days' prior notice. Sponsor may, from time to time, adjourn such date and hour upon reasonable prior notice to Purchaser, which notice shall fix a new date (and hour and place, if appropriate) for the closing of title (but in no event may Sponsor adjourn the date originally set herein for a closing for more than twelve months in the aggregate without the consent of Purchaser).

5.2 Whenever used herein, the terms "Closing Date" or "closing of title" or words of similar import shall mean the date on which the deed to the Unit is delivered to Purchaser.

6. **Delivery of Deed and Power of Attorney**.

6.1 At the closing of title, Sponsor shall deliver to Purchaser a bargain and sale deed with covenant against grantor's acts conveying fee simple title to the Unit to Purchaser, subject only to the liens, encumbrances and title conditions set forth on Schedule A annexed hereto and made a part hereof. Sponsor shall prepare the deed, which shall be substantially in the form set forth in Exhibit 3 in Part II of the Plan, and Sponsor and Purchaser shall execute the deed and have the same acknowledged, in form for recording.

6.2 At the closing of title, Purchaser shall execute and acknowledge a power of attorney to the Board, prepared by Sponsor and substantially in the form set forth as Exhibit 2 in Part II of the Plan.

6.3 The executed deed and power of attorney shall be delivered to the representative of the title company insuring Purchaser's title (or if no such representative is present, then to Sponsor's attorney) for recording in the City Register's Office, which recording shall be at Purchaser's expense. After being recorded: (i) the deed shall be returned to Purchaser; and (ii) the power of attorney in favor of the Board shall be returned to the Board (or as the Board shall direct).

6.4 Purchaser's payment of the Balance and acceptance of the deed to the Unit shall constitute Purchaser's recognition that Sponsor has fully satisfactorily performed those obligations stated in the Plan and/or this Agreement to be performed by Sponsor prior to closing. However, nothing herein contained shall excuse Sponsor from performing those obligations (if any) expressly stated herein or in the Plan to be performed subsequent to the closing, and nothing herein shall be in derogation of the rights of purchasers under Article 23-A of the General Business Law, the Plan or Part 20 of the Regulations issued by the Department of Law.

7. **State of Title.**

7.1 The title conveyed by Sponsor to Purchaser shall be subject only to the liens, encumbrances and title conditions set forth in Schedule A annexed hereto and made a part hereof. Any lien, encumbrance or condition to which title is not to be subject shall not be an objection to title if: (a) the instrument required to remove it of record is delivered at or prior to the closing of title to the proper party or to the Title Company (as such term is defined the Plan), together with the recording or filing fee; or (b) Purchaser's title insurance company will insure Purchaser, at the company's regular rates and without additional premium, that it will not be collected out of, or enforced against, the Unit; or (c) Purchaser's title insurance company is unwilling to issue the affirmative insurance described in subsection (b) at its regular rates and without additional premium, and the Title Company would be willing to do so at its regular rates and without additional premium (as evidenced by the issuance of the same by the Title Company in connection with the closing of any other Units in the Condominium).

7.2 Sponsor shall be entitled to adjourn the closing to remove or correct any defect in title which is not set forth in Schedule A. However, if such defect existed at least 10 days prior to the closing and Purchaser, or Purchaser's attorney, failed to send Sponsor's attorney written notice of such defect in title at least 10 days prior to the closing, then, for purposes of Article 12 below, Purchaser shall be deemed at fault for not having sent timely notice, and the closing adjournment to allow Sponsor to correct or remove such title defect shall be considered as being at the request of Purchaser.

7.3 The covenants in the deed will be solely for the personal benefit of Purchaser and will not inure to the benefit of Purchaser's successors or subrogees. In the event of a claimed breach of any covenant of the grantor contained in the deed, Purchaser must first seek recovery against Purchaser's title insurance company before proceeding against Sponsor, it being agreed that the liability of Sponsor will be limited to any loss or damage not covered by such title insurance. In the event that Purchaser elects not to purchase title insurance, then the liability of Sponsor shall be limited to any loss or damage which would not have been covered by the title insurance that was available to Purchaser at the closing. The terms of any marked-up title binder of any title insurance company authorized to do business in New York State issued in connection with any Unit shall be conclusive evidence of the title insurance coverage that was available to Purchaser. The provisions of this Section 7.3 shall survive the closing of title or the termination of this Agreement.

8. **Closing Adjustments.**

8.1 The following costs with respect to the Unit shall be apportioned between Sponsor and Purchaser as of the Closing Date:

(a) real estate taxes and assessments, if any (including water charges and sewer rents, if separately assessed), on the basis of the period for which assessed;

(b) Common Charges for the month in which title closes; and

(c) if Purchaser is allowed to occupy the Unit prior to the closing, accrued rent and any other charges pursuant to an interim lease or occupancy or other agreement, if any, covering the Unit.

8.2 If the Unit has been separately assessed but the closing of title occurs before the tax rate is fixed, adjustment of taxes shall be based upon the latest tax rate applied to the most recent applicable assessed valuation. Installments for tax assessments due after the delivery of the deed, if any, shall be paid by Purchaser; however, the installment for the then current period shall be apportioned

appropriately. If the Unit has not been separately assessed as of the Closing Date for the then current tax period, the adjustment under subsection 8.1(a) hereof shall be based upon the Property's actual taxes and assessment for such period prorated to the Unit in the manner set forth in Section 6.16 of the By-Laws and in Part I of the Plan.

8.3 Sponsor shall remit or cause to be remitted to Purchaser an amount equal to interest, if any, earned on the Deposit, on or promptly after the Closing Date.

8.4 In the event that Purchaser fails to close title to the Unit on the date originally scheduled for the closing of title, postpones the closing for any reason, or is deemed at fault for not timely sending notice of a title defect as provided in Article 7 above, and title thereafter closes, then:

(a) the closing apportionments shall be made as of the originally scheduled closing date regardless of when the actual closing of title occurs; and

(b) Purchaser shall pay Sponsor interest at the rate of 0.04% per day (or such lower rate per day which is the legal limit, if 0.04% per day exceeds the legal limit) on the total purchase price, computed from the original Closing Date until this transaction is actually closed. If, through no fault of Purchaser, Sponsor postpones the originally scheduled Closing Date, the foregoing provisions shall apply to the rescheduled Closing Date if Purchaser fails for any reason to close title to the Unit on the rescheduled Closing Date.

8.5 Adjustments and apportionments shall be calculated on the basis of the actual number of days in the period for which payments were made or are due, as the case may be. The "Customs in Respect to Title Closings" recommended by The Real Estate Board of New York, Inc., as amended to date, shall apply to the adjustments and other matters therein mentioned, except as aforesaid and as otherwise provided herein or in the Plan.

8.6 Any errors or omissions in calculating apportionments at closing shall be corrected, and payment shall be made to the proper party, promptly after discovery. This provision shall survive the closing.

## 9. Closing Costs

Purchaser shall be required to pay certain costs in connection with the purchase of the Unit, in addition to any net credit in favor of Sponsor that may result from the closing adjustments and any interest or late closing charge described in Article 8. Other than any such net credit in favor of Sponsor that may result from the closing adjustments (or certain other fees which may be payable prior to the closing, as described below), all such closing costs shall be paid by Purchaser, at closing, by Purchaser's unendorsed, personal certified check or by official bank check, in either event drawn only upon a bank that is a member of the New York Clearing House Association. Such closing costs will include the following, the amounts of which (where applicable) are based on rates in effect on the date hereof and are subject to change without prior notice:

9.1 If Purchaser elects to obtain fee title insurance, Purchaser will pay a premium to the title company for such insurance, which will vary depending upon the amount of insurance purchased.

9.2 Purchaser will pay a fee to the City Register for recording the deed and the power of attorney of approximately $32.00 for each instrument plus $5.00 for each page (including the cover page), and will pay the $75.00 filing fee for the RP-5217 form. In addition, Purchaser's title insurance

company may charge various fees and service charges in connection with such recordings and filings, all of which shall be payable by Purchaser.

9.3 If Purchaser obtains a mortgage loan, Purchaser shall pay all closing costs associated with such loan, which may include, but need not be limited to, the following:

(a) a fee and service charge for recording the mortgage at the same rates given above for recording the deed and power of attorney;

(b) a mortgage recording tax in the amount provided for by law, which on the date hereof is 2.05% of the principal amount of the mortgage for mortgages of less than $500,000 and 2.175% of the principal amount of the mortgage for mortgages equal to or greater than $500,000 (unless the New York City Department of Finance assesses the mortgage recording tax at the higher nonresidential rate of 2.8% for mortgages in the amount of $500,000 or more; for mortgages of less than $500,000 the rate is 2.05%, the same as for residential property) (further, if the mortgagor receives a $30 deduction pursuant to applicable law, in such case, the amount payable to Sponsor under subparagraph (c) below is deducted);

(c) to Sponsor, a sum equal to the full amount (but not in excess thereof) of the partial mortgage recording tax credit provided by Section 339-ee(2) of the New York Condominium Act, to the extent the same is or becomes available, as a reimbursement for the mortgage recording taxes previously paid (such credit is based, in general, on the Common Interest of the Units being purchased multiplied by a portion of the mortgage tax previously paid on account of pre-existing mortgages on the Property);

(d) the premium for mortgage title insurance, if required by Purchaser's lender;

(e) deposits for Common Charges, real estate taxes, any assessments, water charges and sewer rents (if separately assessed), if required by Purchaser's lender; and

(f) such other costs and expenses in connection with such loan as determined by Purchaser's lender.

9.4 Purchaser will be required to pay the amount of $1,850 to Kramer Levin Naftalis & Frankel LLP, Sponsor's counsel, for each Unit purchased hereunder, in order to defray Sponsor's legal fees for services in connection with preparing the deed and power of attorney and for coordinating and attending the closing. The sum of $250 for the preparation of ACRIS transfer documents required by the City of New York. If Purchaser obtains financing and the lender is unwilling to close at the offices of Sponsor's counsel or if Purchaser otherwise requests that the Closing occur other than at the office of Sponsor's counsel (or such other place as Sponsor may designate in its closing notice) and Sponsor in its sole discretion consents to such request, the closing may be held elsewhere in New York City, provided that Purchaser shall pay Sponsor's counsel a travel fee of $500 if the closing is held elsewhere in Manhattan and $750 if the closing is held in another borough other than Manhattan. If, through no fault of Sponsor, Purchaser fails to close on the date scheduled by Sponsor (including, without limitation, the failure of Purchaser or Purchaser's attorney to give at least ten (10) days' prior written notice of a title defect as required in Article 7 above and the failure of Purchaser to have payment in proper form available at closing), then Purchaser shall pay to Sponsor's counsel an additional fee of $600 for each Unit purchased hereunder for each rescheduled closing to help defray the cost of preparing for and coordinating the new closing and recalculating the closing apportionments. If Purchaser shall obtain mortgage financing, then Purchaser shall pay an additional fee of $700 to Sponsor's counsel to defray the

additional costs associated therewith. In addition, if Sponsor, in its sole discretion, consents to a Purchaser's request for an assignment of this Agreement, or for the addition, deletion or substitution of names on this Agreement (or Purchaser otherwise exercises its limited right with respect to an assignment as provided in Section 23.4 hereof), a fee of $850, shall be payable by Purchaser to Sponsor's counsel, for preparation of an assignment agreement. Purchaser may be required to pay more than one fee pursuant to the preceding sentence and forgoing provisions with respect to a single Unit. At Sponsor's option in its sole discretion, any one or more of the foregoing fees to be paid to Sponsor's counsel shall be paid by Purchaser in advance, prior to closing, upon notice to Purchaser.

9.5 Purchaser shall make a contribution to the Working Capital Fund of the Condominium, payable to the Board, in an amount equal to two (2) months' Common Charges then in effect for each Unit pursuant to the Condominium budget and in accordance with Schedule A in the Plan, as the same may be amended from time to time.

9.6 Purchaser shall pay to the Board the Common Charges for the Unit for the first full month following the month in which title closes. In addition, if Purchaser 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) shall pay to the Board an amount equal to the Common Charges for such Unit for a period of two (2) years as security for the faithful observance by Purchaser of the terms, provisions and conditions of the By-Laws. In the event that Purchaser defaults in respect of the terms, provisions and conditions of the By-Laws, the Board may use, apply, or retain the whole or any part of the security so paid in advance to the extent required for the payment of any Common Charges or any other sum as to which Purchaser is in default; and such Unit Owner shall, within thirty (30) days after notice from the Board, deposit with such Board the amount so applied or retained so that at the option of the Board, such Board shall have the full amount of said security on hand at all times. The provisions of the preceding sentence shall survive the closing of title.

9.7 Purchaser shall pay the Real Estate Transfer Tax due to the State of New York (the so-called "deed stamps" and, if applicable, the so-called "mansion tax"), the Real Property Transfer Tax due to the City of New York and any other real property transfer tax due to the City or State of New York. Purchaser agrees to indemnify and hold Sponsor harmless from and against any and all liabilities and expenses (including, without limitation, reasonable legal fees and disbursements) incurred by Sponsor by reason of the non-payment by Purchaser of any of the taxes Purchaser is obligated to pay hereunder in connection with the purchase of the Unit. Purchaser's obligations to pay the taxes described in this Section 9.7 and to indemnify Sponsor as herein provided shall survive the closing of title or the termination of this Agreement.

**10.** **Transfer Tax Returns**. At the closing, Purchaser shall duly complete and sign before a notary public the real property transfer tax return required to be filed with The City of New York ("RPT Form") and Purchaser shall duly complete and sign the Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate ("Combined Tax Form") required to be filed with the Department of Taxation and Finance of the State of New York (the "Tax Department"), or such other forms as may then be required by law. The RPT Form and Combined Tax Form shall be delivered at closing to the representative of Purchaser's title insurance company (or, if none, to Sponsor's attorney) for filing with the proper governmental officer. Sponsor will similarly execute all of such forms and other documents required in connection with recording of the deed including, without limitation, smoke detector and multiple-dwelling affidavits.

**11. The Plan.**

11.1 Purchaser acknowledges having received and read a copy of the Plan, including all amendments thereto, if any, filed prior to the date hereof with the Department of Law of the State of New York, at least three (3) business days before submitting this Agreement. If, however, Purchaser did not receive a copy of the Plan at least three (3) business days before submitting this Agreement, Purchaser may rescind this Agreement, by sending written notice of same to Sponsor by certified or registered mail, return receipt requested, or by personal delivery, in either case within seven (7) days of Purchaser's submission of this Agreement.

11.2 The Plan is incorporated herein by reference and made a part hereof with the same force and effect as if set forth herein at length. In the event of any inconsistency between the provisions of this Agreement and the Plan, the Plan shall govern, except with respect to express modifications to the terms of the Plan included in this Agreement and agreed to by Sponsor and Purchaser, in which case such modifications will govern.

11.3 Purchaser hereby adopts, accepts and approves the Plan (including, without limitation, the Declaration, By-Laws and Rules and Regulations contained therein) and agrees to abide and be bound by the terms and conditions thereof, as well as all amendments to the Plan duly filed by Sponsor.

**12. Default by Purchaser.** (a) Any of the following shall constitute an "Event of Default" hereunder:

(i) [Purchaser's failure to pay the Additional Deposit on the date set forth in Article 3 hereof,][*] Purchaser's failure to pay the Balance or any closing apportionment or closing cost required to be paid by Purchaser in Article 8 or 9 hereof on the Closing Date designated by Sponsor pursuant to Article 5 hereof, or the dishonor of any check given by Purchaser to Sponsor; or

(ii) the failure to pay, perform or observe any of Purchaser's other obligations hereunder; or

(iii) the occurrence of any Events of Default under any other Agreement between Sponsor and Purchaser, or between Sponsor and any member or members of Purchaser's immediate family or between Sponsor and any parent, affiliate or subsidiary of Purchaser; or

(iv) if Purchaser is permitted to become the tenant or other occupant of the Unit, Purchaser's failure to pay rent or to perform some other lease or occupancy obligation within the period after notice, if any, set forth in the lease or occupancy or other agreement and either (x) Sponsor has obtained an order of eviction against Purchaser from a court of competent jurisdiction or (y) Purchaser has vacated the Unit; or

(v) Purchaser's assignment of any of Purchaser's property for the benefit of creditors, or Purchaser's filing a voluntary petition in bankruptcy; or

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[*] Omit if Purchaser 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).

(vi) if a non-bankruptcy trustee or receiver is appointed over Purchaser or Purchaser's property, or an involuntary petition in bankruptcy is filed against Purchaser; or

(vii) if a judgment or tax lien is filed against Purchaser and Purchaser does not pay or bond the same within thirty (30) days.

(b) **TIME IS OF THE ESSENCE** with respect to Purchaser's obligations to pay the Balance and to pay, perform or observe Purchaser's other obligations under this Agreement. Upon the occurrence of an Event of Default, Sponsor, in its sole discretion, may elect by notice to Purchaser to (i) cancel this Agreement or (ii) seek specific performance. If Sponsor elects to cancel, Purchaser shall have thirty (30) days from the giving of the notice of cancellation to cure the specified default. If the default is not cured within such thirty (30) days, then this Agreement shall be deemed cancelled, and Sponsor shall have the right to retain, as and for liquidated damages, the Deposit and any interest earned on the Deposit. Upon the cancellation of this Agreement, Purchaser and Sponsor will be released and discharged of all further liability and obligations hereunder and under the Plan, and the Unit may be sold to another as though this Agreement had never been made, and without accounting to Purchaser for any of the proceeds of such sale. If Sponsor elects to seek specific performance, then Purchaser shall have thirty (30) days from the giving of notice of Sponsor's election to close on his or her Unit in accordance with this Agreement, without prejudice to Sponsor's right to recover from Purchaser all damages, losses, costs, expenses and all other lawful sums to which Sponsor is entitled (including, but not limited to, reasonable legal fees and costs of collection).

(c) Sponsor and Purchaser each hereby agree and acknowledge that it would be impractical and/or extremely difficult to fix or establish the actual damage sustained by Sponsor as a result of a default by a Purchaser hereunder, and that the Deposit (including all interest) shall constitute and be deemed to be the reasonable and agreed upon liquidated damages of Sponsor in respect of the possible loss of a timely closing, the possible fluctuation of values, additional carrying costs of the Unit and other expenses that may be incurred, including, without limitation, attorneys' fees, and shall be paid by Purchaser to Sponsor as Sponsor's sole and exclusive remedy. The payment of the deposit (including all interest) as liquidated damages is not intended to be a forfeiture or penalty, but is intended to constitute liquidated damages to Sponsor.

(d) NEITHER SELLER NOR PURCHASER SHALL CHALLENGE THE VALIDITY OF THE PROVISIONS OF THIS AGREEMENT OR THE PLAN WITH RESPECT TO LIQUIDATED DAMAGES OR ANY RIGHT OF SPONSOR SET FORTH HEREIN OR THEREIN TO RETAIN THE DEPOSIT IN THE EVENT OF A PURCHASER DEFAULT. SUCH PROVISIONS HAVE BEEN AGREED TO VOLUNTARILY, AFTER NEGOTIATION, WITHOUT DURESS OR COERCION BY ANY PARTY UPON ANY OTHER PARTY, AND WITH EACH PARTY HAVING BEEN (OR HAVING HAD FULL AND ADEQUATE OPPORTUNITY TO BE) REPRESENTED AND ADVISED BY COUNSEL, ACCOUNTANTS, BROKERS, APPRAISERS AND OTHER EXPERTS AND ADVISORS OF ITS OWN CHOOSING.

13. **Agreement Subject to Lien of Mortgage**. No lien or encumbrance shall arise against the Property or the Unit as a result of this Agreement or any money deposited hereunder, except as hereinafter set forth. In furtherance and not in limitation of the provisions of the preceding sentence, Purchaser agrees that the provisions of this Agreement are and shall continue to be subject and subordinate to the lien of any mortgage heretofore or hereafter made and any payments or expenses already made or incurred or which hereafter may be made or incurred, pursuant to the terms thereof, or incidental thereto, or to protect the security thereof, to the fullest extent thereof, without the execution of any further legal documents by Purchaser. Sponsor shall, at its option, either satisfy such mortgages or

obtain a release of the Unit and its undivided interest in the Common Elements from the lien of such mortgages on or prior to the Closing Date, unless, if Purchaser is obtaining financing on the Unit, Purchaser assumes such mortgages (at Sponsor's discretion). The existence of any mortgage or mortgages encumbering the Property, or portions thereof, other than the Unit and its undivided interest in the Common Elements, shall not constitute an objection to title or excuse Purchaser from completing payment of the Purchase Price or performing all of Purchaser's other obligations hereunder or be the basis of any claim against, or liability of, Sponsor, provided that any such mortgage is subordinated to the Declaration, or the Unit is released from, or not subject to, the lien of such mortgage at closing (unless Purchaser has assumed the continuation of a mortgage lien encumbering such Unit as hereinabove described).

14. **Agreement Subject to Plan Being Effective**. The performance by Sponsor of its obligations under this Agreement is contingent upon the Plan having been declared effective in accordance with the terms and provisions of the Plan (as the same may be amended from time to time). The Plan may be withdrawn or abandoned by Sponsor only under certain conditions and at certain times, as set forth in the Plan. If the Plan is abandoned or if, after being declared effective, the Plan is not consummated for any reason and Purchaser is not in default under this Agreement beyond any applicable grace period, this Agreement shall be deemed cancelled and the Deposit, together with interest, if any, earned thereon, shall be returned to Purchaser. Upon such return, neither party shall have any further rights, obligations or liability to or against the other and the parties shall be released and discharged from all obligations and liability under this Agreement and the Plan.

15. **Sponsor's Inability to Convey the Unit**. If Sponsor is unable to deliver title to the Unit to Purchaser in accordance with the provisions of this Agreement and the Plan by reason of a defect in title, substantial damage or destruction of the Building by fire or other casualty, or the taking of any material portion of the Property by condemnation or eminent domain, Sponsor shall not be obligated to bring any action or proceeding or otherwise incur any cost or expense of any nature whatsoever in excess of its obligations set forth in the Plan in order to cure such inability. If Sponsor is not so obligated under the Plan and notifies Purchaser of its election not to cure such inability, and Purchaser is not in default hereunder, Purchaser's sole remedy shall be to either (a) take title to the Unit subject to such inability (without any abatement in or credit against the Purchase Price, or any claim or right of action against Sponsor for damages or otherwise) or (b) terminate this Agreement. If Purchaser so elects to terminate this Agreement, Sponsor shall, within 30 days after receipt of notice of termination from Purchaser, return the Deposit to Purchaser, together with interest, if any, earned thereon. Upon making such payment, this Agreement shall be terminated and neither party shall have any further rights, obligations or liability to or against the other and the parties shall be released and discharged from all obligations and liability under this Agreement and the Plan. The foregoing remedy must be exercised by written notice sent by Purchaser to Sponsor within ten days after the giving of Sponsor's notice of election not to cure such inability, failing which it shall be conclusively deemed that Purchaser elected the first remedy above to acquire title subject to such inability.

16. **Fixtures, Appliances and Personal Property**. Only those fixtures, appliances and items of personal property which are described in the Plan as being included in the Unit are included in the sale of the Unit pursuant to this Agreement. No portion of the Purchase Price shall be attributable to such items, except with respect to that portion of the Purchase Price attributable to personal property in which case Purchaser shall pay sales tax at the applicable rates.

17. **Construction**.

17.1 The construction of the Building and the Unit, including the materials, equipment and fixtures to be installed therein, shall be substantially in accordance with the Plan and the Plans and

Specifications (as defined in the Plan), subject to the right of Sponsor to amend the Plan and the Plans and Specifications in order to substitute materials, equipment or fixtures of equal or better quality, provided that the approval of any governmental authorities having jurisdiction is first obtained (if required). The issuance of a temporary or permanent Certificate of Occupancy for the Building shall be deemed presumptive evidence that the Building and the Unit have been fully completed in accordance with the Plan and the Plans and Specifications. However, nothing herein contained shall excuse Sponsor from its obligation to correct any defects in construction in accordance with the conditions set forth in the Plan in the Section entitled "Rights and Obligations of Sponsor."

17.2 The construction of the Building and the Unit and the correction of any defects in the construction thereof to the extent required under the Plan are the sole responsibility of Sponsor. Purchaser acknowledges and agrees that Sponsor will not be liable for, and will have no obligation to correct, certain variations from the Plan and Plans and Specifications as indicated in the Section of the Plan entitled "Rights and Obligations of Sponsor" and will only be responsible to correct any construction defects to the extent, and on the terms and conditions, set forth in such Section.

17.3 The closing of title shall occur only after, or concurrently with, compliance with the prerequisites set forth under "Prerequisites to Closing of Title" in Part I of the Plan. As a result, if all other prerequisites not involving the construction of the Unit are met, Purchaser shall be obligated to close and complete payment of the full Purchase Price (without any credit against or abatement in the Purchase Price and without any provision for escrow) once a temporary or permanent Certificate of Occupancy is issued for the Unit (notwithstanding any construction items noted on Purchaser's Inspection Report (as hereinafter defined) remaining for Sponsor to complete and/or correct in accordance with its obligations under the Plan, and notwithstanding the incomplete construction and/or decoration of any other portions of the Building not preventing Purchaser's occupancy of the Unit).

17.4 Sponsor has projected that, based upon currently anticipated schedules, construction of the Building will be sufficiently completed to permit closings of Units to begin in or about October 2006. The actual date for the First Closing is only an estimate and is not guaranteed or warranted, and may be earlier or later depending on the progress of construction and compliance with the other prerequisites described in the Plan. Purchaser acknowledges that construction may be delayed by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery or inability to obtain on a timely basis or otherwise materials or equipment, governmental restrictions, or other events beyond Sponsor's reasonable control. Purchaser further acknowledges that the units in the Building will be completed at varying times over a period that could extend well beyond the First Closing. The order in which these units will be completed is in the discretion of Sponsor. Purchaser acknowledges that except as otherwise expressly provided in the Plan, Purchaser shall not be excused from paying the full Purchase Price, without credit or set-off, and shall have no claim against Sponsor for damages or losses, in the event that the First Closing occurs substantially earlier or later than the projected date or the time to complete or to close title to the Unit is accelerated, delayed or is postponed by Sponsor, Purchaser's rights as set forth in Plan in respect thereof being in lieu of any other rights or remedies which may be available pursuant to any applicable law, regulation, statute or otherwise, all of are hereby expressly waived by Purchaser.

**18.** **Inspection of Unit**. At least one week (but not more than one month) prior to the Closing Date, at Sponsor's direction, Sponsor's representative shall notify Purchaser that the Unit is ready for inspection. Upon receipt of the notice, Purchaser shall promptly arrange an appointment with Sponsor's representative to inspect the Unit within the week prior to the Closing Date. Purchaser or his or her duly authorized agent shall attend such inspection, shall carefully inspect the Unit, and shall complete, date and sign the Inspection Statement (in the form set forth as Schedule B to this Agreement) and deliver same to Sponsor's representative at the conclusion of the inspection. Failure of Purchaser

either to arrange such appointment or to inspect the Unit within the week prior to the Closing Date or to so sign and deliver the completed Inspection Statement shall not excuse Purchaser from paying the Balance when due and shall constitute Purchaser's full acceptance of the Unit. However, nothing herein shall relieve Sponsor of its obligations as set forth in "Rights and Obligations of Sponsor" in the Plan.

**19. Damage to the Unit**. If between the date of this Agreement and the closing of title, the Unit is damaged by fire or other casualty, the following shall apply:

19.1 The risk of loss to the Unit by fire or other casualty, until the earlier of closing of title or possession of the Unit by Purchaser, is assumed by Sponsor; provided that Sponsor shall have no obligation or liability to repair or restore the Unit. In the event of damage or destruction of the Unit due to fire or other casualty prior to the closing of title and the election by Sponsor to repair or restore the Unit, this Agreement shall continue in full force and effect, Purchaser shall not have the right to reject title or receive a credit against, or abatement in, the Purchase Price and Sponsor shall be entitled to a reasonable period of time within which to complete the repair or restoration. Any proceeds received from insurance or in satisfaction of any claim or action in connection with such loss shall, subject to the rights of the Condominium Board and the Hotel Board and other Unit Owners if the Declaration has theretofore been recorded, belong entirely to Sponsor and if such proceeds are paid to Purchaser, Purchaser shall promptly upon receipt thereof turn them over to Sponsor. The provisions of the preceding sentence shall survive the closing of title or the termination of the Agreement.

19.2 In the event of damage to or destruction of the Unit by fire or other casualty prior to the closing of title and the election by Sponsor, with notice thereof to Purchaser, that it does not elect to repair or restore the Unit, or, if the Declaration has been recorded prior thereto, then if the Unit Owners do not resolve to make such repairs or restoration pursuant to the By-Laws, this Agreement shall be deemed cancelled and of no further force or effect and Sponsor shall return to Purchaser all sums deposited by Purchaser hereunder, together with interest, if any, earned thereon, and neither party shall have any further rights, obligations or liability to or against the other and the parties shall be released and discharged from all obligations and liability hereunder and under the Plan, except that if Purchaser is then in default hereunder (beyond the applicable grace period, if any), Sponsor shall retain all such sums deposited by Purchaser hereunder and any interest earned thereon, as and for liquidated damages.

**20. No Representations**. Purchaser acknowledges that Purchaser has not relied upon any architect's plans, sales plans, selling brochures, advertisements, representations, warranties, statements or estimates of any nature whatsoever, whether written or oral, made by Sponsor, Selling Agent or otherwise, including, but not limited to, any relating to the description or physical condition of the Property, the Building or the Unit, or the size or the dimensions of the Unit or the rooms therein contained or any other physical characteristics thereof, the services to be provided to Unit Owners, the estimated Common Charges allocable to the Unit, the estimated real estate taxes of the Unit, the ability to rent the Unit and/or the rental income therefor, the right to any income tax deduction for any real estate taxes or mortgage interest paid by Purchaser, or any other data, except as herein or in the Plan specifically represented; Purchaser has relied solely on his or her own judgment and investigation in deciding to enter into this Agreement and purchase the Unit. No person has been authorized to make any representations on behalf of Sponsor. No oral representations or statements shall be considered a part of this Agreement. Purchaser agrees (a) to purchase the Unit, without offset or any claim against, or liability of, Sponsor, whether or not any layout or dimension of the Unit or any part thereof, or of the Common Elements, as shown on the Floor Plans on file in Sponsor's office and [to be]* filed in the City Register's Office, is accurate or correct, and (b) that Purchaser shall not be relieved of any of Purchaser's obligations

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* Omit after Floor Plans have been filed in City Register's office.

hereunder by reason of any immaterial or insubstantial inaccuracy or error. The provisions of this Article 20 shall survive the closing of title or the termination of this Agreement.

21. **Prohibition Against Advertising**. Purchaser hereby covenants and agrees that it shall not, prior to the closing of title hereunder, list the Unit for sale or resale with any broker or otherwise advertise, promote, or publicize the availability of the Unit for sale. Any such listing of the Unit or form of advertising, promotion or publicizing of the Unit by Purchaser or its agents or representatives prior to the closing of title shall be an Event of Default hereunder, entitling Sponsor to the remedies set forth in Article 12 hereof. The provisions of this Article 21 shall survive the closing of title or the termination of this Agreement.

22. **Broker**. Purchaser represents to Sponsor that Purchaser has not dealt with any broker in connection with this transaction other than Selling Agent and _____. Purchaser shall pay the commission of any broker with whom Purchaser may have dealt, other than Selling Agent and the aforementioned broker. Purchaser agrees that, should any claim be made against Sponsor for commissions by any broker other than Selling Agent on account of any acts or dealings of Purchaser or Purchaser's representatives, Purchaser will indemnify and hold Sponsor free and harmless from and against any and all liabilities and expenses in connection therewith, including, but not limited to, reasonable legal fees and disbursements. The provisions of this Article 22 shall survive the closing of title or the termination of this Agreement.

23. **Agreement May Not Be Assigned.**

23.1 This Agreement, or any interest of Purchaser herein, shall not inure to the benefit of any successors or assigns of Purchaser and may not be assigned by Purchaser, without the prior written consent of Sponsor, which consent may be given or denied by Sponsor in its sole discretion. Any purported assignment by Purchaser in violation of this Agreement shall be an event of default by Purchaser entitling Sponsor to all remedies available at law, in equity or otherwise, including, without limitation, the remedies set forth in Article 12 hereof, and shall be voidable at the option of Sponsor.

23.2 If Purchaser is a corporation, any sale, assignment, transfer, pledge, encumbrance or other disposition of any of the stock of Purchaser, or if Purchaser is a partnership, limited liability company or other entity, any sale, assignment, transfer, pledge, encumbrance or other disposition of any interest in such partnership, limited liability company or other entity shall, for purposes of this Agreement, be considered an assignment and shall be subject to the provisions, prohibitions and terms of this Article concerning assignment of this Agreement, except that a sale of less than fifty percent (50%) of the stock, or in the case of a partnership, limited liability company or other entity, less than fifty percent (50%) of the ownership interests, of Purchaser which does not result in a change in control of Purchaser shall not be considered an assignment. For purposes of the preceding sentence only, "control" shall mean the ownership of fifty-one percent (51%) or more of the interests in such entity or possession of the power to direct the management and policies of such entity and the distribution of its profits.

23.3 If a Purchaser desires to assign its rights under this Agreement or to take title in the name of an affiliate of, or entity related to, or controlled by Purchaser that differs from that reflected in this Agreement, or to add, delete or substitute the name of a member of the Purchaser's family, then, if such assignment, alteration, addition, deletion or substitution is permitted by Sponsor (in Sponsor's sole discretion), Purchaser shall deliver to Selling Agent or Sponsor's counsel, four (4) signed forms of assignment of this Agreement (to be prepared by Sponsor's counsel at Purchaser's expense and in form and content acceptable to Sponsor, in its sole discretion), as well as three (3) completed and signed copies of either Form W-9 (Request for Taxpayer Identification Number and Certification) or Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding), as applicable, in

the form required by law. Upon each assignment or other change permitted by Sponsor (it its sole discretion), the assignments and Form W-8 or Form W-9, as applicable, must be delivered to Selling Agent or Sponsor's counsel, together with a personal certified check, or an official bank or cashier's check, in the amount of $850 made payable to Kramer Levin Naftalis & Frankel LLP (for services rendered in connection with the assignment), not less than twenty (20) days prior to the date scheduled for the Purchaser's closing. In no event shall Purchaser or its assignee (or any added or substituted party) have any right to adjourn or postpone the closing as a result of any such change or assignment. Sponsor is not obligated to consent to any such change or assignment and, Sponsor's refusal to consent to an assignment or change in name will not entitle Purchaser to cancel this Agreement or excuse Purchaser from any of its obligations hereunder or give rise to any claim for damages against Sponsor; and the prohibition against advertising or publicizing the availability of Purchaser's Unit as set forth in Article 21 above and in the Plan will remain in effect.

23.4 Notwithstanding the provisions of Section 23.1 above, Sponsor will not unreasonably withhold its consent to the assignment by Purchaser, on one (1) occasion only, of all of Purchaser's rights under this Agreement to a Purchaser Affiliate or to member(s) of Purchaser's immediate Family, provided that any such assignment is made without consideration and otherwise in accordance with the provisions and procedures set forth in Section 23.3 above. For purposes of this Section 23.4 only: (i) "Purchaser Affiliate" means an entity, as of the date of the assignment and at all times thereafter through and including the Closing, controlled by or under common control with Purchaser; (ii) "Immediate Family Members" means Purchaser's spouse, domestic partner, children, grandchildren, parents, grandparents, brothers or sisters, stepchildren and stepparents; and (iii) "control" means the ownership of fifty-one percent (51%) or more of the interests in such entity and possession of the power to direct the management and policies of such entity and the distribution of its profits.

23.5 Notwithstanding any consent by Sponsor pursuant to the terms of this Article to any such change of name or assignment, in no event shall Purchaser, as assignor, be released or relieved from any obligations, promises, covenants and liabilities under or in respect of this Agreement.

**24. Binding Effect**. The submission of this Agreement to Purchaser does not create a binding obligation on the part of Sponsor. This Agreement shall not be binding on Purchaser or Sponsor until Purchaser has signed this Agreement and delivered the signed Agreement and the Initial Deposit to Sponsor, and a counterpart hereof executed by Sponsor has been delivered to Purchaser. If this Agreement is not signed by Sponsor and a fully executed counterpart delivered to Purchaser or its attorneys within thirty (30) days after the date hereof, this Agreement shall be deemed to have been rejected and the Initial Deposit shall be promptly returned to Purchaser. Upon such refund being made, neither party shall have any further rights, obligations or liabilities hereunder with respect to the other. Prior to Sponsor's countersigning and returning this Agreement to Purchaser, and at any time thereafter, Purchaser agrees upon request to provide Sponsor with written information about Purchaser's employment, financial and rental/ownership history. Such information obtained prior to countersignature may be used to determine Purchaser's qualification to purchase and own the Unit, but does not constitute a reservation or binding obligation on either the applicant or Sponsor. Sponsor has the right, without incurring any liability, to reject this Agreement without cause or explanation to Purchaser. This Agreement may not be rejected due to Purchaser's sex, sexual orientation, race, creed, color, national origin, ancestry, disability, marital status, or other ground proscribed by law.

**25. Notices.**

25.1 Any notice, election, demand, consent, request or other communication hereunder or under the Plan shall be in writing and either delivered in person or sent, postage prepaid, by registered or certified mail, return receipt requested or by Federal Express or other reputable overnight

courier, with receipt confirmed: to Purchaser at the address given at the beginning of this Agreement; and to Sponsor, addressed to Selling Agent at: One Central Park South, First Floor, New York, New York 10019, with a copy sent simultaneously and in like manner to Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attention: Jay A. Neveloff, Esq. Either party may hereafter designate to the other in writing a change in the address to which notices are to be sent. Except as otherwise expressly provided herein, a notice shall be deemed given when personal delivery or delivery by overnight courier is effected or, in the case of mailing, three (3) days after the date of mailing, except that the date of actual receipt shall be deemed to be the date of the giving of any notice of change of address.

25.2 Sponsor hereby designates and empowers both Selling Agent and Sponsor's counsel (Kramer Levin Naftalis & Frankel LLP) as Sponsor's agents to give any notice to Purchaser under this Agreement (including, without limitation, a notice of default) in Sponsor's name, which notice so given shall have the same force and effect as if given by Sponsor itself.

**26.** **Joint Purchasers**. The term "Purchaser" shall be read as "Purchasers" if the Unit is being purchased by more than one person, in which case their obligations shall be joint and several.

**27.** **Liability of Sponsor**. Sponsor shall be excused from performing any obligation or undertaking provided for in this Agreement for so long as such performance is prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, sabotage, inability to procure or general shortage of energy, labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, or any other cause (whether similar or dissimilar to the foregoing) not within the reasonable control of Sponsor. Sponsor's time to perform such obligation or undertaking shall be tolled for the length of the period during which such performance was excused.

**28.** **Further Assurances**. Either party shall execute, acknowledge and deliver to the other party such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein, as such other party may reasonably request in order to effectuate the provisions of this Agreement 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.

**29.** **Severability**. If any provision of this Agreement or the Plan is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Agreement or the Plan and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Agreement or the Plan, except as otherwise herein or therein provided, shall be valid and enforced to the fullest extent permitted by law.

**30.** **Strict Compliance**. Any failure by either party hereto to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other party of any and all of the provisions of this Agreement to be performed by such other party.

**31.** **No Lien**. Neither this Agreement nor any monies deposited hereunder or expended by Purchaser in connection herewith shall constitute a lien against the Unit, any other Units, or any other portion of the Building or the Land upon which it is situated, and Purchaser may not record this Agreement or a memorandum thereof.

**32.** Governing Law. The provisions of this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York applicable to contracts made and to be performed wholly in the State of New York, without regard to principles of conflicts of law.

**33.** Purchaser's Representations.

33.1 Purchaser represents that Purchaser has full right and authority to execute this Agreement and perform Purchaser's obligations hereunder. If Purchaser is not a natural person, Purchaser agrees to deliver at Closing, such documents evidencing Purchaser's authority as may be required by Purchaser's title company. Purchaser further represents that the Deposit represents Purchaser's own funds and that no other party (other than Purchaser or Seller, as provided herein) has any right or claim to all or any portion of the Deposit.

33.2 Purchaser is not now, nor shall it be at any time prior to or at the closing of title, an individual, corporation, partnership, joint venture, trust, trustee, limited liability company, unincorporated organization, real estate investment trust or any other form of entity (collectively, a "Person") with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC or otherwise. Neither Purchaser nor any Person who owns an interest in Purchaser is now nor shall be at any time prior to or at the closing of title a Person with whom a U.S. Person, including a "financial institution" as defined in 31 U.S.C. 5312 (a)(z), as periodically amended, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC or otherwise.

33.3 Purchaser has taken, and shall continue to take until the closing of title, such measures as are required by applicable law to assure that the funds used to pay to Seller the Purchase Price are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated. Purchaser is, and will at closing be, in compliance with any and all applicable provisions of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

33.4 The provisions of this Article shall survive the closing of title to the Unit or termination of this Agreement.

**34.** Agreement Not Contingent Upon Financing. The terms and provisions of this Agreement and Purchaser's obligations hereunder are not contingent upon Purchaser securing financing of the Purchase Price (or any portion thereof) stated in Article 3 of this Agreement, and Purchaser understands and agrees that Purchaser's failure to obtain such financing will not relieve Purchaser of Purchaser's obligations hereunder. Purchaser further understands and agrees that if Purchaser chooses to

finance the purchase of the Unit through a lending institution and obtain a commitment therefrom, neither a subsequent change in the terms of such commitment, the expiration or other termination of such commitment, any change in Purchaser's financial status or condition, nor any delay in or adjournment of the Closing, shall release or relieve Purchaser of Purchaser's obligations pursuant to this Agreement.

35. **Costs of Enforcing and Defending Agreement.** Purchaser shall be obligated to reimburse Sponsor for any legal fees and disbursements incurred by Sponsor in defending Sponsor's rights under this Agreement or, in the event Purchaser defaults under this Agreement beyond any applicable grace period, in canceling this Agreement or otherwise enforcing Purchaser's obligations hereunder. The provisions of this Article shall survive closing of title or the termination of this Agreement.

36. **Waiver of Jury Trial**. Except as prohibited by law, the parties shall, and they hereby do, expressly waive trial by jury in any litigation arising out of, connected with, or relating to this Agreement or the relationship created hereby or in the Plan. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial is waived. The provisions of this Article shall survive closing of title or the termination of this Agreement.

37. **Waiver of Diplomatic or Sovereign Immunity.**

37.1 Purchaser hereby waives any and all immunity from suit or other actions or proceedings and agrees that, should Sponsor or any of its successors or assigns bring any suit, action or proceeding in New York or any other jurisdiction to enforce any obligation or liability of Purchaser arising, directly or indirectly, out of or relating to this Agreement, no immunity from such suit, action or proceeding will be claimed by or on behalf of Purchaser.

37.2 As of the execution of this Agreement, Purchaser acknowledges and agrees that all disputes arising, directly or indirectly, out of or relating to this Agreement 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 Purchaser to the jurisdiction of such courts in any suit, action or proceeding arising, directly or indirectly, out of or relating to this Agreement. 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 Purchaser in any such court.

37.3 Purchaser 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 this Agreement, 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. Purchaser agrees that final judgment from which Purchaser 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 Purchaser 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 Purchaser is subject, by a suit upon such judgment and that Purchaser will not assert any defense, counterclaim, or set off in any such suit upon such judgment.

37.4 Purchaser 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 Purchaser

to jurisdiction of the state courts of New York and the federal courts sitting in New York and any other provisions of this Article 37.

37.5 Nothing in this Article 37 shall affect the right of Sponsor to bring proceedings against Purchaser in the courts of any jurisdiction or jurisdictions.

37.6 The provisions of this Article 37 shall survive the closing of title or the termination of this Agreement for the purpose of any suit, action, or proceeding arising directly or indirectly, out of or relating to this Agreement.

37.7 In the event Purchaser 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 Purchaser shall hereby be deemed to have designated and 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 Purchaser in any state or Federal suit, action or proceeding in the State of New York based on, arising out of or connected with this Agreement.

37.8 If Purchaser is a foreign mission, as such term is defined under the Foreign Missions Act, 22 U.S.C. 4305, Purchaser shall notify the United States Department of State prior to purchasing a Unit and provide a copy of such notice to Sponsor. Sponsor shall not be bound under this Agreement unless and until the earlier to occur of: (i) a notification of approval is received from the Department of State; or (ii) sixty (60) days after Purchaser's notice is received by the Department of State.

**38.** **Entire Agreement**. This Agreement, together with the Plan, supersedes any and all understandings and agreements between the parties and constitutes the entire agreement between them with respect to the subject matter hereof.

**39.** **Certain References**. A reference in this Agreement 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. The term "herein," "hereof" or "hereunder," or similar terms used in this Agreement, refer to this entire Agreement and not to the particular provision in which the term is used. Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of this Agreement.

**40.** **Captions**. The captions in this Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

**41.** **Successors and Assigns**. Subject to the provisions of Article 23 hereof, the provisions of this Agreement shall bind and inure to the benefit of Purchaser and Purchaser's heirs, legal representatives, successors and permitted assigns and shall bind and inure to the benefit of Sponsor and its successors and assigns.

**42.** **No Oral Changes**. This Agreement, or any provision hereof, cannot be orally changed, terminated or waived. ANY CHANGES OR ADDITIONAL PROVISIONS MUST BE SET FORTH IN A RIDER ATTACHED HERETO OR IN A SEPARATE WRITTEN AGREEMENT SIGNED BY THE PARTIES AND WHICH REFERS TO THIS AGREEMENT.

**43.** **Counterparts**. This Agreement and any Rider(s) which may be annexed hereto may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which

shall constitute one and the same document. A facsimile signature on this Agreement (or any such Rider(s)) shall be acceptable and be deemed binding. The party tendering such facsimile signature shall provide the other party with original counterparts of the signature page promptly after delivery of the facsimile signature page, although the failure to do so shall not invalidate the effectiveness of the facsimile signature.

44. **Rule of Construction**. There shall be no presumption against the drafter of this Agreement or the Plan.

45. **Section 1031 Exchange**. Sponsor hereby acknowledges that the acquisition of the Unit hereunder may be in connection with a tax deferred exchange under §1031 of the Internal Revenue Code and that Purchaser (except as prohibited by paragraph 24 of this Agreement) may be assigning all of its rights and obligations hereunder to a qualified intermediary as part of, and in furtherance of, such tax deferred exchange. Sponsor hereby agrees to reasonably assist and cooperate in such tax deferred exchange, provided, however, that: (i) any action taken in connection with such tax deferred exchange or requested of Sponsor shall not result in any cost, expense or liability on the part of Sponsor or increased risk to Sponsor relating to the transaction contemplated by this Agreement (and, among other things, Purchaser acknowledges that a fee may be payable to Sponsor's Counsel in connection with the review of any documentation related to such tax-deferred exchange); (ii) no action or failure on the part of Purchaser (or any other party to such tax deferred exchange) or cooperation on the part of Sponsor in connection with or related to said tax deferred exchange will frustrate the purpose of this Agreement or otherwise result in a reduction of Sponsor's rights, remedies and privileges under this Agreement or increase any of Sponsor's obligations or duties under this Agreement or otherwise; and (iii) Sponsor shall not be obligated, as part of any tax deferred exchange, to convey any property (other than the Unit), acquire any property, or accept any form of payment in respect of the amounts due hereunder other than as set forth herein. Purchaser shall indemnify and shall hold Sponsor harmless from and against any and all costs, expenses, fees (including, without limitation, reasonable attorneys' fees) or liabilities incurred by Sponsor in connection with or resulting from the said tax deferred exchange, and such indemnity shall survive the closing of title or the termination of this Agreement. Notwithstanding the foregoing, Sponsor makes no representation and expresses no opinion with respect to the applicability of §1031 of the Internal Revenue Code to the purchase or acquisition of a Unit.

46. **FF&E**. In addition to the Unit, Purchaser is agreeing hereunder to acquire the fixtures, furnishings and equipment to be located at Closing within the Condo Hotel Unit (the "FF&E") as described or to be described in the Plan as hereinafter set forth. At the closing of title, Purchaser and Sponsor shall execute a Bill of Sale, the form of which can be found in Exhibit A attached hereto, wherein Sponsor will transfer title of the FF&E to Purchaser. Prior to or promptly after the closing of title, Sponsor shall configure the FF&E within the Unit in accordance with the configuration plan (the "Configuration Plan"), although Purchaser acknowledges that the absence of any item(s) of FF&E within the Unit and/or a deviation from the Configuration Plan shall not excuse Purchaser from closing title to the Unit. A description of the FF&E as well as the Configuration Plan within each Condo Hotel Unit will be determined in consultation with Hotel Manager so that each Condo Hotel Unit is furnished in such as way as to maintain the hotel standard set forth in the Unit Management and Operation Agreement. Such list of FF&E and the Configuration Plan will be disclosed in an amendment to the Plan and will be available for inspection at the Sales Office. Purchaser acknowledges that it is obligated to pay any and all sales or other federal, state or county tax or fee applicable to the sale of the FF&E at the closing of title to the Unit, and, Purchaser, in connection therewith, acknowledges that a portion of the Purchase Price (calculated as $65.00 per square foot (as indicated in Schedule A of the Plan) of the Condo Hotel Unit) is allocable to the FF&E, it being agreed that said amount represents the value of such furnishings for the purposes hereof.

47. **Lead-Based Paint Disclosure**. Annexed hereto and incorporated herein as Exhibit B, is the "Disclosure Information on Lead-Based Paint and/or Lead Based Paint Hazards" required to be executed pursuant to the provisions of Federal regulation.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth hereinabove.

**SPONSOR:**

CPS 1 REALTY LP

By: CPS 1 REALTY GP LLC, its general partner

By:_____
Miki Naftali
President

**PURCHASER(s):**

By:_____
Name:
Title:
Social Sec. Number
or Federal Tax ID:_____

**PURCHASER(s):**

By:_____
Name:
Title:
Social Sec. Number
or Federal Tax ID:_____

Purchaser acknowledges receipt of Offering Plan [and amendments] on _____, 200__

Initials of Purchaser(s):

_____ _____

## SCHEDULE A

## PERMITTED ENCUMBRANCES

1. Building and zoning laws and other regulations, resolutions and ordinances (including, but not limited to, any variances or use regulations) and any amendments thereto now or hereafter adopted.

2. The terms, burdens, covenants, restrictions, conditions, easements and rules and regulations, all as set forth in the Declaration, the Condominium By-Laws (and the Rules and Regulations made thereunder), the Hotel By-Laws (and the Hotel Rules and Regulations made thereunder), the Power of Attorney from Purchaser to the Board and the Floor Plans, all as may be amended from time to time.

3. Any declaration or other instrument affecting the Property which Sponsor 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 demolition, construction, alteration, repair or restoration of the Building or any portion or element thereof.

4. Consents by Sponsor or any former owner of the Land for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.

5. Any easement or right of use in favor of any utility company for construction, use, maintenance or repair of utility lines, wires, terminal boxes, mains, pipes, cables, conduits, poles, connections and other equipment and facilities on, under and across the Property.

6. Any easement or right of use required by Sponsor or its designee to obtain a temporary, permanent or amended Certificate of Occupancy for the Building or any part of same.

7. Any encumbrance as to which the Title Company (or the title insurance company that insures Purchaser's title to the Unit) would be willing to insure, at its regular rates and without additional premium, in a fee policy issued by it to Purchaser, that such encumbrance will not be collected out of or enforced against the Unit if it is a lien, or that such encumbrance is not a blanket lien encumbering the Common Elements.

8. Any other encumbrance, covenant, easement, agreement, or restriction against the Property other than a mortgage or other lien for the payment of money, which does not prevent the use of the Unit for its permitted purposes.

9. Revocability of licenses for vault space, if any, under the sidewalks and streets and the lien of any unpaid vault tax.

10. Encroachments of trim, copings, retaining walls, stoops, bay windows, balconies, sidewalk elevators, fences, fire escapes, cornices, foundations, footings, chutes, fuel oil lines, drainage and standpipes, and similar projections, if any, on, over or under the Property or the streets, sidewalks or premises abutting the Property, and the rights of governmental authorities to require the removal of any

such projections, and variations between record lines of the Property and retaining walls and the like, if any.

11. Leases and service, maintenance, employment, concessionaire and license agreements, if any, of other Units or portions of the Common Elements.

12. The lien of any unpaid Common Charges, real estate tax, water charge or sewer rent, provided the same are adjusted at the closing of title.

13. The lien of any unpaid assessment payable in installments (other than assessments levied by the Board), except that Sponsor shall pay all such assessments due prior to the Closing Date and Purchaser shall pay all assessments due from and after such date (however, the then current installment shall be adjusted at the closing of title).

14. Franchise taxes and New York City Business Corporation taxes of any corporation in the chain of title, provided that the Title Company would be willing in a fee policy issued by it to Purchaser, to insure that such taxes will not be collected out of the Unit.

15. Standard printed exceptions contained in the form of fee title insurance policy then issued by the Title Company (or the title insurance company insuring Purchaser's title to the Unit).

16. Any Certificate of Occupancy for the Building, so long as the same permits, or does not prohibit, use of the Unit for its stated purposes.

17. Any lease or other occupancy agreement for the Unit made by Sponsor and Purchaser.

18. Any violations against the Property (other than the Unit) that are the obligation of the Board or another Unit Owner to correct.

19. Survey (the "Existing Survey") made by Earl B. Lovell – S.P. Belcher, Inc., dated January 5, 1978.

20. Any state of facts which an update of the Existing Survey or any other accurate survey o a personal inspection of the Property and the Unit would show; provided such state of facts would not prevent the use of the Unit for its stated purposes; although any encroachment of a portion of the Unit structure upon another Unit or Units or upon the Common Elements may remain undisturbed as long as the same shall stand.

21. Restrictive Declaration by [Declarants] in favor of the New York City Landmarks Preservation Commission, dated as of _____ and recorded in the Office of the City Register for the County of New York as CRFN _____ on _____.

22. All other covenants, restrictions and matters of record.

## SCHEDULE B

## INSPECTION STATEMENT

CPS 1 Realty LP
c/o El-Ad Properties NY LLC
575 Madison Avenue, 23rd Floor
New York, New York 10022

_____, 200_

Re: Unit No._____
The Plaza Hotel -- Condominiums

Gentlemen:

As a result of my/our final inspection, please be advised that except as otherwise noted, I/we found the following items in good condition, free of chips, mars, breaks or other defects:

| Items | Initials | Exceptions if any |
|---|---|---|
| Windows, window frames | | |
| Electric fixtures & globes | | |
| Interior painted surfaces | | |
| Sinks, tubs, bowls & shower | | |
| doors & trim | | |
| Kitchen cabinets & counter tops | | |
| anity tops & base | | |
| Medicine cabinets, doors & mirror | | |
| Hardware | | |
| Flooring | | |
| Appliances | | |

I/we understand that to prevent pilferage, certain items such as medicine cabinet doors, shower heads, toilet seats, kitchen cabinets, vanity knobs and mechanical chimes will be

installed just prior to my/our date of moving. I/we agree and I/we will sign off each item requiring adjustment or repairs as it is completed.

_____
Purchaser's Signature

_____
Purchaser's Signature

_____
Sponsor's Representative

**EXHIBIT A**

**BILL OF SALE FOR CONDO HOTEL UNIT FF&E**

**THIS BILL OF SALE** is made as of the ____ day of _____, 200_, from CPS 1 Realty LP, a Delaware limited partnership, having offices c/o El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10022 ("Seller"), to _____, having an address at _____ ("Purchaser").

**R E C I T A L:**

**WHEREAS**, contemporaneously with the execution and delivery of this Bill of Sale, Seller has sold and conveyed to Purchaser Condo Hotel Unit ____ of The Plaza Hotel -- Condominiums, located at 768 Fifth Avenue, New York, New York by deed of even date herewith (hereinafter referred to as the "Unit"); and

**WHEREAS**, as part of the consideration for the conveyance of the Unit, Seller has agreed to convey to Purchaser the items of personal property referred to as the FF&E in the Offering Plan;

**NOW, THEREFORE**, in consideration of the sum of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller does hereby sell, assign, and convey to Purchaser (without any representation or warranty whatsoever, except as expressly set forth in the Offering Plan, Seller's right, title and interest in and to the FF&E as the same are present in the Condo Hotel Unit on the date hereof.

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

This Bill of Sale shall be binding upon and shall inure to the benefit of Seller, Purchaser and their respective successors and assigns.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York.

**IN WITNESS WHEREOF**, Seller has caused this Bill of Sale to be duly signed as of the day and year first written above.

**CPS 1 REALTY LP**
By: CPS 1 Realty GP LLC, its general partner

By:_____
Name:
Title:

## EXHIBIT B

## DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS SALES

**Lead Warning Statement**

**Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in your children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchaser.**

**Seller's Disclosure**

(a) Presence of lead-based paint and/or lease-based paint hazards *(Check (i) or (ii) below)*:

(i) ☐ Known lead-based paint and/or lead-based paint hazards are present in the housing *(explain)*.

_____

_____

_____

(ii) ☐ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller *(Check (i) or (ii) below)*:

(i) ☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based hazards in the housing *(list documents below)*.

_____

_____

_____

(ii) ☐ Seller has no reports pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's Acknowledgement** (initial)

(c)____ Purchaser has received copies of all information listed above.

(d)____ Purchaser has received the pamphlet **Protect Your Family from Lead in Your Home.**

(e)____ Purchaser has (check (i) or (ii) below):

(i) received a 10-day opportunity or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgement** (initial)

(f)____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate

| | | | |
|---|---|---|---|
| Seller | Date | Seller | Date |
| Purchaser | Date | Purchaser | Date |
| Agent | Date | Agent | Date |

**EXHIBIT 1A**

FORM OF REQUEST FOR TAXPAYER IDENTIFICATION NUMBER (W-9)

Form **W-9**
(Rev. January 2005)
Department of the Treasury
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

**Give form to the requester. Do not send to the IRS.**

Print or type See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ▶ .....

☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid b[redacted] withholding. For individuals, this is your social security number (SSN). However, for a resident al[redacted] sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** *If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.*

**Social security number**

or

**Employer identification number**

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

**Sign H[redacted]** Signature of U.S. person ▶ Date ▶

## Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note.** *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

For federal tax purposes you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

***Example.*** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester, or

2. You do not certify your TIN when required (see the Part II instructions on page 4 for details), or

3. The IRS tells the requester that you furnished an incorrect TIN, or

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

# Specific Instructions

## Name

If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

**Other entities.** Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

## Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

| IF the payment is for . . . | THEN the payment is exempt for . . . |
|---|---|
| Interest and dividend payments | All exempt recipients except for 9 |
| Broker transactions | Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker |
| Barter exchange transactions and patronage dividends | Exempt recipients 1 through 5 |
| Payments over $600 required to be reported and direct sales over $5,000 [1] | Generally, exempt recipients 1 through 7 [2] |

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a Federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at *www.socialsecurity.gov/online/ss-5.pdf*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/businesses/* and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting *www.irs.gov* or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** *A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.*

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

| For this type of account: | Give name and SSN of: |
|---|---|
| 1. Individual | The individual |
| 2. Two or more individuals (joint account) | The actual owner of the account or, if combined funds, the first individual on the account [1] |
| 3. Custodian account of a minor (Uniform Gift to Minors Act) | The minor [2] |
| 4. a. The usual revocable savings trust (grantor is also trustee) | The grantor-trustee [1] |
| b. So-called trust account that is not a legal or valid trust under state law | The actual owner [1] |
| 5. Sole proprietorship or single-owner LLC | The owner [3] |
| **For this type of account:** | **Give name and EIN of:** |
| 6. Sole proprietorship or single-owner LLC | The owner [3] |
| 7. A valid trust, estate, or pension trust | Legal entity [4] |
| 8. Corporate or LLC electing corporate status on Form 8832 | The corporation |
| 9. Association, club, religious, charitable, educational, or other tax-exempt organization | The organization |
| 10. Partnership or multi-member LLC | The partnership |
| 11. A broker or registered nominee | The broker or nominee |
| 12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity |

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

[4] List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

**EXHIBIT 1B**

FORM OF CERTIFICATE OF FOREIGN STATUS (W-8BEN)

Form **W-8BEN**
(Rev. December 2000)
Department of the Treasury
Internal Revenue Service

# Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

| Do not use this form for: | Instead, use Form: |
|---|---|
| • A U.S. citizen or other U.S. person, including a resident alien individual | W-9 |
| • A person claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States | W-8ECI |
| • A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) | W-8ECI or W-8IMY |
| • A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions) | W-8ECI or W-8EXP |

**Note:** *These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.*

| | |
|---|---|
| • A person acting as an intermediary | W-8IMY |

**Note:** *See instructions for additional exceptions.*

## Part I Identification of Beneficial Owner (See instructions.)

1 Name of individual or organization that is the beneficial owner

2 Country of incorporation or organization

3 Type of beneficial owner: ☐ Individual ☐ Corporation ☐ Disregarded entity ☐ Partnership ☐ Simple trust ☐ Grantor trust ☐ Complex trust ☐ Estate ☐ Government ☐ International organization ☐ Central bank of issue ☐ Tax-exempt organization ☐ Private foundation

4 Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address.**

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

5 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

6 U.S. taxpayer identification number, if required (see instructions) ☐ SSN or ITIN ☐ EIN

7 Foreign tax identifying number, if any (optional)

8 Reference number(s) (see instructions)

## Part II Claim of Tax Treaty Benefits (if applicable)

9 **I certify that (check all that apply):**

a ☐ The beneficial owner is a resident of .....within the meaning of the income tax treaty between the United States and that country.

b If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).

c ☐ The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).

d ☐ The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).

e ☐ The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, $500,000.

10 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article .....of the treaty identified on line 9a above to claim a .....% rate of withholding on (specify type of income):.....

Explain the reasons the beneficial owner meets the terms of the treaty article: .....

.....

## Part III Notional Principal Contracts

11 ☐ I have provided or will provide a statement that identifies those notional principal contracts from which the income is **not** effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

## Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates.
- The beneficial owner is not a U.S. person.
- The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States or is effectively connected but is not subject to tax under an income tax treaty, and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

**Sign Here** ▶ ..... Signature of beneficial owner (or individual authorized to sign for beneficial owner) ..... Date (MM-DD-YYYY) ..... Capacity in which acting

**EXHIBIT 2**

FORM OF CONDO HOTEL UNIT POWER OF ATTORNEY

**CONDO HOTEL UNIT**
**POWER OF ATTORNEY**

_____

to

**THE HOTEL BOARD OF**
**THE PLAZA CONDOMINIUM**

**The Plaza Condominium**
768 Fifth Avenue
New York, New York 10019
Unit No. _____

County: New York
Block: 1274
Lot: ____

Record and Return to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Jonathan H. Canter, Esq.

# CONDO HOTEL UNIT OWNER'S POWER OF ATTORNEY

All terms used in this Condo Hotel Unit Power of Attorney that are used in that certain Amended and Restated Declaration, dated as of March 13, 2006, by CPS 1 Realty LP pursuant to Article 9-B of the Real Property Law of the State of New York, establishing condominium ownership of the premises known as The Plaza Condominium, 768 Fifth Avenue, New York, New York 10019 (hereinafter called the "**Condominium**"), which Amended and Restated Declaration was recorded in the New York County Office of the Register of the City of New York (hereinafter called the "**Register's Office**") on March 13, 2006, as CRFN 2006040600067 (as the same may have been amended, hereinafter called the "**Declaration**"), shall have the same meanings in this Condo Hotel Unit Power of Attorney as in the Declaration.

The undersigned: _____, having an office/residing at: _____, the owner of the Condominium unit (hereinafter called the "**Unit**") known as Unit No. _____ at the Condominium, said Unit(s) being so designated and described in the Declaration and also designated as Tax Lot _____ in Block _____ of the Borough of Manhattan on the Tax Map of the Real Property Assessment Bureau of the City of New York and on the Floor Plans of the Condominium certified by _____ on _____, 200__, and filed with the Real Property Assessment Bureau of the City of New York on _____, 200__, as Condominium Plan No. _____ and also filed in the Register's Office on _____, 200__, as Condominium Plan No. _____, [does/do] hereby irrevocably nominate, constitute and appoint the persons who may from time to time constitute:

(A) the Hotel Board of the Condominium (the "**Hotel Board**"), jointly true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, in their own names, as members of the Hotel Board, or in the name of their designee (corporate or otherwise), but subject in all respects to the provisions of the Declaration Condominium By-Laws and the Hotel By-Laws (collectively, the "**Condominium Documents**"), then in effect, to:

(i) acquire in the name of the Hotel Board or its designee, corporate or otherwise, on behalf of all Unit Owners, title to any Unit, together with its appurtenant Common Interest:

(a) in connection with the enforcement of the Hotel Board's lien for unpaid Hotel Common Charges;

(b) whose owner desires to surrender the same pursuant to Section 6.2.2 of the Hotel By-Laws;

(c) that becomes the subject of a foreclosure or other similar sale; or

(d) for the use and occupancy of the hotel manager;

on such terms, including, without limitation, price (with respect to subdivisions (c) or (d) above) as said attorneys-in-fact shall deem proper;

(ii) acquire or lease in the name of the Hotel Board or its designee, corporate or otherwise, on behalf of all Hotel Unit Owners, any Hotel Unit, together with its

appurtenant Common Interest, from any Hotel Unit Owner desiring to sell, convey, transfer, assign or lease the same, on such terms and conditions as said attorneys-in-fact shall deem proper;

(iii) convey, sell, lease, mortgage, or otherwise deal with (but not to vote the Common Interest appurtenant to) any Hotel Unit so acquired or to sublease any Hotel Unit so leased by them, without the necessity of any authorization by the Hotel Unit Owners, on such terms as said attorneys-in-fact may determine, granting to said attorneys-in-fact the power to do all things in and to said Hotel Unit which the undersigned could do if personally present; and

(iv) execute, acknowledge, deliver and (if determined to be necessary or desirable by said attorneys-in-fact) cause to be recorded in the City Register's Office:

(a) any declaration or other instrument affecting the Hotel Section and/or the Condominium that the Hotel 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 (including, without limitation Chapter 3 of Title 25 of the New York City Administrative Code) applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Hotel Section or the Condominium; or

(b) following due authorization by any affected Hotel Unit Owner(s) to the extent required in the Condominium Documents, any consent, covenant, restriction, easement or declaration, or amendment thereto, affecting the Condominium, the Hotel Section or any of the Common Elements, in each case that the Hotel Board deems necessary or appropriate.

(v) execute, acknowledge, deliver and (if determined to be necessary or desirable by said attorneys-in-fact) cause to be recorded in the City Register's Office a Unit Management and Operation Agreement together with a Memorandum of Unit Management and Operation Agreement:

The acts of a majority of such persons constituting the Hotel Board shall constitute the acts of said attorneys-in-fact.

This Condo Hotel Unit Power of Attorney shall be irrevocable; and

(B) the board of managers of the Condominium (the **"Condominium Board"**), jointly true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, in their own names, as members of the Condominium Board, or in the name of their designee (corporate or otherwise), but subject in all respects to the provisions of the Condominium Documents, then in effect, to:

(i) acquire in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, title to any Unit, together with its appurtenant Common Interest:

(a) in connection with the enforcement of the Condominium Board's lien for unpaid General Common Charges;

(b) whose owner desires to surrender the same pursuant to Section 13 of the Condominium By-Laws; or

(c) that becomes the subject of a foreclosure or other similar sale;

on such terms, including, without limitation, price (with respect to subdivisions (c) above) as said attorneys-in-fact shall deem proper;

(ii) convey, sell, lease, mortgage, or otherwise deal with (but not to vote the Common Interest appurtenant to) any Commercial Unit so acquired or to sublease any Commercial Unit so leased by them, without the necessity of any authorization by the Unit Owners, on such terms as said attorneys-in-fact may determine, granting to said attorneys-in-fact the power to do all things in and to said Commercial Unit which the undersigned could do if personally present; and

(iv) execute, acknowledge, deliver and (if determined to be necessary or desirable by said attorneys-in-fact) cause to be recorded in the City Register's Office:

(a) any declaration or other instrument affecting the Condominium that 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 (including, without limitation Chapter 3 of Title 25 of the New York City Administrative Code) applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Condominium; or

(b) following due authorization by any affected Unit Owner(s) or the Hotel Board, in each case to the extent required in the Condominium Documents, any consent, covenant, restriction, easement or declaration, or amendment thereto, affecting the Condominium, the Hotel Section or any of the Common Elements, in each case that the Condominium Board deems necessary or appropriate.

The acts of a majority of such persons constituting the Condominium Board shall constitute the acts of said attorneys-in-fact.

This Condo Hotel Unit Power of Attorney shall be irrevocable.

**IN WITNESS WHEREOF**, the undersigned (has) (have) executed this Condo Hotel Unit Power of Attorney as of the ____ day of _____, 200__.

_____

_____

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

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

_____
Notary Public

STATE OF _____ )
) ss.:
COUNTY OF _____ )

On the __ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of _____, County of _____ and State of _____.

_____
Notary Public

**EXHIBIT 3**

FORM OF CONDO HOTEL UNIT DEED

**CONDO HOTEL UNIT DEED**

**CPS 1 REALTY LP**

TO

_____

**THE PLAZA HOTEL -- CONDOMINIUMS**
768 Fifth Avenue
New York, New York 10019
Unit _____

County: New York
Block: 1274
Lot: _____

Record and Return to:

_____
_____
_____

## CONDO HOTEL UNIT DEED

**THIS INDENTURE** is made the ___ day of _____, 200 , by and between CPS 1 Realty LP, a Delaware limited partnership having an address at c/o El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10022 (hereinafter called "**Grantor**") and _____, having an address at _____ (hereinafter called "**Grantee**").

**W I T N E S S E T H:**

That Grantor, in consideration of Ten ($10.00) Dollars and other valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby grant and release unto Grantee, and the heirs or successors and assigns of Grantee, forever:

The Condominium Unit (hereinafter called the "**Unit**") in the building (hereinafter called the "**Building**") known as The Plaza Condominium and by the street address 768 Fifth Avenue, Borough of Manhattan, City, County and State of New York, said Unit being designated and described as Unit _____ in that certain amended and restated declaration, dated as of March 13, 2006 , made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York (hereinafter called the "**Condominium Act**") establishing condominium ownership of the Building and the land (hereinafter called the "**Land**") upon which the Building is situate (which Land is more particularly described in Schedule A annexed hereto and by this reference made a part hereof), which declaration was recorded in the New York County Office of the Register of The City of New York (the "**City Register's Office**") on March 13, 2006, as CRFN 2006040600067 (which declaration, and any amendments thereto, are hereinafter collectively called the "**Declaration**"). The Unit is also designated as Tax Lot ___in Block _____ of the Borough of Manhattan on the Tax Map of the Real Property Assessment Bureau of The City of New York and on the Floor Plans of the Building certified by _____ on _____, 200__, and filed with the Real Property Assessment Bureau of The City of New York on _____, 200__, as Condominium Plan No. ___ and also filed in the City Register's Office on _____, 200__, as Condominium Plan No. ___;

together with an undivided _____% interest in the Common Elements (as such term is defined in the Declaration) of The Plaza Condominium;

together with the appurtenances and all the estate and rights of Grantor in and to the Unit;

together with, and subject to, all of the rights, obligations, easements, restrictions and other provisions set forth in the Declaration, the Condominium By-Laws (as defined in the Declaration) as may be amended from time to time (said By-Laws and any amendments thereto are hereinafter collectively called the "**Condominium By-Laws**"), and the Hotel By-Laws (as defined in the Declaration) as the same may be amended from time to time (said By-Laws and any amendments thereto are hereinafter collectively called the "**Hotel By-Laws**"), including, without limitation, the restrictions and other provisions with respect to the permitted uses of the Unit; all of which shall constitute covenants running with the Land and shall bind any person

having at any time any interest or estate in the Unit, as though recited and stipulated at length herein;

subject also to such other liens, agreements, covenants, easements, restrictions, consents, other matters of record as pertain to the Unit, to the Land and/or to the Building (which Land and Building are hereinafter collectively called the "**Property**") as more particularly described in Schedule B annexed hereto and by this reference made a part hereof.

**TO HAVE AND TO HOLD** the same unto Grantee, and the heirs or successors and assigns of Grantee, forever.

If any provision of the Declaration or the By-Laws is invalid under, or would cause the Declaration or the By-Laws to be insufficient to submit the Property to, the provisions of the Condominium Act, or if any provision that is necessary to cause the Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from the Declaration or the By-Laws, or if the Declaration and the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the applicable provisions of Article 17 of the Declaration shall control.

Grantor covenants that Grantor has not done or suffered anything whereby the Unit has been encumbered in any way whatever, except as set forth in the Offering Plan and the Purchase Agreement (each as defined in the By-Laws), and the Declaration and By-Laws. This covenant is for the personal benefit of Grantee only and cannot be assigned to, exercised by, or inure to the benefit of any other person or entity, including, without limitation, any insurer of Grantee's title or successor to Grantee's interest.

In the event of a claimed breach of any covenant of Grantor contained in the preceding paragraph, Grantee shall first seek recovery against Grantee's title insurer before proceeding against Grantor for any breach of such covenants, it being agreed that the liability of Grantor shall be limited to the extent only that any loss or damage shall not be covered by such title insurance. In the event that Grantee shall elect not to purchase title insurance, then the liability of Grantor shall be limited to the extent only that any loss or damage would not have been covered by the title insurance that was available to Grantee as of the date of this conveyance. The terms of any marked-up title binder issued by any title insurer that is a member of the New York State Land Title Association, Inc. in connection with any unit in the Building shall be conclusive evidence against Grantee of the title insurance coverage that was available to Grantee as of the date of this conveyance.

Grantor, in compliance with Section 13 of the Lien Law of the State of New York, covenants that Grantor will receive the consideration for this conveyance, and will hold the right to receive such consideration, as a trust fund for the purpose of paying the cost of the improvements at the Property required to be made by Grantor and will apply the same first to the payment of the cost of such improvements before using any part of the same for any other purposes.

Grantee hereby accepts and ratifies the provisions of the Declaration and the By-Laws (and any Rules and Regulations adopted under the By-Laws) and agrees to comply with all

the terms and provisions thereof, including, without limitation, all the terms and provisions with respect to the permitted uses of the Unit.

Grantee hereby acknowledges that the Property shall at all times be known as "The Plaza Condominium" except as otherwise provided in the Declaration.

This conveyance is made in the regular course of business actually conducted by Grantor. The Unit is not subject to a credit line mortgage.

The term "**Grantee**" shall be read as "**Grantees**" whenever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, Grantor and Grantee have duly executed this indenture as of the day and year first above written.

CPS 1 REALTY LP

By: CPS 1 Realty GP LLC, its general partner

By:_____
Miki Naftali
President

PURCHASER:

_____
(Purchaser's Signature)

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

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

_____
Notary Public

STATE OF _____ )
) ss.:
COUNTY OF _____ )

On the __ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of _____, County of _____ and State of _____.

_____
Notary Public

## SCHEDULE A

Description of the Land

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of West 58th Street with the westerly side of Fifth Avenue Plaza;

RUNNING THENCE northerly along the westerly side of Fifth Avenue Plaza, 200 feet 10 inches to the corner formed by the intersection of the southerly side of West 59th Street with the said westerly side of Fifth Avenue Plaza;

THENCE westerly along the southerly side of West 59th Street, 275 feet;

THENCE southerly parallel with Fifth Avenue Plaza, 100 feet 5 inches to the center line of the block;

THENCE westerly parallel with West 59th Street and along said center line, 10 feet:

THENCE southerly parallel with Fifth Avenue Plaza, 100 feet 5 inches to the northerly side of West 58th Street;

THENCE easterly along the northerly side of West 58th Street, 285 feet to the first mentioned corner, the point or place of BEGINNING.

Fifth Avenue Plaza is now known as Grand Army Plaza.

59th Street is now known as Central Park South.

## SCHEDULE B

Permitted Encumbrances

Refer to Permitted Encumbrances set forth
as Schedule A to the Purchase Agreement

[To be inserted prior to Closing]

**EXHIBIT 4**
DESCRIPTION OF PROPERTY AND BUILDING CONDITION

# DESCRIPTION OF THE PROPERTY AND SPECIFICATIONS

Plaza Hotel - Condominium
768 Fifth Avenue
New York, New York

## A. Location and Use of the Property:

1. Address: 768 Fifth Avenue
New York, New York

2. Block/Lot Number: Block 1274, Lot 25 (Building Lot)

The Property will be benefited and/or burdened by the followings easements:

The Property will be benefited by a light and air easement from Lot 55 (22 Central Park South, to the west on Central Park South).

The Property will be both benefited and burdened by various mechanical and ventilation easements from Lot 55.

The Property will be benefited by various egress easements from Lot 55.

3. Zoning: Zone C5-2.5 (Special Midtown District) and R10-H. Zone C5-2.5 fronts on Central Park South, Fifth Avenue and the easterly portion of the lot on West 58th Street. Zone R10-H fronts on the westerly portion of the lot on West 58th Street.

4. Permissible Uses: Zone C5-2.5 (Special Midtown District): Use Groups 1-6, 9-12 as per New York City Zoning Resolution, which permits residential, community facility and commercial uses.

Zone R10-H: Use Groups 1-4 as per New York City Zoning Resolution, which permits residential and community facility uses.

The Property and proposed uses will comply with all zoning and use requirements at closing.

The existing Building is a hotel with restaurants, banquet facilities and retail, which is a pre-existing nonconforming use in the R10-H zone. The conversion to residential use is permitted as-of-right in both zones. The location of Residential Units on the same floor as commercial use is permitted as-of-right under the provisions for residential conversion of the zoning resolution.

Portions of the Building which are not converted to residential use, including restaurants, will remain as hotel or hotel accessory use until such time as a Special Permit (74-711), which is planned to be sought, is granted, at which time some of the restaurant and hotel accessory spaces in the lower floors will become retail space, commercial use group 6 (restaurant), or other permitted commercial use.

In the event that the Special Permit application is denied, these spaces could remain hotel or hotel accessory use, be converted to residential or another conforming use or combination thereof.

B. Status of Construction:

1. Year built: 1907, 1921 extension on W. 58th St.

2. Class of Construction: Class 1 (old code), conforming to all applicable regulations of the Building Code of the City of New York.

When complete, the hotel will be in compliance with all applicable Accessibility Regulations of the New York City Building Code. As required by code, Condo Hotel Units 1134, 1234, 1334, 1434, 1534, 1634, 1734, 1834, 1934, as well as approximately 6 suites in the Transient Hotel Unit will be compliant.

3. Certificate of Occupancy:

The Plaza Hotel has a Certificate of Occupancy, dated August 31, 1992, which allows hotel rooms on the 3rd through 18th floors; apartments, offices, accessory shops, storage rooms and a telephone room on the 19th floor and Penthouse; and storage rooms, restaurants, stores, offices and ballrooms, in the subcellar, the subcellar mezzanine, the cellar, 1st

floor, 1st floor mezzanine and 2nd floor. The Plaza Hotel has also received a series of Temporary Certificates of Occupancy, the latest of which is dated December 16, 2004, which is substantially identical to the 1992 C of O, except that in the cellar an accessory health club has replaced a restaurant and theater. A new Certificate of Occupancy, primarily J2, apartments, and J1, hotel, will be issued for the Building when the alteration is complete. A new Temporary Certificate of Occupancy will be issued upon completion of construction of a portion of the Condo Hotel section of the Building. The Sponsor will obtain a temporary Certificate of Occupancy for each Condo Hotel Unit prior to the closing of each Condo Hotel Unit.

4. Description of Work:

The existing Building will undergo a major interior rehabilitation with the exception of certain interior elements that will be preserved per NYC Landmarks Preservation Commission. See Article I.5 of this report, 'Landmark Status'. The existing exterior of the Building is to remain with the exception of new roofing surfaces as required. A new one-story addition (floor 21) will be added above floor PH, which will contain the upper level of the new duplex apartments and mechanical spaces. There will also be small additions at the 19th and PH floors on the north and east sides of the courtyard. Substantially all mechanical equipment, plumbing, sprinklers, electrical systems, will be replaced with the exception of existing incoming utility services, existing air handling units serving some of the 1st floor spaces of the Residential Section, existing fire reserve tank on roof, existing life safety generators and existing fuel oil storage that will remain. All of these will be tested and refurbished as required to assure that they are in proper working order. All lintels, sills, terraces, existing storage tanks and vaults to be retained will be refurbished as required to be in useable condition. All piping will be in good condition at closing. Although primarily new, there will be a combination of new and existing partitions and finishes throughout, with the exception of certain rooms that are being preserved per the NYCLPC which will be retained and refurbished.

C. Site:

1. Size:

The size of the Land is approximately 53,723 square feet.

2. Number and Use of The Building:

The Building, which will be the only structure on the Property located on the west side of Fifth Avenue from Central Park South to West 58th Street. The Building will consist of 181 Residential Units, Hotel, 1 Accessory Unit and1 Club Unit.

The component of the Building referred to in this report as 'Hotel' will be renovated by the Unit Owner/Owners and/or lessees. The 'Hotel' will consist of 1 Transient Hotel Unit consisting of 13[redacted] transient guest suites, approximately 152 Condo Hotel Units, which will be Units for individual ownership, as well as Hotel Limited Common Elements. The Condo Hotel Units are the only Units being offered in this Plan.

The Residential Units and Residential Limited Common Elements will be collectively known as the Residential Section. The Residential Units are offered by a separate offering plan.

The Hotel, Accessory Unit and Club Unit will collectively be known as the Non-Residential Section.

The Club Unit is an existing commercial health club[redacted] The new owners may elect to renovate the existing club.

The primary residential entrance will be located on Central Park South. The primary entrance to the Hotel will be from the combined entrance on Fifth Avenue with a secondary dedicated entrance located on West 58th Street. Entrances to the Accessory Unit will be located on Central Park South, Fifth Avenue and West 58th Street. Interior convenience doors will be located between the residential lobby and the Accessory Unit and between the Hotel and the Accessory Unit. The common loading dock will be located on West 58th Street.

3. Streets:

The Property is abutted by Central Park South, Fifth Avenue and West 58th Street. These streets are

paved with asphalt, owned and maintained by the City of New York and are in fair condition.

The streets abutting the Property are pitched to drain through catch basins. There are three catch basins, one on each street. The catch basins are part of the New York City storm water drainage system. They are in usable condition.

4. Drives, Sidewalks and Ramps:

The existing sidewalks adjacent to the Property are primarily concrete sidewalks, with certain accent areas of terrazzo, running full width from the property line along each street and pitched for drainage to the curb. All curbs abutting the Property are existing bluestone and metal curbs. The sidewalks and curbs are generally in good condition, as they were replaced in either 2000 or 2004, with the exception of a portion of the sidewalk along West 58th Street. Sidewalk lighting will be provided primarily by the three existing New York City light poles and wall mounted sconces. At the completion of the renovation, the Sponsor will repair any then existing damaged sidewalk or curbs. There is site lighting at entrances.

D. Utilities:

1. Electricity:

Electricity is provided by Consolidated Edison Company ("Con Edison"), a regulated company, and is direct metered to the Building. The electricity consumed in the Non-Residential Units will be direct metered by the Utility and separately sub-metered and paid for by the owners of such Units or their tenants. The cost of the electricity consumed in the Hotel Section and the Hotel Limited Common elements will be borne by the Hotel Unit Owners as a common expense and be allocated to each Hotel Unit as noted in the budget. The electricity consumed by the Residential Section will be direct metered by the Utility. The electricity consumed by each Residential Unit (including the electricity required to power water-source heat pumps) is individually sub-metered by the Building. The electricity consumed in the common areas of the Residential Section will be separately sub-metered and the cost of the same will be borne by the Residential Unit Owners as a common expense and be allocated to each Unit as noted in the budget.

Finally, the electricity consumed in the common areas of the Building will be separately sub-metered and the cost of the same will be borne by the Unit Owners as a common expense and be allocated to each Unit as noted in the budget.

2. Gas:

Gas is provided by Con Edison. Gas consumed by each of the Non-Residential Units will be separately metered and paid for by the Owners of such Units or their tenants. The cost of the gas consumed in the Hotel Limited Common Elements including all gas used for gas heating equipment serving corridors will be borne by the Hotel Unit Owners as a common expense and be allocated to each Hotel Unit as noted in the budget. Gas serving the Residential Section will be direct metered. The cost of the gas consumed in the Residential Section will be borne by the Residential Unit Owners as a common expense and be allocated to each Residential Unit as noted in the budget.

3. Water and Sewer:

Water and sewer service are existing by the City of New York. Any water consumed in the Accessory and Club Units and the Residential Section will be separately sub-metered. The charges for the water and the corresponding sewer rents for Accessory and Club Units and the Residential Section will be paid for by the Owners of the respective Units or their tenants. The charges for water and sewer services provided to the balance of the Building and the Hotel (including Hotel Units and Hotel Limited Common Elements) and the General Common areas of the Building) will be sub-metered and borne by all Unit Owners as a common expense and be allocated to each Unit as noted in the budget.

4. Telephone:

Telephone service will be provided by Verizon and/or another Local Exchange Carrier (LEC), Competitive Local Exchange Carrier (CLEC) or a cellular service provider. Telephone service is not metered. A centralized voice communications system (PBX – Public Branch Exchange and/or Voice over IP) will service the 'Hotel' consisting of the Transient Hotel Unit, Condo Hotel Units, and Hotel Limited Common Elements. The cost of all telephone (voice) services will be borne by Hotel Unit Owners as a common expense. Local and long distance charges incurred in

the Accessory and Club Units and the Residential Section will be borne by the Owners of the respective Units or their tenants. The telephone charges with respect to the public areas of the Hotel (such as the concierge's desk, hotel manager's office, maintenance offices and shops, etc.) will be borne by the Hotel Unit Owners as a common expense and be allocated as noted in the budget. Similarly, the charges with respect to the telephones in the other non-Residential and Residential Units will be separately paid for by the respective Unit Owners or their tenants.

5. Cable/Satellite Television:

Cable/Satellite television service will be provided by Time Warner Cable TV of New York, Satellite TV (such as DirecTV, Primestar, and the Dish Network) and/or another New York City franchised terrestrial cable service provider. Cable/Satellite television services are not metered. The 'Hotel' consisting of the Transient Hotel Unit, Condo Hotel Units and Hotel Limited Common Elements will be prewired for television services supplied either by terrestrial or satellite providers. Television service charges for the Accessory and Club Units and the Residential Section will be borne by the Owners of the respective Units or their tenants. The cable/satellite charges provided to any public areas of the Hotel (such as the concierge's desk, hotel manager's office, maintenance offices and shops, etc.) will be borne by Hotel Unit Owners as a common expense and be allocated as noted in the budget. Similarly, the charges with respect to the cable/satellite service in the other non-Residential and Residential Units will be separately paid for by the respective Unit Owners or their tenants.

6. On-demand services: On demand services (such as guest account review automated check out, movies and games) will be provided by vendors such as LodgeNet Entertainment Corp., Inncom, On Command Corp. and KoolConnect. These services are not metered. For the Hotel, Transient Hotel Unit, Condo Hotel Units and Hotel Limited Common Elements the end user is billed directly. A percentage of these charges must be allocated for artist licensing and royalty payments as dictated by Federal statutes. Cable/satellite service in

the other non-Residential and Residential Units will provide 'on-demand' entertainment and will be separately paid for by the respective Unit Owners or their tenants.

7. High Speed Internet:

For the Hotel, Transient Hotel Unit, Condo Hotel Units and Hotel Limited Common Elements high speed Internet access will be provided either by on-demand hospitality service vendors, wireless LECs or CLECs, or by the Owner's building network. Internet usage will not be metered, the end user will be billed directly. Internet service charges for the Accessory and Club Units and the Residential Section will be borne by the Owners of the respective Units or their tenants. In the other non-Residential and Residential Units, Unit Owners will be able to obtain high-speed internet access via Digital Subscriber Loop (DSL – a family of digital telecommunications protocols designed to allow high speed data communication over the existing copper telephone lines) or a terrestrial cable modem. The high-speed internet charges with respect to the public areas of the Building (such as the concierge's desk, resident manager's office, etc.) will be borne by all Unit Owners as a common expense and be allocated to each respective Unit as noted in the budget.

8. Steam:

Steam service will be provided by Con Edison or other service provider, and is direct metered to the Building. The steam consumed in the non-Residential Units will be separately direct metered to the Building and paid for by the owners of such Units or their tenants. Steam consumed in the Residential Section will be direct metered and all residential steam costs will be borne by the Residential Unit Owners as a Common Expense and be allotted to each as noted in the budget. Steam consumed in the Hotel will be direct metered and all hotel steam costs will be borne by the Hotel Unit Owners as a Common Expense and be allotted to each as noted in the budget. Steam consumed by 22 Central Park South will be separately sub-metered and paid for by the owners of such building or their tenants. Finally, the steam consumed in the common areas of the Building will be separately sub-metered and the cost of the same will be borne by the all Unit Owners as a common expense and be allocated to each Unit as noted in the budget.

E. Sub-Soil Conditions:

Based on the original Building structural drawings the existing foundation walls are a combination of poured-in-place reinforced concrete and brick on concrete strip footings. The existing slab-on-grade at the subcellar level is concrete over waterproofing on a gravel bed with drain piping leading to sump pit. The columns are supported on steel grillage over spread footings.

The existing foundation system of the Building, which includes the foundation, column footings, wall footings, foundation walls, various pits, the subsurface drainage system and related elements and is not readily open to inspection. Based on the limited available information, we understand the foundations are supported upon hard rock which is common in this area of Manhattan. In addition there are no signs of foundation settlement or movement showing up on any primary building framing elements. There are no signs of detrimental water penetration thru the foundations, and the existing drainage system appears to be in working order. However, no warranty is made by Sponsor or the undersigned that underground water conditions will not change in the future or that possible deterioration of hidden elements within the foundation might not have occurred given the age of the structure. The building is undergoing a major reconstruction at this time and any defects adversely affecting the integrity of the Building or its structure discovered during the course of reconstruction will be corrected.

F. Landscaping:

All landscaping at the 5th floor Exterior Garden Court will be new. The Exterior Garden Court is part of the Residential Limited Common elements and is not accessible to the Hotel.

1. Grass cover: None.

2. Plantings: Groundcovers (*Vinca minor, Hedera helix, Euonymus fortunei 'Coloratus'*) on the 5th floor courtyard surrounding the pitched water course.

Seasonal annual plantings (Impatiens, Begonias) in the planted areas and in decorative urns.

Evergreen shrubs (*Taxus baccata repandans, Ilex crenata 'Convexa', Rhododendron maximum, Prunus laurocerasus 'Schipkaensis'*) in front of the balustrade surrounding the 5th floor courtyard.

3. Trees: Seventeen (17) minor trees (*Amelanchier canadensis, Cornus florida, Viburnum prunifolium*) in the 5th floor courtyard; 12 at the west end of the courtyard and 5 at the southeast entrance to the courtyard from the hotel.

4. Fencing: Divider fences at hotel and residential private terraces will be metal.

5. Garden Walls: Cast stone balustrades (3-1/2' ht.) with decorative, planted urns, separate the private terraces from the interior of the courtyard.

6. Retaining Walls: Granite retaining walls (2-1/2' max. ht.) will support the cast stone balustrade and create a divider between private and public space in the courtyard.

7. Display Pools and Fountains:

A 48' x 25' pool with three spray jets will sit in the center of the eastern portion of the courtyard. It will be 15" high and surrounded by a 1'-8" wide granite coping.

A second pool with granite coping will be situated within the planted area in the western portion of the courtyard. It will feature a lighted sculptural element on a granite pedestal. This pool will spill into a pitched water course, surrounded by granite pavers that will run down towards the eastern part of the courtyard.

G. Building Size:

1. Total Height: Approximately 279'-0" from the sidewalk at Residential entrance on Central Park South to the top of roof at the southeast corner pavillion.

2. Number of Floors Below Grade:

There are 4 levels below grade with varying heights – Starting from the lowest level they are Mechanical Floor (D), Lower Concourse (C), Lower Concourse Mezzanine (B) and Main Concourse (A).

3. Number of Floors above Grade:
   There are 21 stories above grade, 1st Floor/Lobby Level, 2-19, PH, 21 and Main Roof.

5. Equipment Rooms: At Floors D, C, A, 19th, 21st and Main Roof.

6. Parapet/Railing Assemblies:
   The parapet and/or railing assemblies will extend a minimum of 3' -6" above the roofs.

H. Occupancy:
(Location of Units, Residential Lobby, Hotel Lobby)

Mechanical Floor (D):
None.
Lower Concourse (C):
Accessory Unit.
Lower Concourse Mezzanine (B):
None.
Main Concourse (A):
Accessory Unit, Club Unit.
1st Floor/Lobby Level:
Residential Lobby, Accessory Unit, Hotel Lobby, lower floor of 1 duplex Residential Unit.
2nd Floor: Upper floor of 1 duplex Residential Unit, Accessory Unit, Hotel Unit.
3rd Floor: 5 Residential Units, Accessory Unit, Hotel Unit.
4th Floor: 5 Residential Units, Accessory Unit, Transient Hotel Unit.
Floors 5-10: 65 Residential Units, Transient Hotel Unit.
Floors 11-19, PH and 21:
105 Residential Units, 152 Condo Hotel Units.

I. Structural System:

1. Structural System: The original existing structure was built circa 1907 and has a structural steel framing with concrete fill over terracotta slabs. The later addition (circa 1921)

has a structural steel framing with cinder concrete slabs. The base building structure that will be exposed during the renovation will be visually observed and conditions that require corrective work will be repaired. Where existing fireproofing of steel members is disturbed or removed during the alteration, new fireproofing of gypsum board and/or spray-on materials will be installed.

The current proposed renovation will use slab on metal deck for all infills and additional floor areas.

2. Exterior Walls:

The existing exterior walls are solid brick construction and brick on terracotta in some locations, generally with a plaster finish at the interior. The plaster finish will be repaired as required. The walls are approximately one foot thick with an 'R' rating of 2.5. The lower four floors of the street facades have a marble veneer over brick at the original portion of the Building and a limestone veneer over the brick at the 1920's addition. At various locations, terracotta is used as a decorative trim.

Exterior repair has been ongoing and will include all work items with respect thereto identified as necessary in the 'Existing Conditions Survey', prepared by Higgins and Quasbarth, a copy of which is on file and available for inspection at the Sponsor's office.

The entire façade of the building, including the ornamentation and decorative elements of the façade will be restored under the direction of a Licensced Professional Engineer experienced in exterior building restoration. The work will include the removal and replacement or repair of damaged masonry and ornamentation, the raking and repointing of masonry and mortar, filling and patching of significant cracks in the façade, structural repairs to façade as deemed necessary such as defects of anchorage or supports of façade elements or related materials uncovered during this process, the cleaning of all masonry surfaces and elements and stains removed, and recaulking of all windows, doors, grilles and louvers. Existing metalwork such as railings and banisters will be either repainted, or refinished. All restoration work will designed, detailed, and installed to levels

acceptable to the Landmarks Preservation Commission, and to satisfy the requirements of Local Law 10/11of the City of New York.

Neither Sponsor nor the undersigned will be responsible for the means, methods, or procedures used in the original installation of this ornamentation.

The new facades at the 21st floor, as well as the new portions of the facade at the 19th and PH floors will be constructed of metal panels, 6" metal studs, or masonry construction with 5½" R-19 batt insulation, with an interior finish of 5/8" gypsum wallboard, or a metal and glass windowwall system. The new walls, inclusive of the new interior finish, will have an aggregate nominal thickness of 1'-2" and an "R" rating of 19.

3. Doors and Windows:

There are a variety of existing window types and materials. The windows are primarily double hung, with some fixed panels and some sections of louver. Glass is primarily insulated glass, except for the windows below the 5th floor, which are single pane. Copper and copper and bronze-clad sash are predominant on the base of the Building. There are aluminum replacement windows and louvers in selective areas on the first through third floors. Throughout the upper floors of the Building and the mansard, aluminum windows were installed over the original wood frames, with the exception of the rounded corner turrets, where the original copper-clad sash and frames remain. No screens or separate storm windows will be provided. All exterior windowsills are existing stone. The perimeter of all windows are caulked to control water and air infiltration. The windows are generally in fair to good condition; and the renovation will include all work items with respect thereto identified as necessary in the 'Existing Conditions Survey', prepared by Higgins and Quasbarth, a copy of which is on file and available for inspection at the Sponsor's office.

Structural performance: Withstand without excessive deflection, damage or impairment of function the wind load established by the requirements of the New York City Building Code.

Local Law 11 report will be due in five year cycles. The next cycle will be due in 2007.

As noted in the By-Laws, portions of all curtains, drapes, blinds or other window treatment, by Unit Owners or Occupants, visible from the exterior of the Building should be white to give the Building a uniform exterior appearance.

4. Lot Line windows:

The windows on the west façade on the southerly section of the Building from floors 8-13 will be provided with sprinklers due to the proximity and construction of the building on the adjacent lot to the west. These windows, and above, may be required to be reduced in size and/or be provided with sprinklers where not currently provided, if the adjoining Property is ever redeveloped with one or more buildings of different configurations than that now located on the same. The rooms having these windows have other windows that, under the existing building codes, will satisfy light, air and other requirements for the lawful use of such rooms for habitation purposes. These windows in the Residential Units and Hotel are identified on the floor plans that follow this Report.

The Property is benefited by a light and air easement, which protects the windows on the west façade on the northerly section of the Building, however these windows on floors 5-13 will be provided with sprinklers due to the proximity and construction of the adjacent building to the west. Any future development (alteration or new construction) on the adjacent lot would be required, by any governing authorities having jurisdiction, to respect the legal light and air for these windows and not create a non-conforming condition. These windows in the Residential Units are identified on the floor plans that follow this Report.

5. Landmark Status:

The Building was designated an 'Individual Landmark' by the NYC Landmarks Preservation Commission ("LPC") in 1969. This designation applies only to the exterior of the Building. Additionally, in 2005, LPC designated a number of the significant spaces as Interior Landmarks. The designation applies to the Plaza Hotel Interior, ground floor (floor 1 of condominium) interior consisting of the Fifth Avenue

vestibules, Lobby, corridor to the east of the Palm Court, the Palm Court, Terrace Room, corridor to the north of the Palm Court connecting to the 59th Street Lobby and the Oak Room, foyers to the Edwardian Room from the corridor to the north of the Palm Court and the 59th Street Lobby, the Edwardian Room, 59th Street Lobby and vestibule, the Oak Room and Oak Bar, corridor to the east of the Oak Room, corridor to the south of the Palm Court, and the staircases connecting the ground floor to the mezzanine (2nd floor of the condominium) floor, mezzanine floor interior consisting of the Terrace Room Corridor, Mezzanine Foyer, Terrace Room balcony, Terrace Room and fountain, and the staircase connecting the mezzanine floor to the first (3rd floor of the condominium) floor Grand Ballroom Foyer, first floor interior consisting of the Grand Ballroom Foyer, Grand Ballroom Corridor, Grand Ballroom and stage, and Grand Ballroom boxes; and the fixtures and the interior components of these spaces, including but not limited to wall surfaces, ceiling surfaces and floor surfaces, murals, mirrors, chandeliers, all lighting fixtures, attached furnishings, doors, exterior elevator doors and grilles, railings and balustrades, decorative metalwork and attached decorative elements. This designation imposes special restrictions on current work being done as part of the alteration as well as upon the construction, alteration, demolition and reconstruction of the Building in the future. In the event any such construction, alteration, demolition or reconstruction of the Building would affect the exterior of the Building or protected areas of the interior, the Condominium will have to apply to the Landmarks Preservation Commission for permission to perform such work. LPC, before approving the work, could impose additional requirements or conditions, which could increase the cost and time required to complete the work. In addition, where proposed work in the Building requires a Building Permit, notwithstanding the fact that such work does not affect the protected exterior or protected interior portions of the Building, the LPC requires that a "certificate of no effect on protected architectural features" be issued. For the current renovation, a Special Permit (74-711) is required which entails approval by the NYC Department of City Planning due to the change of Occupancy and change of use.

6. Parapets and Coping: Any existing parapets and copings on the existing Building are existing masonry with existing terra cotta copings with metal rails as required and are in fair condition. Any new roof parapet construction will be a continuation of the new metal panel exterior wall with new metal copings. New painted metal rails will be added if required to meet the minimum 3'-6" height as required.

7. Chimneys and Caps: All unused flues will be eliminated after the equipment is decommissioned and removed. After removal of the flue above the roof, the roof penetration will be closed up.

The Residential Condominium Component will have one new refuse chute., and the Hotel Component will have one new linen chute. The chutes will each have an explosion vent and metal flashing collar. The chutes will be metal enclosed in a concrete and/or concrete block flue with 1 1/2 hour rated doors at every opening. The Building will have two restaurant flues terminating in accordance with the New York City Building Code at the roof of the Building. The flues will be enclosed in a concrete and/or concrete block and/or gypsum wallboard shaft. Bathroom exhaust vents will be provided with multiple fan systems exhausting to the exterior where required by code.

The majority of the existing fireplace flues will be eliminated and the flues will be decommissioned. The existing flues that are to remain are masonry, will terminate in accordance with the New York City Building Code at the roof of the Building, will be repaired as required and will be suitable for gas-firing.

8. Balconies and Terraces:

The private terraces will have a new surface finish of new concrete pavers typically including those surrounding the 5th floor Exterior Garden Court, granite pavers at 5th floor Exterior Garden Court, new or existing masonry parapets, new or existing stone, terracotta or aluminum coping, and painted aluminum rail if required. Dividers between private terraces will be metal fences. Dividers between 5th floor private terraces and Exterior Garden Court will be a cast stone balustrade. The existing parapets and copings

that are to remain after the renovation of the Building are generally in fair to good condition. Access to the terraces will be through new swing doors constructed of insulated tempered glass in aluminum frames.

Terraces will occur at the 5th and 9th floor of the Transient Hotel Unit, Condo Hotel Units PH2030, PH2032, PH2034, PH2036, PH2038 and PH2040, Exterior Garden Court at 5th floor and at the 5th, 19th, PH and 21st floors of the Residential Section.

There are existing decorative, inaccessible balconies at Condo Hotel Units 1521, 1523, 1525, 1527, 1529, 1531, 1533, 1534, 1535 and 1537 and on the 13th and 15th floors of the Residential Section.

9. Exterior Entrances:

The primary residential entrance on Central Park South has two existing revolving doors and a pair of existing swing doors. The secondary residential entrance/combined egress located on West 58th Street has 3 pairs of swing doors. The combined entrance to the Hotel and Accessory Unit on Fifth Avenue has 2 pairs of existing swing doors and one existing revolving door. The dedicated hotel entrance on Fifth Avenue will have a pair of swing doors and the secondary entrance to the Hotel located on West 58th Street has a pair of swing doors. The entrance to the Accessory Unit on West 58th Street has three pairs of swing doors, while the entrance on Central Park South will have one pair. All of these doors are bronze and glass. All entrances except the Accessory Unit entrance on West 58th Street have existing stone stairs with bronze handrails. Chair lifts are/will be provided per Section I. 19 of this Report. The common loading dock located on West 58th Street will have two new garage type roll-up doors.

The cast-iron and copper marquees, although not original features, have become important parts of the Plaza's character. There are eight marquees: three large marquees, four medium-sized and one smaller marquee. All of the marquees have copper tops set in ornamented cast-iron frames. Three of the marquees, located on Fifth Avenue, Central Park South and W. 58th Street, have been restored to first class condition since 2000 and will remain.

10. Service Doors: All service doors, existing and new will be 1.5 hour fireproof, self closing, hollow metal doors with metal frames.

11. Roof and Roof Structures:

All flat roof areas, whether new or existing will receive new roofing systems. The roofing system will be an Insulated Roof Membrane Assembly (IRMA) roof comprised of fluid-applied water-proofing installed below extruded polystyrene board insulation, installed below concrete pavers or stone ballast.

Flashing will be as follows: base flashing, fluid-applied waterproofing membrane; counter-flashing existing or new copper or stainless steel; and drain-flashing; neoprene.

Existing or new cast iron drains will be provided, which will discharge through existing or new internal and/or external leaders into the Building storm systems.

Existing green terra cotta roof tiles covering all of the sloped surfaces will be removed and replaced with new,
The new roofs will be warranted by the roofing manufacturer for a period of 10 years and guaranteed by the contractor for a period of two years.

There are existing metal and glass skylights over various stairwells, mechanical room and other locations. Generally the skylights are in fair to poor condition and will be repaired as required.

12. Fire Escapes: None.

13. Yards and Courts: The Exterior Garden Court at the 5th floor will be as described in Sections F and I.8 of this Report.

14. Interior Stairs: The new stairs will be metal pan with steel stringers and risers with either concrete treads and platforms and metal rails, or metal "panless" stairs.. The existing stairs are steel stringers with marble or concrete risers, treads and platforms and metal rails. The stair enclosures are a combination of existing terracotta and new masonry and/or gypsum wallboard and are painted. Duplex will have new wood stairs with new wood handrails. Any existing portions of the

stairs or enclosures that are to remain will be in good condition at closing.

| STAIR NUMBER | FLOORS SERVED | EXISTING/NEW | REMARKS |
|---|---|---|---|
| 1 | 1-Main Roof | New | |
| 2 | 1-4 | New | |
| 3 | C-1 | New | |
| 4 | 1-Main Roof | Existing | Marble partial/not fully enclosed |
| 6 | 1-21 | Existing 1-19<br>New 19-21 | Marble partial/not fully enclosed |
| 7 | C-21 | New C-4<br>Existing 4-21 | |
| 8 | 1-3 | Existing | Marble partial/not fully enclosed |
| 9 | 1 | Existing | Marble/not enclosed |
| 10 | 1-2 | Existing | Marble, not fully enclosed |
| 11 | A-1 | Existing | |
| 12 | A-1 | Existing | Marble, not enclosed |
| 13 | 1-4 | New | Marble, not enclosed |
| 14 | 1-2 | Existing | Not enclosed |
| 15 | 1-2 | Existing | Not enclosed |
| 16 | A | Existing | |
| 19 | D-C | Existing | |
| 20 | D-C | Existing | |
| 22 | D-C | Existing | |
| 23 | C-1 | New | |
| 24 | C-1 | New | |
| | | | |

15. Interior Doors and Frames:

The entrance door and frame to each Hotel Condo Unit will be flush wood 1-3/4/" thick with applied mouldings, F.P.S.C. 1 1/2 hour rated, STC 41 db, with painted metal frames, and stone saddles. Apartment interior swing and pocket doors will be raised flush wood in hollow metal frames with saddles as per the door schedule.

All public corridor doors and frames will be hollow metal doors. Stair hall doors and frames will be painted flush hollow metal, 1 3/4" thick, F.P.S.C. 1 1/2 hour rated with marble saddles.

Cellar and service area doors and frames will be painted flush hollow metal, 1 3/4" thick, F.P.S.C. 1 1/2 hour rated with saddles, as appropriate.

16. Elevators:

| ELEV. NO. | FLOORS SERVED | SPEED (ft./min) | CAP. (LBS/ PEOPLE) | MACH. TYPE | MANUF./ MODEL NO. |
|---|---|---|---|---|---|
| PE1 | 1-2, 3-PH | 700 | 2,000/11 | Overhead geared traction | Existing |
| PE2 | 1-2, 3-PH | 700 | 2,000/11 | Overhead geared traction | Existing |
| PE3 | 1-2, 3-PH | 700 | 2,000/11 | Overhead geared traction | Existing |
| SE4 | C, A, 2-PH | 350 | 2,500/13 | Overhead geared traction | Existing |
| PE5 | A, 1, 3-19, PH | 700 | 2,500/13 | Overhead gearless | Existing/ Upgrade |
| PE6 | C, A, 1, 3-19, PH | 700 | 2,500/13 | Overhead gearless | Existing/ Upgrade |
| PE7 | C, A, 1, 3-19 | 700 | 2,500/13 | Overhead gearless | Existing/ Upgrade |
| PE8 | A, 1, 3-19 | 700 | 2,500/13 | Overhead gearless | Existing/ Upgrade |
| PE9 | A, 1, 2 | 150 | 2,500/13 | Hole-less hydraulic | New; re-use hoistway |
| PE11 | 1, 3, 4 | 150 | 3,500/18 | Hole-less dual-roped hydraulic | New |
| PE12 | 1, 3, 4 | 150 | 3,500/18 | Hole-less dual-roped hydraulic | New |
| PE13 | A, 1-3 | 250 | 3,500/18 | Overhead geared traction | Existing/ Upgrade |
| PE14 | A, 1-3 | 250 | 3,500/18 | Overhead geared traction | Existing/ Upgrade |
| FE16 | C, B, A, 1-3 | 100 | 6,000/32 Freight | Hole-less dual-roped hydraulic | New |
| SE17 | C, A, 1-4 | 150 | 4,000/21 Service | Hole-less dual-roped hydraulic | New |
| SE18 | C, A, 1-4 | 150 | 4,000/21 Service | Hole-less dual-roped | New |

| ELEV. NO. | FLOORS SERVED | SPEED (ft./min) | CAP. (LBS/ PEOPLE) | MACH. TYPE | MANUF./ MODEL NO. |
|---|---|---|---|---|---|
| | | | | hydraulic | |
| SE19 | C, A, 1 | 150 | 2,500/13 | Hole-less dual-roped hydraulic | New |
| SE20 | C, A, 1 | 150 | 2,500/13 | Hole-less dual-roped hydraulic | New |
| DW21 | A, 1 | 50 | 500/No Pass. | Traction Dumbwaiter | New |
| SE22 | C, 1-19 | 400 | 3,000/16 | Overhead geared traction | New |
| SE23 | C, 1-19 | 400 | 3,000/16 | Overhead geared traction | New |
| SE24 | A, 1 | 100 | 2,000/11 Service | Hole-less Hydraulic | New |
| SW25 | C, A, 1 | 50 | 3,000/16 Freight | Hydraulic | Existing/ Upgrade |

| ELEV. NO. | PLATFORM SIZE | DOOR SIZE | DOOR OPERATION | REMARKS |
|---|---|---|---|---|
| PE1 | 5'-0" w x 5'-8" d | 2'-10" x 6'-10" | 2-speed center opening | |
| PE2 | 5'-0" w x 5'-8" d | 2'-10" x 6'-10" | 2-speed center opening | |
| PE3 | 5'-0" w x 5'-8" d | 2'-10" x 6'-10" | 2-speed center opening | |
| SE4 | 5'-4" w x 6'-6" d | 3'-6" x 7'-0" | 2-speed side opening | |
| PE5 | 5'-0" w x 6'-2" d | 3'-0" x 6'-10" | 2-speed side opening | |
| PE6 | 5'-0" w x 6'-2" d | 3'-0" x 6'-10" | 2-speed side opening | |
| PE7 | 5'-0" w x 6'-2" d | 3'-0" x 6'-10" | 2-speed side opening | |
| PE8 | 5'-0" w. x 6'-2" d | 3'-0" x 6'-10" | 2-speed side opening | |
| PE9 | 6'-0" w x 5'-6" d | 3'-6" x 7'-0" | 2-speed side opening | |
| PE11 | 7'-4" w. x 6'-2" d | 4'-0" x | Single-speed | |

| ELEV. NO. | PLATFORM SIZE | DOOR SIZE | DOOR OPERATION | REMARKS |
|---|---|---|---|---|
| | | 8'-0" | center opening | |
| PE12 | 7'-4" w. x 6'-2" d | 4'-0" x 8'-0" | Single-speed center opening | |
| PE13 | 7'-0" w x 5'-9" d | 4'-2" x 7'-0" | Single-speed center opening | |
| PE14 | 7'-0" w x 5'-9" d | 4'-2" x 7'-0" | Single-speed center opening | |
| FE16 | 8'-4" w. x 7'-4" d | 8'-0" x 8'-0" | Vertical Bi-Parting | |
| SE17 | 7'-0" w. x 7'-3" d | 4'-6" x 7'-0" | 2-speed side opening | |
| SE18 | 7'-0" w. x 7'-3" d | 4'-6" x 7'-0" | 2-speed side opening | |
| SE19 | 5'-4" w. x 6'-8" d | 3'-6" x 7'-0" | 2-speed side opening | |
| SE20 | 7'-0" w. x 6'-1" d | 4'-0" x 7'-0" | 2-speed side opening | |
| DW21 | 3'-0" w. x 3'-0" d | 3'-0" x 4'-0" | Vertical Slide | |
| SE22 | 5'-4" w. x 7'-0" d | 3'-0" x 7'-0" | 2-speed side opening | |
| SE23 | 5'-4" w. x 7'-0" d | 3'-0" x 7'-0" | 2-speed side opening | |
| SE24 | 6'-0" w. x 5'-1" d | 3'-6" x 7'-0" | 2-speed side opening | |
| SW25 | Existing | Existing | Bilco S/W Doors | |

PE Passenger Elevator
SE Service Elevator
FE Freight Elevator
SW Sidewalk Elevator
CL Chair Lift
DW Dumb-waiter

The make and model of the new elevators, SE4, PE9, SE17 and 18, PE19 and 20, SE22, SE23 and SE24 will be either Otis Elevator Company/Custom, Schindler Elevator Company/Custom, Thyssenkrupp Elevator Company/Custom, Kone Elevator

Company/Custom, or approved equal utilizing industry standard and quality manufacturers and components.

The existing elevators PE1, 2, 3, 5, 6, 7 and 8, PE13 and 14 will be modernized/upgraded utilizing industry standard quality components.

The existing elevators PE11 and 12 were recently modernized and will be retained.

The existing sidewalk car, SW25, will be retained and upgraded utilizing industry standard and quality components.

17. Elevator Cabs:

The following is a finish schedule for the elevator cabs. All finishes are new except as noted below: A manufacturer for the elevator cabs has not yet been selected:

| ELEV. NO. | FLOOR | WALLS | CEILING | LIGHTING | REMARKS |
|---|---|---|---|---|---|
| PE1 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE2 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE3 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| SE4 | metal | metal | metal | recessed downlights | |
| PE5 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE6 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE7 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE8 | ceramic mosaic tile, carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE9 | ceramic mosaic | wood/ metal/ | wood | cove and surface- | |

| ELEV. NO. | FLOOR | WALLS | CEILING | LIGHTING | REMARKS |
|---|---|---|---|---|---|
| | tile, carpet | mirror | | mounted | |
| PE11 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE12 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE13 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| PE14 | mosaic tile and/or carpet | wood/ metal/ mirror | wood | cove and surface-mounted | |
| FE16 | metal | metal | metal | recessed downlights | |
| SE17 | metal | metal | metal | recessed downlights | |
| SE18 | metal | metal | metal | recessed downlights | |
| SE19 | metal | metal | metal | recessed downlights | |
| SE20 | metal | metal | metal | recessed downlights | |
| DW21 | metal | metal | metal | recessed downlights | |
| SE22 | metal | metal | metal | recessed downlights | |
| SE23 | metal | metal | metal | recessed downlights | |
| SE24 | metal | metal | metal | recessed downlights | |
| SW25 | metal | metal | metal | recessed downlights | |

18. Escalators: Two new chain drive type escalators will be provided, with a step width of 32 inches, speed of 100 fpm (4,000 persons/hour) and glass side balustrades. The escalators will be located in the Accessory Unit. The two escalators (1-2) will serve landings A and 1. The manufacturer and model nos. of the escalators will be Schindler 9300-10, KONE ECO-3000, Thyssen 'Velino' or Approved Equal.

19. Chair Lifts: The existing chair lift, located on the Central Park South side of the building, serving from the sidewalk to 1st Floor/Lobby Level, will be retained and upgraded. New chair lifts will be installed at the Fifth Avenue entrance also serving from the sidewalk to 1st Floor/Lobby Level and in the Accessory Unit, serving a change of elevation on the 1st Floor/Lobby Level. Each of the chair lifts will travel at 25 ft./min., have a capacity of 700 lbs/1 person, 3'-0" x 4'-0" platform and have rack/pinion type machines. Each will be of quality manufacture, as produced by Savaria, Concord or approved equal.

J. Auxiliary Features:

1. Laundry Room: None.

2. Refuse Disposal: The refuse from the Hotel Condo Units will be picked up by hotel staff, stored in the refuse Room located at the Lower Concourse (C) and then deposited curbside for pick-up.

K. Plumbing and Drainage:

1. Water Supply: The existing water services to remain, and distribution piping will be replaced where required. New backflow preventers (RPZ's) shall be provided for all water services. A new suction tank (15,000 gallon) shall be provided to serve the new constant pressure pumping system, which will serve the entire Building.

2. Domestic Hot Water: Separate new central domestic water heaters (steam generated) and piping distribution system shall be provided for the Residential Units and Hotel. Accessory Unit and Club Unit shall generate their own domestic hot water.

3. Fire Protection System: New separate sprinkler and standpipe risers with distribution system provides full sprinkler and fire standpipe hose coverage throughout the Building.

A new 750 GPM automatic fire pump provides the required system pressure for the sprinkler system only. Existing storage tank at the roof level and new storage tank at the 19th floor will provide the required second service for the Accessory Unit.

New hose racks will be provided where required.

Existing Siamese connections shall remain or be added as required.

4. Water Storage Tanks: New steel water storage tank, totaling 14,000 gallons, will serve sprinkler system for the retail component of the accessory areas only. The existing 5,000 gallon tower storage tank will only serve the fire standpipe system throughout the building. Domestic water service is provided through a new 15,000 gallon suction tank and new constant pressure system.

5. Water Pressure: Water pressure for all zones is provided by a new constant pressure pumping system. Minimum pressure in all zones is 25 psi. Pressure reducing valves are provided to limit maximum pressure to 85 psi.

6. Sanitary Sewage System:

The existing sanitary drainage is connected to public street sewer. An existing sewage ejector is provided for sanitary fixtures below house sewer level, which will be upgraded as required.

The existing sewage piping is cast iron piping for all soil, waste and vent. All discharge to house trap connected to city sewer.

7. Storm Drainage System:

The storm drainage system consists of existing risers, and horizontal piping connected to house trap and discharging into city sewer. Any portions of storm piping found in poor condition will be replaced with "no hub" cast iron piping.

Catch Basins: There are no catch basins required on the Property.

Yard and Roof Drains: Drains at tank level roof and main roof and at terraces connected to leaders and storm drainage system.

8. General: A new system of water piping will be provided throughout. System will include new constant pressure system and hot water heaters. Only existing

common areas which retain their original fabric will retain and re-use existing piping.

New sanitary and vent risers will be utilized with new branch waste and vent piping to fixtures. Only existing common areas which retain their original fabric will retain and re-use existing piping.

L. Heating, Ventilation & and Air Conditioning:

1. Heating:

Heating will be provided to the individual Hotel Units by their respective 4-pipe fan coil units with heat injected into the recirculating water loop as required. Each fan coil unit and all associated piping shall be new. Each fan coil unit will be controlled with a separate thermostat.

Con Edison steam injects heat into the fan coil water loop via a new shell and tube heat exchanger, and is also used to generate domestic hot water. The steam service is reduced in pressure with new and existing pressure reducing valves with double reduction to 12 psi with supply to fan coil loop converter, domestic hot water heaters and steam heating coils.

2. Air Conditioning:

Air conditioning is provided for all Hotel Units by new 4-pipe fan coil units. Air conditioning for common areas will be provided by new chilled water air handling units and associated costs will be borne by all Unit Owners as a common expense.

3. Chilled Water/Condenser Water:

Chilled water used in the central air conditioning systems serving Building common areas and all Units is produced by new electric centrifugal chillers having a total rated capacity of 1,140 tons. Chilled water used for the Building common areas and all Units will be metered, and costs allocated accordingly.

The condenser water to be used by the chillers and the all Units is produced by new cooling towers located on the roof. Condenser water use by the all Units will be metered and associated costs will be borne by all Units or their tenants, and costs allocated accordingly. Chillers are located in the sub-subcellar (Level D) mechanical room.

4. General:

The central system is designed to provide sufficient heat to maintain inside conditions of 70 ±2 degrees Fahrenheit when the outside conditions are 5 degrees Fahrenheit and sufficient air conditioning to maintain inside conditions of 78 degrees Fahrenheit and 50% ±5% relative humidity when the outside conditions are not more than 89 degrees Fahrenheit dry bulb and 73 degrees Fahrenheit wet bulb. The system is designed to meet the requirements of the current New York State Energy Code.

The rated capacities of the various types of units to be installed in the Transient Hotel Unit and Condo Hotel Units are as shown on the following table. Units are provided in each exterior occupied room,

| Fan Coil Unit No. | Climate Master Model Number | CFM | GPM (CLG/HTG) | COOLING TBTUH | HEATING SBTUH |
|---|---|---|---|---|---|
| A | FHY04 | 270 | 1.1/1.0 | 7,827 | 10,299 |
| B | FHY06 | 460 | 1.6/1.7 | 11,190 | 17,248 |
| C | FHY10 | 625 | 2.3/2.5 | 14,729 | 24,580 |
| D | FHY12 | 890 | 3.1/3.5 | 21,807 | 35,499 |
| | | | | | |

Reference should be made to the Building plans and specifications for the types of units to be installed in each Hotel Unit, which are on file at the sales office.

Heating and cooling is available throughout the year as required and will be adequate for peak periods.

5. Public Areas:

New air-cooled rooftop air conditioning units provide ventilation air and conditioning to the Hotel corridors. The main lobby and Building common areas are served with new packaged chilled water air handling units.

6. Special Ventilation:

A new system of mechanical ventilation shall be provided for all Hotel Units. Interior bathrooms will be ventilated through new vertical risers to new central fan systems exhausting to exterior of Building.

7. Fresh Air:

Fresh air for Condo Hotel and Transient Hotel Unit interiors will be available by opening windows only.

M. Gas Supply:

A separate gas riser will be provided to service the building roof top heating units. The gas will be metered by the Utility Company, and will be supplied and distributed through new black steel piping.

N. Electrical Systems:

Electric service is provided by Con Edison at 120/208 Volts, 3 phase, 4 wire to an electric Switchboard Room and distributed through various size service and distribution switches for the Residential Units and the Non-Residential Units.

The Building is served via five Con Edison electrical service take-offs. The five service take-offs are directly metered by five Con Edison meters that are totalized. The combined limit for the three most westerly take-offs is 8300 amperes per phase per half hour demand. The combined limit for the two most easterly take-offs is 5700 amperes per phase per half hour demand.

The Non-Residential Units will be separately sub-metered and all costs will be borne by the Non-Residential Units or their tenants. There will be sub-metering for common areas of the Building.

Electric service will be provided to the Residential Units from new Electrical Closets located on every floor. Individual feeders, which will vary in capacity, will be run to each Residential Unit. Metering for each residential unit is sub-metered by the Condominium Board.

Electric service will be provided to the Condo Hotel Units and each guest room in the Transient Hotel Unit from new Electrical Closets located on every floor. Individual feeders, which will vary in capacity, will be run to each Condo Hotel Unit and each guest room in the Transient Hotel Unit.

Circuits will be provided to each Condo Hotel Unit and each guest room in the Transient Hotel Unit with the capacity to handle the typical loads within the Unit

(lighting, appliances, receptacles) including its fan-coil units. On average, each hotel condominium will have the equivalent of 70.5 amps at 120V single phase.

Switched incandescent or fluorescent lighting fixtures will be provided in all bathrooms, walk-in closets, foyers, and kitchens. Ground fault receptacles will be provided in bathrooms and kitchens.

Unit services, including switching and fusing, shall be adequate for modern day appliances, lighting, convenience outlets, washers, dryers, and fan coil units.

The electrical distribution and wiring system for the Hotel will be new with new electrical panels, conduit and wiring.

Individual feeders, which vary in capacity, will be run to each Condo Hotel Unit as follows:

| CONDO HOTEL UNIT TYPE | NUMBER OF 20A CIRCUITS |
|---|---|
| Junior Suite | 3 |
| King Suite | 3 |
| 1 Bedroom Suite | 4 |
| 2 Bedroom Suite | 4 |
| Duplex Suite | 4 |

O. Telephone, Intercom and Security Systems:

Telephone service enters the Building, and will be fed to a TSER (Telecommunications Service Entry Room), and to a main telephone room (Technology Equipment Room) and then distributed through conduits and sleeves to various areas of the Building, including the Floor Serving Terminal servicing the Residential Units and hotel rooms. Each Residential and Non-Residential Unit will receive telephone service through wires running between a closet in the Unit and the Floor Serving Terminal servicing such Unit.

The Building will be provided with either a "telephone" type dial intercom system, permitting the occupants of the Hotel Units to communicate over a standard touch-tone telephone with the concierge's desk, the security office and other areas of the Building. The jack for this telephone will be standard wall telephone jack. All new communications wiring will be UTP (unshielded twisted pair) wire capable of providing digital telecommunications and high speed internet service to various parts of the Condo Hotel Units.

Closed circuit television cameras will be a combination of Fixed and PTZ cameras. Cameras will be provided in the selected locations, entrance corridors to the elevators, inside elevators, service lobby and back of house areas. The viewing monitors will be located within the Security Office and concierge desk. The cameras will be designed to view the immediate area within the field of view of the cameras and will not necessarily cover all of the areas involved.

Access control will be on all service and main entry doors and sensitive areas as identified by owner.

A stand-alone Intercommunication will be provided at access points allowing two-way communication and notification to the security and concierge desk after hours or for service entry.

Perimeter protection will include door sensors on all perimeter exterior doors. These sensors will provide detection on stairway doors roof hatches and the like. Motion detection provided for all corridors and back of house areas and sensitive areas or rooms as identified.

The Building will be provided with a new fire alarm system comprised of separate panels and devices that will serve the Residential and Non-Residential areas of the Building. The Hotel portion of the Building shall be served by a standpipe fireline telephone and signaling fire alarm system. The fire alarm system will meet the requirements of the New York City Building Code.

P. Television Reception Facilities:

The signal source will be provided from either a manhole in the street (terrestrial cable) or a satellite dish (location TBD). Terrestrial cable and satellite head-end equipment for the facility will be located in a central equipment room. Cable risers will carry the signal to all areas of the facility. For the Hotel, consisting of the Transient Hotel Unit, Condo Hotel Units, and Hotel Limited Common Elements, wiring will be installed in each unit to obtain cable television and/or satellite digital service from one or more cable or satellite television service providers. The Accessory and Club Units and the Residential Section will be serviced by wiring provided primarily by the franchised terrestrial cable or satellite providers.

With respect to the television reception facilities in the other non-Residential and Residential Units, two cables are provided to each Unit to facilitate up to two separate services at a time. One or both of these cables may be utilized by the Unit Owner to receive high speed internet service via a cable modem.

The Building will not be equipped with a Master Television Antenna System.

Q. Public Area Lighting:

Lighting will be furnished to the public areas of the Building through fluorescent and/or incandescent fixtures. Emergency lighting will be provided per code requirements in public corridors and stairways.

R. Garage:

None.

S. Recreation Facilities:

None.

T. Permits and Certificates:

The Building will be renovated under an alteration application. Drawings have been filed under an Alteration Application No. 104129863.

Attached are the following reports:

Local Law 11

Asbestos (See attached report for compliance with applicable asbestos regulations, 13NYCRR 20.7(cc))

Lead-based Paint

Violations

All required inspection certificates and permits, including Elevator Inspection and Sprinkler System, will be provided before closing.

U. Vaults:

Existing sidewalk vaults are located under Central Park South, Fifth Avenue and West 58th Streets at the Lower Concourse, Lower Concourse Mezzanine (West 58th St. only), and Main Concourse levels. The vault space will be used as part of the Building (Mechanical, Residential Limited Common Vault, Hotel Vault, Club Vault and Accessory Vault). Vault spaces are subject to standard New York City vault license rules.

V. Unit Information:

1. Condo Hotel Unit Information:

There will be 152 Condo Hotel Units.

Top of floor slab to bottom of hung ceiling heights in the Units will be 9'-0" to 11'-0", but may vary from floor to floor. Ceiling heights in the kitchen, powder rooms and bathroom will be approximately 9'-0". Ceiling heights in the public corridors will be approximately 10'-0" to 14'-0". At beam drops and/or where there are concealed mechanical pipes or ducts or dropped ceilings, heights may be lower than the above stated heights and may also vary slightly from room to room.

The types of Condo Hotel Units, together with the type and number of rooms in each of the same are as follows:

| Type/ Rooms | Unit |
|---|---|
| | |
| KING SUITE | |
| Studio and 1 Bath | Units: 1126, 1132, 1136, 1137, 1138, 1141, 1232, 1236, 1237, 1238, 1241, 1332, 1336, 1337, 1338, 1341, 1432, 1436, 1437, 1438, 14411532, 1536, 1537, 1538, 1541 1632, 1636, 1637, 1638, 1641, 1727, 1732, 1735, 1736, 1738, 17411823, 1825, 1827, 1832, 1835, 1836, 1838, 1841, 1932, 1933, 1936, 1937, 1938, 1941 |
| | |
| JUNIOR SUITE | |
| Studio, Sitting Area and 1 Bath | Unit: 1133, 1134, 1135, 1227, 1229, 1233, 1234, 1235, 1327, 1329, 1333, 1334, 1335, 1427, 1429, 1433, 1434, 1435, 1527, 1529, 1533, 1534, 1535, 1627, 1629, 1633, 1634 (ADA), 1635, 1729, 1733, 1734, 1737, 1829, 1833, 1834, 1837, 1934, 1935 |
| | |
| JUNIOR SUITE | |
| Studio, Sitting Area and 1.5 Baths | Unit: 1226, 1326, 1426, 1526, 1626, 1726, 1826 |
| | |
| ONE BEDROOM SUITE | |
| 1 Bedroom, Living Room, Pantry and 1.5 Baths | Unit: 1127, 1129, 1130, 1131, 1139, 1140, 1221, 1230, 1231, 1239, 1240, 1321, 1330, 1331, 1339, 1340, 1421, 1430, 1431, 1439, 1440 1521, 1530, 1531, 1539, 1540, 1621, 1630, 1631, 1639, 1640, 1721, 1730, 1731, 1739, 1740, 1821, 1830, 1831, 1839, 1840, 1930, 1931, 1940 |
| | |
| TWO BEDROOM SUITE | |
| 2 Bedrooms, Living Room, Pantry and 2.0 Baths | Unit: 1223, 1323, 1423, 1523, 1623, 1723 |
| | |
| DUPLEX PENTHOUSE SUITE | |
| 1 Bedroom, Library, Living Room, Library, Pantry and 2.0 Baths | Unit: PH2030, PH2032, PH2034, PH2036, PH2038 and PH2040 |

Fixtures and Appliances: Subject to Sponsor's right to make substitutions as set forth in the offering plan, the Condo Hotel Units will be equipped with the following (or comparable) fixtures and appliances:

| ITEM | DESCRIPTION | UNITS |
|---|---|---|
| Dishwasher Drawer | Fisher & Pykel DS603I | All One Bedroom Suites, Two Bedroom suites and Duplex Penthouse Suites |
| Electric Cook top (2 burners) | Miele KM400 | All One Bedroom Suites, Two Bedroom suites and Duplex Penthouse Suites |
| Microwave | Sharp R-230KW | All Units |
| Refrigerator (undercounter) | GE Monogram ZIFI240PFF Or Kooltech Minibar | All Units |
| Water Closets | Kohler K-358-40 rear outlet | All Bathrooms and Powder Rooms |
| Lavatories | Kohler 'Caxton' undermount , | All Bathrooms and Powder Rooms |
| Bathtubs | Kohler 'Maestro' K840-0 (66") or Americh BK723421 | All Bathrooms |

Finish Schedule:

The following is a finish schedule for a typical Condo Hotel Unit. All finished are new except as noted below. Any of the finishes that are being retained will be refurbished/replastered as required to be in good condition. This occurs primarily at the inside face of the exterior walls:

| Location | Floor | Base | Walls | Ceiling | Remarks |
|---|---|---|---|---|---|
| Foyer, Corridors | carpet / wood | painted wood | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" gypsum board-painted and/or existing plaster-painted | |

| Location | Floor | Base | Walls | Ceiling | Remarks |
|---|---|---|---|---|---|
| Living Room, Dining Room, Library, Closets, All other rooms and halls in Unit. | carpet / wood | painted wood | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" gypsum board-painted and/or existing plaster-painted | |
| Bedroom | carpet / wood | painted wood | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" gypsum board-painted and/or existing plaster-painted | |
| Master Bathroom | mosaic stone tile/ ceramic tile | ceramic tile | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" WR gypsum board-painted and/or existing plaster-painted | 7'-0" high ceramic tile, stone countertop, mirror |
| Secondary Bathrooms | mosaic stone tile/ ceramic tile | stone tile | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" WR gypsum board-painted and/or existing plaster-painted | 7'-0" high ceramic tile, mirror |
| Secondary Bathroom w/ Shower | stone tile/ ceramic tile | stone tile | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" WR gypsum board-painted and/or existing plaster-painted | 7'-0" high stone tile at shower only, mirror |
| Powder Rooms | mosaic stone tile/ ceramic tile | stone tile | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" gypsum board-painted and/or existing plaster-painted | mirror |

| Location | Floor | Base | Walls | Ceiling | Remarks |
|---|---|---|---|---|---|
| Pantry | carpet / wood | painted wood | 5/8" gypsum board-painted and/or existing plaster-painted | Hung 5/8" gypsum board-painted and/or existing plaster-painted | stone tile backsplash, stone counter top |

W. Substitutions: Sponsor reserves the right to substitute materials, appliances, fixtures and equipment of equal or better quality than those set forth in this report.

X. Safety and Warning Devices:

New smoke detectors will be provided outside the bedrooms in residential and hotel rooms, as required by law. Area smoke detectors will be installed in all electrical and mechanical equipment rooms as required by law. New duct mounted smoke detectors will be provided in all supply air handling units with a capacity in excess of 2,000 cfm which is also a New York City Building Code requirement. New carbon monoxide detectors will provided outside bedroom in residential Units where required by law.

Y. Additional Information Dimensions of Units:

The approximate square foot area of each Unit is measured horizontally on each of one or more floors from the exterior side of the exterior walls, at the Building line and/or Property line to the midpoint of the interior walls and partitions separating one Unit from another Unit, or the midpoint of the interior walls and partitions separating a Unit from public corridors, stairs, elevators and other mechanical equipment spaces or any Common Elements. Columns and mechanical pipes (whether along the perimeter or within the Unit), with the exception of specific major shafts, are not deducted from the square foot area of the Units. Outdoor floor areas of a balcony and/or terrace appurtenant to a Unit are not included in the Unit's indoor floor area.

Measured vertically, each Unit will consist of the volume from the top of the floor slab below (located under the finished flooring and sub-floor materials) to the underside of the floor slab above.

The foregoing constitutes a true, correct and complete Description of Property by our firm for the Property 'Plaza Hotel - Condominium' located at 768 Fifth Avenue, New York, New York.

L. Stephen Hill A.I.A.

REGISTERED ARCHITECT
LEO STEPHEN HILL
No. 022264
STATE OF NEW YORK

**EXHIBIT 5**

FLOOR PLANS

PLATE:
01

# THE PLAZA HOTEL CONDOMINIUMS

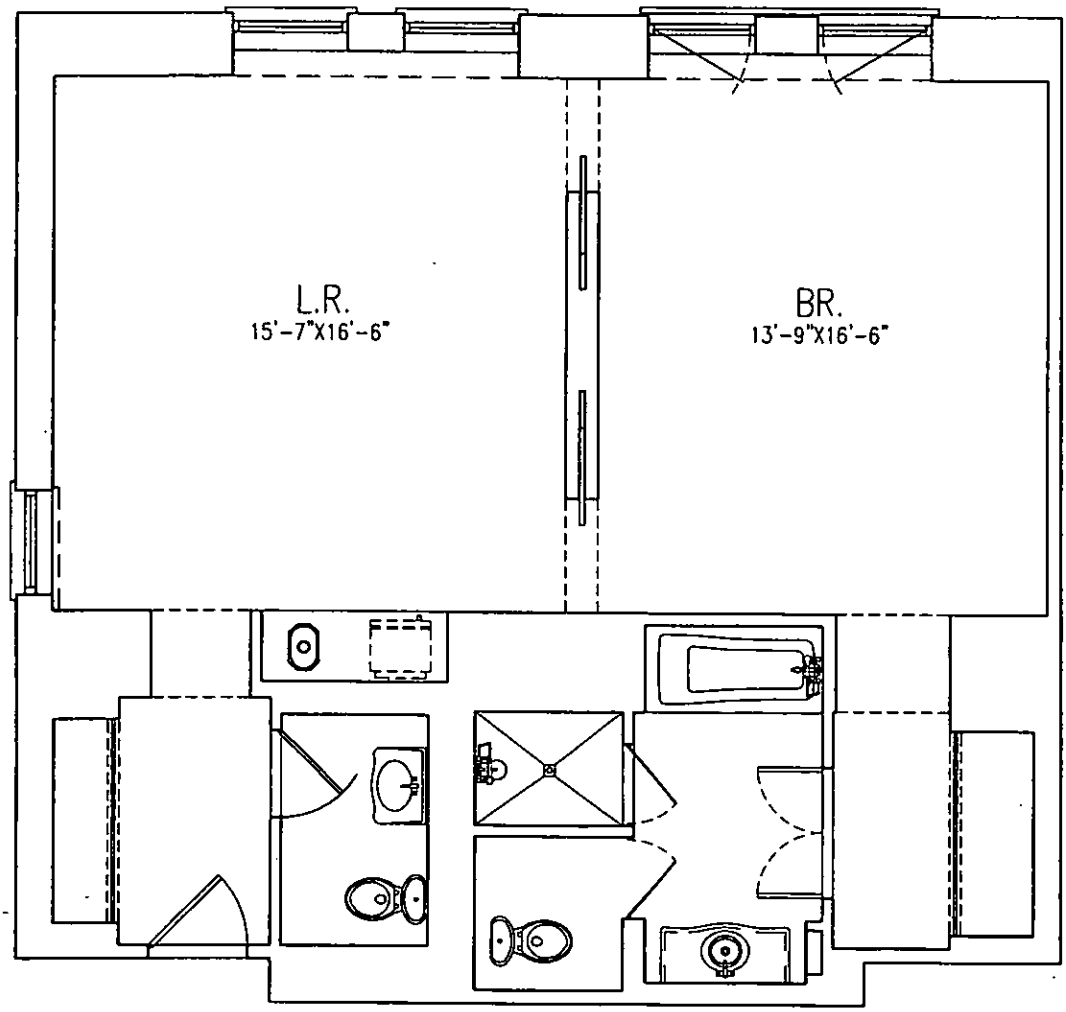
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH-19TH

SUITES 1140-1940 - EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 941 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

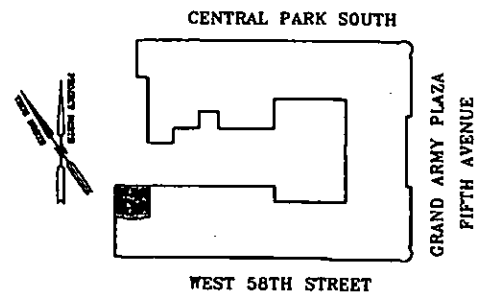


PLATE:
02

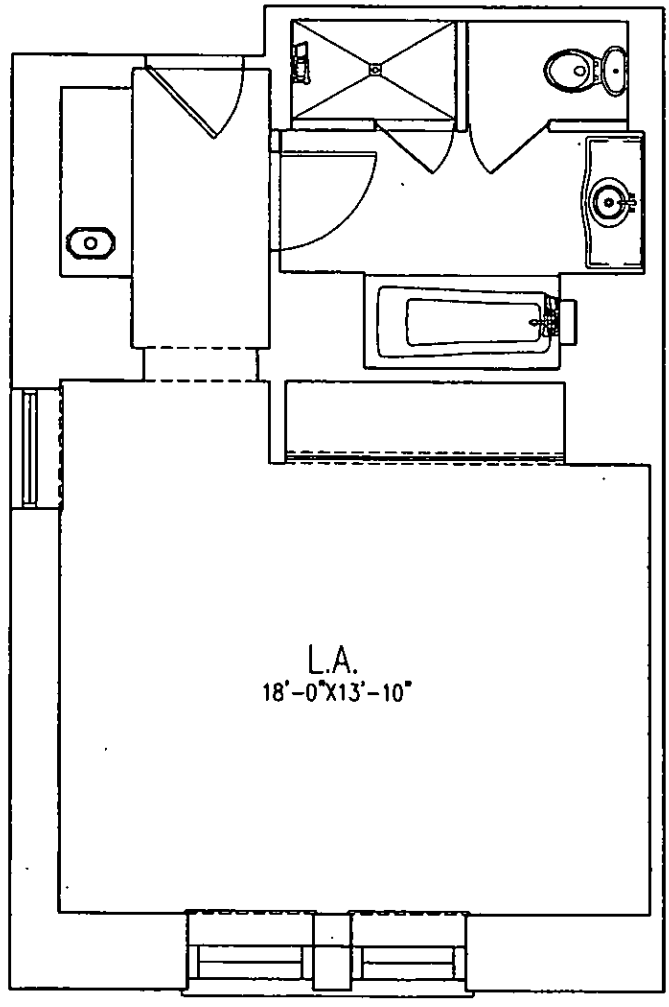
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH–16TH

SUITE 1141–1641 – PALM SUITE

0 BEDROOM
1 BATHS

APPROX. 580 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

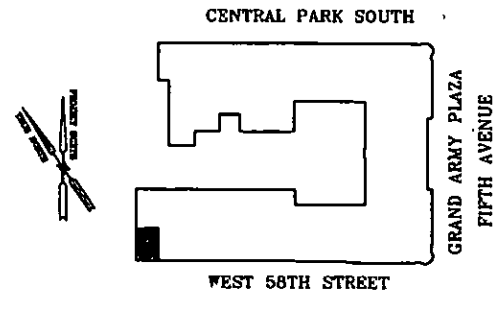


PLATE:
03

# THE PLAZA HOTEL CONDOMINIUMS

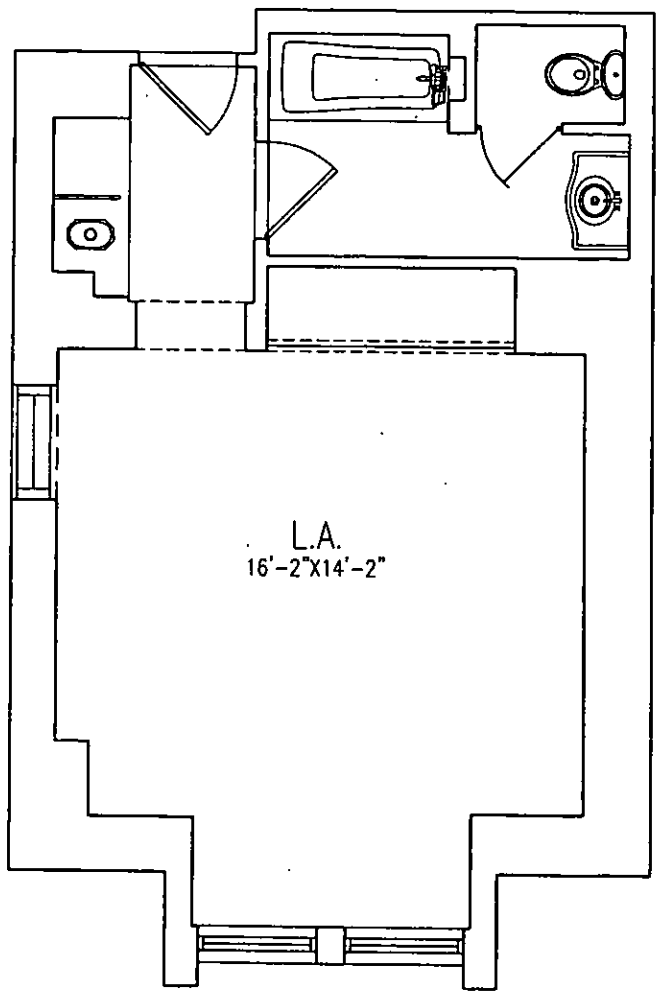
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1741 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 524 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

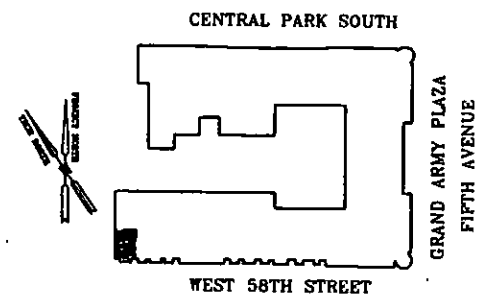


PLATE:
04

# THE PLAZA HOTEL CONDOMINIUMS

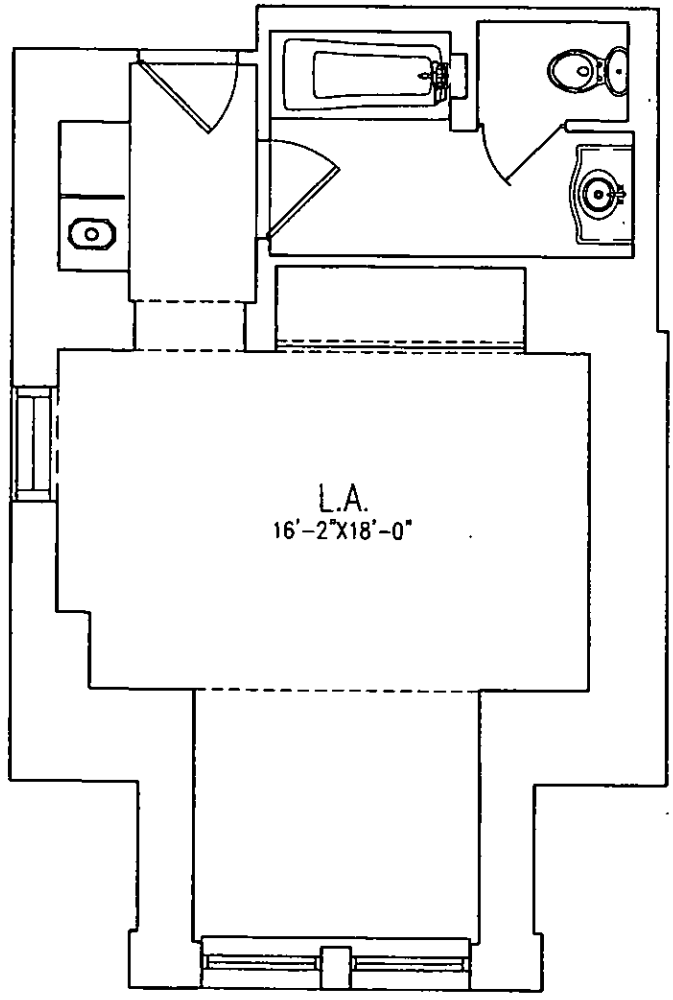
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1841 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 517 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

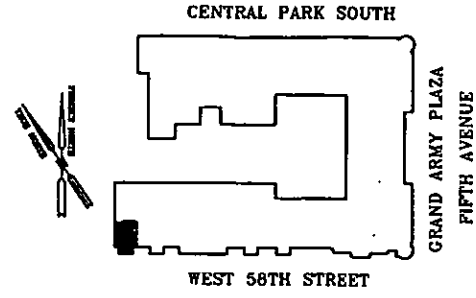


PLATE:
05

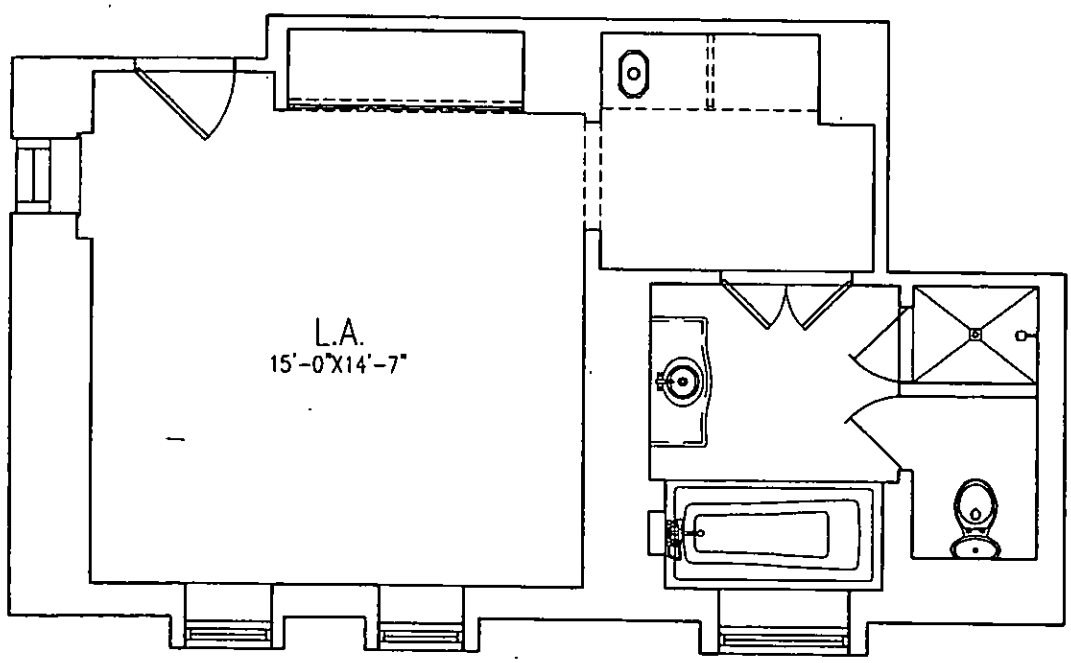
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 19TH

SUITE 1941 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 548 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

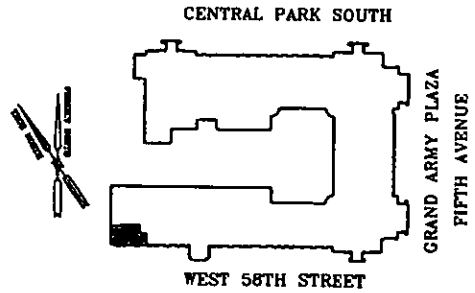


PLATE:
06

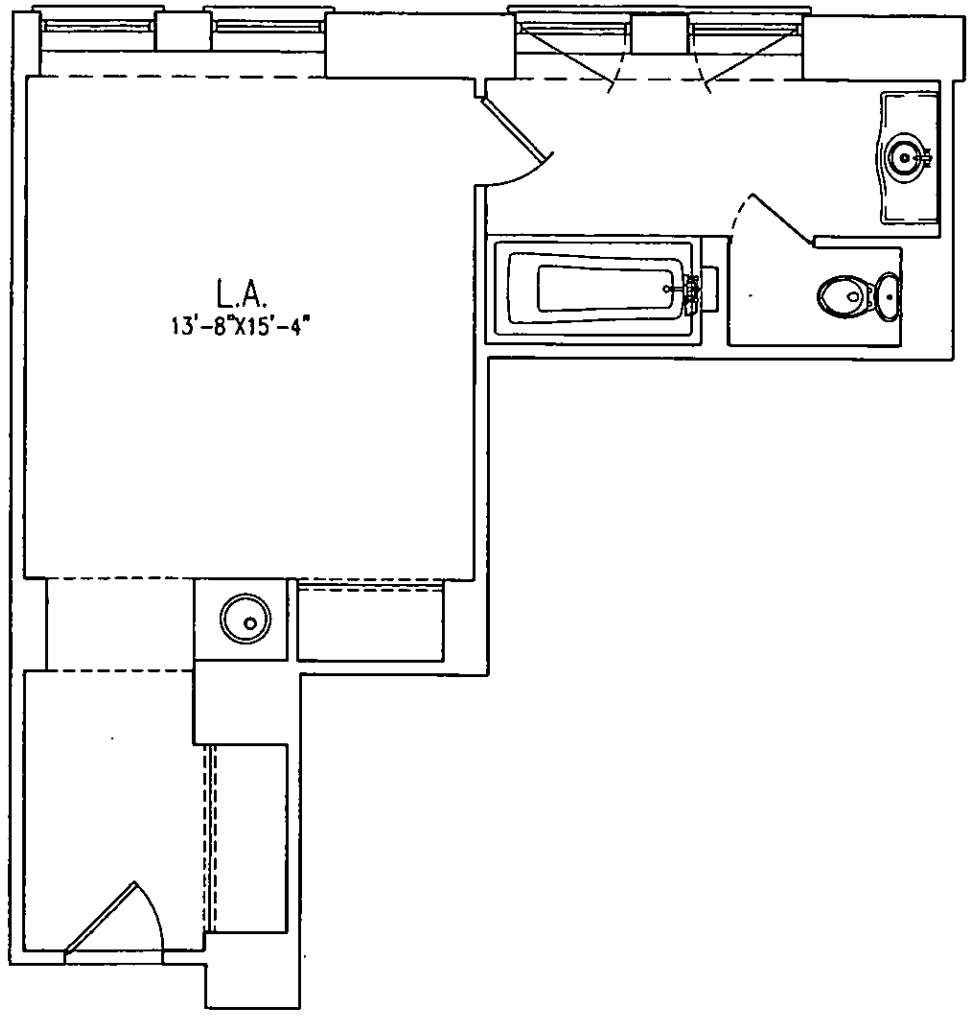
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 11TH-19TH

SUITE 1138-1938 - PALM SUITE

0 BEDROOM
1 BATH

APPROX. 529 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

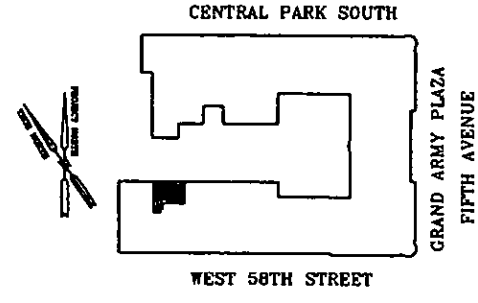


PLATE:
07

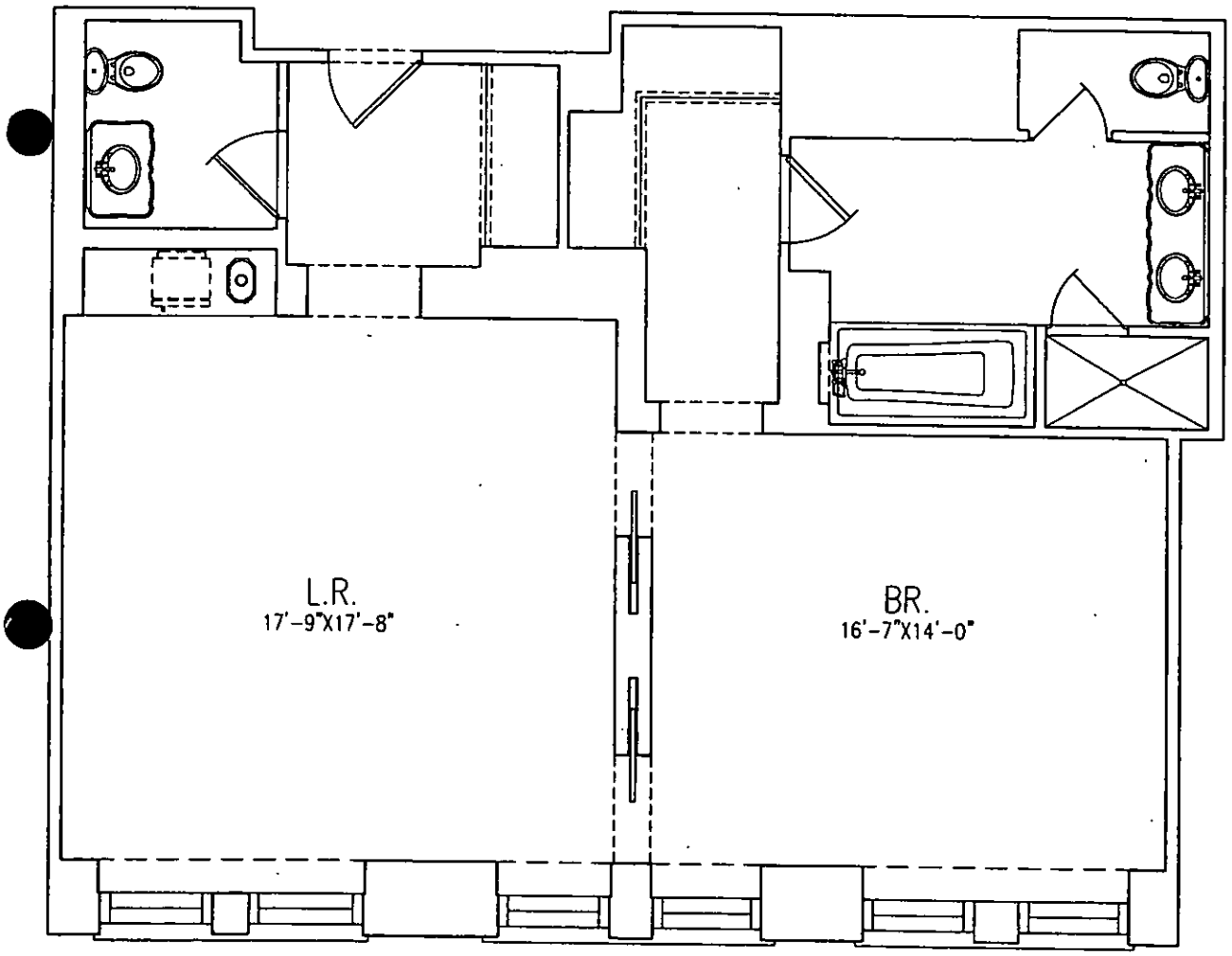
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 11TH–16TH

SUITE 1139–1639 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 1061 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

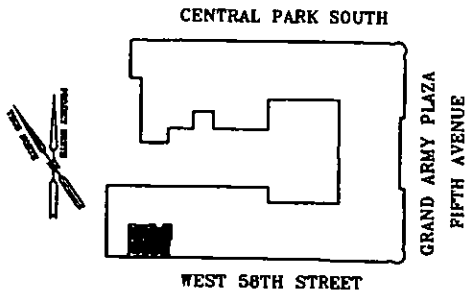


PLATE:
08

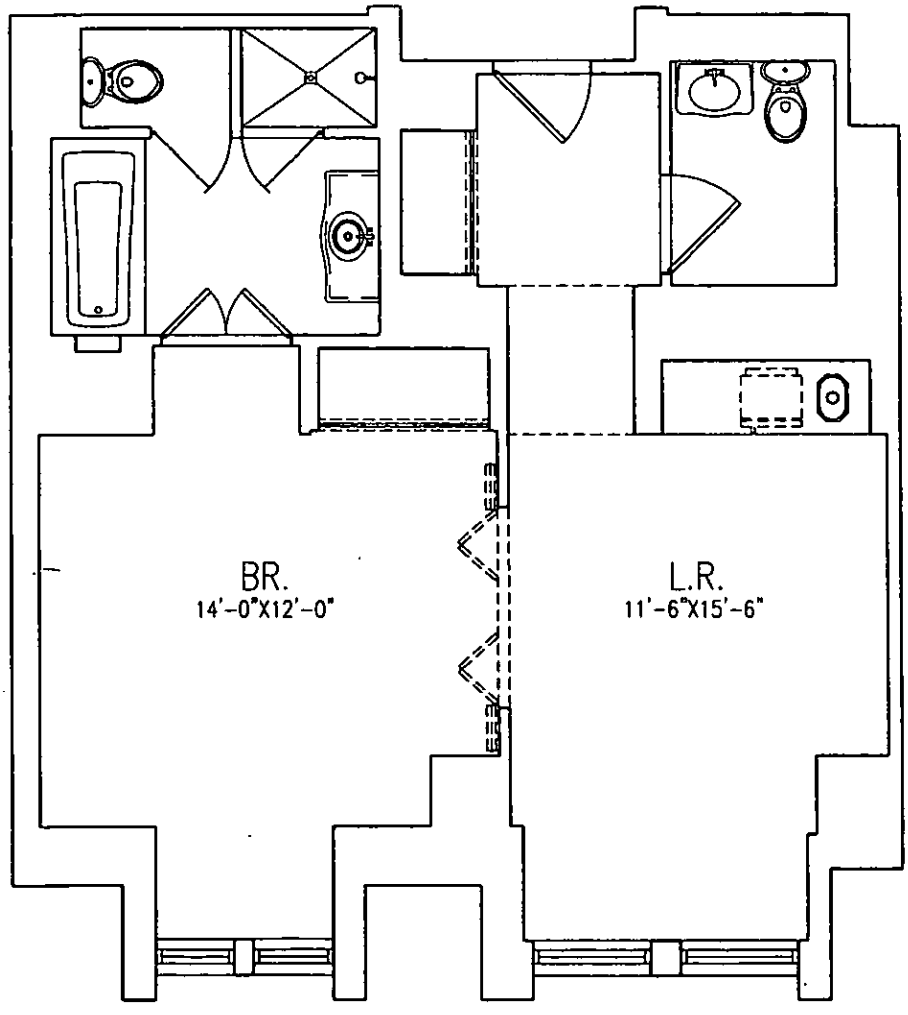
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1739 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 738 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

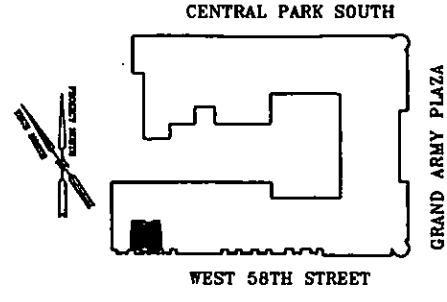


PLATE:
09

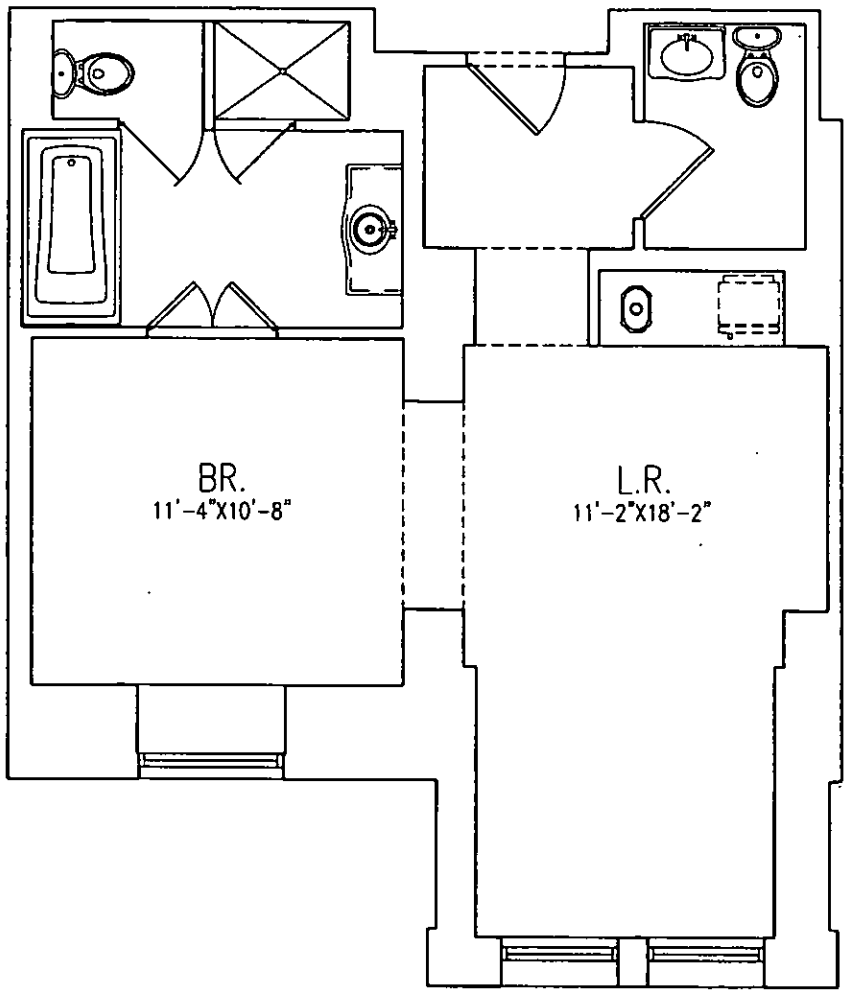
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1839 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 659 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

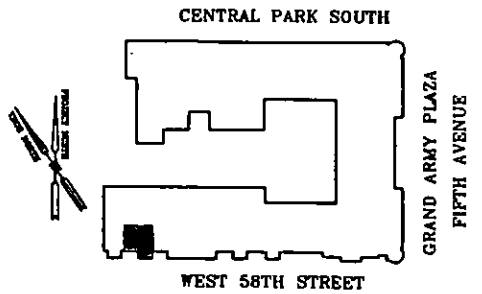


PLATE:
10

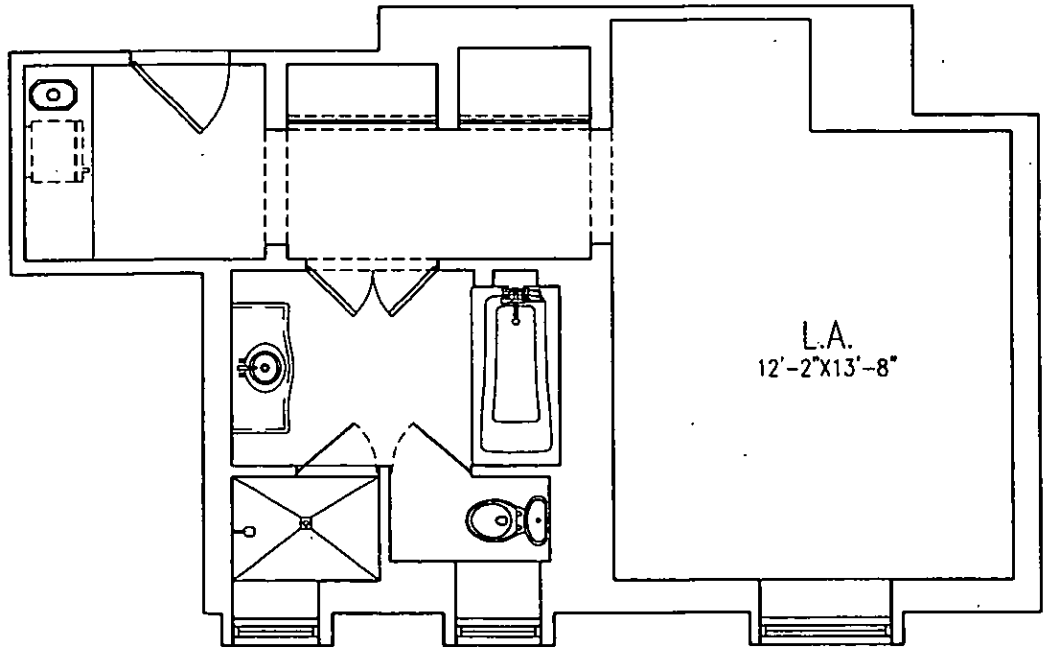
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 19TH

SUITE 1937 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 508 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

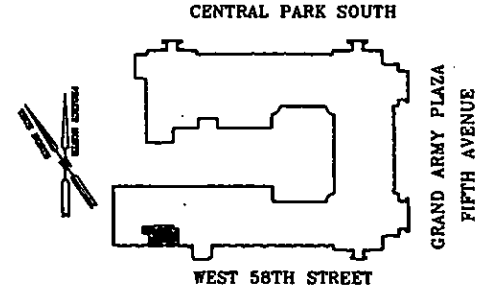


PLATE:
11

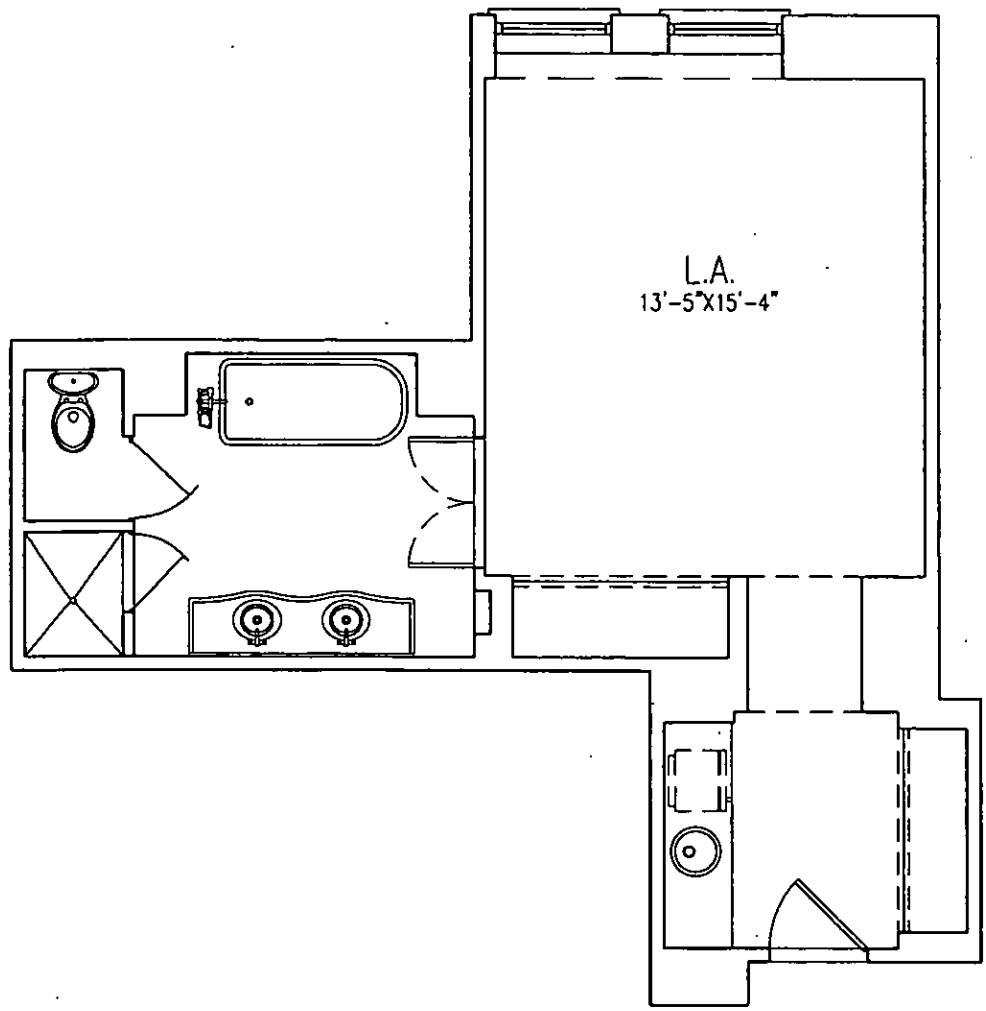
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH–19TH

SUITE 1136–1936 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 504 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

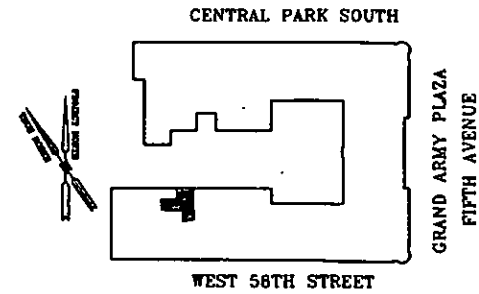


PLATE:
12

# THE PLAZA HOTEL CONDOMINIUMS

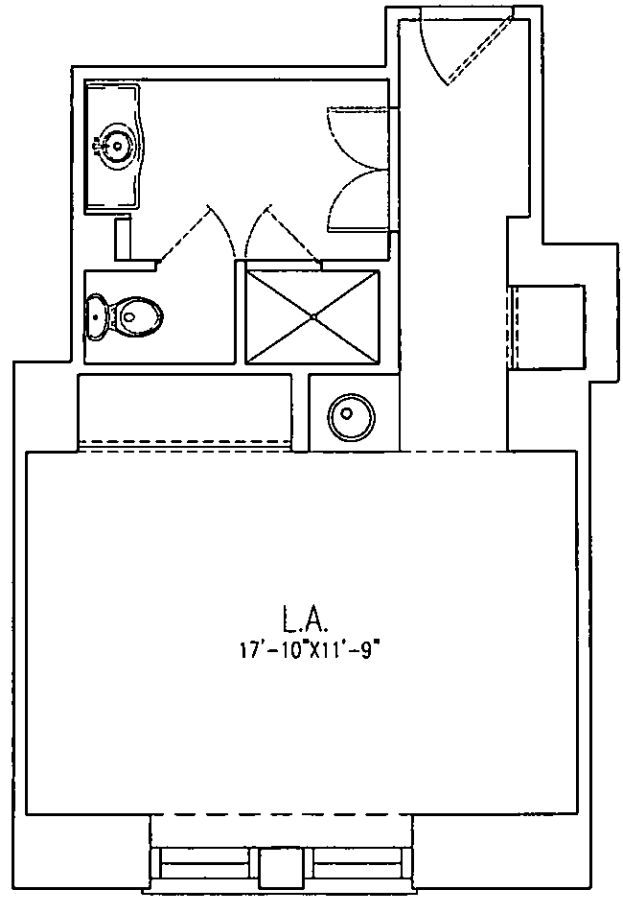
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 11TH-16TH

SUITE 1137-1637 - PALM SUITE

0 BEDROOM
1 BATH

APPROX. 476 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

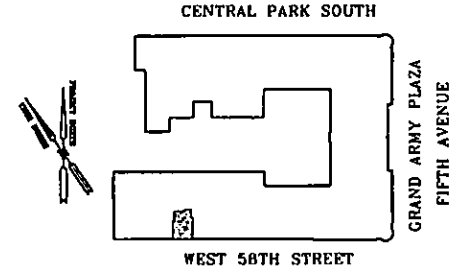


PLATE:
13

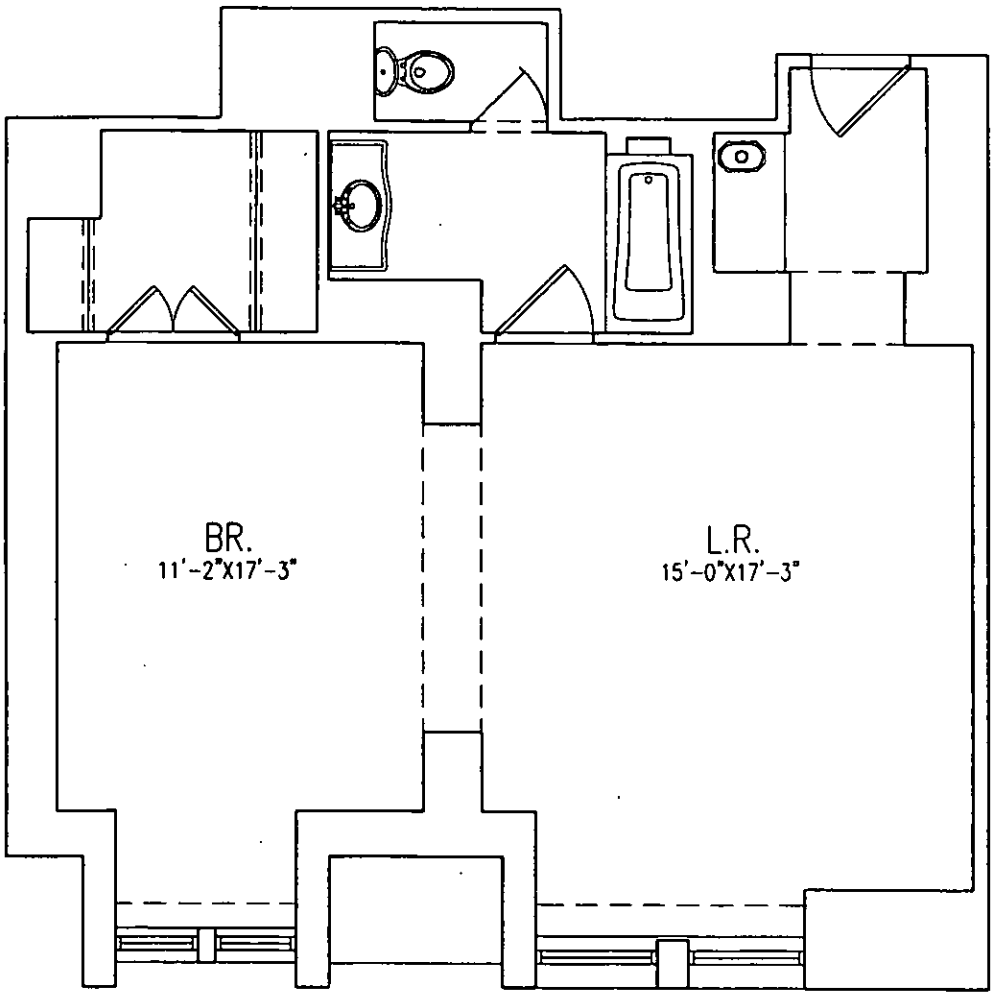
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1737 - ROSE SUITE

1 BEDROOM
1 BATH

APPROX. 773 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

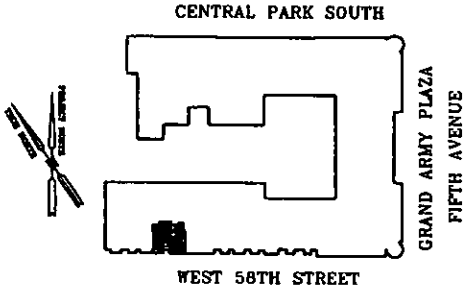


PLATE:
14

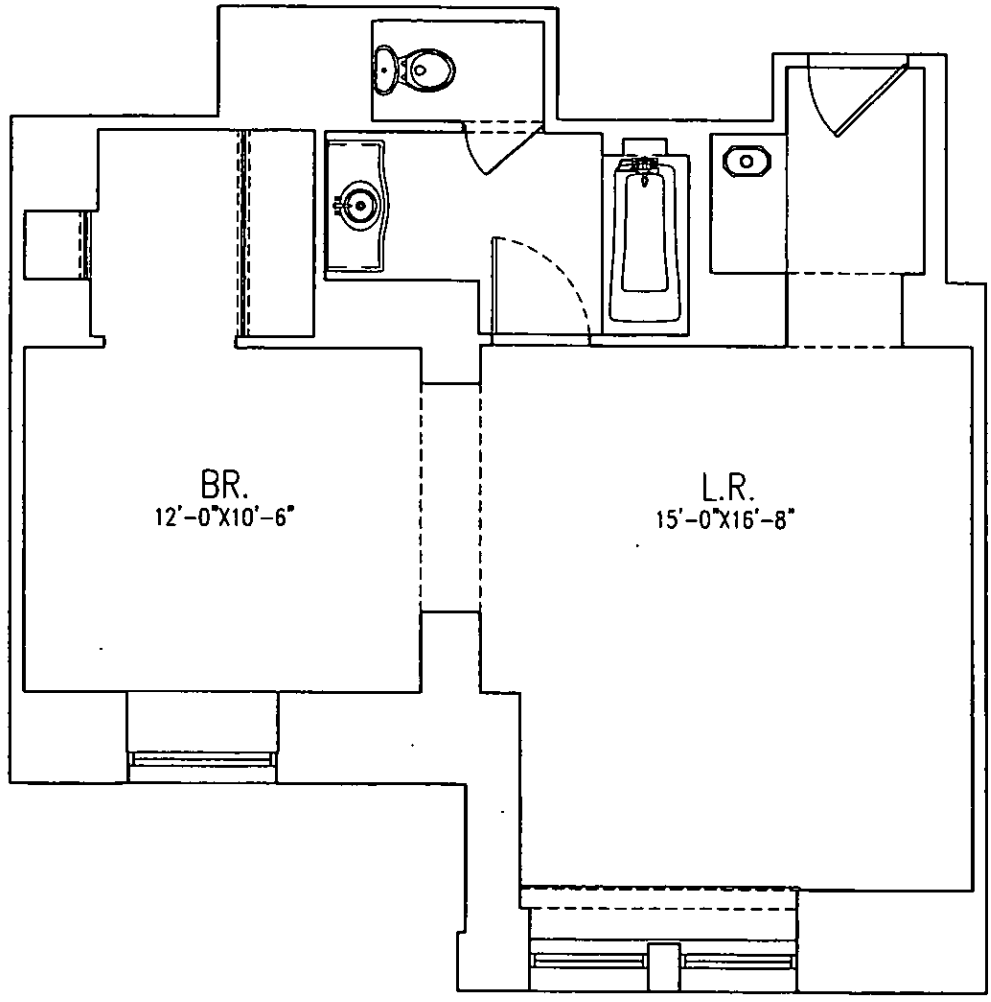
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1837 – ROSE SUITE

1 BEDROOM
1 BATHS

APPROX. 731 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

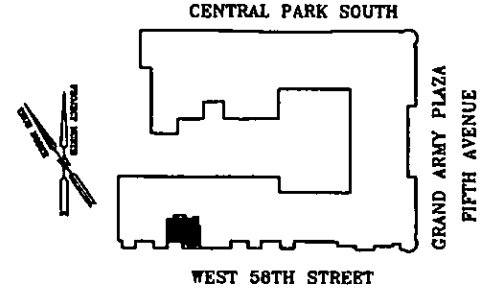


PLATE:
15

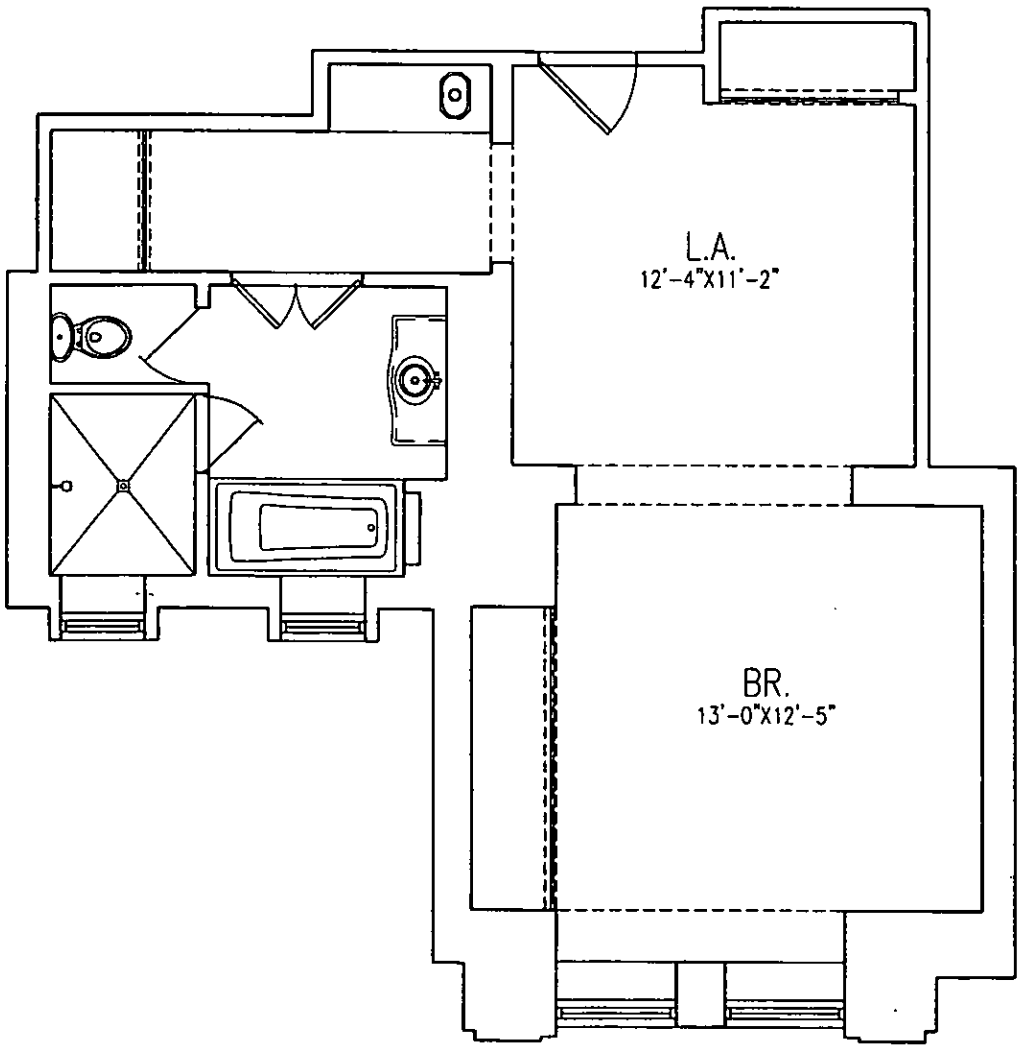
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 19TH

SUITE 1935 - ROSE SUITE

1 BEDROOM
1 BATH

APPROX. 702 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

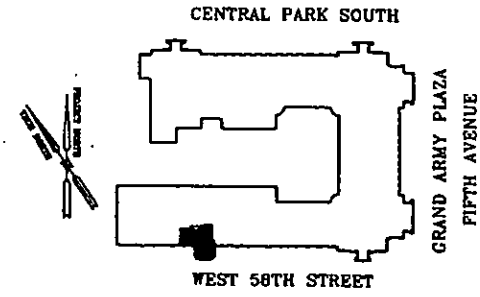


PLATE:
16

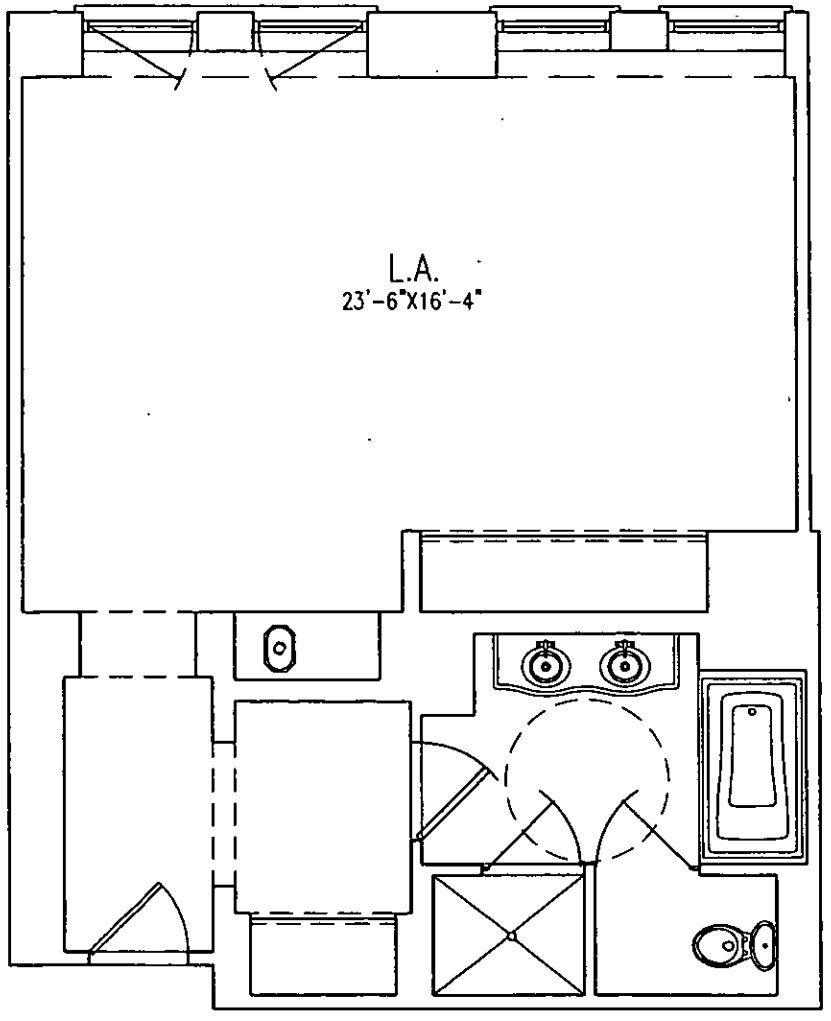
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH–19TH

SUITE 1134–1934 (ADA) – ROSE SUITE

1 BEDROOM
1 BATH

APPROX. 711 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

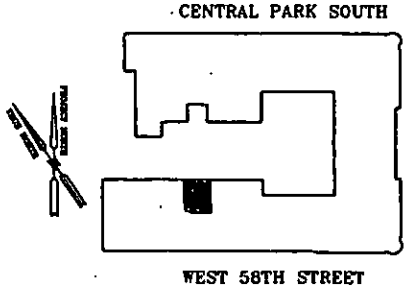


PLATE:
17

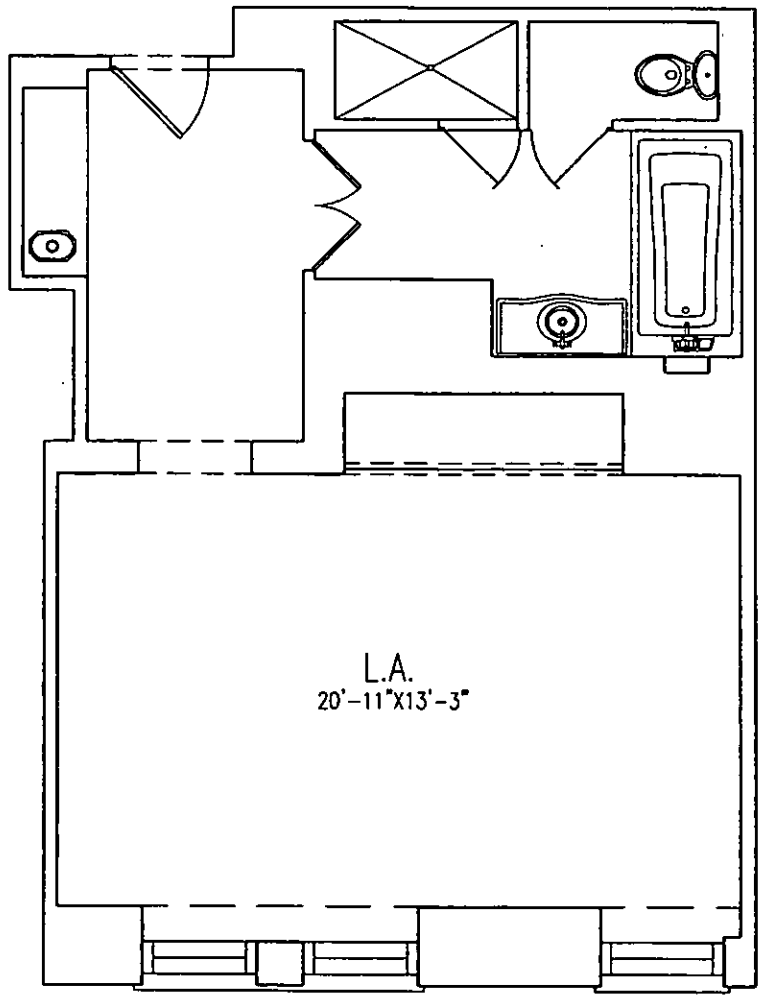
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH–16TH

SUITE 1135–1635 – ROSE SUITE

0 BEDROOM
1 BATH

APPROX. 638 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05–04–06

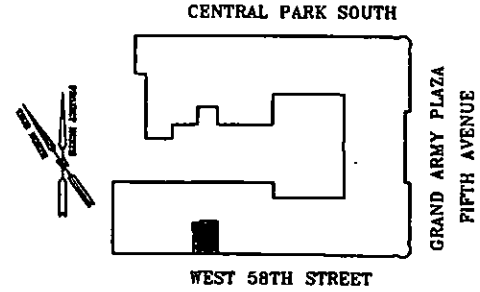


PLATE:
18

# THE PLAZA HOTEL CONDOMINIUMS

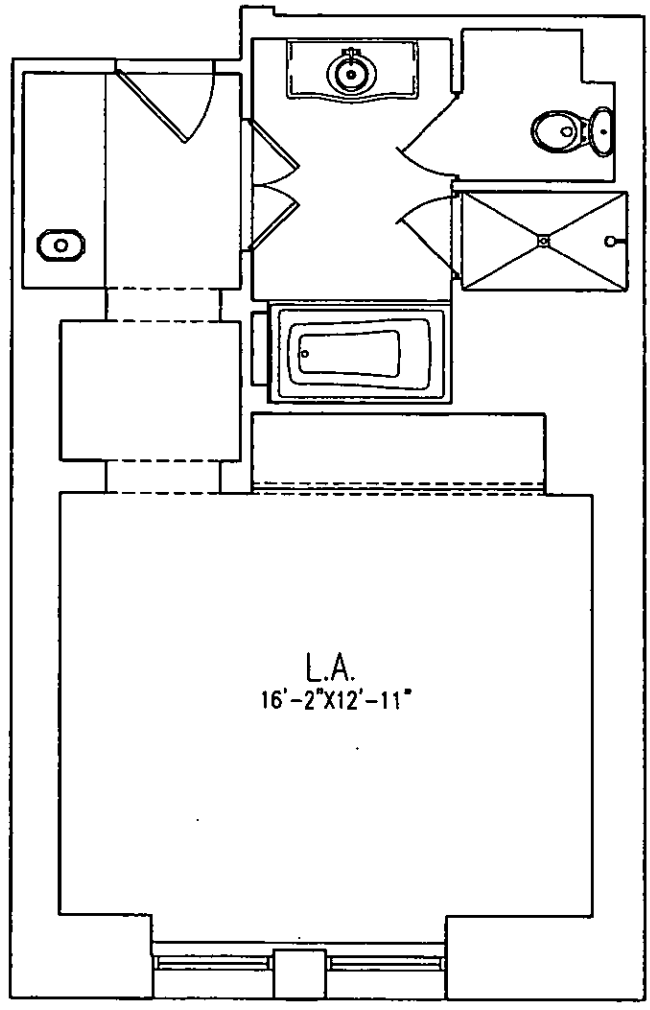
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1735 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 511 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

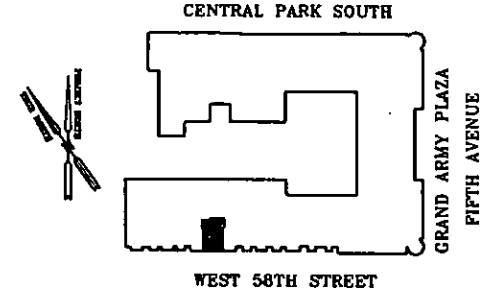


PLATE:
19

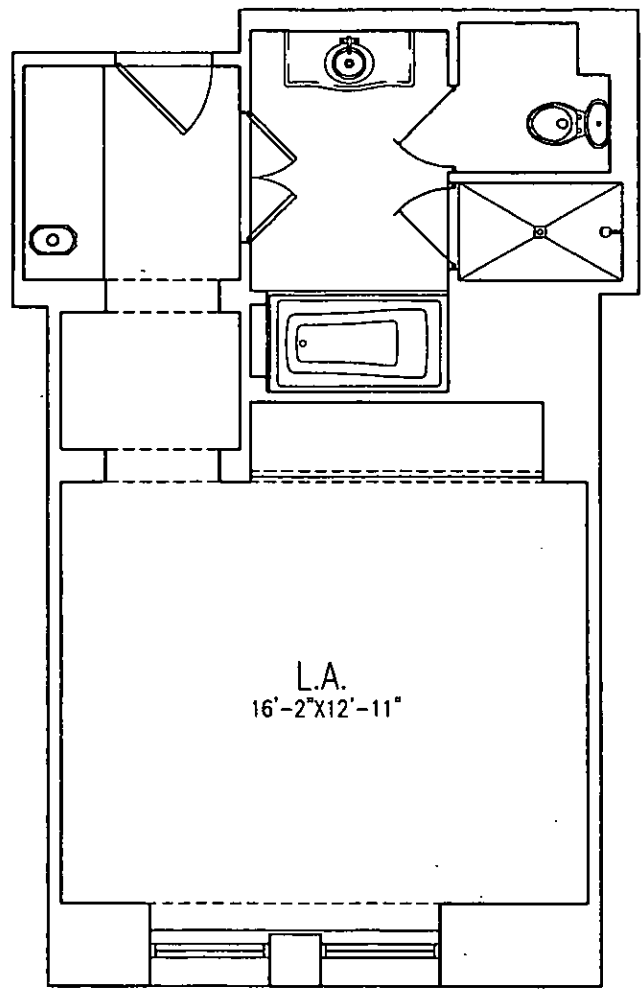
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1635 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 510 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

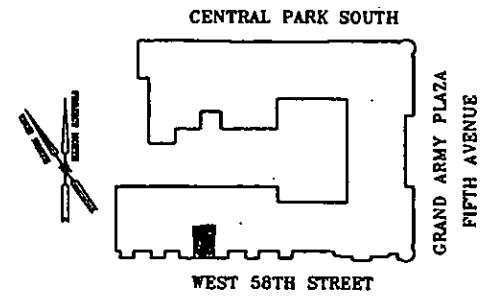


PLATE:
20

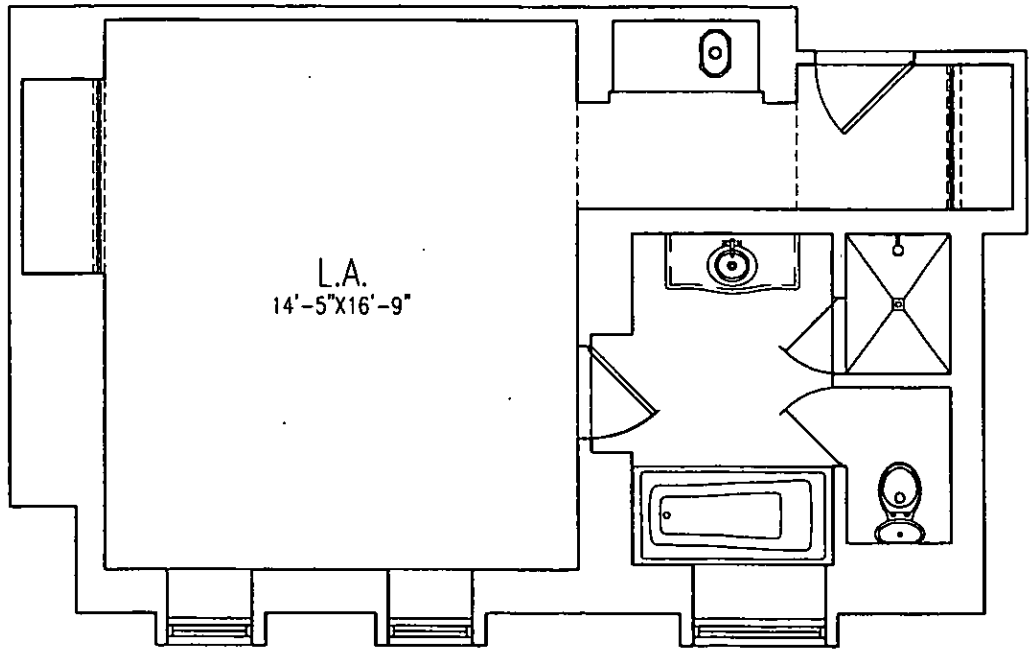
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 19TH

SUITE 1933 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 541 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

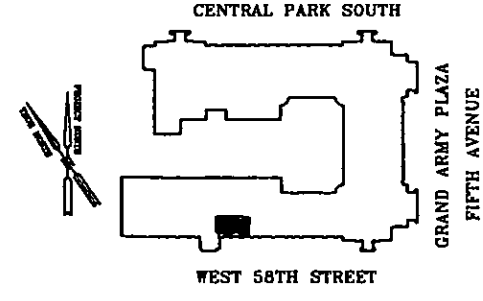


PLATE:
21

# THE PLAZA HOTEL CONDOMINIUMS

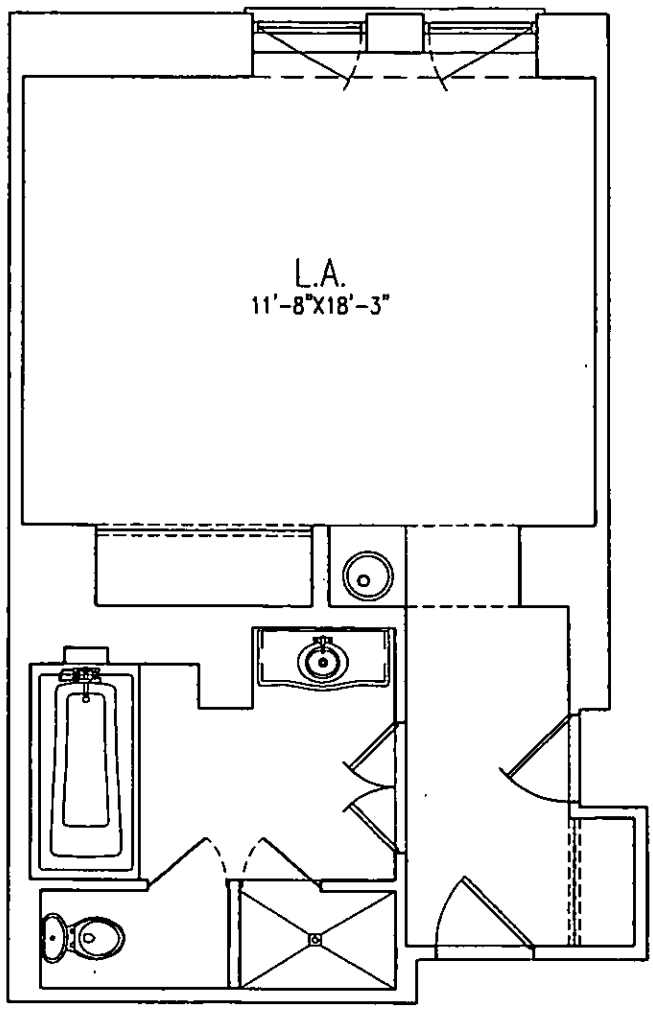
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH–19TH

SUITE 1132–1932 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 537 SQ.FT.



All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

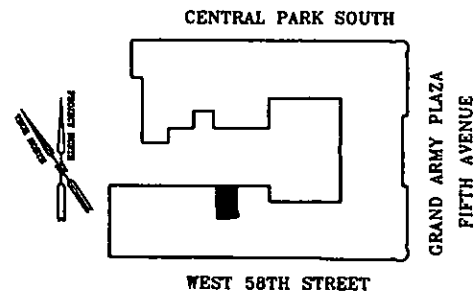


PLATE:
22

# THE PLAZA HOTEL CONDOMINIUMS

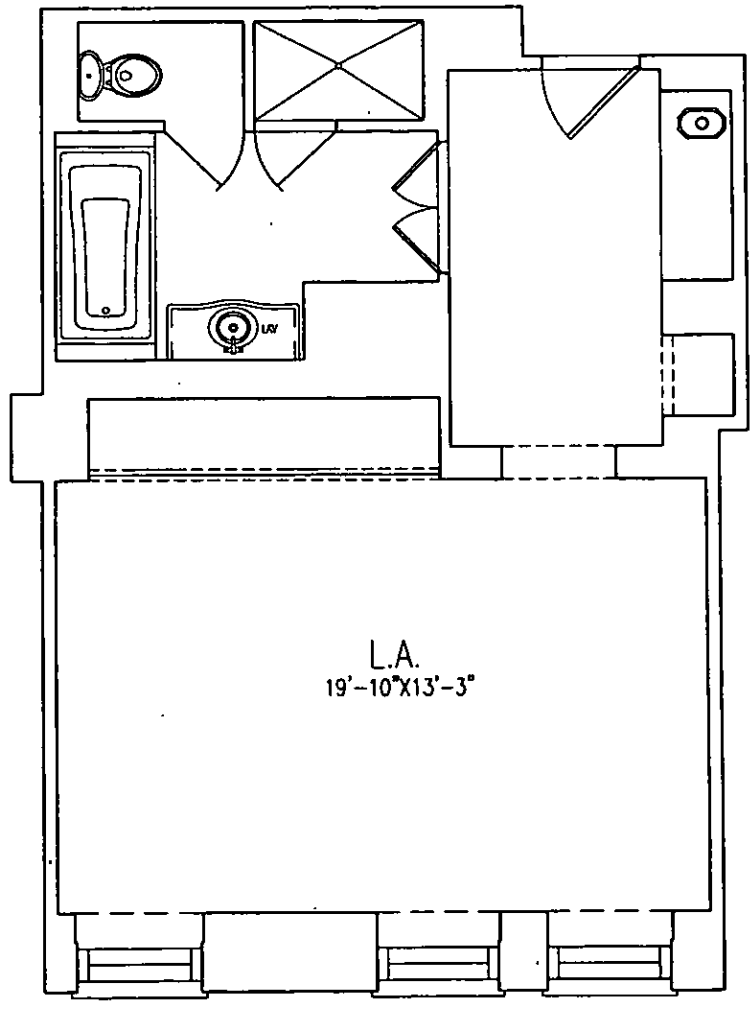
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 11TH–16TH

SUITE 1133–1633 – ROSE SUITE

0 BEDROOM
1 BATH

APPROX. 606 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05–04–06

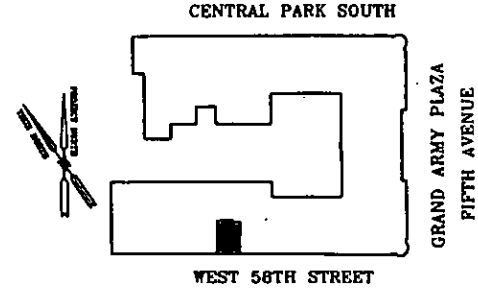


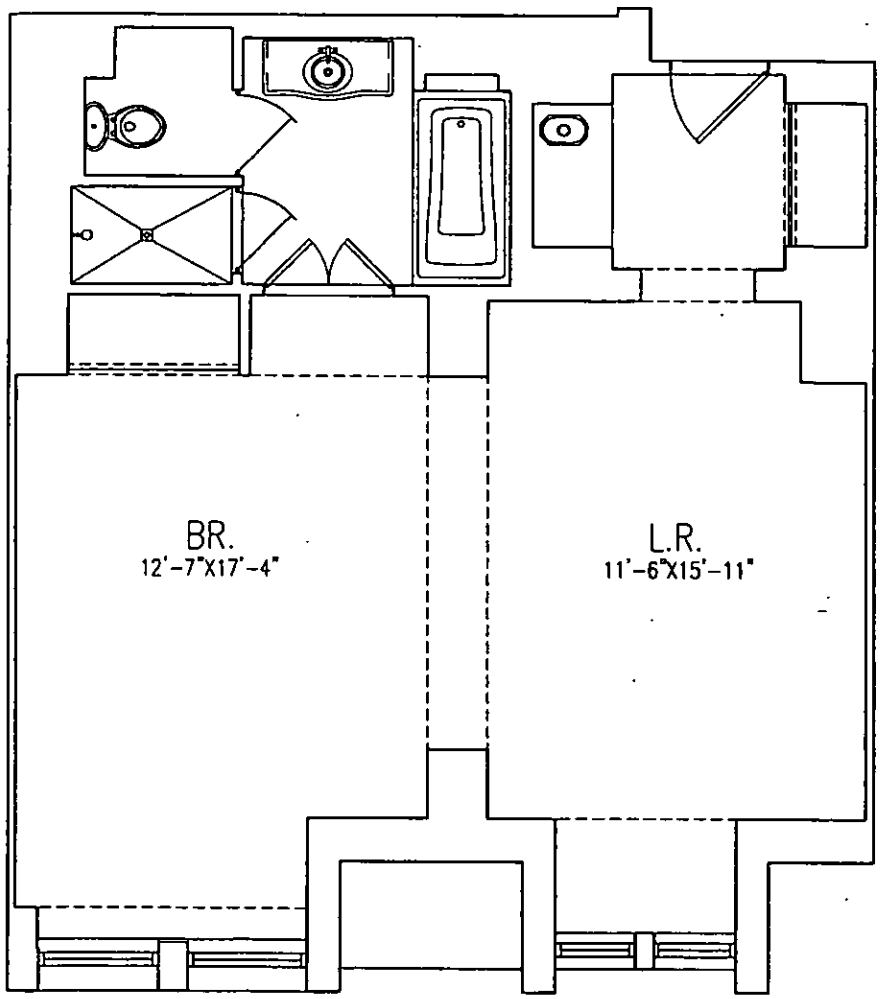
PLATE:
23

# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1733 – ROSE SUITE

1 BEDROOM APPROX. 733 SQ.FT.
1 BATH




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

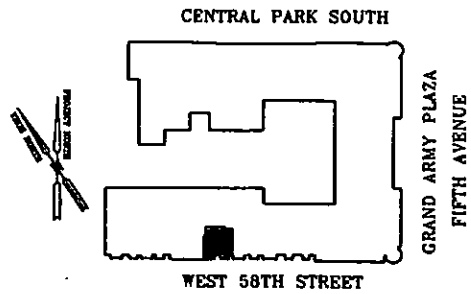


PLATE:
24

# THE PLAZA HOTEL CONDOMINIUMS

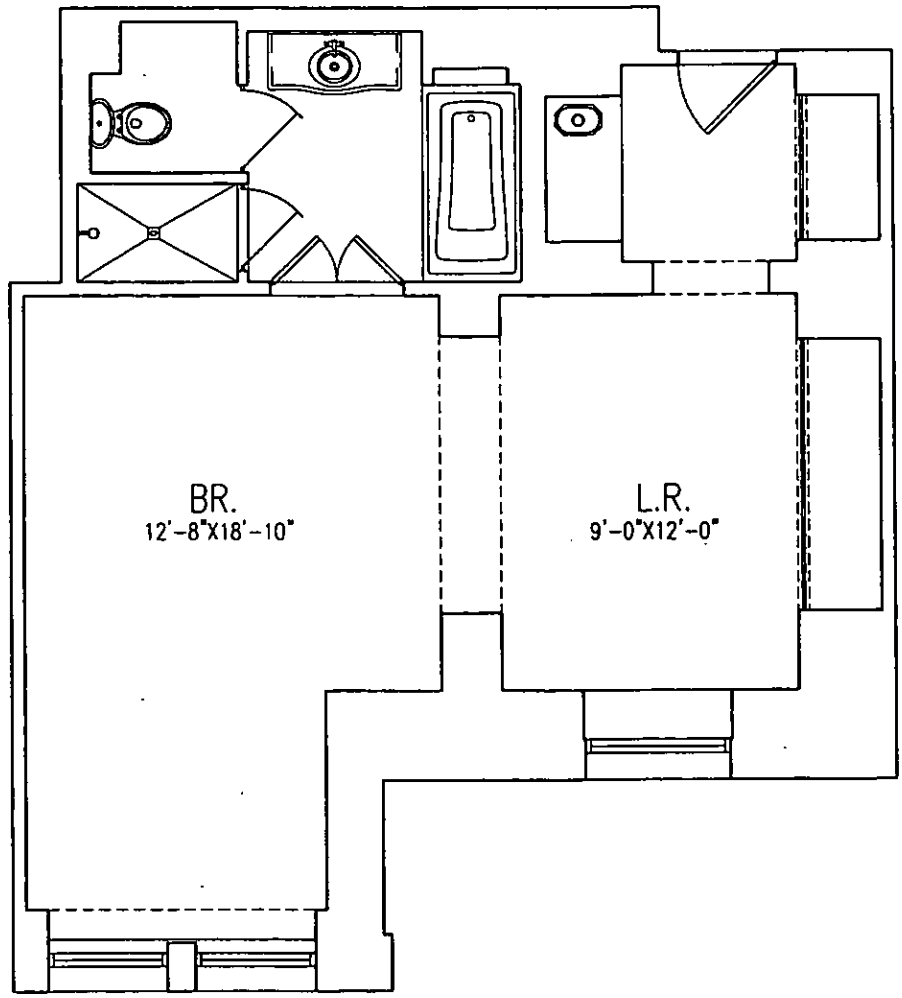
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1833 – ROSE SUITE

1 BEDROOM
1 BATH

APPROX. 670 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

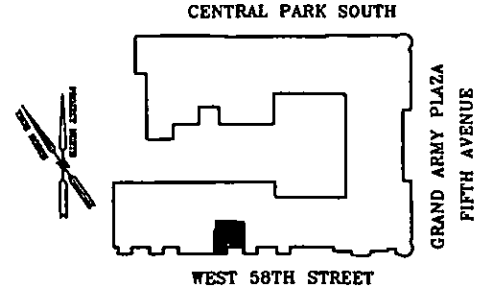


PLATE:
25

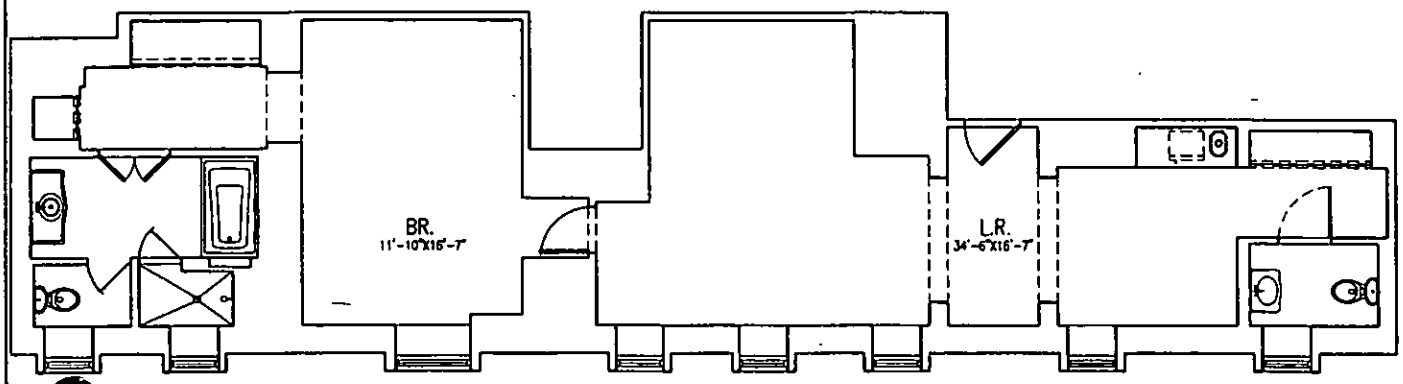
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 19TH

SUITE 1931 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 1,160 SQ.FT.



All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

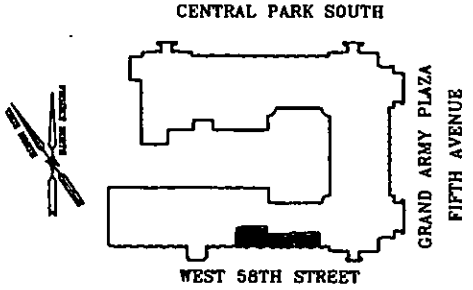


PLATE:
26

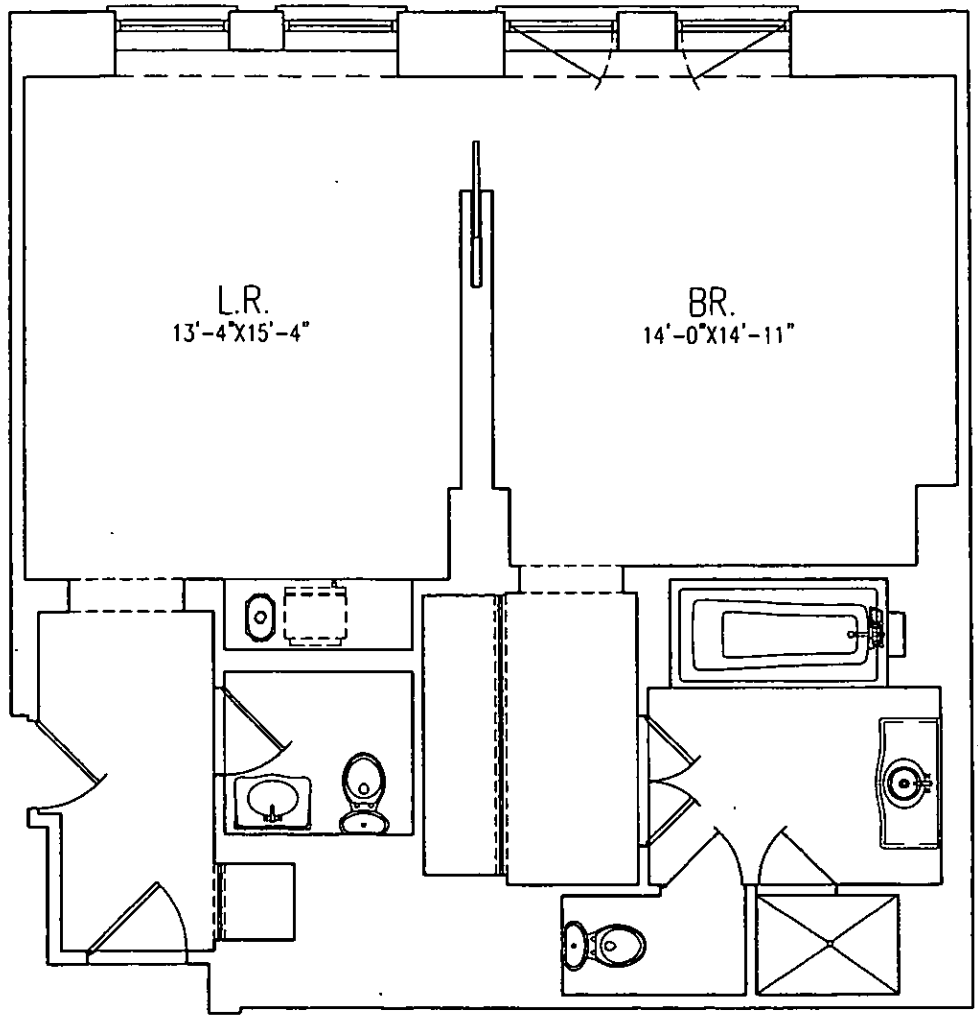
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH–19TH

SUITE 1130–1930 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 904 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05–04–06

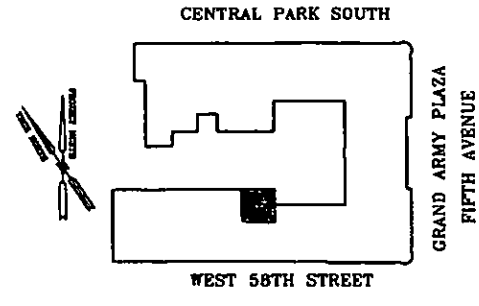


PLATE:
27

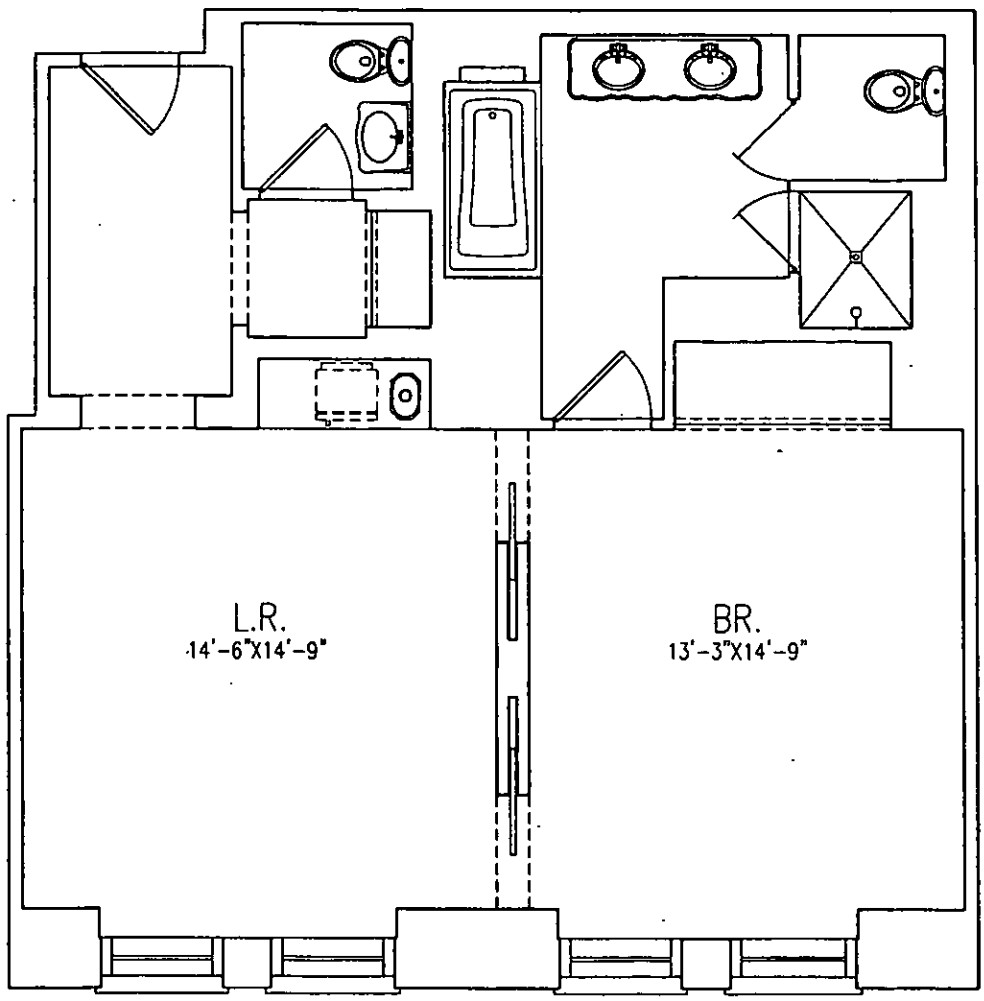
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 11TH–16TH

SUITE 1131–1631 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 857 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

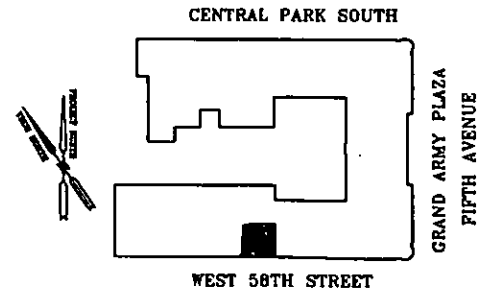


PLATE:
28

# THE PLAZA HOTEL CONDOMINIUMS

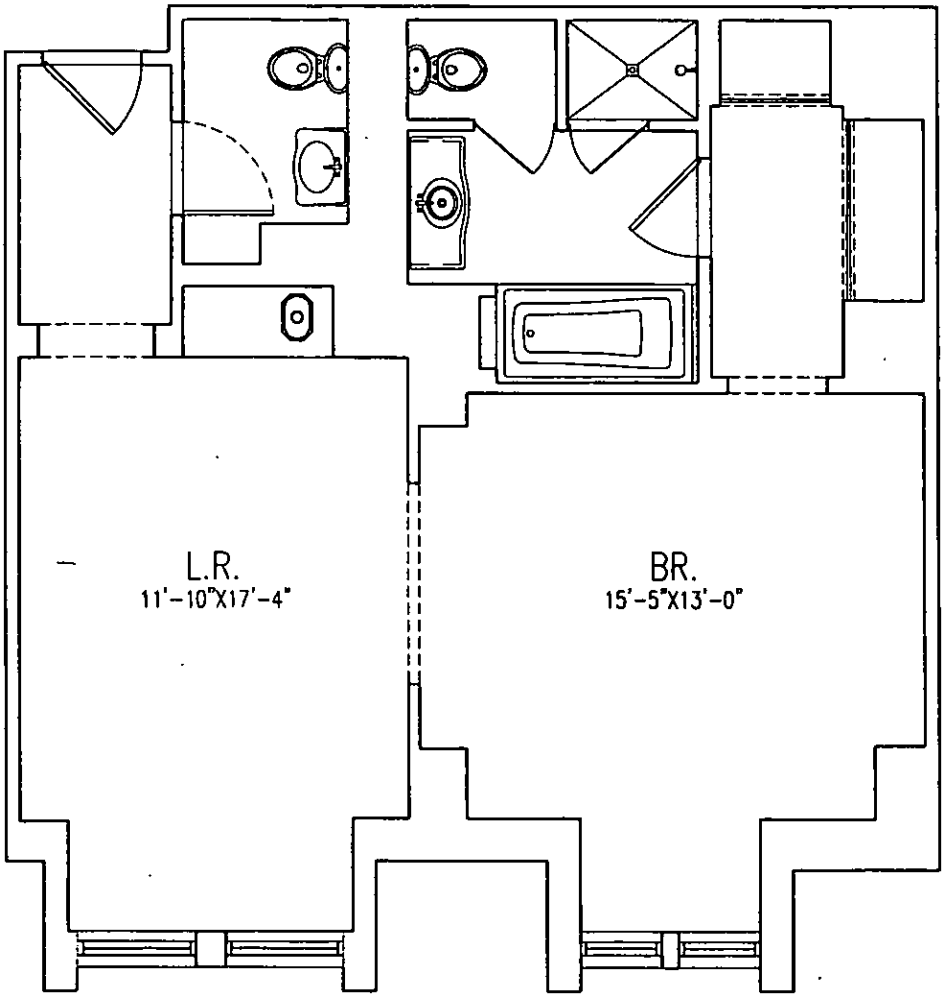
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1731 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 790 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

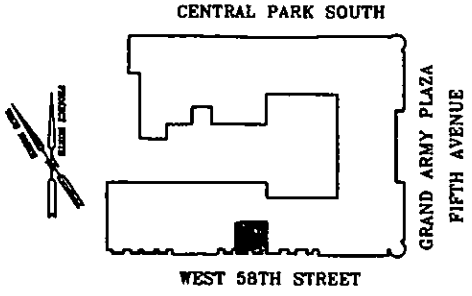


PLATE:
29

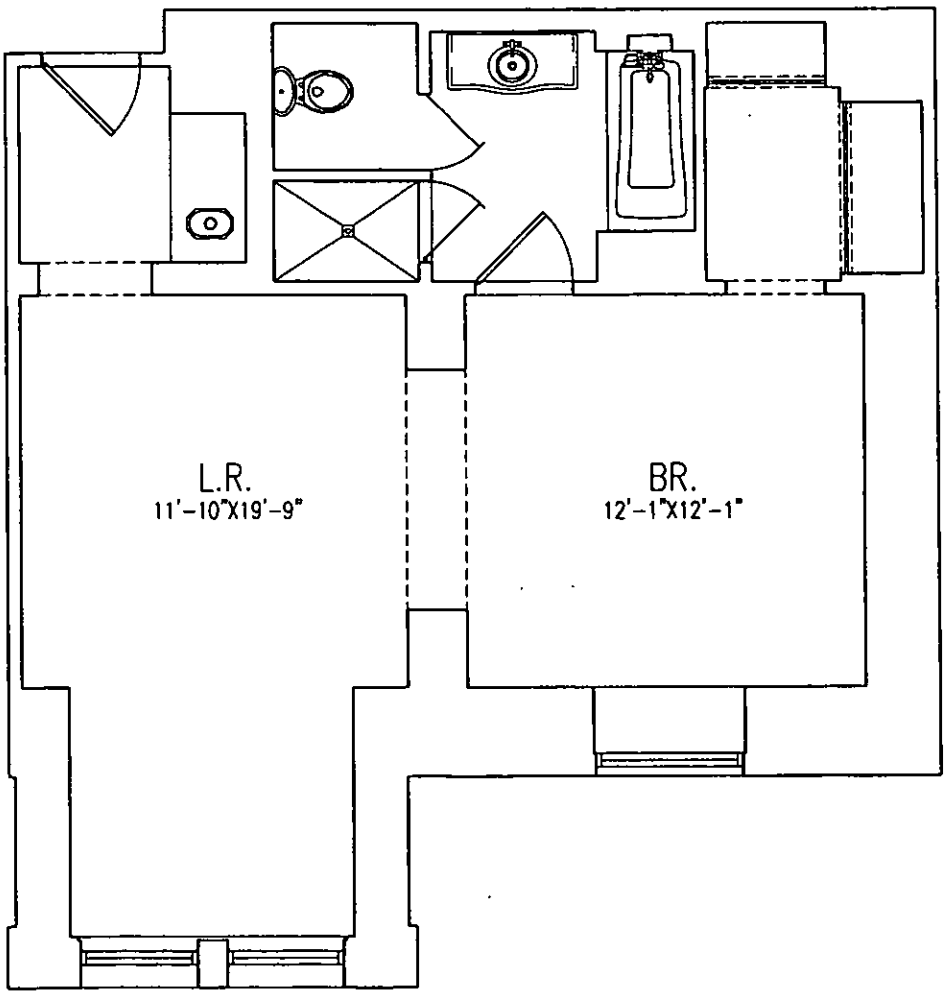
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1831 - EDWARDIAN SUITE

1 BEDROOM
1 BATH

APPROX. 732 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

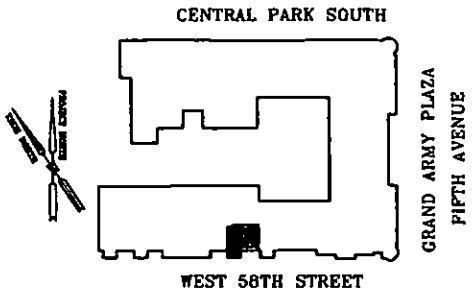


PLATE:
30

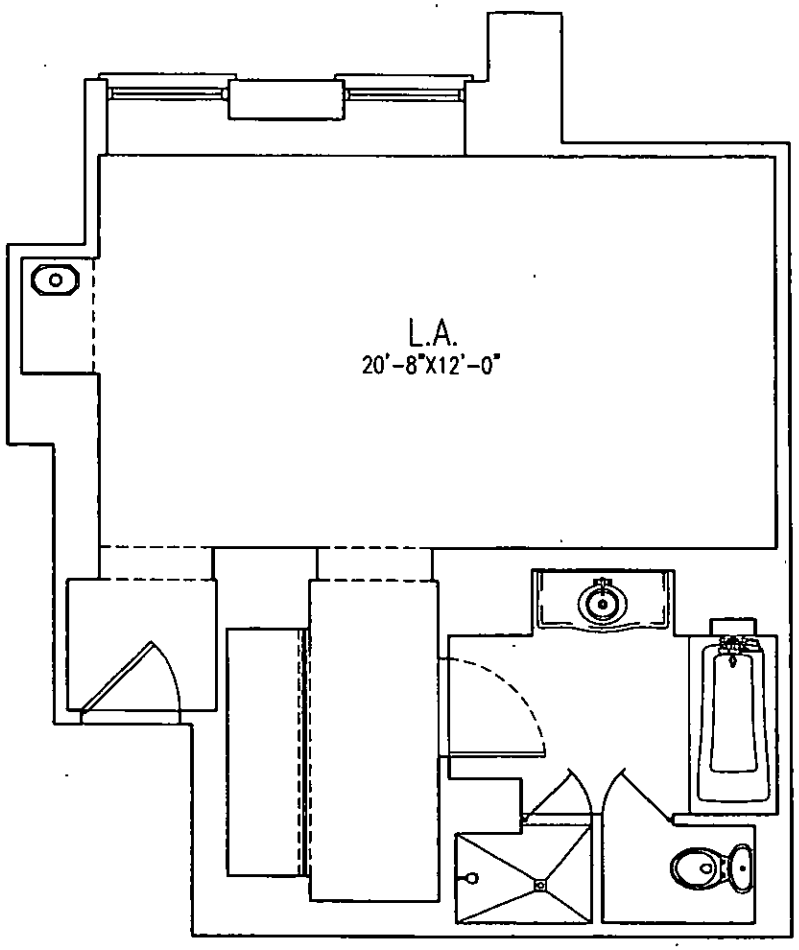
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 11TH

SUITE 1126 – PALM SUITE

0 BEDROOM
1 BATH

APPROX. 580 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

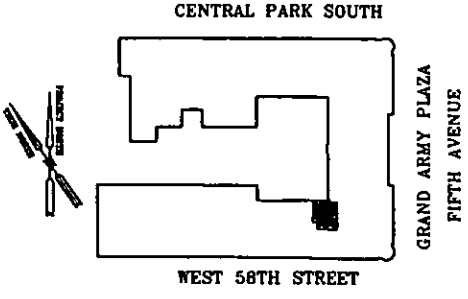


PLATE:
31

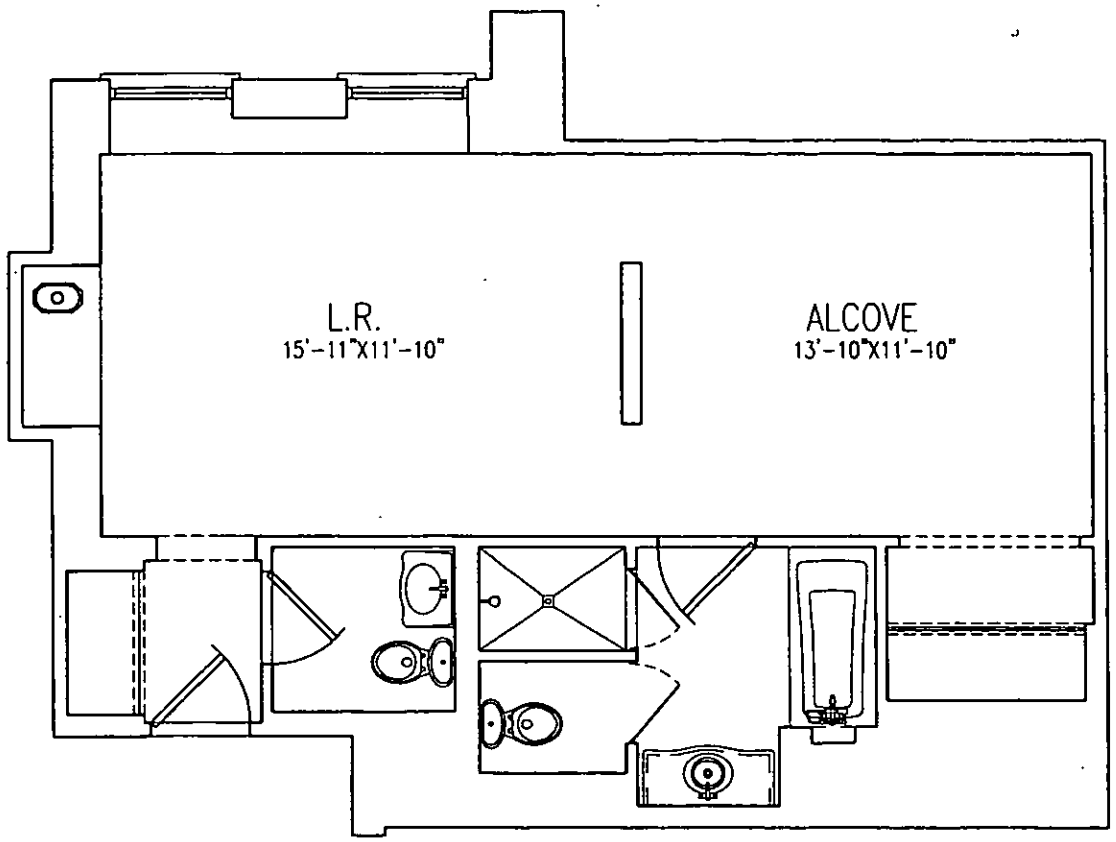
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 12TH–18TH

SUITE 1226–1826 – ROSE SUITE

0 BEDROOM
1.5 BATHS

APPROX. 713 SQ.FT.




0 1 2 3 4 5 10

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05–04–06

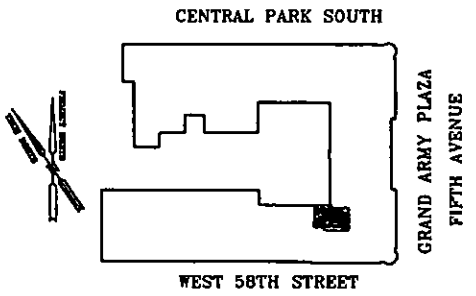


PLATE:
32

# THE PLAZA HOTEL CONDOMINIUMS

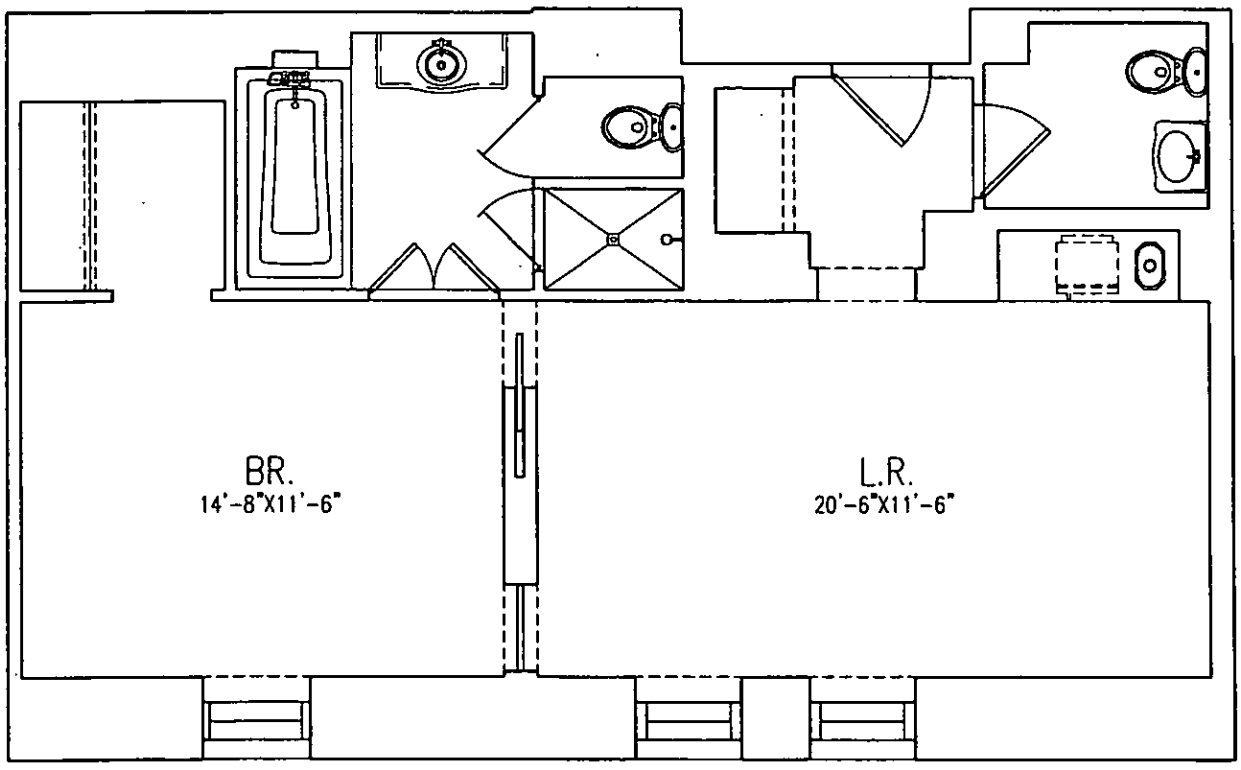
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 11TH

SUITE 1129 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 639 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

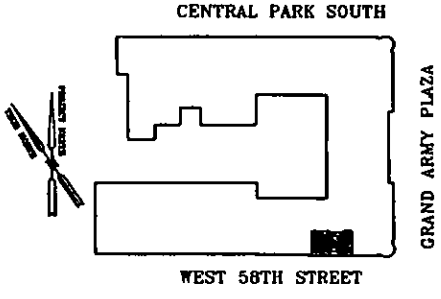


PLATE:
33

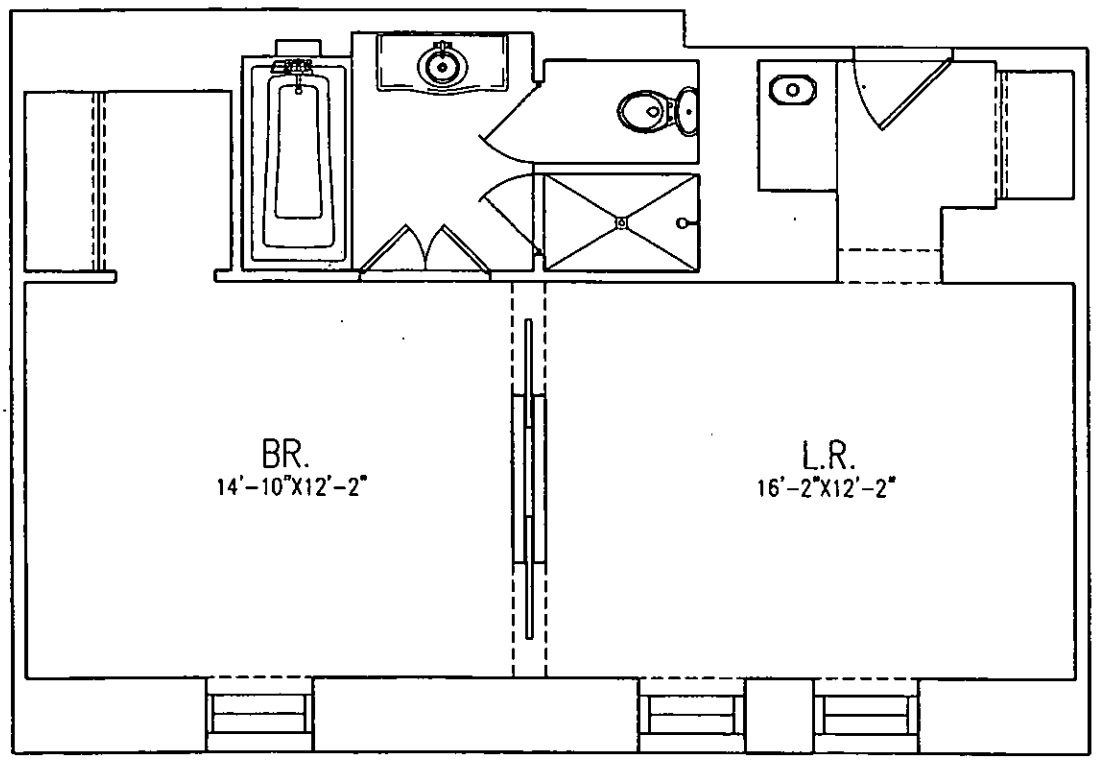
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 12TH–16TH

SUITE 1229–1629 – ROSE SUITE

1 BEDROOM
1 BATH

APPROX. 730 SQ.FT.




0 1 2 3 4 5 10

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05–04–06

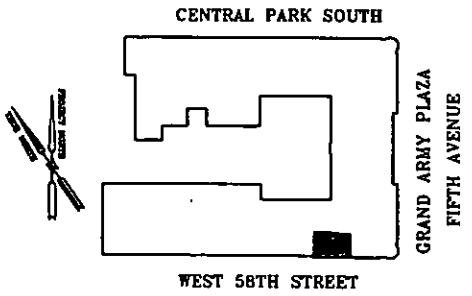


PLATE:
34

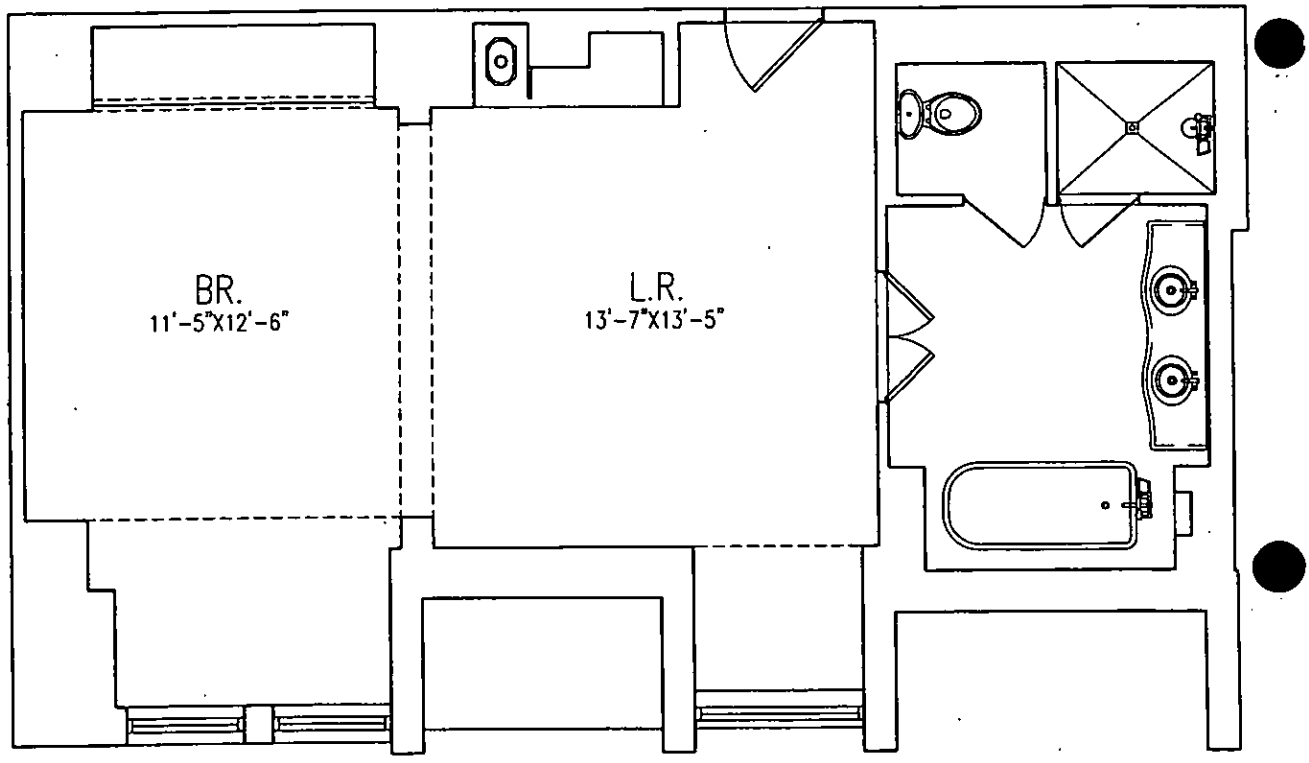
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1729 – ROSE SUITE

1 BEDROOM
1 BATH

APPROX. 767 SQ.FT.




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

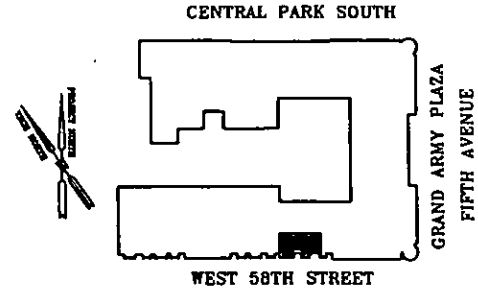


PLATE:
35

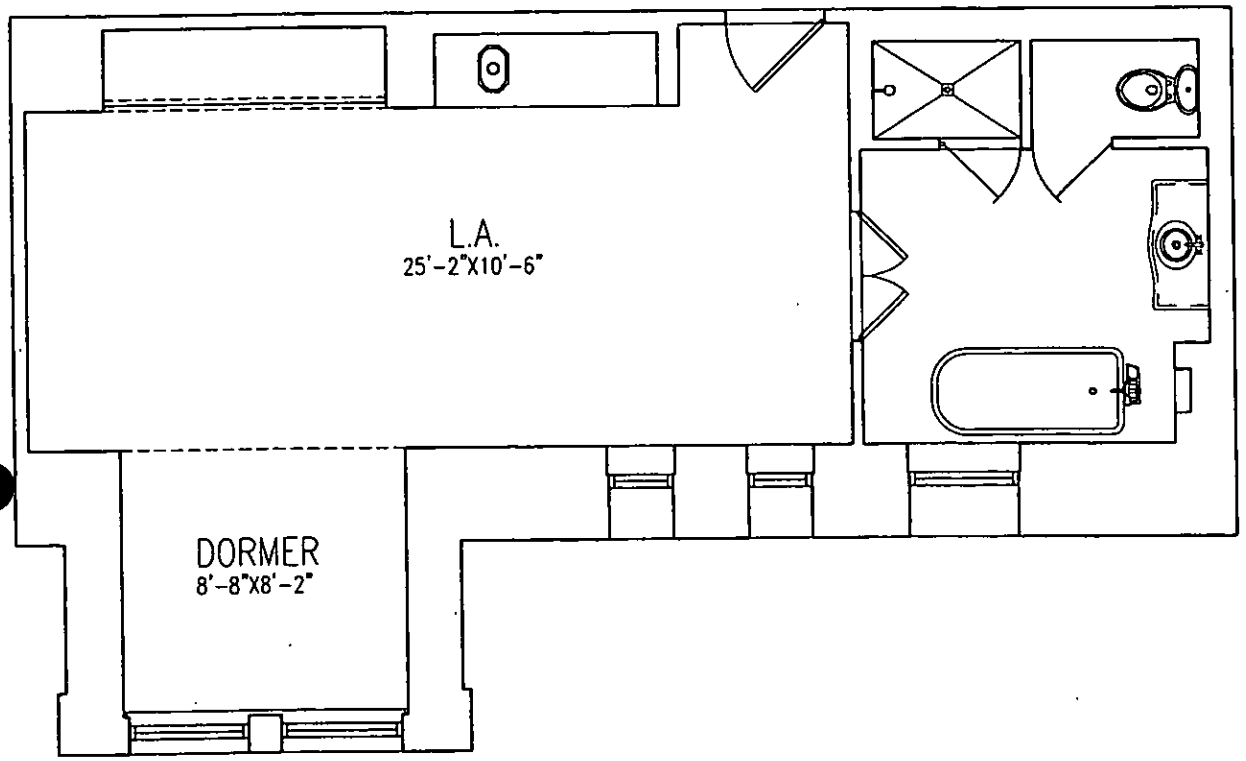
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1829 - ROSE SUITE

0 BEDROOM
1 BATH

APPROX. 691 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

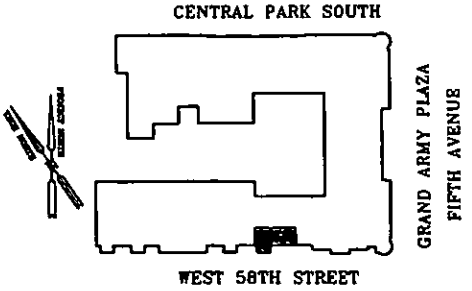


PLATE:
36A

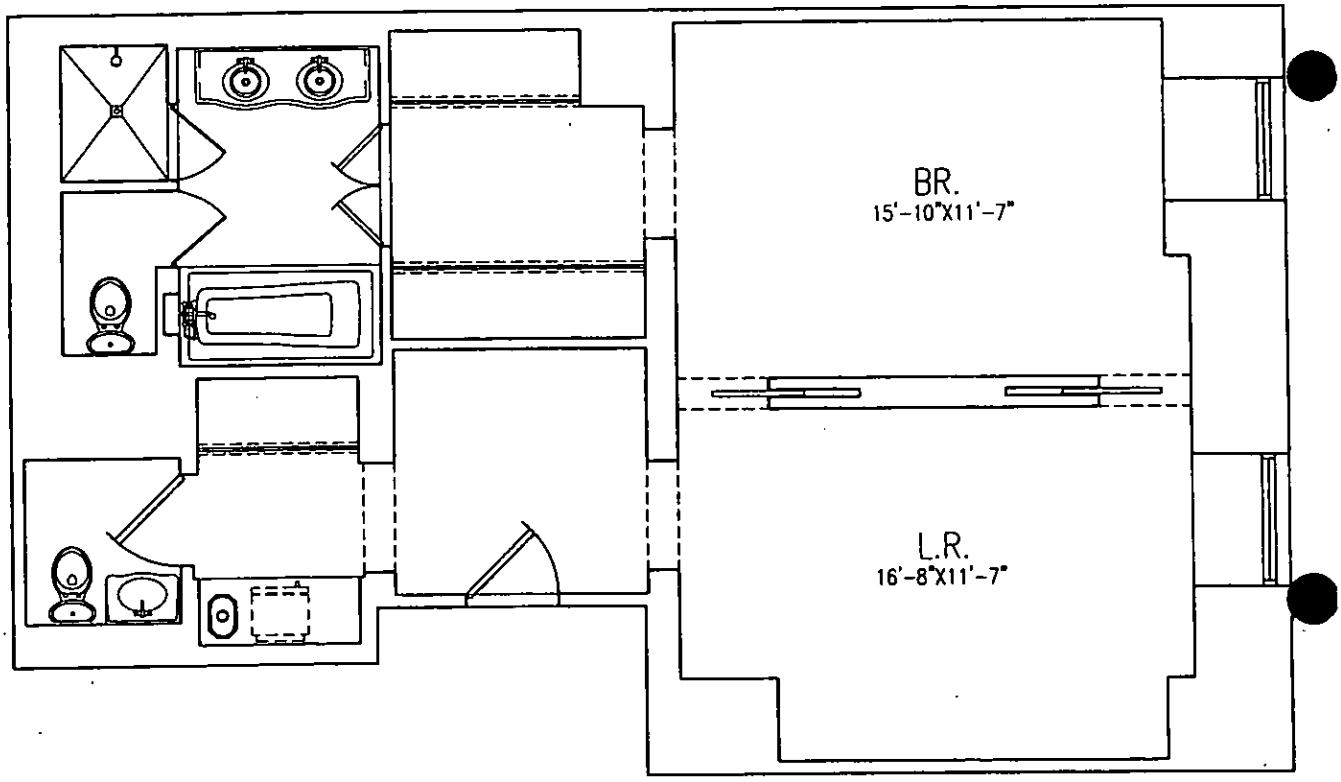
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 12TH–16TH

SUITE 1221–1621 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 905 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

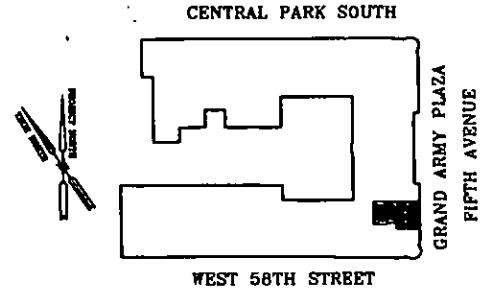


PLATE:
36B

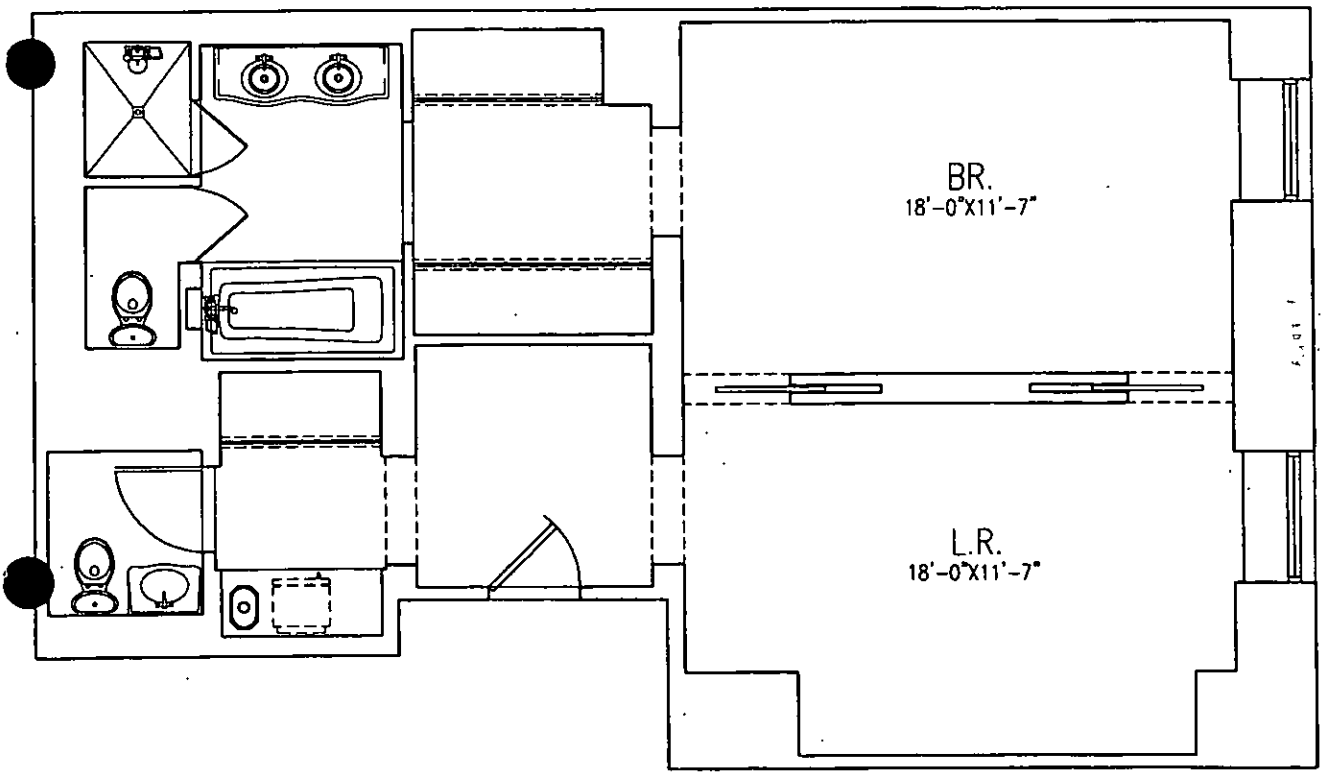
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 17TH-18TH

SUITE 1721-1821 - EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 903 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

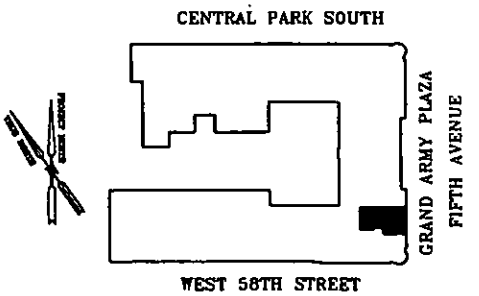


PLATE:
37

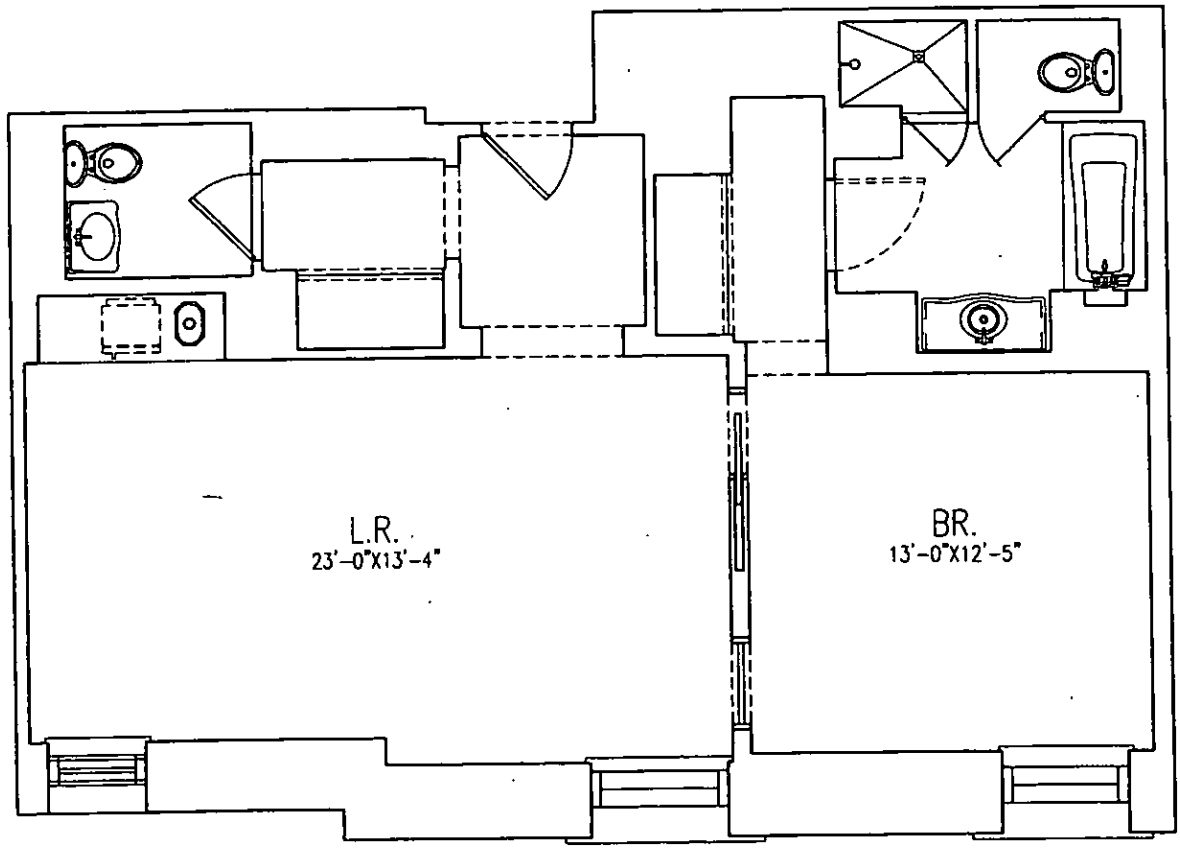
# THE PLAZA HOTEL CONDOMINIUMS
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVEL: 11TH

SUITE 1127 – EDWARDIAN SUITE

1 BEDROOM
1.5 BATHS

APPROX. 924 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

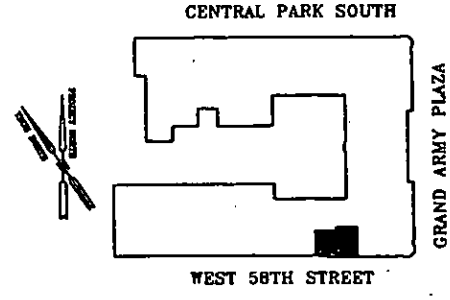


PLATE:
38

# THE PLAZA HOTEL CONDOMINIUMS

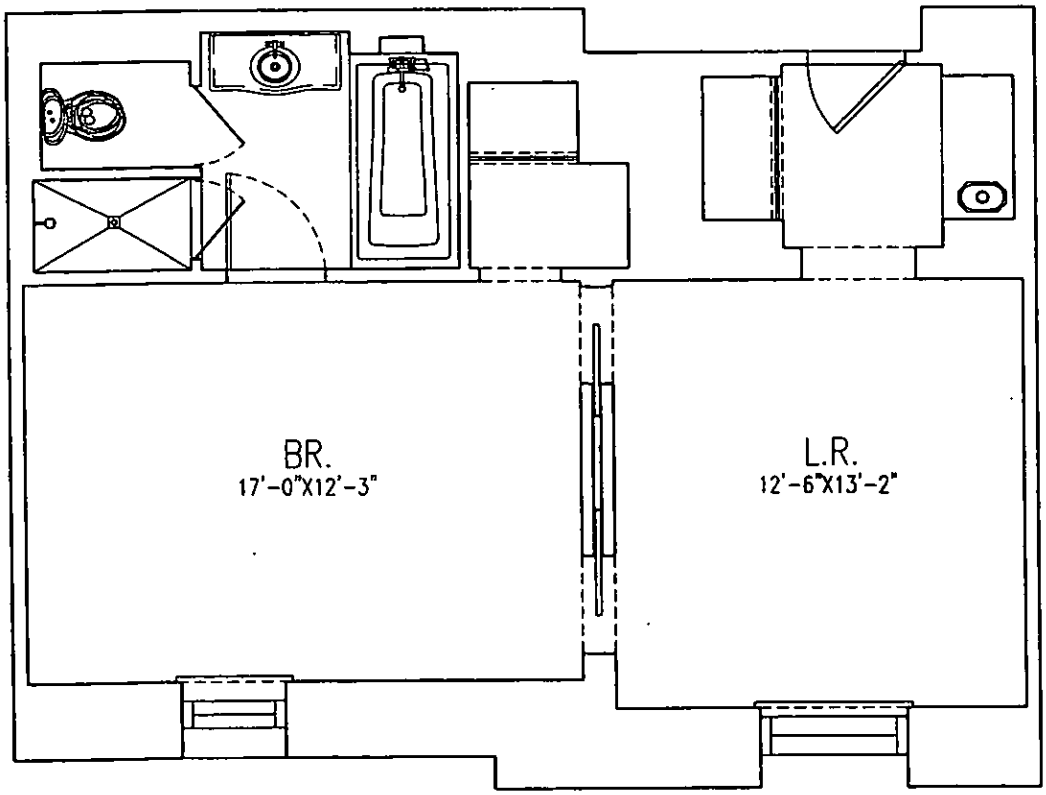
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 12TH–16TH

SUITE 1227–1627 – ROSE SUITE

1 BEDROOM
1 BATH

APPROX. 697 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

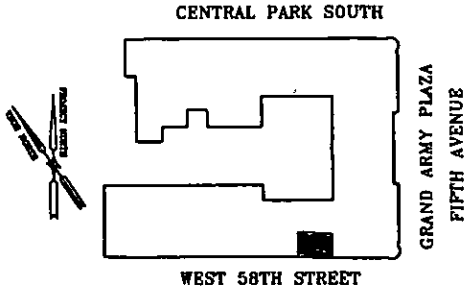


PLATE:
39

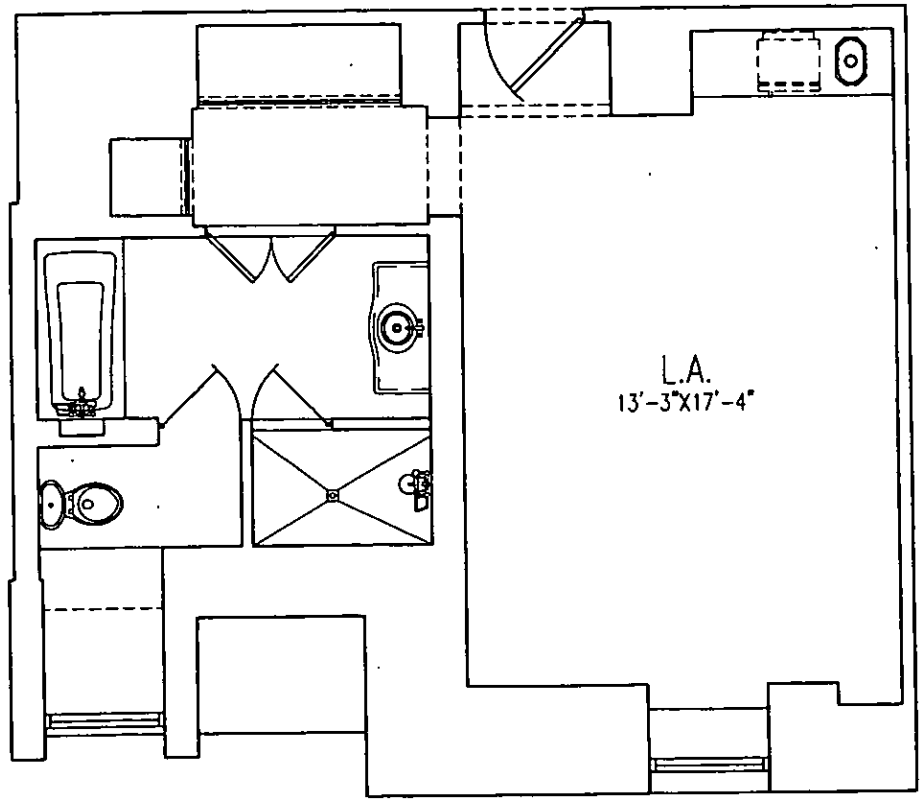
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1727 - PALM SUITE

0 BEDROOM
1 BATH

APPROX. 598 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

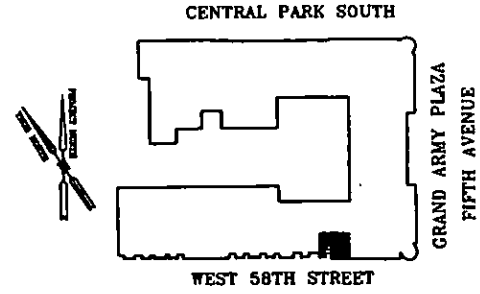


PLATE:
40

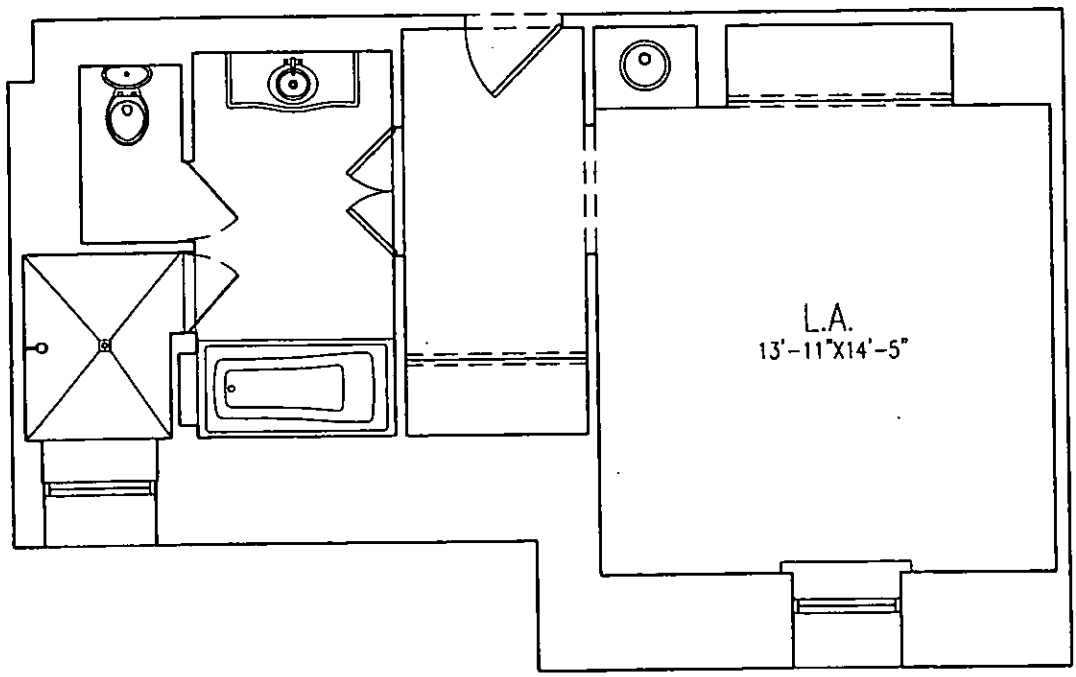
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1827 - PALM SUITE

0 BEDROOM
1 BATH

APPROX. 574 SQ.FT.



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05-04-06

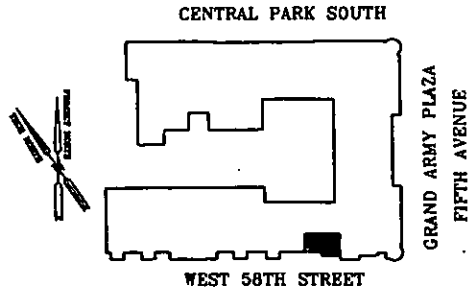


PLATE:
41A

# THE PLAZA HOTEL CONDOMINIUMS

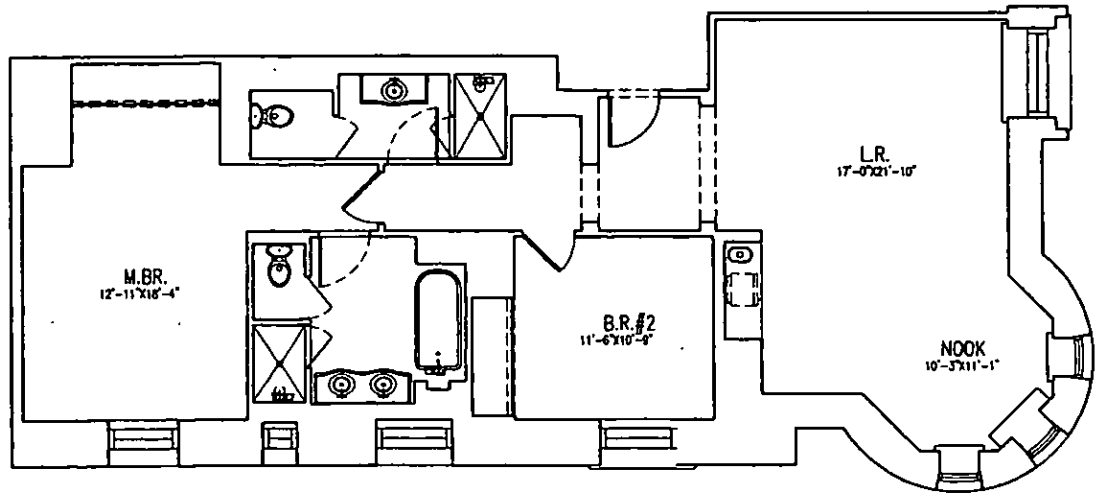
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 12TH–16TH

SUITE 1223–1623 – PLAZA SUITE

2 BEDROOMS
2 BATHS

APPROX. 1,476 SQ.FT.

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05-04-06

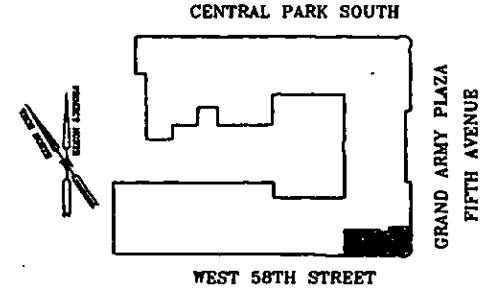


PLATE:
41B

# THE PLAZA HOTEL CONDOMINIUMS

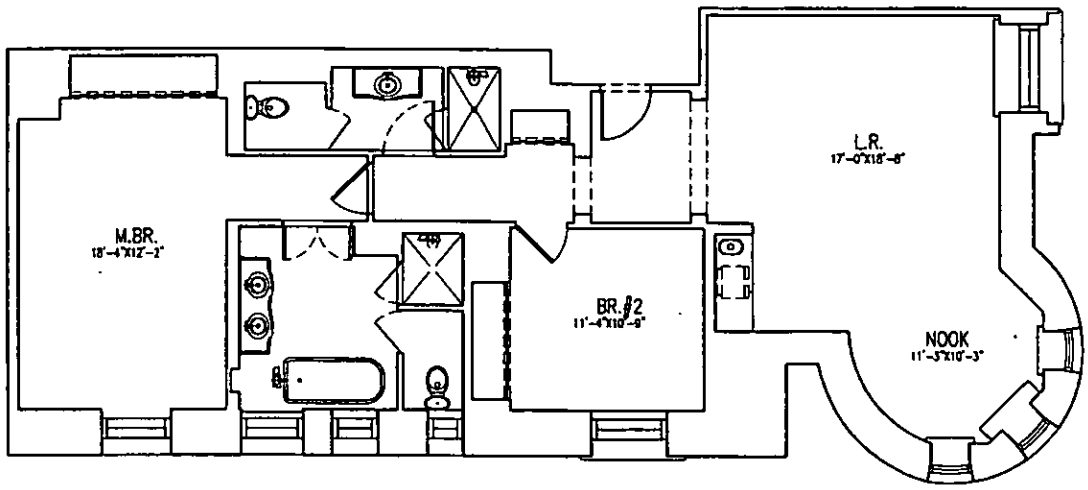
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 17TH

SUITE 1723 – PLAZA SUITE

2 BEDROOMS
2 BATHS

APPROX. 1,473 SQ.FT.

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05-04-06

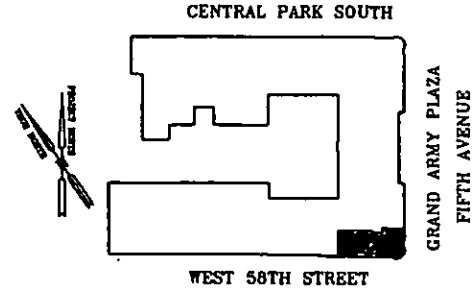


PLATE:
42A

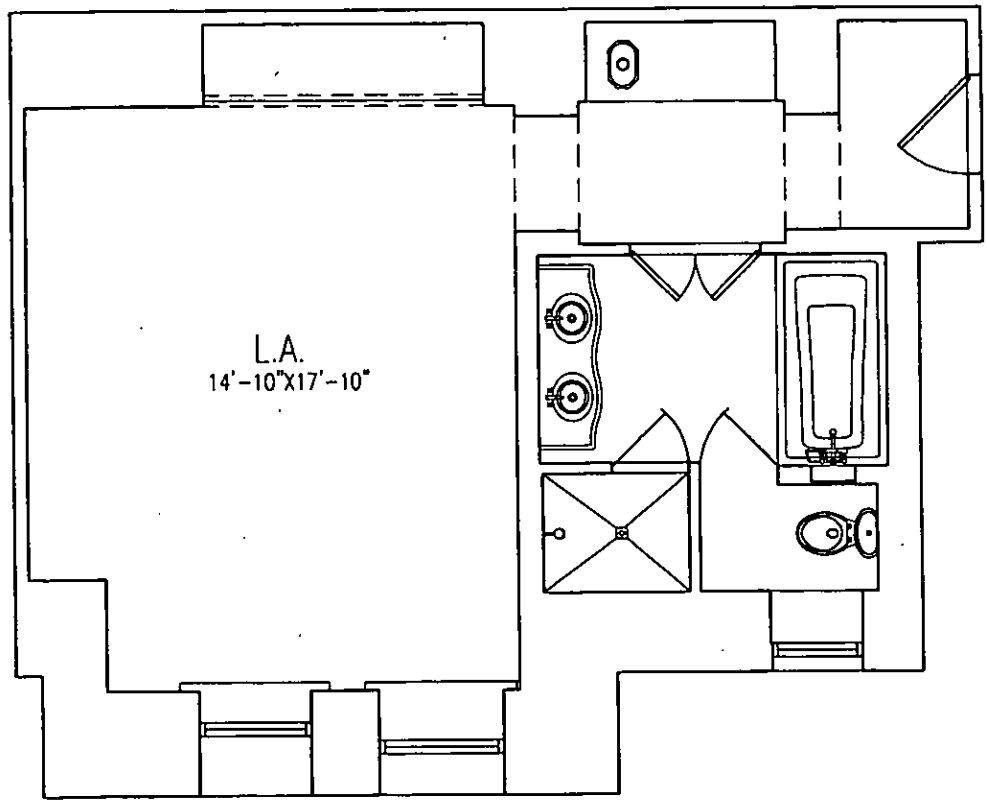
# THE PLAZA HOTEL CONDOMINIUMS

768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1825 – PALM SUITE

0 BEDROOM APPROX. 620 SQ.FT.
1 BATHS




0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

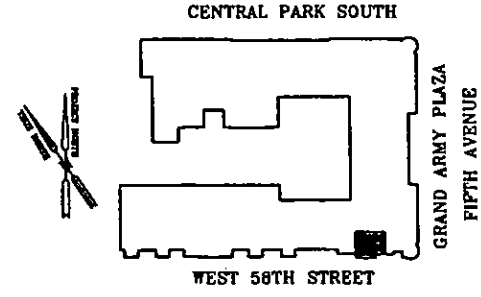


PLATE:
42B

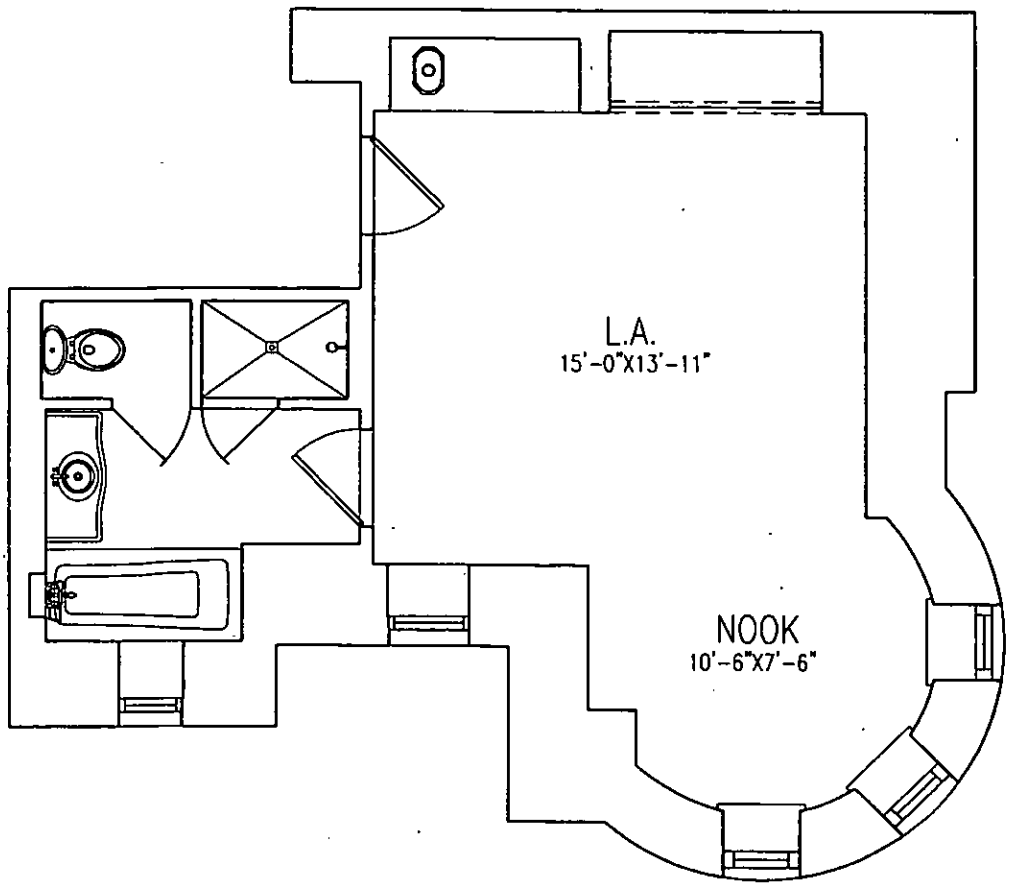
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVEL: 18TH

SUITE 1823 - PALM SUITE

0 BEDROOM
1 BATHS

APPROX. 598 SQ.FT.




0 1 2 3 4 5 10

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05-04-06

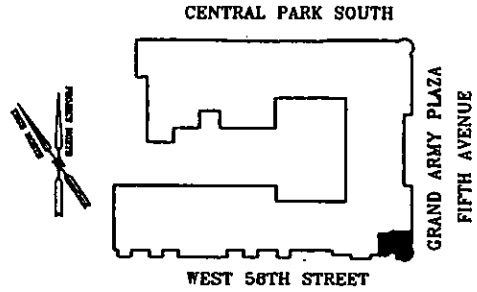


PLATE:
43

# THE PLAZA HOTEL CONDOMINIUMS

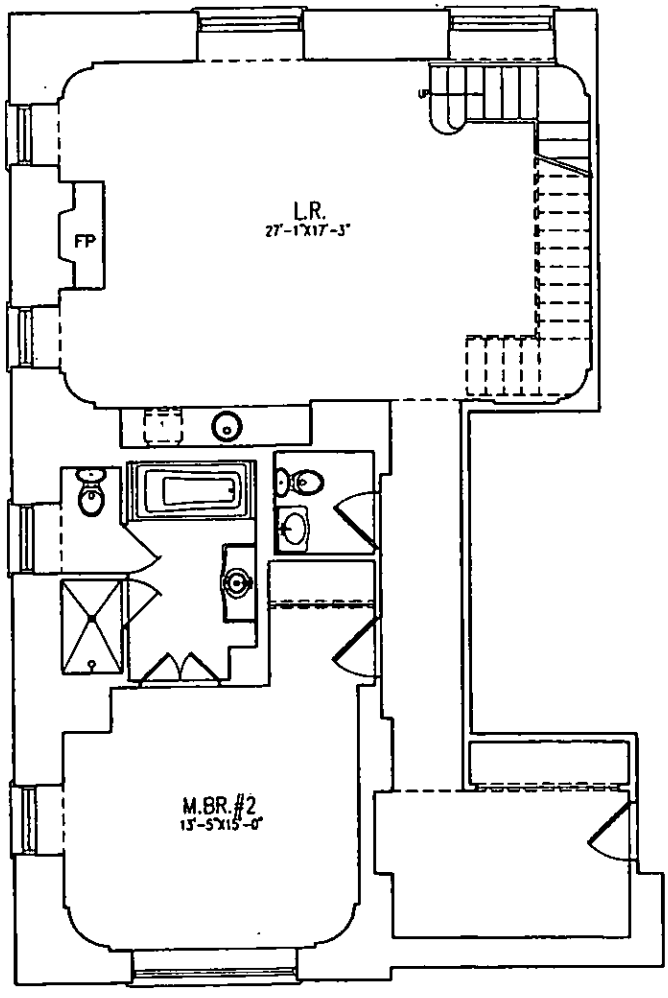
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 20TH–21ST

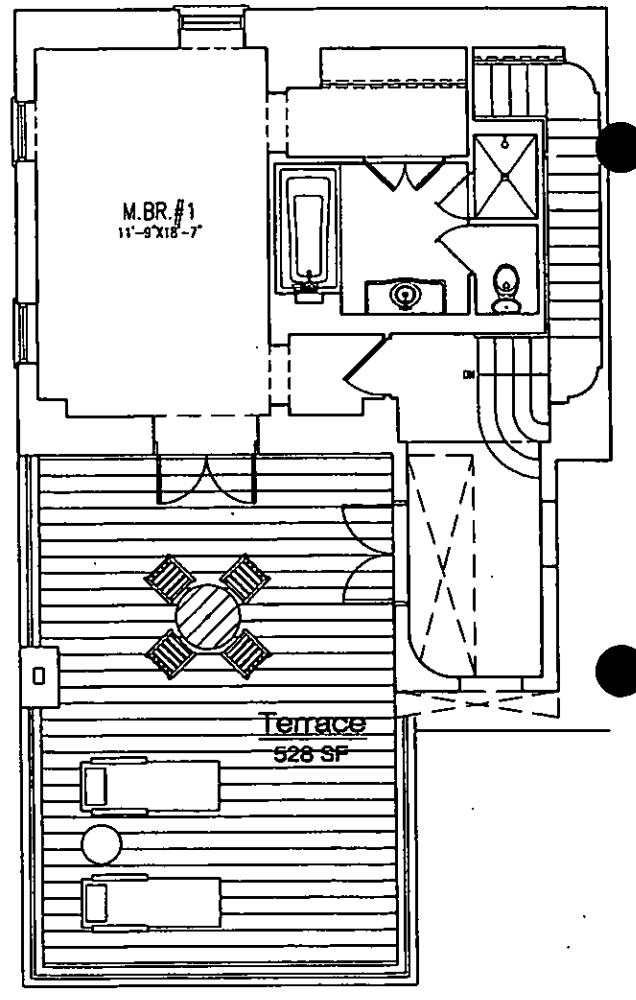
SUITE PH 2040 – TERRACE SUITE

2 BEDROOMS
2.5 BATHS

APPROX. 2,148 SQ.FT.




LEVEL 20
1,373 SQ.FT.




LEVEL 21
775 SQ.FT.

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

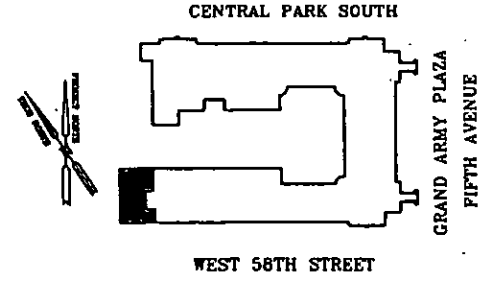


PLATE:
44

# THE PLAZA HOTEL CONDOMINIUMS

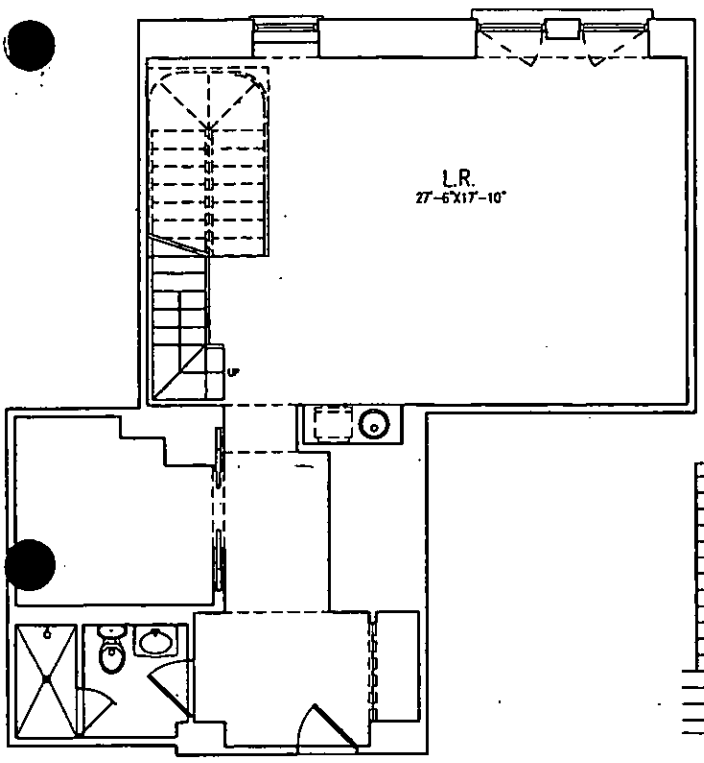
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 20TH-21ST

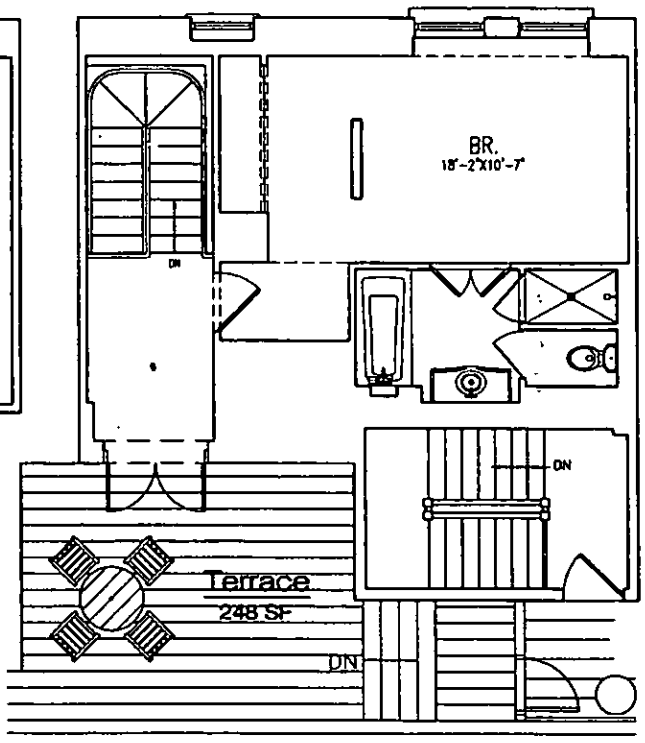
SUITE PH 2038 - TERRACE SUITE

1 BEDROOM
2 BATHS

APPROX. 1,501 SQ.FT.




LEVEL 20
889 SQ.FT.




LEVEL 21
612 SQ.FT.

0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

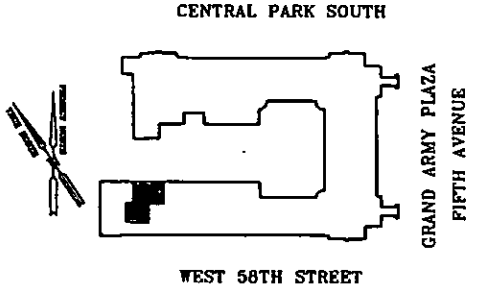


PLATE:
45

# THE PLAZA HOTEL CONDOMINIUMS

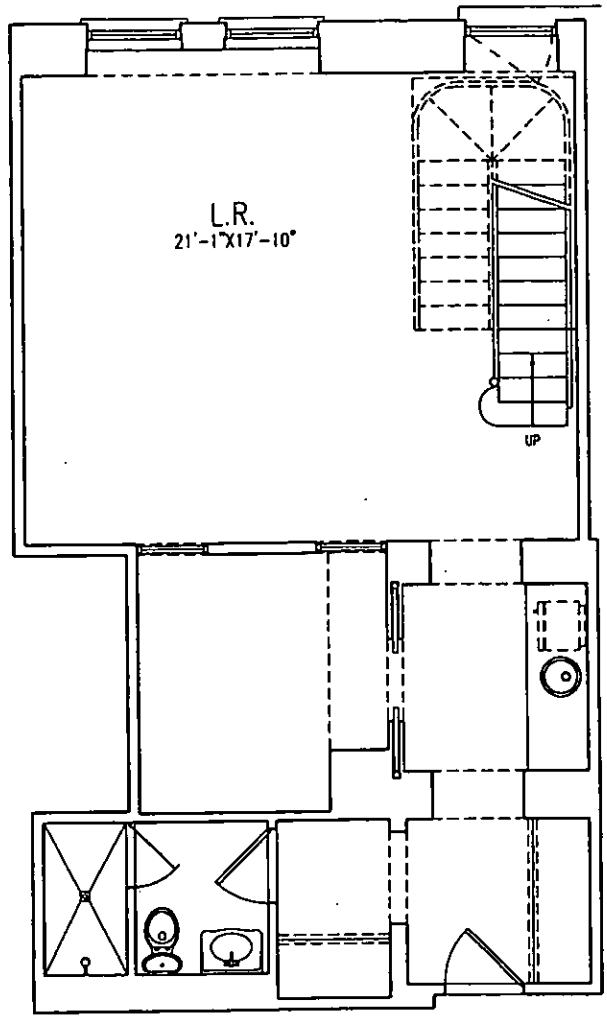
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 20TH–21ST

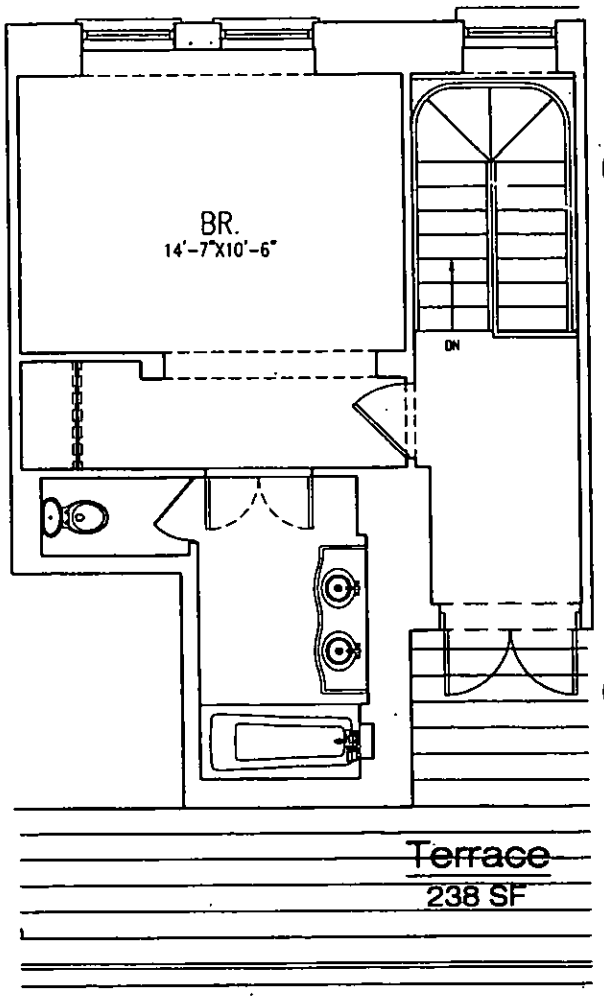
SUITE PH 2036 – TERRACE SUITE

1 BEDROOM
2 BATHS

APPROX. 1,305 SQ.FT.




LEVEL 20
764 SQ. FT.




LEVEL 21
541 SQ. FT.

0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

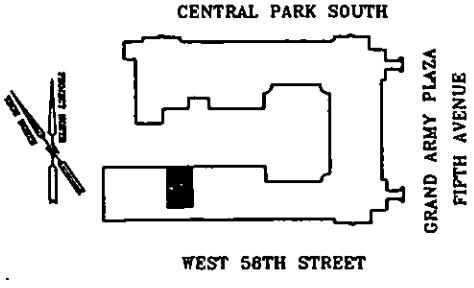
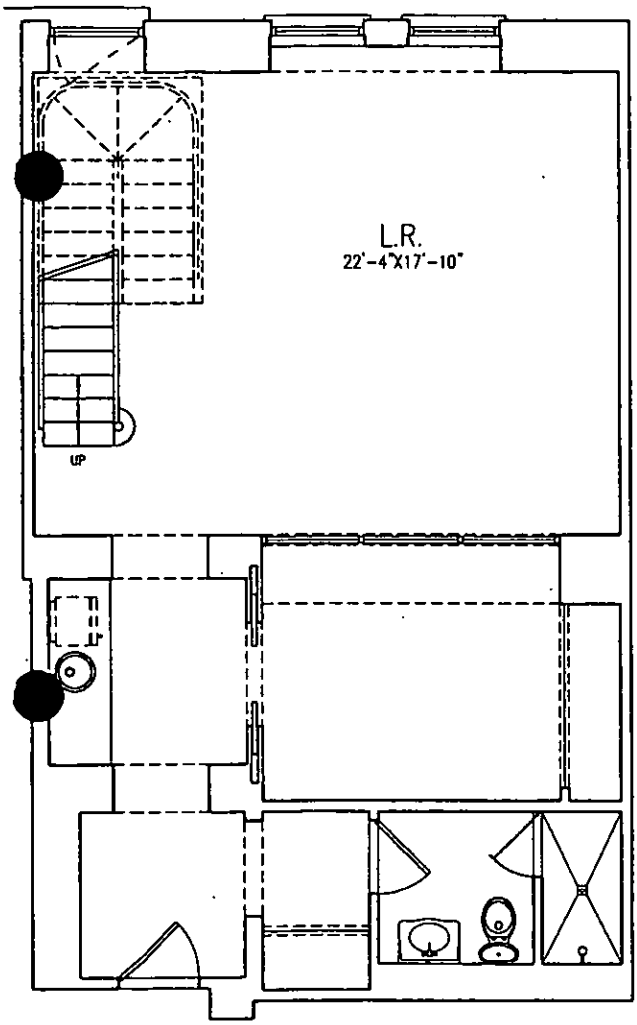


PLATE:
46

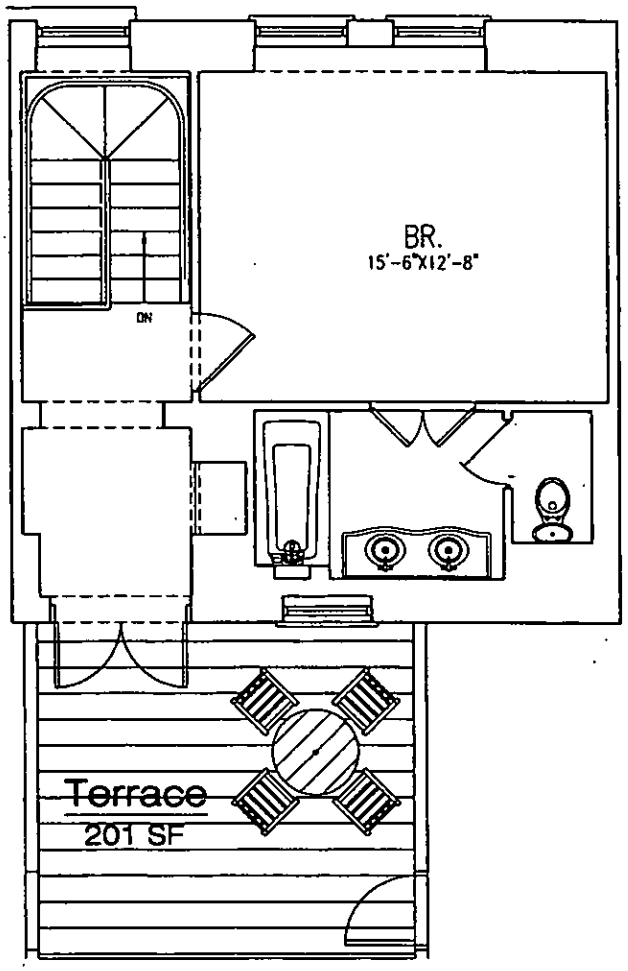
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 20TH–21ST

SUITE PH 2034 – TERRACE SUITE
1 BEDROOM
2 BATHS
APPROX. 1,359 SQ.FT.




LEVEL 20
835 SQ.FT.




LEVEL 21
425 SQ.FT.

0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

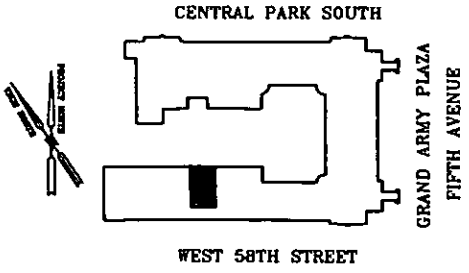


PLATE:
47

# THE PLAZA HOTEL CONDOMINIUMS

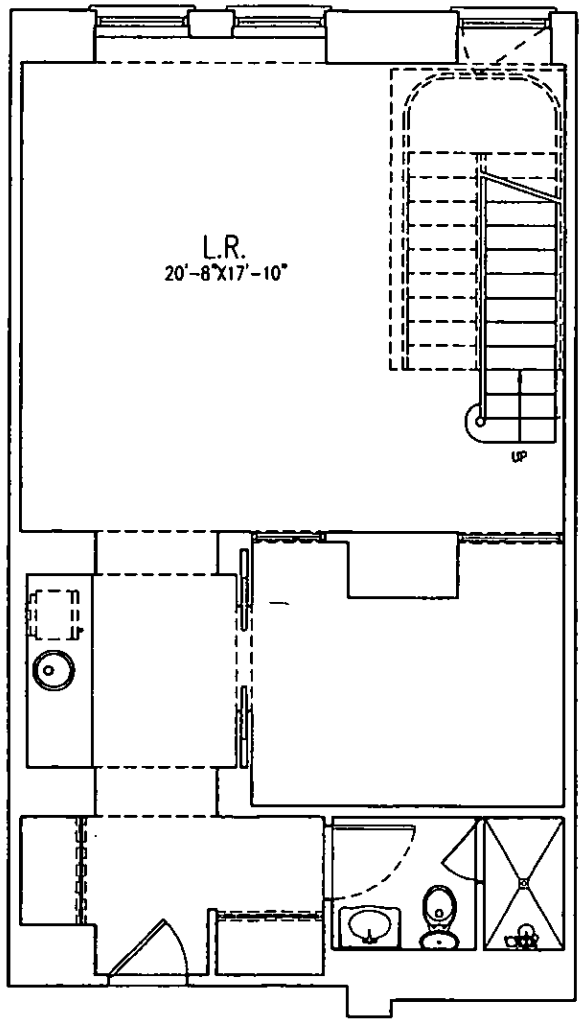
## 768 FIFTH AVENUE
## NEW YORK, NY 10019

LEVELS: 20TH-21ST

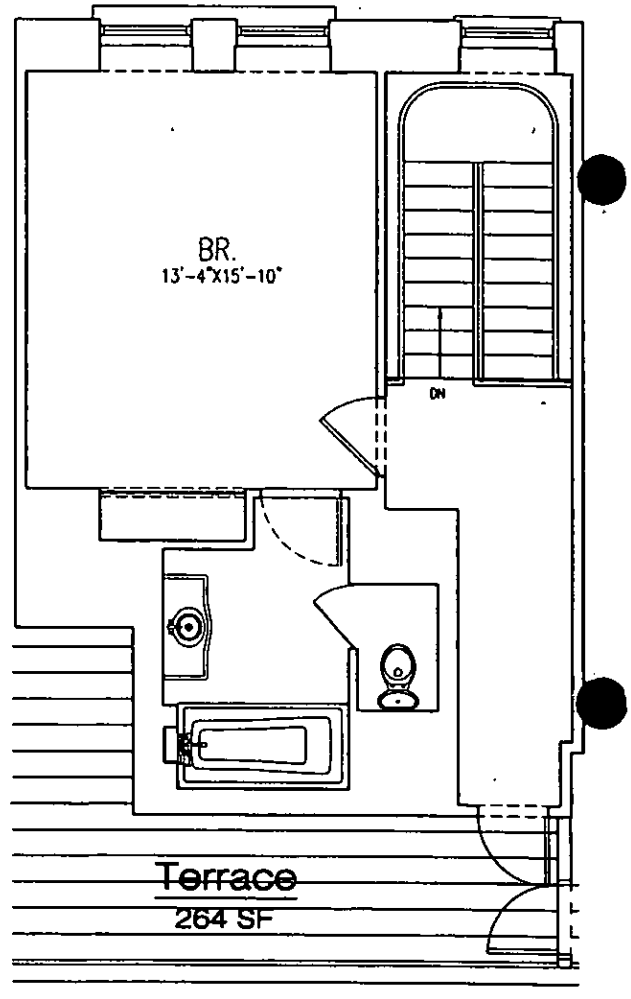
SUITE PH 2032 – TERRACE SUITE

1 BEDROOM
2 BATHS

APPROX. 1,393 SQ.FT.




LEVEL 20
781 SQ.FT.




LEVEL 21
612 SQ.FT.

0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

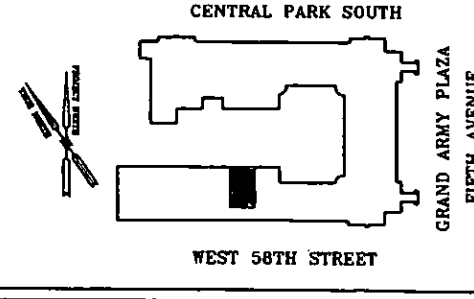


PLATE:
48

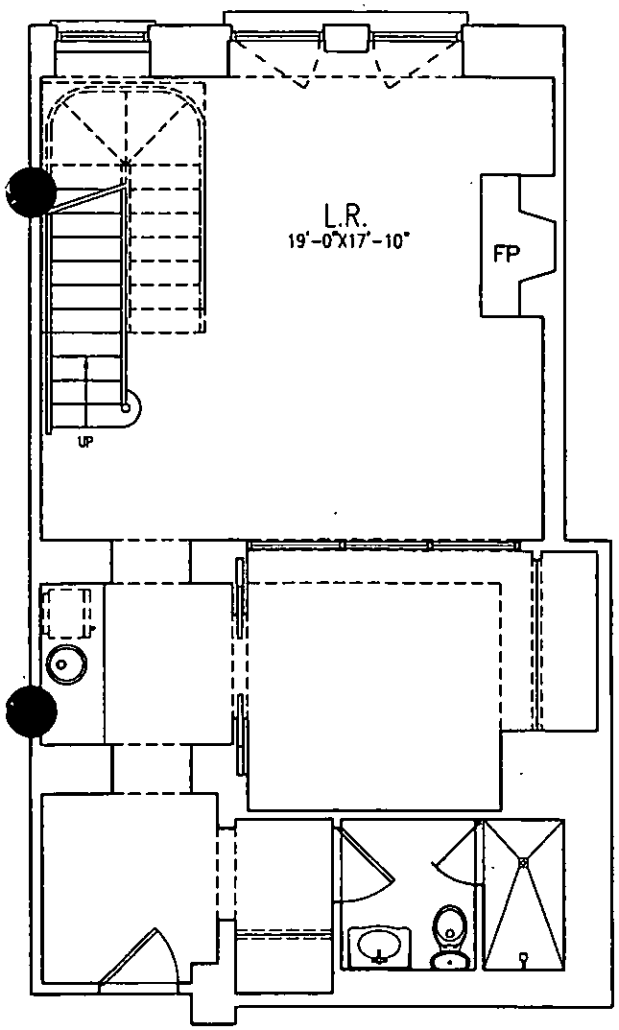
# THE PLAZA HOTEL CONDOMINIUMS
768 FIFTH AVENUE
NEW YORK, NY 10019

LEVELS: 20TH–21ST

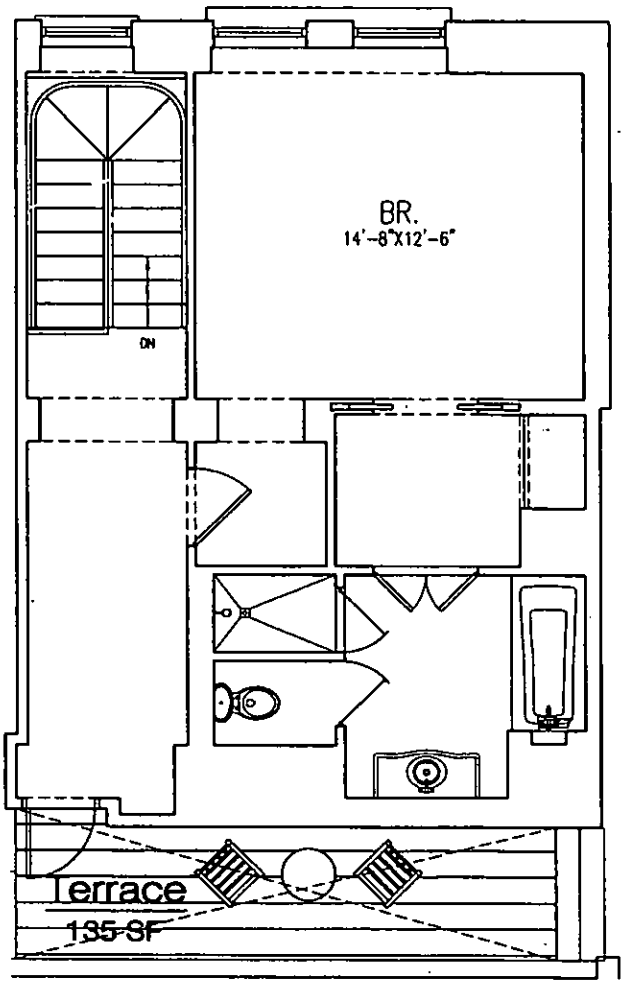
SUITE PH 2030 – TERRACE SUITE

1 BEDROOM
2 BATHS

APPROX. 1,532 SQ.FT.




LEVEL 20
637 SQ.FT.




LEVEL 21
695 SQ.FT.

0 1 2 3 4 5 10

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds the usable floor area. Sponsor reserves the right to make changes in accordance with the Offering Plan.

05-04-06

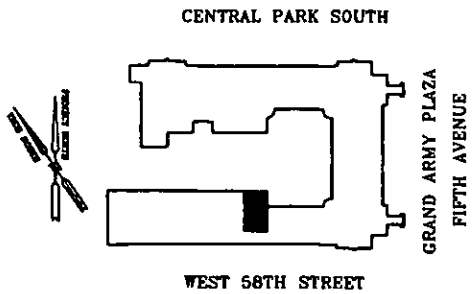


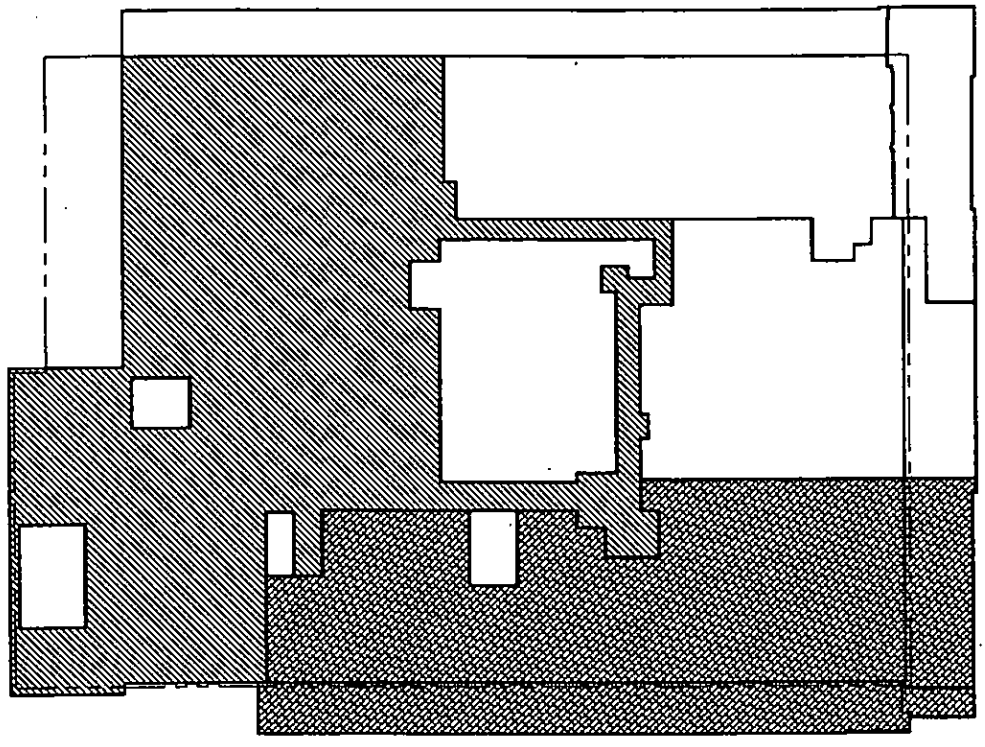
PLATE:
A

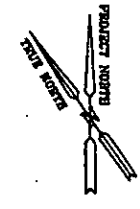
# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: SUB-CELLAR

SHARED AREAS

HOTEL BOH AREAS




04-26-06

PLATE:
B

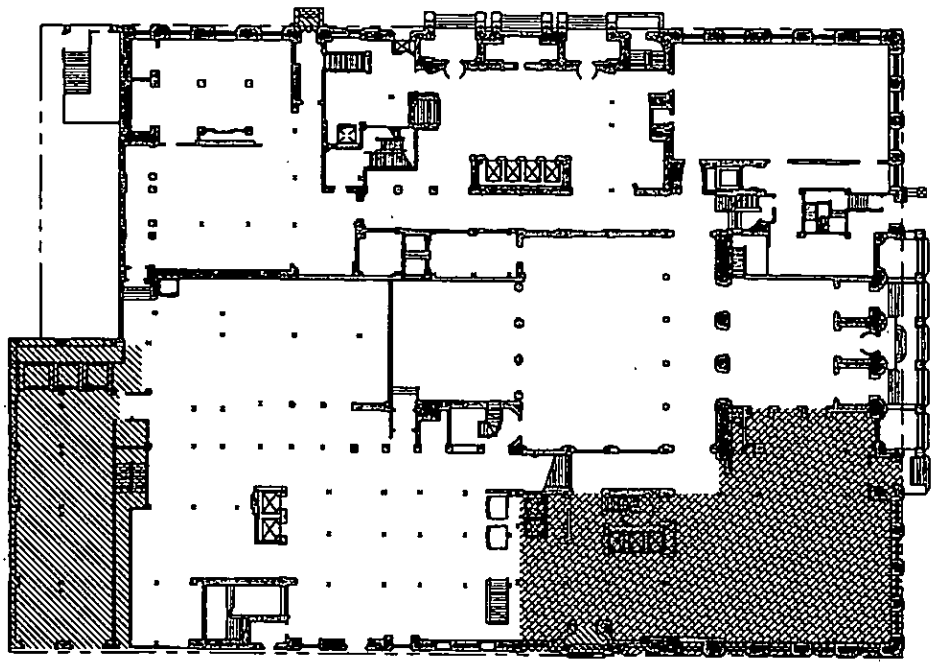
# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 1ST

SHARED AREAS

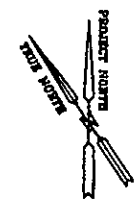
HOTEL LOBBY

CENTRAL PARK SOUTH



GRAND ARMY PLAZA
FIFTH AVENUE

WEST 58TH STREET



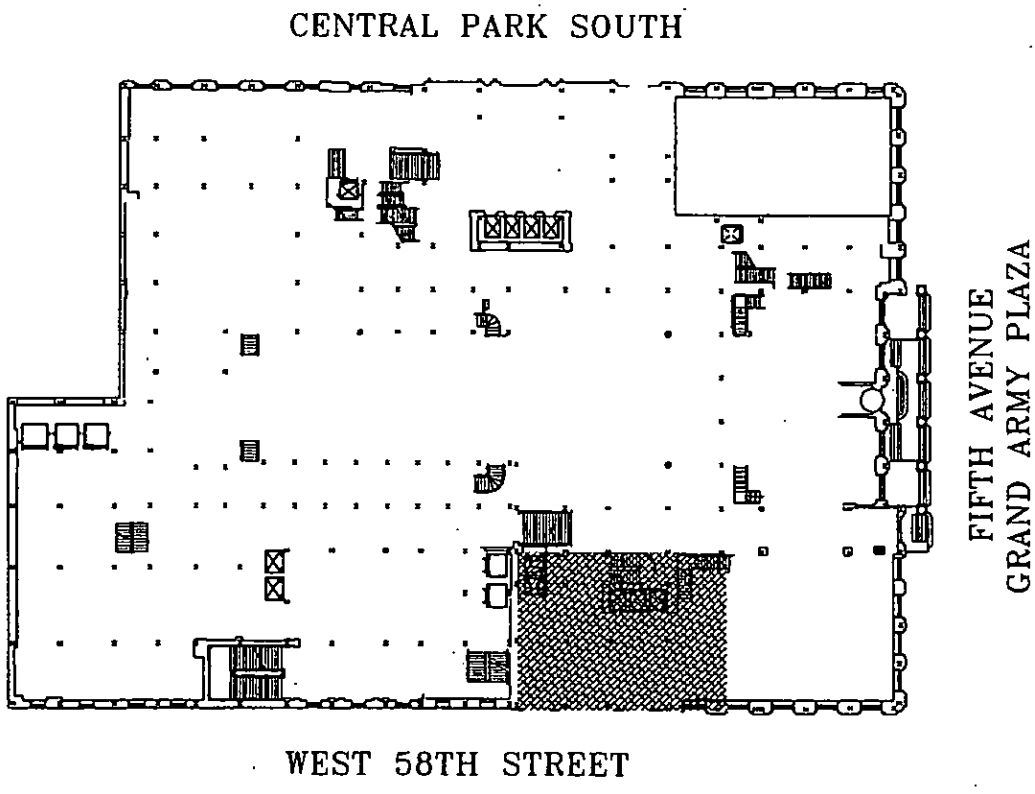

04-26-06

PLATE:
C

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 2ND

HOTEL LOBBY




04-26-06

PLATE:
D

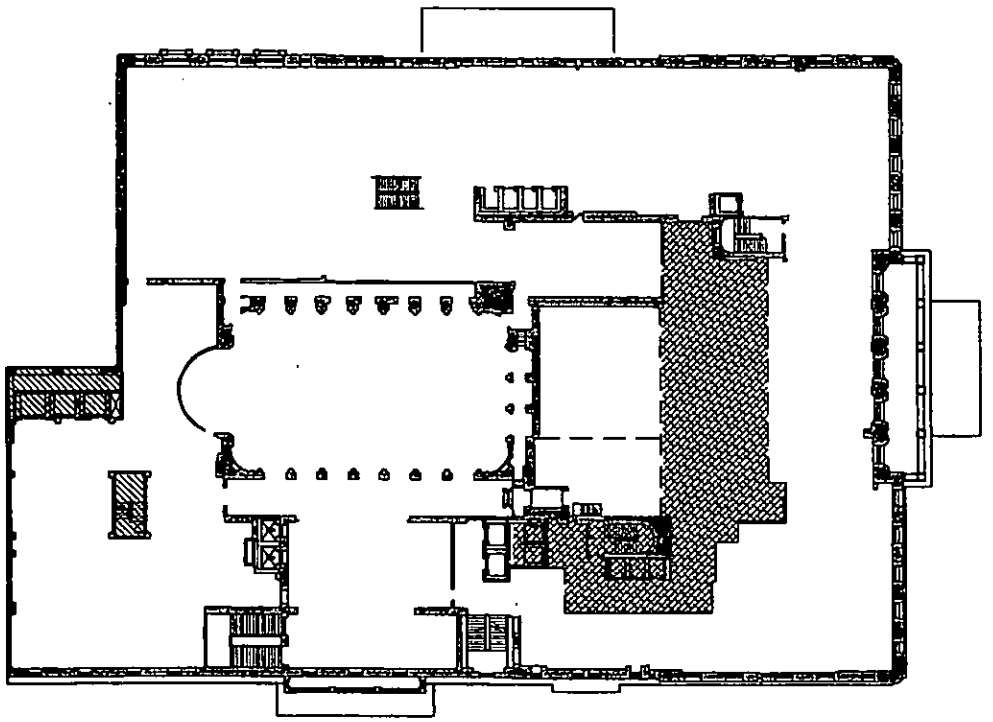
# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 3RD

SHARED AREAS

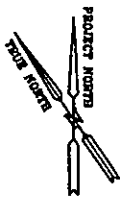
HOTEL ADMINISTRATION

CENTRAL PARK SOUTH



GRAND ARMY PLAZA
FIFTH AVENUE

WEST 58TH STREET



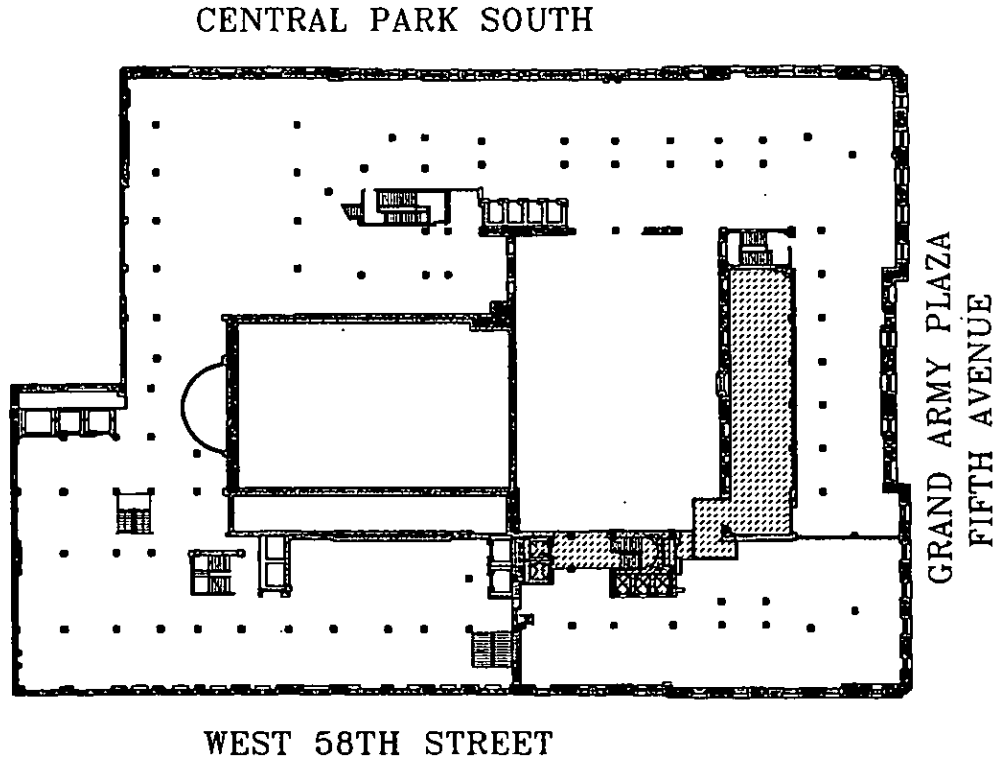

04-26-06

PLATE:
E

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 4TH

HOTEL ADMINISTRATION



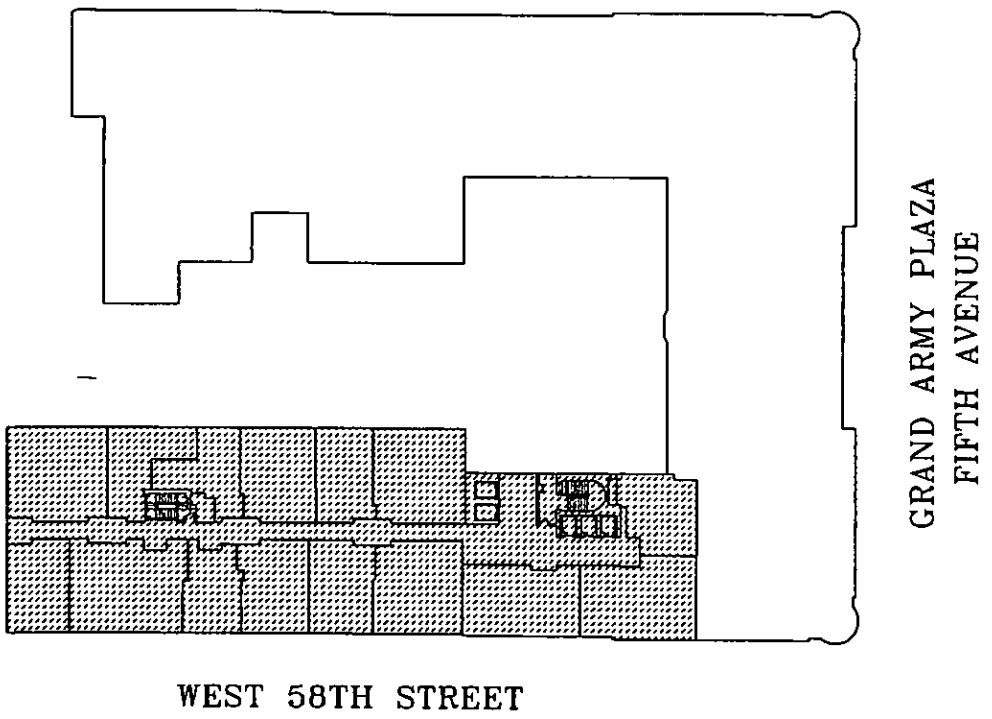

04-26-06

PLATE:
F

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 11TH

HOTEL CONDOMINIUM



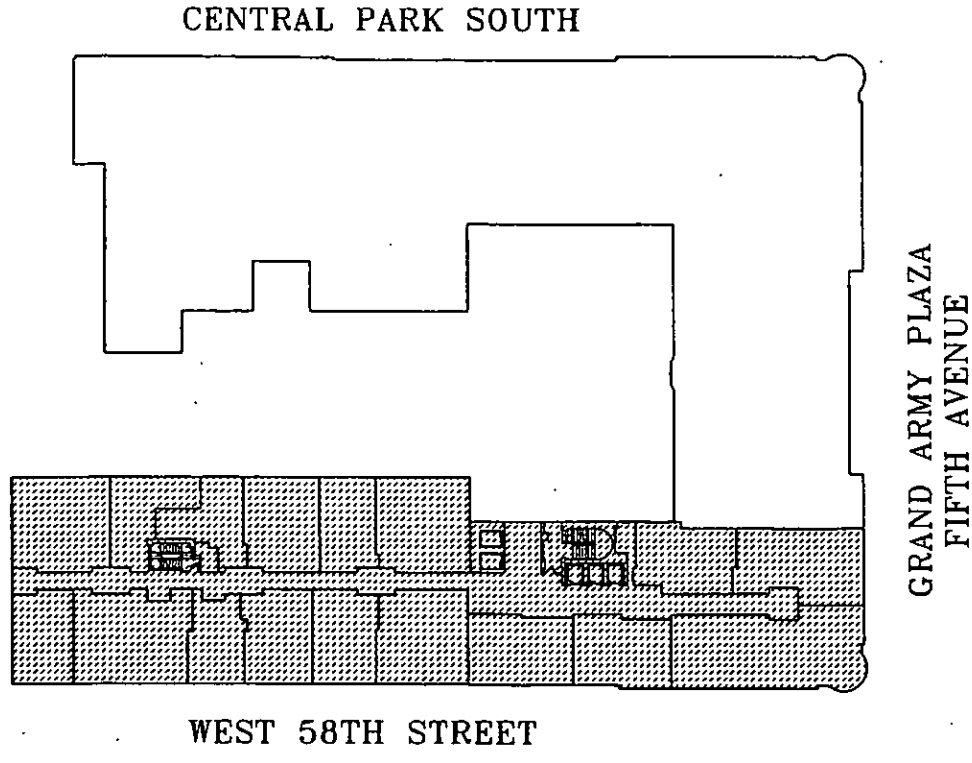

04-26-08

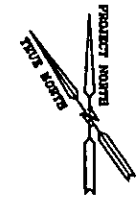
PLATE:
G

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 12TH - 14TH

HOTEL CONDOMINIUM



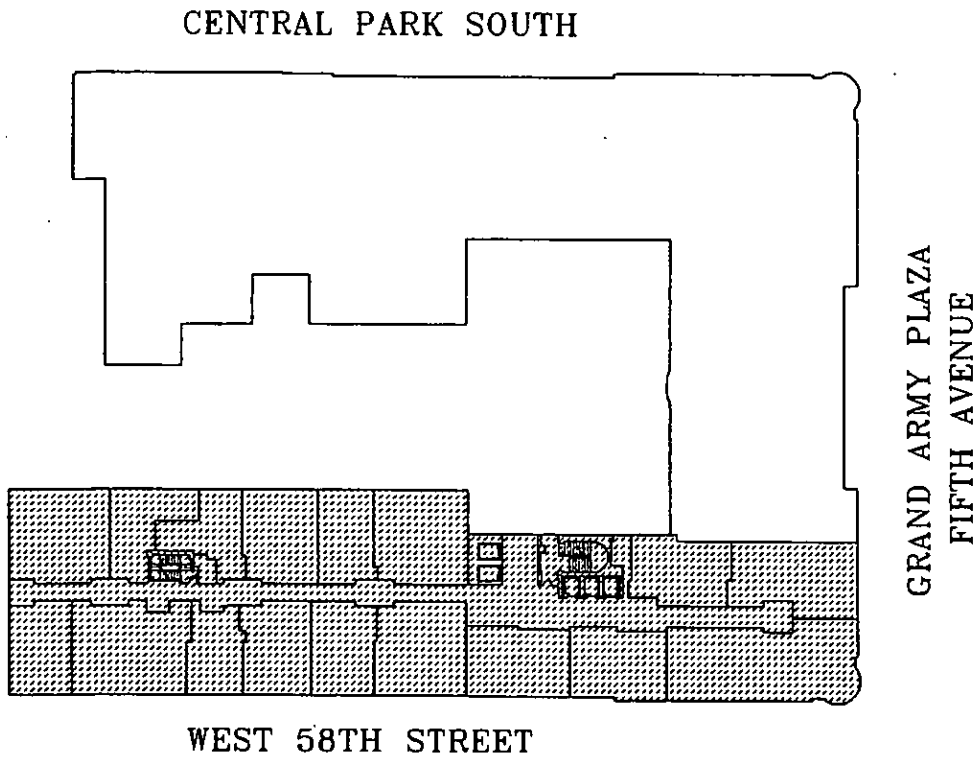

04-26-06

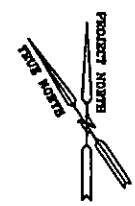
PLATE:
H

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 15TH - 16TH

HOTEL CONDOMINIUM



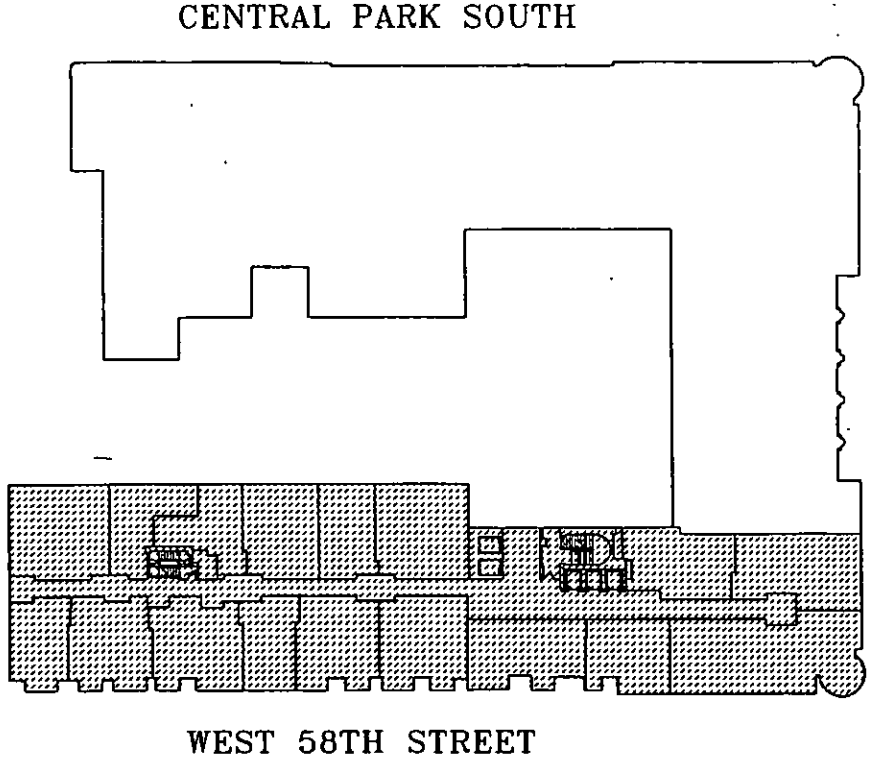
04-26-06

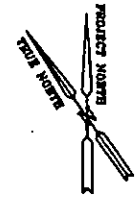
PLATE:
J

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 17TH

HOTEL CONDOMINIUM



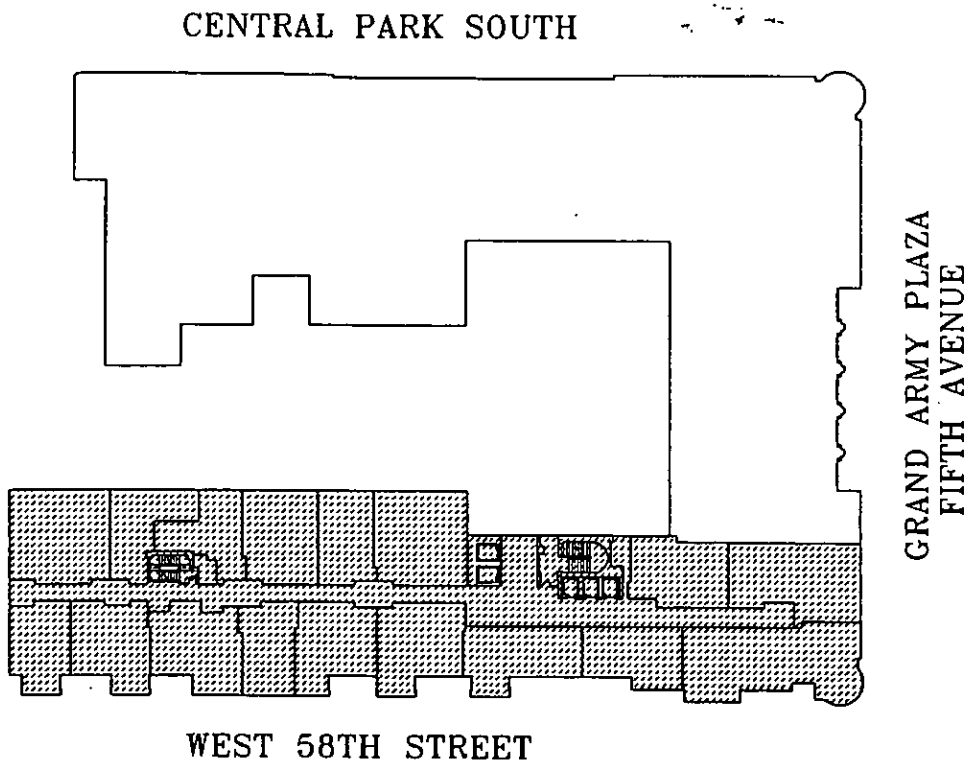

04-26-06

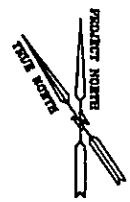
PLATE:
K

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 18TH

HOTEL CONDOMINIUM



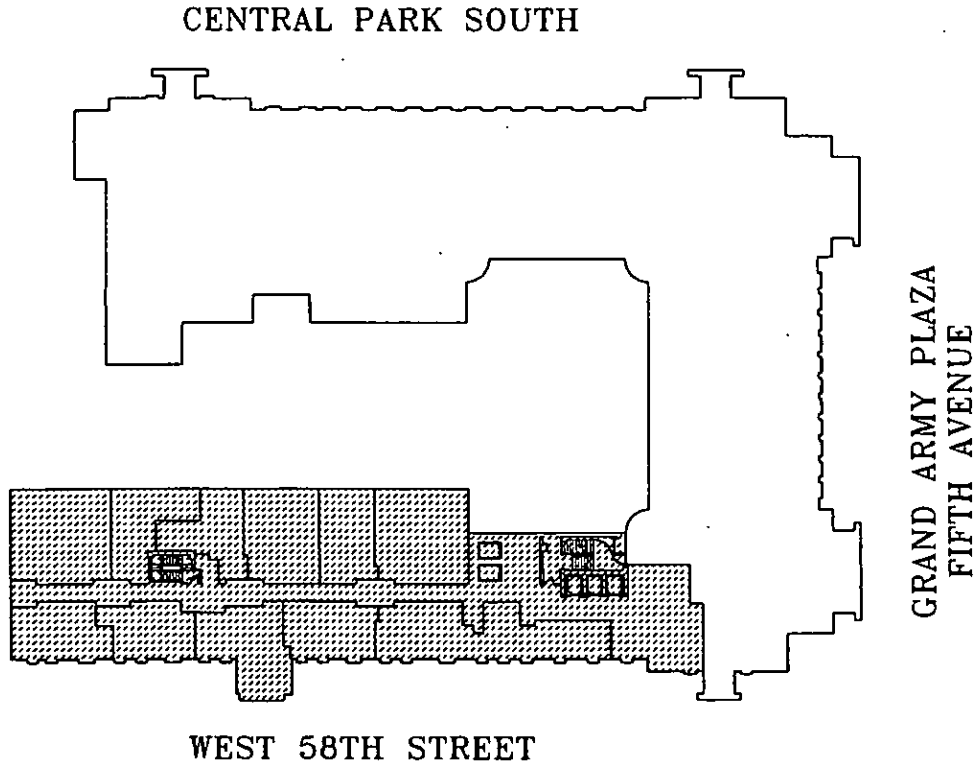

04-26-06

PLATE:
L

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 19TH

HOTEL CONDOMINIUM



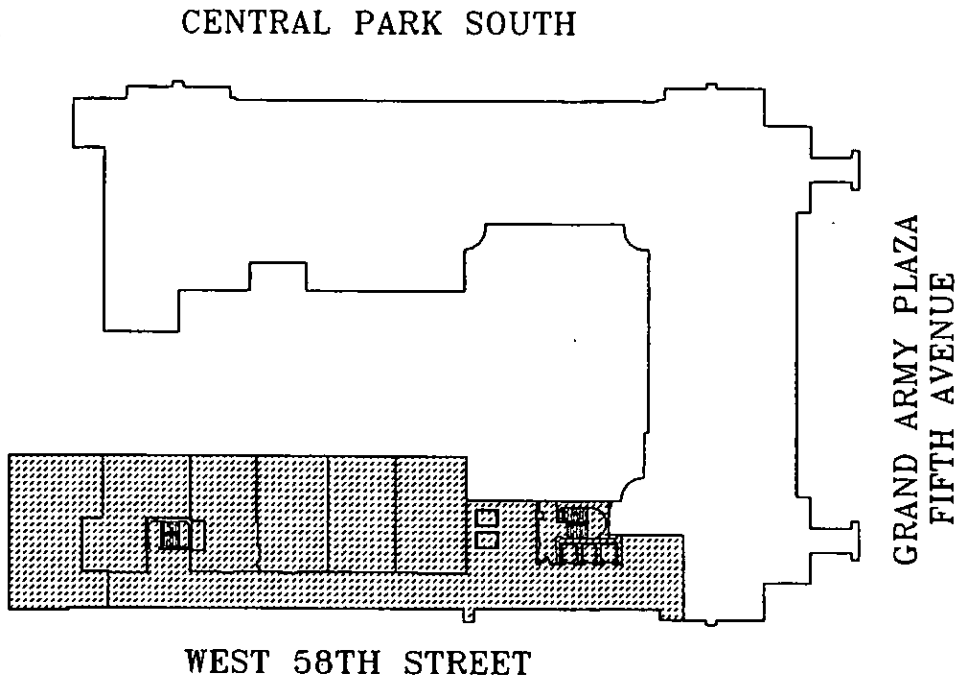

04-26-06

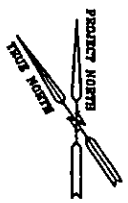
PLATE:
M

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 20TH

HOTEL CONDOMINIUM



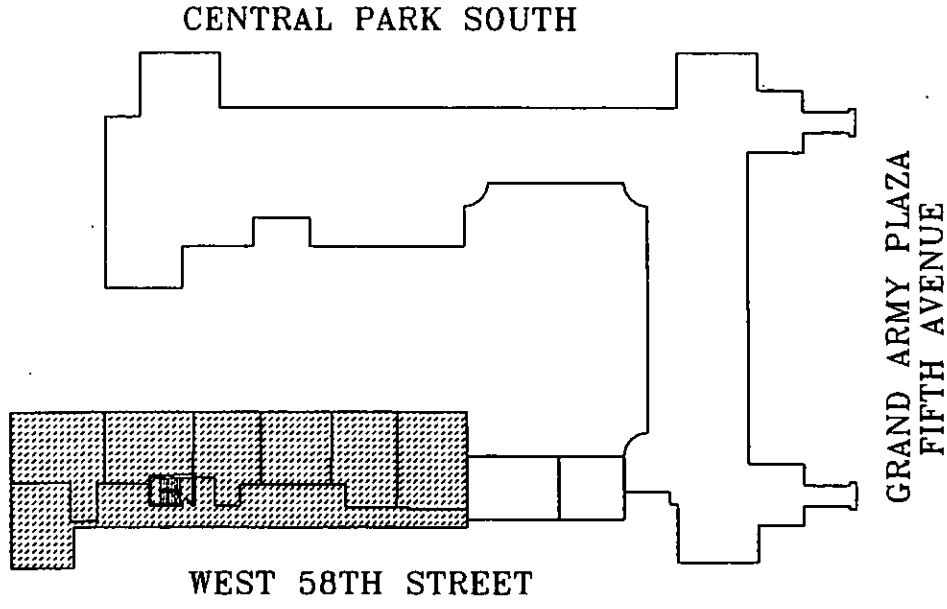

04-26-06

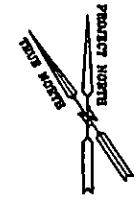
PLATE:
N

# THE PLAZA
768 FIFTH AVENUE
NEW YORK, NY

LEVEL: 21ST

HOTEL CONDOMINIUM



04-26-06

**EXHIBIT 6**

DECLARATION OF CONDOMINIUM

# AMENDED AND RESTATED DECLARATION

Establishing a Plan for Condominium Ownership
of the Premises known as
768 Fifth Avenue
(including also One Central Park South)
New York, New York
Pursuant to Article 9-B of the Real Property
Law of the State of New York

Name

THE PLAZA CONDOMINIUM

Declarant

CPS 1 REALTY LP

Date of Declaration

As of March 13, 2006

Block 1274
Lots 1301-1636
(f/k/a Lot 25)
Borough of Manhattan

When Recorded, Return to:

Kramer Levin Naftalis & Frankel LLP
Attorneys for Declarant
1177 Avenue of the Americas
New York, New York 10036
Attention: Jonathan H. Canter, Esq.

**INDEX TO DECLARATION**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Schedule:

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| Schedule | Description of Units |
| Schedule | Accessory Unit and Club Unit |
| Schedule | Residential Units |
| Schedule | Hotel Units |

Exhibits

A — Condominium By-Laws
B — Residential By-Laws
C — Hotel By-Laws
D — Building Facade

# AMENDED AND RESTATED
# DECLARATION
# OF
# THE PLAZA CONDOMINIUM

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

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM (this "Declaration") is made as of March 13, 2006 by CPS 1 REALTY LP, a Delaware a limited partnership, having an office at c/o El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10022 ("Declarant").

W I T N E S S E T H:

WHEREAS, a Declaration (the "Original Declaration"), dated as of March 13, 2006, was made by CPS 1 REALTY LP under the provisions of Article 9-B of the Real Property Law of the State of New York (as the same may be amended from time to time, the "New York Condominium Act") establishing a plan for condominium ownership of the premises known as 768 Fifth Avenue (including also One Central Park South), New York, New York, which Original Declaration was recorded in the City Register's Office (hereinafter defined) on March 23, 2006 as CRFN 2006000164230 (Condominium No. 1508) together with the Floor Plans (recorded with the City Register's Office on March 23, 2006 as CRFN 2006000164231);

WHEREAS, Declarant continues to own all of the Units (hereinafter defined) in the Condominium (hereinafter defined) and desires to amend and restate said Original Declaration in its entirety;

NOW, THEREFORE, Declarant hereby amends and restates the Original Declaration in its entirety and declares as follows, it being intended that upon the recording of this Declaration, the Original Declaration shall thereafter be null and void and of no further force and effect:

## ARTICLE 1

## SUBMISSION OF THE PROPERTY; BY-LAWS

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

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

1.3 Residential By-Laws. Annexed to this Declaration as Exhibit B and made a part hereof are the by-laws of the Residential Section (as hereinafter defined) (said by-laws, as the same may be amended from time to time in accordance with the provisions hereof, thereof and of the Condominium By-Laws governing amendment, the "Residential By-Laws") and the same shall (together with, but subject and subordinate to, this Declaration and the Condominium By-Laws) govern the affairs, operation, use and occupancy of the Residential Section from and after the first conveyance of title to a Residential Unit by Residential Sponsor.

1.4 Hotel By-Laws. Annexed to this Declaration as Exhibit C and made a part hereof are the by-laws of the Hotel Section (as hereinafter defined) (said by-laws, as the same may be amended from time to time in accordance with the provisions hereof, thereof and of the Condominium By-Laws governing amendment, the "Hotel By-Laws") and the same shall (together with, but subject and subordinate to, this Declaration and the Condominium By-Laws) govern the affairs, operation, use and occupancy of the Hotel Section from and after the first conveyance of title to a Condo Hotel Unit by Condo Hotel Sponsor.

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

1.6 Defined Terms; Conflicting Provisions. All capitalized terms used but which are not separately defined in this Declaration shall have the meanings given to such terms in the Condominium By-Laws (including the Table of Definitions annexed as Exhibit 1 thereto). In the event of a conflict between: (i) the terms and provisions of this Declaration, on the one hand, and the terms and provisions of any of the Condominium By-Laws, the Residential By-Laws or the Hotel By-Laws, on the other hand, the terms of this Declaration shall in all events govern; and (ii) the terms and provisions of the Condominium By-Laws, on the one hand, and the terms and provisions of the Residential By-Laws and/or the Hotel By-Laws, on the other hand, the terms of the Condominium By-Laws shall in all events govern.

## ARTICLE 2

## THE LAND

Included in the Property described in Article 1 is all that certain tract, plot, piece and parcel of land described in Schedule A annexed hereto and made a part hereof (the "Land"), situate, lying and being in the City, County and State of New York. The Land is owned, as of

the date hereof, by Declarant in fee simple absolute and has an area of approximately 53,723 square feet.

## ARTICLE 3

## THE PROPERTY

3.1 General. Included in the Property described in Article 1 is a building (the "Building") containing, in addition to the General Common Elements (hereinafter described):

(a) 181 residential units (each a "Residential Unit" and collectively the "Residential Units") designated as "Residential – Tax Lot Nos. 1456-1636" on the Floor Plans and located on portions of Floors 1 through 21 of the Building;* together with the entrance and lobby on the First Floor at Central Park South; the other lobby/(ies), hallways, corridors and other service, utility, mechanical and other areas (and on other Floors) in the Building constituting the Residential Limited Common Elements (as described in Article 7 below) and/or otherwise designated as "Residential Limited Common" on the Floor Plans (the Residential Units together with the Residential Limited Common Elements appurtenant thereto, but exclusive of any General Common Elements contained therein or appurtenant thereto, are hereinafter referred to as the "Residential Section");

(b) (i) a single unit designated as the "Transient Hotel Unit" comprised of the areas designated as "Transient Hotel Unit – Tax Lot No. 1303" on the Floor Plans and located on portions of Floor 2 and Floors 4 through 10 of the Building and, as of the recording of this Declaration, configured as approximately 130 transient hotel guest rooms; and (ii) 152 individual hotel condominium apartments (each a "Condo Hotel Unit" and collectively the "Condo Hotel Units") designated as "Condo Hotel Units – Tax Lot Nos. 1304-1455" on the Floor Plans, and located on portions of Floors 11 through 21 of the Building; together with the entrance and lobby on the First Floor at West 58th Street; the other lobby/(ies), hallways, corridors and other service, utility, mechanical and other areas (and on other Floors) in the Building (all of which serve both the Transient Hotel Unit and the Condo Hotel Units) constituting the Hotel Limited Common Elements (as described in Article 7 below) and/or otherwise designated as "Hotel Limited Common" on the Floor Plans (the Transient Hotel Unit, the Condo Hotel Units and the Hotel Limited Common Elements appurtenant thereto, but exclusive of any General Common Elements contained therein or appurtenant thereto, are hereinafter collectively referred to as the "Hotel Section");

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* As shown on the Floor Plans to be filed with the City Register's Office upon the recording of this Declaration, the floors of the Building are designated as follows: Mechanical Floor D, Lower Concourse C, Lower Concourse Mezzanine B and Main Concourse A (below grade); First Floor or Floor 1 (at grade); and Floors 2 through 21 (above grade). All "Floor" references herein are in accordance with such floor designations. Floor numbering in the plans for the Building filed with the New York City Department of Buildings includes references to construction levels which may differ from the Floor designations of the Building as set forth above.

(c) a single unit (the "Accessory Unit") comprised of the areas designated as "Accessory Unit – Tax Lot No. 1301" on the Floor Plans, located principally on portions of the Lower Concourse C, Main Concourse A, and Floors 1 through 4 of the Building, and including the Building Façade (hereinafter defined); and

(d) a single unit (the "Club Unit") comprised of the areas designated as "Club Unit – Tax Lot No. 1302" on the Floor Plans and located on Floor 4 of the Building.

3.2 Unit and Unit Owners. (a) The owner of a Residential Unit is herein called a "Residential Unit Owner" and the owners of all such Residential Units are herein collectively called the "Residential Unit Owners"; (b) The Owner of the Transient Hotel Unit is called a "Transient Hotel Unit Owner." The owner of a Condo Hotel Unit is herein called a "Condo Hotel Unit Owner" and the owners of all such Condo Hotel Units are herein collectively called the "Condo Hotel Unit Owners." The Transient Hotel Unit together with the Condo Hotel Units are sometimes referred to herein collectively as the "Hotel Units" and the unit owners thereof collectively as the "Hotel Unit Owners"; (c) The owner of the Accessory Unit is herein called the "Accessory Unit Owner"; and (d) The owner of the Club Unit is herein called the "Club Unit Owner". (e) The Transient Hotel Unit, the Accessory Unit and the Club Unit are referred to collectively herein as the "Commercial Units" and the owners thereof, collectively, as the "Commercial Unit Owners."

3.3 Street Addresses. The overall street address of the Property is 768 Fifth Avenue, New York, New York 10019. The address of the Residential Section shall be One Central Park South, New York, New York 10019; the address of the Hotel Section shall be 768 Fifth Avenue, New York, New York 10019; the address of the Accessory Unit shall be 768 Fifth Avenue; and the address of the Club Unit shall be 768 Fifth Avenue, New York, New York 10019.

## ARTICLE 4

## THE BUILDING

The Building is classified as being of fireproof construction and has a foundation which is a combination of poured-in-place reinforced concrete and brick on concrete strip footings. The existing slab-on-grade at the subcellar level is concrete over waterproofing on a gravel bed with drain piping leading to a sump pit. The columns are supported on steel grillage over spread footings. Portions of the existing Building have a structural steel framing with concrete fill over terracotta slabs and other existing portions have a structural steel framing with cinder concrete slabs. New infills and new floor areas consist of slab on metal deck. Exterior walls are solid brick construction and brick on terracotta in some locations, generally with a plaster finish at the interior. Street façades have a marble veneer over brick and/or limestone veneer over brick with terracotta decorative trim. On flat roof areas there are insulated roof membrane assembly roofs comprised of fluid-applied water-proofing installed below extruded polystyrene board insulation, installed below concrete pavers or stone ballast; and on sloped roof areas there are glazed terra-cotta roof tiles laid in existing steel frames over new roofing consisting of membrane roof.

## ARTICLE 5

## THE UNITS

5.1 Floor Plans. The location of each Unit is shown on and is governed by the floor plans of the Building certified by Costas Kondylis & Partners LLP filed in the New York County office of the Register of the City of New York (the "City Register's Office") on March 23, 2006 as CRFN 2006000164231 (as the same may be amended from time to time, the "Floor Plans").

5.2 Schedule B Descriptions.

5.2.1 Schedule B-1 annexed hereto and made a part hereof sets forth the following supplementary data with respect to the Accessory Unit and the Club Unit necessary for the further proper identification thereof: Unit designation; tax lot number; statement of location; approximate square foot area; and the proportionate, undivided interest in fee simple absolute (expressed as a percentage) in the Common Elements (the "Common Interest") appurtenant to such Unit.

5.2.2 Schedules B-2 and B-3 annexed hereto and made a part hereof set forth with respect to each of the Residential Units and Hotel Units, respectively, such categories of supplementary data described in Section 5.2.1 above, together with (except in the case of the Transient Hotel Unit, as to which only the type of data described in Section 5.2.1 above is provided) the additional categories "direction faced"; "the portions of the Common Elements to which the Unit has immediate access"; and "number of rooms" for each such Residential Unit or Condo Hotel Unit, as the case may be.

## ARTICLE 6

## DIMENSIONS OF UNITS

The approximate square foot area of each Unit is measured horizontally on each of one or more floors from the exterior side of the exterior walls, at the Building line and/or Property line, to the midpoint of the interior walls and partitions separating one Unit from another Unit, or the midpoint of the interior walls and partitions separating a Unit from public corridors, stairs, elevators and other mechanical equipment spaces or any Common Elements. Columns and mechanical pipes (whether along the perimeter or within the Unit), with the exception of specific major shafts, are not deducted from the square foot area of the Units. Outdoor floor areas of a balcony and/or terrace appurtenant to a Unit are not included in the Unit's indoor floor area. Measured vertically, each Unit will consist of the volume from the top of the floor slab below (located under the finished flooring and sub-floor materials) to the underside of the floor slab above. The method of measurement is applicable to all Units.* The

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* Each Unit includes, and each Unit Owner shall be responsible for, all fixtures, equipment and other items of personalty, including, without limitation, all plumbing and heating fixtures and equipment, and other appliances as may be contained in, affixed, attached or appurtenant to

*(footnote cont'd on next page)*

Condominium Board, Declarant and Declarant's designee will each have an easement to install and maintain pipes, conduits, wires, ducts and other facilities in the space between the underside of each such floor slab and the top surface of each Unit's finished ceiling, without any need to obtain the consent of any Unit Owner with respect to the same. Without limiting the foregoing, the Building Façade shall, subject to the terms hereof and of the Condominium By-Laws, be part of the Accessory Unit.

## ARTICLE 7

## COMMON ELEMENTS; BUILDING FACADE

7.1 General. The Common Elements of the Condominium (the "Common Elements") consist of the entire Property including the Land and all parts of the Building and improvements thereon other than the Units. The Common Elements include, among other things, the foundations, roofs and supports of the Building and all areas, equipment or facilities* for the common use of the Units or all or some of the Unit Owners or which are necessary or convenient for the existence, maintenance, operation or safety of the Property (excluding,

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such Unit, other than as may constitute part of the Common Elements. Plumbing and heating fixtures and equipment as used in the preceding sentence shall include exposed gas and water pipes attached to fixtures, appliances and equipment and the fixtures, appliances and equipment to which they are attached, and any special pipes or equipment which a Unit Owner may install within a wall or ceiling, or under the floor, but shall not include water or other pipes, conduits, wiring or ductwork within the walls, ceiling or floors. Except as otherwise expressly set forth herein, each Unit shall also include all lighting and electrical fixtures and appliances within the Unit and any special equipment, fixtures or facilities affixed, attached or appurtenant to the Unit to the extent located within such Unit and serving or benefiting only that Unit.

* As used herein, the words "facility" and "facilities" include, but are not limited to, the following fixtures, apparatus, equipment, personalty, appurtenances, installations, systems and other items (grouped more or less functionally) which are set forth only for the purpose of illustrating the broad scope of those terms: convector, radiator, heater, convertor, heat exchanger, mechanism, device, machinery, induction unit, fan coil unit, motor, pump, control, tank or tank assembly, condenser, compressor, fan, damper, blower, thermostat, thermometer, coil, vent, sensor, shut-off valve or other valve, gong, panel, receptacle, outlet, relay, alarm, sprinkler head, electric distribution facility, wiring, wireway, switch, switchboard, circuit breaker, transformer, fitting, siamese connection, hose, plumbing fixture, lighting fixture, other fixture, bulb, sign, telephone, meter, meter assembly, scaffolding, piping, line duct, conduit, cable, riser, main, shaft, pit, flue, lock or other hardware, rack, screen, strainer, trap, drain, catch basin, leader, filter, incinerator, canopy, closet, cabinet, door, railing, coping, step, furniture, mirror, furnishing, appurtenance, urn, carpeting, tile, marble or other floor covering, drapery, shade or other window covering, wallpaper or other wall covering, tree, shrubbery, flower or other plantings.

however, the Building Façade which shall be part of the Accessory Unit). The Common Elements include the General Common Elements, the Residential Limited Common Elements and the Hotel Limited Common Elements (the Residential Limited Common Elements and the Hotel Limited Common Elements, collectively, the "Limited Common Elements"), all of which are described in Sections 7.2 through 7.4 of this Article 7, respectively, subject in all events however to any specific designation for any portion of the Property as may be reflected on the Floor Plans (whether or not consistent with the general descriptions contained in this Article).

7.2 General Common Elements. The General Common Elements include those portions of the Building that are designated as "General Common Elements" on the Floor Plans and, to the extent not specifically identified as part of the General Common Elements on the Floor Plans, all other parts of the Property (other than those areas and items specifically identified as part of a Unit and/or the Limited Common Elements) the common use of which is necessary or convenient for the existence, maintenance, operation or safety of the Property. More specifically, the General Common Elements consist of the following (whether or not covered by the preceding sentence):

7.2.1 the Land, together with all easements, rights and privileges appurtenant thereto (except as otherwise expressly provided in this Declaration);

7.2.2 all foundations, foundation walls, roofs (except as otherwise expressly provided in this Declaration), footings, columns, girders, beams, supports, interior load-bearing walls, floor slabs and ceilings; and those portions of the exterior walls beyond the Unit side of the glass or concealed block work or other structural members of those walls (except those of the above items which are Limited Common Elements, and excluding, however, any of the same that are part of the Building Façade, which shall be part of the Accessory Unit);

7.2.3 those portions of the exterior walls of the Building and all canopies and attached fixtures beyond the Unit side of the glass or concealed block work or concealed structural members of those walls, to the extent the same form a perimeter to, and are adjacent to, a General Common Element (except those of the above items which are Limited Common Elements, and excluding, however, any of the same that are part of the Building Façade, which shall be part of the Accessory Unit);

7.2.4 the water cooling towers including the structure(s) provided for the water cooling towers;

7.2.5 all passages and corridors, mechanical and other utility rooms, all fire staircases, landings and stairs, areas and spaces located in the Building, which are not Limited Common Elements or included in any Unit;

7.2.6 central smoke and carbon monoxide alarm system;

7.2.7 any ventilation supply or exhaust system consisting of motors, ductwork, fans and controls, supply and return piping, serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit;

7.2.8 hot water, condenser water and chilled water systems;

7.2.9 all mechanical equipment and associated piping and controls serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit;

7.2.10 all electrical risers, feeders, lines and equipment, including incoming service, emergency generator main switchgear and distribution panelboards, conduits, wires, meters, transformers and panelboards serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit, excluding, however, all such items located within a Unit and serving only that Unit;

7.2.11 all plumbing fixtures, equipment for distribution of cold water and equipment for producing and distributing domestic hot water, including pumps, valves, heat exchangers, pressure reducers, meters and water heaters and chillers, excluding, however, all such items located within a Unit and serving only that Unit;

7.2.12 all fire protection equipment for distribution of sprinkler and standpipe systems, including the water storage tank and the structure(s) provided for such tank;

7.2.13 all storm and sanitary sewer equipment and pipes (including vent lines, ejectors, interceptors, filters and valves), excluding, however, all such items located within a Unit and serving only that Unit;

7.2.14 all electric service rooms, gas, steam and water meter rooms, storage rooms, workrooms, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit;

7.2.15 all loading docks, if any, serving any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit; and

7.2.16 whether or not specifically identified as part of the General Common Elements (or identified at all) on the Floor Plans, all other parts of the Property and all other facilities (including shafts, pipes, wires, ducts, vents, flues, cables, conduits and lines) and Equipment in the Building or on the Property (other than those areas and/or items specifically identified on the Floor Plans or herein as part of a Unit and/or the Limited Common Elements), which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of any combination of the Residential Units, the Hotel Units, the Accessory Unit and the Club Unit, or the respective Unit Owners thereof.

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

7.3.1 to the extent shown on the Floor Plans as Residential Limited Common Elements, the residential lobby and entrance, elevators, service entrance and accessway to service elevators, all located on the First Floor at Central Park South;

7.3.2 all passages, corridors, the residential storage bins located on the Lower Concourse level of the Building, as shown on the Floor Plan (each, a "Residential Storage Bin"; collectively, the "Residential Storage Bins"), storage rooms, housekeeping areas, all fire staircases, landings and stairs, mechanical and other rooms, areas and spaces (including their respective floors, ceilings and enclosing walls) located in the Building which exclusively serve or benefit the Residential Units and are not part of any Unit;

7.3.3 the passenger elevators and the service elevators, in each case, which exclusively serve or benefit the Residential Section and in each case including the shafts, elevator equipment, elevator pits and entrances and appurtenant facilities;

7.3.4 smoke and carbon monoxide alarm system, telephone system and cable television system exclusively serving the Residential Section;

7.3.5 any ventilation supply or exhaust system consisting of motors, ductwork, fans and controls, supply and return piping, and the hot water and condenser water systems serving or benefiting solely the Residential Units;

7.3.6 all mechanical equipment and associated piping and controls serving or benefiting solely the Residential Units;

7.3.7 all electrical risers, feeders, lines and equipment, including incoming service, main switchgear and distribution panelboards, conduits, wires, meters, transformers and panelboards serving or benefiting solely the Residential Units;

7.3.8 all plumbing fixtures, equipment for distribution of cold water and equipment for producing and distributing domestic hot water, including pumps, valves, heat exchangers, pressure reducers, meters and water heaters, serving or benefiting solely the Residential Units;

7.3.9 all storm and sanitary sewer equipment and pipes (including vent lines, ejectors, interceptors, filters and valves), serving or benefiting solely the Residential Units;

7.3.10 all fire protection equipment for distribution of sprinkler and standpipe systems serving or benefiting solely the Residential Units;

7.3.11 all electric service rooms, gas, steam and water meter rooms, workrooms, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting solely the Residential Units;

7.3.12 all loading docks, if any, exclusively serving the Residential Units;

7.3.13 the laundry room for use solely by occupants of Residential Units;

7.3.14 all Building storage rooms and Residential Storage Bins, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting only the Residential Units;

7.3.15 all security monitors and equipment and other security facilities serving or benefiting solely the Residential Units;

7.3.16 the balcony or terrace appurtenant to any particular Residential Unit (although the benefited Residential Unit Owner shall have the responsibilities with respect thereto as are set forth in the Residential By-Laws) (excluding, however, any of the same that are part of the Building Façade, which shall be part of the Accessory Unit); and

7.3.17 whether or not specifically identified as part of the Residential Limited Common Elements (or identified at all) on the Floor Plans, all other parts of the Property and all other facilities (including shafts, pipes, wires, ducts, vents, flues, cables, conduits and lines) and Equipment in the Building or on the Property (other than those areas and/or items specifically identified on the Floor Plans or herein as part of a Unit and/or the General Common Elements or Hotel Limited Common Elements), which serve or benefit or are necessary or convenient or existing for the common use, existence, maintenance, operation or safety of the Residential Section only, or any combination of the Residential Units or the respective Unit Owners thereof.

7.4 Hotel Limited Common Elements. The Hotel Limited Common Elements consist of those portions of the Property designated on the Floor Plans as Hotel Limited Common Elements; and also those Common Elements (other than vertical shaftways and penetrations) which exclusively serve or exclusively benefit all or a combination of the Hotel Units or the Hotel Unit Owners whether or not designated as Hotel Limited Common Elements (or designated at all) on the Floor Plans (but excluding any items therein or in the Building which are not part of the Property, including, without limitation, any equipment, wiring and devices owned by telecom providers). The Hotel Limited Common Elements include, without limitation, the following:

7.4.1 the hotel lobby and entrance located on the First Floor and entered from 58th Street;

7.4.2 all passages, corridors, storage rooms, housekeeping areas, all fire staircases, landings and stairs, mechanical and other rooms, areas and spaces (including their respective floors, ceilings and enclosing walls) located in the Building which exclusively serve or benefit the Hotel Units and are not part of any Unit;

7.4.3 the passenger elevators and the service elevators, in each case which exclusively serve or benefit the Hotel Units and in each case including the shafts, elevator equipment, elevator pits and entrances and appurtenant facilities;

7.4.4 smoke and carbon monoxide alarm system, telephone system and cable television system exclusively serving the Hotel Section;

7.4.5 any ventilation supply or exhaust system consisting of motors, ductwork, fans and controls, supply and return piping, and the hot water, chilled water and condenser water systems serving or benefiting solely the Hotel Units;

7.4.6 all mechanical equipment and associated piping and controls serving or benefiting solely the Hotel Units;

7.4.7 all electrical risers, feeders, lines and equipment, including incoming service, main switchgear and distribution panelboards, conduits, wires, meters, transformers and panelboards serving or benefiting solely the Hotel Units;

7.4.8 all plumbing fixtures, equipment for distribution of cold water and equipment for producing and distributing domestic hot water, including pumps, valves, heat exchangers, pressure reducers, meters and water heaters, benefiting solely the Hotel Units;

7.4.9 all storm and sanitary sewer equipment and pipes (including vent lines, ejectors, interceptors, filters and valves), serving or benefiting solely the Hotel Units;

7.4.10 all fire protection equipment for distribution of sprinkler and standpipe systems benefiting solely the Hotel Units;

7.4.11 all electric service rooms, gas, steam and water meter rooms, workrooms, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting solely the Hotel Units;

7.4.12 all loading docks, if any, exclusively serving the Hotel Units;

7.4.13 all Building storage rooms, locker rooms, telephone rooms and other service, mechanical and utility rooms serving or benefiting only the Hotel Units;

7.4.14 all security monitors and equipment and other security facilities serving or benefiting solely the Hotel Units;

7.4.15 the balcony or terrace appurtenant to any particular Hotel Unit (although the benefited Hotel Unit Owner shall have the responsibilities with respect thereto as are set forth in the Hotel By-Laws) (excluding, however, any of the same that are part of the Building Façade, which shall be part of the Accessory Unit); and

7.4.16 whether or not specifically identified as part of the Hotel Limited Common Elements (or identified at all) on the Floor Plans, all other parts of the Property and all other facilities (including shafts, pipes, wires, ducts, vents, flues, cables, conduits and lines) and Equipment in the Building or on the Property (other than those areas and/or items specifically identified on the Floor Plans or herein as part of a Unit and/or the General Common Elements or Residential Limited Common Elements), which serve or benefit or are necessary or convenient or existing for the common use, existence, maintenance, operation or safety of the Hotel Section only, or any combination of the Hotel Units or the respective Unit Owners thereof.

7.5 Building Façade.

7.5.1 As used in the Condominium Documents, the Building Façade shall mean the external nature of the Building, including window frames and window panes, as shown in Exhibit D annexed hereto and made a part hereof (together with the sloped mansard and any similar exterior vertical elements visible in such Exhibit), subject, however, to any specific provisions with respect thereto set forth in the Condominium Documents.

7.5.2 The Accessory Unit shall include the Building Façade, however, as set forth in Article 19 of the Condominium By-Laws, the Condominium Board shall, on behalf of the Accessory Unit Owner, but for the benefit of the Unit Owners and the Boards, exercise certain rights and undertake certain obligations with respect thereto.

## ARTICLE 8

## USE OF UNITS AND COMMON ELEMENTS

8.1 Use of the Residential Units.

8.1.1 General. A Residential Unit may generally be used only for residential purposes and, subject to compliance with this Declaration, the Condominium By-Laws and the Residential By-Laws, for a lawful home occupation as defined in the Zoning Resolution. Residential Units may be owned or leased by an individual, corporation, partnership, limited liability company, fiduciary or any other entity (including, but not limited to, embassies and consulates of foreign governments). Residential Units may only be occupied by: (i) any individual who is a Residential Unit Owner or permitted lessee; (ii) any officer, director, shareholder or employee of any corporation which is a Residential Unit Owner or permitted lessee; (iii) any partner or employee of any partnership which is a Residential Unit Owner or permitted lessee; (iv) any member or employee of any limited liability company which is a Residential Unit Owner or permitted lessee; (v) the fiduciary or beneficiary or employee of any fiduciary which is a Residential Unit Owner or permitted lessee; (vi) any principal or employee of any other entity (including, but not limited to, embassies and consulates of foreign governments) which is a Residential Unit Owner or permitted lessee; provided that in each instance in clauses (i) through (vi) above: (A) the individual, designated officer, director, shareholder, partner, member, fiduciary, beneficiary, principal or employee is designated as the primary occupant of the Residential Unit and is not being designated to use the Residential Unit on a transient basis or as other than the primary occupant; and (B) such use is not, in fact or in effect, part of or in furtherance of an Occupancy Plan; and (vii) family members, domestic partners, domestic employees and/or non-paying guests of any of the foregoing. Subject to the foregoing, Residential Units may only be leased in accordance with the Residential By-Laws and the Residential Rules and Regulations. An "Occupancy Plan" means a program, plan, agreement or other arrangement for the use, occupancy, marketing, advertising or promotion of one or more Residential Units under short-term, timeshare, fractional or shared ownership, interval exchange (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements through which a participant in the plan or arrangement acquires a direct or indirect ownership interest in the Unit(s) in question with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of such Unit(s) or a portfolio of accommodations including such Unit(s).

8.1.2 Unsold Residential Units. Notwithstanding the foregoing or anything contained herein, in the Condominium By-Laws, the Residential By-Laws, the Hotel By-Laws or any Rules and Regulations to the contrary, subject only to compliance with all Laws, Declarant and Residential Sponsor (and their respective designees) may, without the permission of any Board or any other Person use or grant permission for the use of any Unsold Residential Unit for any lawful purpose, including, but not limited to, the use of any Unsold Residential Units as models and sales and/or promotion offices in connection with the sale or rental of the Residential (or other) Units or for any other purpose. .As used in the Condominium Documents, "Unsold Residential Unit" refers to any Residential Unit owned or retained, by way of lease or any other arrangement by which management and/or financial responsibility is retained, by Declarant or Residential Sponsor or any of their respective designees as the holder of one or more Unsold Residential Unit(s); any Residential Unit that is acquired, individually or collectively, by a principal of Declarant or Residential Sponsor or a group of which Declarant or Residential Sponsor or one or more of their principals is a member; or a Residential Unit that is acquired, individually or collectively, by either the holder of a Permitted Mortgage given by Declarant or Residential Sponsor or the designee of a holder of such a Permitted Mortgage.

8.2 Use of the Condo Hotel Units.

8.2.1 General. Except to the extent otherwise permitted by Law and approved by the Hotel Board as set forth in the Hotel By-Laws, each Condo Hotel Unit may only be used as Hotel Accessory Quarters and for no other purpose, and in all events subject to all Laws and to the further provisions of this Declaration, the Condominium By-Laws and the Hotel By-Laws. As used in the Condominium Documents, "Hotel Accessory Quarters" means living quarters which are not occupied by the Unit Owner thereof in excess of four months (in the aggregate) in any calendar year, and, when not occupied by such Unit Owner, available for rental as a "Transient Hotel Room", *i.e.*, a room or single suite of rooms used for transient occupancy and which may be rented on a daily basis as part of a transient hotel. Where a Condo Hotel Unit is owned by an entity (*i.e.*, rather than by one or more natural person(s)), such entity shall designate in writing to the Hotel Board and Hotel Manager one individual as the primary occupant of such Unit, and the term "Unit Owner" as used in the preceding sentence and in connection with the conditions relating to the permitted use of such Unit as reflected therein shall mean such designated individual. Without limiting any other provision of the Condominium Documents, Condo Hotel Units may not be used in fact or in effect, as part of or in furtherance of any Occupancy Plan; provided, however, if, as and when, and only for so long as, the Transient Hotel Unit is being used by the Unit Owner thereof or the Hotel Manager in connection with an Occupancy Plan (and, for the avoidance of doubt, the use of the Transient Hotel Unit as a transient hotel in the ordinary course shall not be considered "use . . . in furtherance of [an] Occupancy Plan"), the Condo Hotel Units may be so used on the same basis. As used in the Condominium Documents, "Hotel Manager" means any Person operating the hotel in the Transient Hotel Unit, whether as the Transient Hotel Unit Owner, lessee of the Transient Hotel Unit, or as an agent, manager or independent contractor of, or otherwise on behalf of, the Transient Hotel Unit Owner, pursuant to a hotel management agreement or otherwise.

8.2.2 Unsold Condo Hotel Units. Notwithstanding the foregoing or anything contained herein, in the Condominium By-Laws, the Residential By-Laws, the Hotel

By-Laws or any Rules and Regulations to the contrary, subject to compliance with all Laws, Declarant and Condo Hotel Sponsor (and their respective designees) may, without the permission of any Board or any other Person use or grant permission for the use of any Unsold Condo Hotel Unit for any lawful purpose, including, without limitation, as models and sales and/or promotion offices in connection with the sale or rental of the Condo Hotel (or other) Units or for any other purpose. As used in the Condominium Documents, "Unsold Condo Hotel Unit" refers to any Condo Hotel Unit owned or retained, by way of lease or any other arrangement by which management and/or financial responsibility is retained, by Declarant, Condo Hotel Sponsor, the Transient Hotel Unit Owner or any of their respective designees as the holder of one or more Unsold Condo Hotel Unit(s); any Condo Hotel Unit that is acquired, individually or collectively, by a principal of Declarant, Condo Hotel Sponsor, the Transient Hotel Unit Owner or a group of which Declarant, Condo Hotel Sponsor, the Transient Hotel Unit Owner or one or more of their principals is a member; or a Condo Hotel Unit that is acquired, individually or collectively, by either the holder of a Permitted Mortgage given by Declarant, Condo Hotel Sponsor, the Transient Hotel Unit Owner or the designee of a holder of such a Permitted Mortgage.

8.3 Use of Transient Hotel Unit, Accessory Unit and Club Unit. Subject to compliance with all Laws, the Transient Hotel Unit, the Accessory Unit and the Club Unit may be used and operated for any legally permitted purpose. None of the Condominium Board, the Residential Board, the Hotel Board or any Unit Owner other than the owner of the Unit in question (except as may be expressly provided in the Condominium Documents to the contrary or pursuant to separate written agreement by or among the applicable parties) shall have any right to the income derived from any use of the Transient Hotel Unit, the Accessory Unit or the Club Unit.

8.4 Use of the Common Elements.

8.4.1 Except as otherwise provided herein or in the Condominium By-Laws, the Residential By-Laws and/or the Hotel By-Laws: (i) the 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; (ii) terraces may be used only for purposes commensurate with the uses permitted of the Units to which they are appurtenant; and (iii) the balconies adjoining certain Condo Hotel Units or Residential Units are decorative only and may not be used by the Unit Owner thereof.

8.4.2 Subject to any easements (exclusive or otherwise) and/or rights of access or as otherwise provided in the Condominium Documents with respect to the Common Elements, none of the Boards nor any Unit Owner shall impede the exercise of or encroach upon the rights of the others of such parties or anyone claiming, by, through or under them, including, but not limited to, the occupants of the Units and their respective invitees, to use the same.

8.5 Use of the Residential Storage Bins. No article or material that shall pose a threat to the health or safety of the Unit Owners or other occupants of the Building, or that shall cause the dissemination of noxious odors, dirt or other sanitary problems or otherwise create a nuisance, shall be permitted to be brought into or stored in any Residential Storage Bin. The use

of the Residential Storage Bins shall be further subject to the provisions of the Residential By-Laws and the Residential Rules and Regulations.

8.6 Special Use Provisions.

8.6.1 Accessory Unit Kitchen(s). For so long as all or substantially all of the Hotel Section is being operated as a hotel, it shall be an affirmative covenant of the Accessory Unit Owner that it shall operate (or cause the operation of) kitchen space within the Accessory Unit, for the benefit of the Hotel Units, subject to such terms (subject to the next sentence) as may be reasonably agreed between such Unit Owner (or the operator of such Unit) and the Hotel Unit Owners and/or the Hotel Board, so as to provide (or cause to be provided, as the case may be) such food-related services (*e.g.*, room service), if any, as and to the extent the same are reasonably necessary for such hotel to at all times be operated at the level of quality and meeting the standards at which the hotel is otherwise then operating. Nothing in the preceding sentence shall prohibit the Accessory Unit Owner (or manager, operator or licensee of the Accessory Unit) from charging the Hotel Unit Owners and/or the Hotel Board, as applicable, for the use of such space and the provision of such services, provided, however, that at all times such charges shall not exceed market rates for comparable services. All disputes with respect to the foregoing shall be resolved in Arbitration; however, without limiting the foregoing, the Hotel Board and the Transient Hotel Unit Owner shall have such rights with respect to a default by the Accessory Unit Owner under this subsection 8.6.1 as are set forth in subsection 12.4.2 of the Condominium By-Laws.

8.6.2 Club Unit. For so long as all or substantially all of the Hotel Section is being operated as a hotel, it shall be an affirmative covenant of the Club Unit Owner that it shall operate (or cause the operation of) the Club Unit, for the benefit of the Hotel Units, subject to such terms (subject to the next sentence) as may be reasonably agreed between such Unit Owner (or the operator of such Unit) and the Hotel Unit Owners and/or the Hotel Board, so as to provide (or cause to be provided, as the case may be) such use of and access to the Club Unit or such portions thereof, if any, as and to the extent the same are reasonably necessary for such hotel to at all times be operated at the level of quality and meeting the standards at which the hotel is otherwise then operating. Nothing in the preceding sentence shall prohibit the Club Unit Owner (or manager, operator or licensee of the Club Unit) from charging the Hotel Unit Owners and/or the Hotel Board, as applicable, for such use and access, provided, however, that at all times such charges shall not exceed market rates for comparable services. All disputes with respect to the foregoing shall be resolved in Arbitration; however, without limiting the foregoing, the Hotel Board and the Transient Hotel Unit Owner shall have such rights with respect to a default by the Club Unit Owner under this subsection 8.6.2 as are set forth in subsection 12.4.3 of the Condominium By-Laws.

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

Condominium By-Laws and, as applicable the Residential By-Laws or the Hotel By-Laws, to maintain or repair such portion of the Property.

## ARTICLE 9

## CHANGES IN RESIDENTIAL UNITS AND HOTEL CONDO UNITS

9.1 Residential Units.

9.1.1 Unsold Residential Units. Notwithstanding anything to the contrary in Article 8 of the Condominium By-Laws or in the Residential By-Laws, except to the extent prohibited by, or to the extent that the same will cause the Property or any portion thereof not to comply with, any applicable Laws, Declarant, Residential Sponsor, their respective designees and any other owner of an Unsold Residential Unit shall have the right, at any time and from time to time, without the vote or consent of any Board, Unit Owner or other Person, to: (a) make Alterations and/or Repairs whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon its Unsold Residential Unit(s); (b) change the use (subject to compliance with all Laws) or layout of, or number of rooms in, any Unsold Residential Unit(s) from time to time; (c) change the size and/or number of Unsold Residential Unit(s) by subdividing one or more Unsold Residential Units into two or more separate Residential Units, combining separate Unsold Residential Units (including those resulting from such subdivision or otherwise) into one or more Residential Units, converting an Unsold Residential Unit or any portion thereof to a Common Element, altering the boundary walls between any Unsold Residential Units, or otherwise, including incorporating the use of any portion of the Residential Limited Common Elements adjacent or appurtenant thereto (but only to the extent that such Residential Limited Common Elements are not required to be maintained as Residential Limited Common Elements prior to and/or following such alterations); (d) whether in respect of subdivisions or combinations of the Unsold Residential Units or otherwise, designate all or any part of an Unsold Residential Unit or a Common Element as part of a newly created or expanded Unsold Residential Unit or Common Element; and (e) if appropriate, reapportion among the Units affected by such change in size, use or number pursuant to the preceding clauses (b), (c) and (d) their percentage interests in the Common Elements; provided, however, that: (i) such changes are in compliance with Section 339 of the New York Condominium Act; (ii) the Common Interest of any other Units (other than the Unsold Residential Units (or other Units) owned by such person) shall not be changed by reason thereof unless the owners of such other Units shall consent thereto; and (iii) Declarant, Residential Sponsor, such designee or such other owner of an Unsold Residential Unit, as the case may be, shall comply with all applicable Laws and shall agree to defend and hold each Board and all other Unit Owners harmless from any liability arising therefrom. Declarant, Residential Sponsor or such other owner of an Unsold Residential Unit, as the case may be, shall have the right, without the consent of any Board, Unit Owner or other Person to amend (and/or cause the Condominium Board and/or Residential Board to amend) the Declaration, the Condominium By-Laws, the Residential By-Laws and the Floor Plans and any other documentation to reflect the foregoing changes.

9.1.2 Residential Units Generally. Subject to this Declaration and the Condominium By-Laws and compliance with all applicable Laws, the Unit Owner(s) of one or more Residential Units (other than Unsold Residential Units), with the consent of the Residential Board, shall have such rights with respect to changing, combining and/or subdividing such Residential Unit(s) as are provided in the Residential By-Laws.

9.2 Condo Hotel Units.

9.2.1 Unsold Condo Hotel Units. Notwithstanding anything to the contrary in Article 8 of the Condominium By-Laws or in the Hotel By-Laws, except to the extent prohibited by, or to the extent that the same will cause the Property or any portion thereof not to comply with, any applicable Laws, Declarant, Condo Hotel Sponsor, their respective designees and any other owner of an Unsold Condo Hotel Unit shall have the right, at any time and from time to time, without the vote or consent of any Board, Unit Owner or other Person, to: (a) make Alterations and/or Repairs whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon its Unsold Condo Hotel Unit(s); (b) change the use (subject to compliance with all Laws) or layout of, or number of rooms in, any Unsold Condo Hotel Unit(s) from time to time; (c) change the size and/or number of Unsold Condo Hotel Unit(s) by subdividing one or more Unsold Condo Hotel Units into two or more separate Condo Hotel Units, combining separate Unsold Condo Hotel Units (including those resulting from such subdivision or otherwise) into one or more Condo Hotel Units, converting an Unsold Condo Hotel Unit or any portion thereof to a Common Element, altering the boundary walls between any Unsold Condo Hotel Units, or otherwise, including incorporating the use of any portion of the Hotel Limited Common Elements adjacent or appurtenant thereto (but only to the extent that such Hotel Limited Common Elements are not required to be maintained as Hotel Limited Common Elements prior to and/or following such alterations); (d) whether in respect of subdivisions or combinations of the Unsold Condo Hotel Units or otherwise, designate all or any part of an Unsold Condo Hotel Unit or a Common Element as part of a newly created or expanded Unsold Condo Hotel Unit or Common Element; and (e) if appropriate, reapportion among the Units affected by such change in size, use or number pursuant to the preceding clauses (b), (c) and (d) their percentage interests in the Common Elements; provided, however, that: (i) such changes are in compliance with Section 339 of the New York Condominium Act; (ii) the Common Interest of any other Units (other than the Unsold Condo Hotel Units (or other Units) owned by such person) shall not be changed by reason thereof unless the owners of such other Units shall consent thereto; and (iii) Declarant, Condo Hotel Sponsor, such designee or such other owner of an Unsold Condo Hotel Unit, as the case may be, shall comply with all applicable Laws and shall agree to defend and hold each Board and all other Unit Owners harmless from any liability arising therefrom. Declarant, Condo Hotel Sponsor, such designee or such other owner of an Unsold Condo Hotel Unit, as the case may be, shall have the right, without the consent of any Board, Unit Owner or other Person to amend (and/or cause the Condominium Board and/or Hotel Board to amend) the Declaration, the Condominium By-Laws, the Hotel By-Laws and the Floor Plans and any other documentation to reflect the foregoing changes.

9.2.2 Condo Hotel Units Generally. Subject to this Declaration and the Condominium By-Laws and compliance with all applicable Laws, the Unit Owner(s) of one or more Condo Hotel Units (other than Unsold Condo Hotel Units), with the consent of the Hotel

Board, shall have such rights with respect to changing, combining and/or subdividing such Condo Hotel Unit(s) as are provided in the Hotel By-Laws.

9.3 Consents. Subject to the immediately succeeding sentence, the provisions of Sections 9.1, 9.3 and 9.4 of this Declaration may not be added to, amended, modified or deleted without the prior written consent of Declarant, Residential Sponsor or the owner of any Unsold Residential Unit(s), as the case may be, or the designee of any of the foregoing. Wherever the consent, approval or satisfaction of Declarant (as the owner of any Unsold Residential Units), Residential Sponsor or the owner of any Unsold Residential Unit(s), is required under this Declaration, the Condominium By-Laws or the Residential By-Laws, such consent, approval or satisfaction of such party shall not be required (unless otherwise required under the Condominium Documents) when such party no longer owns any Unsold Residential Units. Subject to the immediately succeeding sentence, the provisions of Sections 9.2, 9.3 and 9.4 of this Declaration may not be added to, amended, modified or deleted without the prior written consent of Declarant, Condo Hotel Sponsor or the owner of any Unsold Condo Hotel Unit(s), as the case may be, or the designee of any of the foregoing. Wherever the consent, approval or satisfaction of Declarant (as the owner of any Unsold Condo Hotel Units), Condo Hotel Sponsor or the owner of any Unsold Condo Hotel Unit(s), is required under this Declaration, the Condominium By-Laws or the Hotel By-Laws, such consent, approval or satisfaction of such party shall not be required (unless otherwise required under the Condominium Documents) when such party no longer owns any Unsold Condo Hotel Units.

9.4 Certification Regarding Common Interest Reallocation. Notwithstanding the other provisions of this Article 9, no reapportionment of the interests in the Common Elements appurtenant to any Residential Unit or Condo Hotel Unit shall be made unless there is first delivered to the Residential Board or Hotel Board, as applicable, and to the Condominium Board, a written certification stating, in each case with respect to the Unit(s) in question that the percentage interests of the affected Unit(s) in the Common Elements, immediately after such reapportionment, are consistent with the terms of this Declaration and in compliance with the terms of Section 339-i(1) of the Condominium Act. The certification referred to herein shall be delivered: (a) in the case of any Unsold Unit(s), at the election of Declarant or the applicable Sponsor, by Declarant or the applicable Sponsor, the managing agent of the Residential Section or Hotel Section, as applicable, or any other Person reasonably acceptable to the applicable Boards; and (b) in the case of any other Residential Unit(s) or Hotel Unit(s), as the case may be, by the managing agent of the Residential Section or Hotel Section, as applicable, or any other person reasonably acceptable to the applicable Boards.

## ARTICLE 10

## CHANGES BY THE TRANSIENT HOTEL UNIT OWNER, ACCESSORY UNIT OWNER AND CLUB UNIT OWNER

10.1 General. Except to the extent prohibited by Law or as otherwise provided herein or in the Condominium By-Laws, each of the Commercial Unit Owners shall have the right, without the consent of any Board, Unit Owner, or other Person to: (a) mortgage or otherwise hypothecate its Unit; (b) decorate or make Alterations and/or Repairs in, to and upon its Unit (provided, however, that such Unit Owner, if other than Declarant or its designee, must

obtain the prior consent of the Condominium Board, which consent shall not be unreasonably withheld, to any Alterations and/or Repairs to its Commercial Unit which would have a material adverse effect on the structural, mechanical, electrical or plumbing elements of the Building or the exterior appearance of the Building or which would increase insurance premiums or maintenance costs for any other Unit or the Common Elements); (c) change the layout of, or number of rooms in, its Commercial Unit from time to time; (d) change the size of its Commercial Unit by subdividing the same into any desired number of condominium units or by combining any units resulting from each such subdivision, altering the boundary walls between the Commercial Units, or otherwise; (e) designate a Commercial Unit as part of a newly created or expanded commercial condominium unit or designate all or part of a Commercial Unit as a newly created or expanded commercial common element; and (f) if appropriate, reapportion among the Units or newly created Units affected by such changes pursuant to the preceding clauses (c), (d) and (e) their percentage interests in the Common Elements; provided, however, that: (i) such changes are in compliance with Section 339 of the New York Condominium Act; (ii) the Common Interest of any other Units (other than the Commercial Unit(s) owned by such Person) shall not be changed by reason thereof unless the owners of such other Units shall consent thereto; and (iii) the Commercial Unit Owner(s) in question shall comply with all Laws and shall agree to defend and hold each Board and all other Unit Owners harmless from any liability arising therefrom. The Commercial Unit Owners shall each have the right with regard to its Unit, without the consent of any Board, Unit Owner or other Person to amend (and/or cause the Condominium Board and/or, as applicable, Hotel Board to amend) the Declaration, the Condominium By-Laws, the Hotel By-Laws and the Floor Plans, as applicable, and any other documentation to reflect the foregoing changes. If any of the Commercial Units are subdivided or combined, the Owner of each Unit resulting from a subdivision or combination will generally have all of the rights (without the consent of any Board, Unit Owner or other Person) set forth above in this Section 10.1, described as pertaining to the Unit Owner of the original Commercial Unit or Units in question. Without limiting the foregoing, the Transient Hotel Unit Owner shall have the right (subject to the consent of its Registered Mortgagee, if otherwise required) to subdivide such Unit and, in the amendment to the Declaration effecting the same, designate any such newly created Unit as a new Condo Hotel Unit or as a new class of Unit (*e.g.*, fractional ownership) and to amend this Declaration, the Condominium By-Laws and the Hotel By-Laws, and/or to create and record a fractional ownership declaration with respect to such new classification of Units (including, among other things, by-laws and other related documents to address issues affecting only the administration and management of such Units and a plan of fractional ownership with respect thereto).

10.2 Certification Regarding Common Interest Reallocation. Notwithstanding the other provisions of this Article 10, no reapportionment of the interests in the Common Elements appurtenant to any Commercial Unit(s) shall be made unless there is first delivered to the Condominium Board a written certification stating, in each case with respect to the Unit(s) in question, that the percentage interests of the affected Unit(s) in the Common Elements, immediately after such reapportionment, are consistent with the terms of this Declaration and in compliance with the terms of Section 339-i(1) of the Condominium Act. The certification referred to herein shall be executed and delivered by all of the affected Commercial Unit Owners or any other Person reasonably acceptable to the Condominium Board.

## ARTICLE 11

## PERSON TO RECEIVE SERVICE

The Secretary of State of the State of New York (the "Secretary of State") is hereby designated to receive service of process in any action which may be brought against the Condominium or any of the Boards. The Condominium and the Boards shall each, with respect to itself, notify the Secretary of State of the address to which a copy of any process received should be mailed.

## ARTICLE 12

## DETERMINATION OF PERCENTAGE INTERESTS IN COMMON ELEMENTS

The Common Interest of each Unit has been determined, pursuant to Section 339-i(1)(iv) of the Condominium Act. In accordance with such method of calculation, the Common Interests have been determined based primarily upon a comparison of the floor areas of the Units, 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 the Common Elements for exclusive or shared use and the overall dimensions of the particular Unit. The aggregate Common Interests of all of the Units equals 100%.

## ARTICLE 13

## 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 encroachment shall hereafter occur as a result of: (i) settling or shifting of the Building; (ii) any Alteration or Repair made to the Common Elements in accordance with the applicable terms of this Declaration, the Condominium By-Laws, the Residential By-Laws and/or the Hotel By-Laws by, or with the consent (when required by the applicable by-laws), of the Condominium Board and any other Board, or made by or Declarant or its designee, as the case may be; or (iii) any Alteration or Repair 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 as long as the Building shall stand (or during any period in which it is being rebuilt or restored, in accordance with the Condominium By-Laws, following any such fire or other casualty, taking or eminent domain proceeding); provided that in the case of any such encroachment described in subparagraph (c)(ii) or (iii) above, such encroachment does not unreasonably interfere with the use of any of the Units for their permitted purposes and/or the use of the Common Elements for their intended purposes.

## ARTICLE 14

## FACILITIES AND ALL OTHER COMMON ELEMENTS

Except as otherwise expressly set forth in this Declaration or the Condominium By-Laws (or, with respect to the Residential Units, the Residential By-Laws; or, with respect to the Hotel Units, the Hotel By-Laws): (i) each Unit Owner will have, in common with all other Unit Owners and each Unit will be subject to, an easement for the use of the General Common Elements located anywhere on the Property without hindering the exercise of or encroaching upon the rights of the other Unit Owners in respect of such easement, including, but not limited to, such easement as will be necessary to maintain, such Unit Owner's Unit; (ii) each Residential Unit Owner will have, in common with all other Residential Unit Owners, an easement for the use of the Residential Limited Common Elements and any facilities located therein, including, but not limited to, such easement as will be necessary to operate and maintain, as necessary, such Residential Unit Owner's Unit, and the Residential Board, on behalf of all Residential Unit Owners, shall have an easement to maintain, and to make Repairs and Alterations to, the Residential Limited Common Elements; and (iii) each Hotel Unit Owner will have, in common with all other Hotel Unit Owners, an easement for the use of the Hotel Limited Common Elements and any facilities located therein, including, but not limited to, such easement as will be necessary to operate and maintain, as necessary, such Hotel Unit Owner's Unit, and the Hotel Board, on behalf of all Hotel Unit Owners, shall have an easement to maintain, and to make Repairs and Alterations to, the Hotel Limited Common Elements. Each Unit and the Common Elements shall be subject to an easement in favor of the Condominium Board, on behalf of all Unit Owners, to use, operate, maintain, Repair, Alter and rebuild all General Common Elements located in such Unit or elsewhere on the Property. In addition, Declarant (or its designee), the Condominium Board and each of the Residential Board and Hotel Board shall have the right to erect scaffolding on or upon any of the terraces for a temporary period of time in connection with maintenance and repairs of the Building and its Common Elements.

## ARTICLE 15

## EASEMENTS; RIGHTS OF ACCESS

15.1 Operation and Maintenance of Common Elements. Each Unit Owner shall have, in common with all other Unit Owners, and each Unit shall be subject to, an easement: (a) to install, operate, maintain, Repair, Alter and rebuild the Common Elements located in, over, under, through or upon any Unit, or any other Common Elements or elsewhere on the Property; and (b) to maintain any encroachment on any Unit, the General Common Elements or any Limited Common Element resulting from the Repair, Alteration or rebuilding of the Units or the Common Elements; provided that access to any Unit or the Common Elements in furtherance of such easement shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business of the tenants and occupants of the Commercial Units or with the use of the Residential Units or Condo Hotel Units for their permitted purposes. Such entry shall be permitted on not less than one day's notice, except that no notice will be necessary in the case of an Emergency.

15.2 Terraces/Courtyard. Each Unit Owner of a Residential Unit or Hotel Unit, as the case may be, with a terrace appurtenant thereto shall have an easement for the exclusive use of such terrace, which use shall be subject to the terms and conditions of this Declaration, the Condominium By-Laws and the Residential By-Laws or Hotel By-Laws, as applicable. All Residential Unit Owners shall jointly have an easement for the exclusive use of the central courtyard of the Building at Floor 5 (except for those portions thereof which are shown on the Floor Plans as a terrace appurtenant to a particular Unit) as a recreation area, which use shall be subject to the terms and conditions of this Declaration, the Condominium By-Laws and the Residential By-Laws, including such rules and regulations with respect thereto as may be adopted by the Residential Board from time to time. Each terrace (and the Unit to which such terrace is appurtenant) and the courtyard shall be subject to the specific easement(s) (with respect to Repairs, maintenance, Emergencies, etc.) in favor of Declarant, the Condominium Board, the Residential Board and the Hotel Board as set forth herein.

15.3 Ingress and Egress. Each Unit Owner shall have, to the extent reasonably necessary, in common with all other Unit Owners, an easement for ingress to and egress from its Unit and its appurtenant (shared or exclusive) Limited Common Elements. Each Unit, General Common Element and Limited Common Element shall be subject to such easement.

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

15.5 Miscellaneous. Each Unit Owner (except as otherwise set forth below) grants an easement over its Unit and the Common Elements (including, without limitation, its appurtenant Limited Common Elements), and the Condominium Board and each of the other Boards grants an easement over and through the General Common Elements and its Limited Common Elements, respectively: (a) to each Board, in common with each other Board, for the purpose of (and to the extent reasonably necessary for) maintaining, Repairing, Altering, preventing or minimizing damage to and causing to be in compliance with Laws and Insurance Requirements such granting Unit Owner's Unit, the Limited Common Elements, if any, appurtenant to its Unit and the Limited Common Elements of such Board; (b) to each Unit Owner, in common with each other Unit Owner, for the purpose of (but only in the absence of a commercially practicable alternative and only to the extent necessary for) maintaining, Repairing, Altering, preventing or minimizing damage to and causing to be in compliance with Laws and Insurance Requirements any portions of the grantee Unit Owner's Unit and its appurtenant Limited Common Elements; (c) to each Unit Owner, and to each Board, in common with each other, for the purpose of (but only in the absence of a commercially practicable alternative and only to the extent necessary for) installing, allowing to remain (and using for their respective intended purposes), maintaining, Repairing, Altering, preventing or minimizing damage to and causing to be in compliance with Laws and Insurance Requirements any Common Elements or other facilities located in or only readily accessible through such granting Unit Owner's Unit or Limited Common Elements, if any, which serve other Units (including, without limitation, reading, maintaining or replacing utility meters relating to the Common Elements, such Unit or any other Unit in the Building); (d) to each Board (only to the extent permitted under the other provisions of the Condominium Documents), in common with each other, for the purpose of (and to the extent reasonably necessary for) preventing or minimizing damage to such

Unit or to any other portion of the Property; (e) to each Board (in each case, only to the extent permitted under the other provisions of the Condominium Documents), in common with each other, for the purpose of (and only to the extent reasonably necessary for) making inspections of, or removing violations noted or issued by any Governmental Authority against, the Common Elements or any other part of the Property; and/or (f) to each Unit Owner and to each Board (in each case, only to the extent permitted under the other provisions of the Condominium Documents), in common with each other, for the purpose of (and only to the extent reasonably necessary for) curing defaults hereunder or under the Condominium By-Laws, the Residential By-Laws or the Hotel By-Laws, as applicable, or correcting any conditions originating in such Unit Owner's Unit or Limited Common Elements and threatening the health, safety and welfare of the occupants of, or the property located within, another Unit or all or any part of the Common Elements.

15.6 Utilities. Declarant (or its designee) and the Condominium Board with respect to the Property, the Residential Board with respect to the Residential Section, the Hotel Board with respect to the Hotel Section, the Accessory Unit Owner with respect to the Accessory Unit and the Club Unit Owner with respect to the Club Unit shall each have the right to grant such additional electric, gas, steam or other utility easements or relocate any existing utility easements in any portion of the Property, the Residential Section, the Hotel Section, the Accessory Unit or the Club Unit, as the case may be, as Declarant (or its designee) or the Condominium Board, the Residential Board, the Hotel Board, the Accessory Unit Owner or the Club Unit Owner, as the case may be, shall deem necessary or desirable for the proper operation and maintenance of the Building, or any portion thereof, or for the general health or welfare of the owners, tenants and occupants of the applicable Units, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the normal conduct of business of the tenants and occupants of the Commercial Units or with the use of any of the other Units for their permitted purposes. Any utility company and its employees and agents shall have the right of access to any Unit or the Common Elements in furtherance of such easement, provided such right of access shall be exercised in such a manner as shall not unreasonably interfere with the normal conduct of business of the tenants and occupants of the Commercial Units or with the use of any of the Residential Units or Condo Hotel Units for their permitted purposes.

15.7 Sidewalks. Declarant and all Unit Owners shall have a non-exclusive easement to use the sidewalks surrounding all portions of the Building for all purposes permitted by Law.

15.8 Vaults. Existing sidewalk vaults are located under Central Park South, Fifth Avenue and West 58th Streets at the Lower Concourse, Lower Concourse Mezzanine (West 58th St. only), and Main Concourse levels. The vault space will be used as part of the Building, and subject to standard New York City vault license rules and other Laws. Certain Unit Owners or groups of Unit Owners or Boards shall have the right to use such of the vault spaces as indicated on the Floor Plans.

15.9 Contractors and Agents. Each easement and other right granted under this Article 15 shall be deemed to permit the benefited party's/ies' contractors, subcontractors, agents, representatives, occupants, employees and other designees (and, in the case of a grant to

the Condominium Board, Residential Board or Hotel Board, such Board's managing agent), to use such easement or other right, as applicable, if such Unit Owner or such Board so elects.

15.10 Miscellaneous Terms. Any grant of an easement "on", "over", "across" or "through" a given area shall be deemed to mean "on, over, across, through, and upon" such area, unless the context otherwise requires.

15.11 Roof Telecom Installations. The Transient Hotel Unit Owner and/or its designee (and its respective successors and assigns) shall have an easement for so long as the Condominium shall remain in existence: (i) to erect, use, lease, license, maintain, repair, replace, and operate a platform and other facilities for the purpose of erecting, using, leasing, licensing, maintaining, repairing, replacing and operating antennae, satellite dishes and other communications equipment on the roof of the Building that is not occupied as of the date hereof for any other Building installations; and (ii) to erect, use, lease, maintain, repair, replace and operate related electronic and other communications equipment in any portion of any mechanical equipment room that is not occupied as of the date hereof by any other Building installations, and the right to erect partitions separating such portion from the balance of such equipment room; in each case, without the consent of, or charge by any Board, Unit Owner or other Person; provided, however, that the Transient Hotel Unit Owner (or its designee) shall give prior notice to the Boards of the type and location of any such equipment before installation. Any obligations of the Transient Hotel Unit Owner under any lease, license or other right of use granted by the Transient Hotel Unit Owner with respect to the roof or the aforesaid mechanical equipment room shall be the obligation solely of the Transient Hotel Unit Owner and not of the Condominium and any rights of the Transient Hotel Unit Owner, including, without limitation, the right to receive rent or other consideration for such lease, license or other right of use, shall be the right solely of the Transient Hotel Unit Owner and not of the Condominium. In connection with such easements and related rights, the Transient Hotel Unit Owner and its designee (and their respective successors and assigns) and the respective tenants and licensees shall each have, to the extent necessary or advisable for such erection, use, lease, maintenance, repair, replacement and operation, an easement in common with all Unit Owners for ingress, egress and the use of any Common Elements. The Units and the Common Elements shall each be subject to such easement. The word "utility" or "utilities" as used in this Section shall be deemed to include fiber optic cable and other communications liens, wires, cables and conduits.

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

15.13 Historic Preservation. The Accessory Unit Owner shall have reserved to it and/or its designee the exclusive right to: (i) apply for and/or grant, with respect to the Building Façade, a historic preservation easement or similar right, the granting of which may, among other things, limit or restrict the ability of the Condominium Board (and/or others) to change the outward appearance of the Building; and (ii) apply for or claim any rehabilitation tax credit available as a result of "qualified rehabilitation expenditures" incurred by it in connection with the rehabilitation of the Building. The Condominium Board, the Residential Board and/or the Hotel Board, and the Unit Owners, shall cooperate with the Accessory Unit Owner (and/or its designee) (at the Accessory Unit Owner's or its designee's reasonable cost) in granting and

effecting any such easement and/or in applying for and claiming any such credit. In furtherance thereof, the power of attorney to the Condominium Board described in Article 16 hereof shall be deemed to include the execution and delivery on behalf of the Unit Owners and the Boards, as applicable, of any declaration, easement, subordination or other agreement affecting the Property reasonably necessary in connection with the granting or complying with the terms of such easement or the landmark status of the Building or portions thereof.

15.14 Signage. (a) The Transient Hotel Unit Owner (or its designee), shall, to the extent permitted by Law, have an easement to place, erect, maintain, repair and replace, from time to time, one or more signs, canopies, flags, flagpoles, lighting, lighting elements or awnings or other protrusions, devices or decorative elements on or within the Property in those areas adjacent to or adjoining the Hotel Section (but not within a Unit without the consent of the Unit Owner thereof nor within or upon any Residential Limited Common Elements without the consent of the Residential Board), including without limitation, on the exterior of the Property (including balconies), in those areas adjacent to or adjoining the Hotel Section (or as otherwise approved by the Condominium Board), for the purposes of advertising or promoting or enhancing the operation of the hotel within the Transient Hotel Unit or the sale or lease of all or any portion of the Transient Hotel Unit, and/or the operation of any business of a tenant or occupant of all or any portion of the Transient Hotel Unit; (b) the Accessory Unit Owner (or its designee), shall, to the extent permitted by Law, have an easement to erect, maintain, repair and replace, from time to time, one or more signs, canopies, flags, flagpoles, lighting, lighting elements or awnings or other protrusions, devices or decorative elements on the exterior of the Property in those areas adjacent to or adjoining the Accessory Unit (or as otherwise approved by the Condominium Board), including without limitation, on the exterior of the walls of the Building, in connection with the operation of any business of a tenant or occupant of all or any portion of the Accessory Unit; (c) each of Residential Sponsor and Condo Hotel Sponsor (or their respective designee(s)), shall, to the extent permitted by Law (and subject, in the case of the Condo Hotel Sponsor, to the consent of the Transient Hotel Unit Owner), have an easement to erect, maintain, repair and replace, from time to time, one or more signs, canopies, flags, flagpoles, lighting, lighting elements or awnings or other protrusions, devices or decorative elements on the Property in those areas adjacent to or adjoining the Residential Section and Hotel Section, respectively (or as otherwise approved by the Condominium Board) (but not within a Unit without the consent of the Unit Owner thereof nor within or upon any Hotel Limited Common Elements (in the case of the exercise of such easement by the Residential Sponsor) without the consent of the Hotel Board nor within or upon any Residential Limited Common Elements (in the case of the exercise of such easement by the Condo Hotel Sponsor) without the consent of the Residential Board), including without limitation, on the exterior of the walls (including any balconies) of the Building, for the purposes of advertising the sale or lease of any Unsold Unit; and (d) the Transient Hotel Unit Owner shall have an easement to install, maintain, inspect and replace from time to time, any signs, plaques or other notices, items, devices or objects within the Condo Hotel Units to the extent required by Law in connection with the operation of a hotel at the Building. In addition, each of the Residential Sponsor and Condo Hotel Sponsor (or their respective designee(s)) as the owner(s) of any Unsold Units shall have the right, until the tenth anniversary of the initial recording of this Declaration (and, in the case of the Hotel Section, subject to the reasonable approval of the Transient Hotel Unit Owner), to use, without charge, portions of the Building (other than within a Unit without the consent of the

Unit Owner thereof), including the Common Elements, for exhibitions, events, promotional functions with respect to any sales programs for Unsold Units or otherwise.

15.15 Air and Light. The Units and the Common Elements shall be subject to that certain light and air easement dated April 7, 2005 and recorded as CRFN 2005051700564001 governing unrestricted light and air over 22 Central Park South, New York, New York (designated as Block 1274, Lot 55 on the Tax Map of the City of New York, "22 CPS").

15.16 22 CPS Utilities. The Units and Common Elements shall be subject to a Restatement Declaration of Easements, Covenants and Restrictions to be recorded, governing certain easements, covenants and restrictions with respect to the steam system and electrical service of 22 CPS which are connected to and reliant upon the Building.

15.17 Right of Access for Operation, Emergency Repairs, Damage Prevention. Each Unit Owner hereby grants to each other Unit Owner an irrevocable right of access, to be exercised: (i) in the case of any grantee Hotel Unit Owner, by the Hotel Board or the managing agent therefor; (ii) in the case of the Club Unit or the Accessory Unit as grantee, by the Condominium Board or the managing agent therefor; or (iii) in the case any Residential Unit Owner grantee, by the Residential Board or the managing agent therefor, to the granting Unit Owner's Unit, its appurtenant Limited Common Elements and any General Common Elements which such Unit Owner (either by itself or jointly with some (but not all) of the other Unit Owner(s)) has the exclusive right to use pursuant to an easement granted under of this Article of the Declaration, from time to time to the extent necessary for the operation of the Property, for the performance of Initial Construction and Fit-Out Work (as applicable) or for making Emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

15.18 Initial Construction Work; Hotel Work; Initial Work. Each of the Condominium Board, the Hotel Board, the Residential Board and each Unit Owner grants a right of access over, as applicable, the General Common Elements, its Unit and its appurtenant Limited Common Elements to, in each case: (a) Declarant for the purpose of exercising Declarant's rights and complying with and fulfilling Declarant's obligations under the Hotel Development Agreement (for so long as the Hotel Development Agreement shall be in effect) and the Construction Loan Documents or until the construction obligations under the Hotel Development Agreement and the Construction Loan Documents with respect to the Property are satisfied; and (b) each of Residential Sponsor (with respect to the Residential Section), Condo Hotel Sponsor (with respect to the Condo Hotel Units), the Transient Hotel Unit Owner (with respect to the Transient Hotel Unit and the Hotel Limited Common Elements), the Accessory Unit Owner (with respect to the Accessory Unit) and the Club Unit Owner (with respect to the Club Unit) as shall be necessary in each case for the purpose of performing such party's Initial Construction and Fit-Out Work as described in Article 27 hereof. Following any material occupancy of a particular grantor Board's Common Elements or Unit Owner's Unit (or applicable Limited Common Elements), the exercise by any Person of the rights of access provided in this Section with respect to such portion(s) of the Property shall be subject to the Access Conduct Standards (defined below).

15.19 Access Conduct Standards. The right of access granted pursuant to Section 15.18 above and any easement or right of access granted pursuant to any other provisions of the Condominium Documents which expressly require compliance with the "Access Conduct Standards", i.e., the standards set forth in this Section, shall be exercised:

(a) upon at least one day's prior notice, which notice shall specify, in reasonable detail, the purpose and contemplated extent, location and duration of such exercise;

(b) to the extent reasonably possible, in such a manner as will not unreasonably interfere with: (i) the conduct of business of the Occupants of the Non-Residential Units (including, without limitation, the use and enjoyment by hotel guests of the Hotel Unit as a hotel of the quality and standard then being maintained or then required under the Condominium Documents); or (ii) the use of the Residential Units for their permitted purposes;

(c) subject to the requirement that the Person exercising such right of access or easement shall be liable for any and all physical damage caused thereby and shall indemnify and hold the affected Board(s), their managing agents, and the affected Unit Owner(s) and Occupants (as the case may be) harmless from and against all costs resulting from, arising out of, or in any way connected to such exercise; and

(d) in compliance with the Condominium Documents (including, without limitation, the provisions hereof and thereof regarding the removal of mechanics' liens and violations), all Laws (including, without limitation, those regarding the licensing of contractors) and all Insurance Requirements.

15.20 Emergencies. Notwithstanding anything to the contrary in the immediately preceding Section of this Article or any other requirement in the Condominium Documents with respect to compliance with Access Conduct Standards, in the case of an Emergency, the right of access or easement in question shall require only such notice, if any, as may be practicable under the circumstances prior to exercising such right of access or easement, and the same may be exercised whether or not the Unit Owner or any other Occupant or Person is present.

## ARTICLE 16

## POWER OF ATTORNEY TO THE BOARD

16.1 From Residential Unit Owners. Each Residential Unit Owner shall grant to the persons who shall from time to time constitute:

(a) the Residential Board, an irrevocable power of attorney, coupled with an interest (in such form and with such content as the Residential Board shall determine) to: (i) acquire or lease on behalf of all Residential Unit Owners any Residential Unit, together with its Appurtenant Interests, whose Owner desires to sell, convey, transfer, assign or lease the same; (ii) acquire on behalf of all Residential Unit Owners any Residential Unit, together with its Appurtenant Interests, whose Owner elects to surrender the same pursuant to the terms of the Residential By-Laws; (iii) purchase or otherwise acquire any Residential Unit, together with its Appurtenant Interests, which becomes the subject of a foreclosure or other similar sale, or with

respect to which liens for real estate taxes are being sold, in each case on such terms and at such price or rental, as the case may be, as the attorneys-in-fact deem proper, in the name of the Residential Board or its designee (corporate or otherwise), on behalf of all Residential Unit Owners, and after any such acquisition or leasing, to manage, convey, sell, lease, sublease, mortgage or otherwise deal with (but not vote the Common Interests appurtenant to) any such Residential Unit so acquired by them, or to sublease any such Residential Unit so leased by them without the necessity of further authorization by the Residential Unit Owners or any other Person, on such terms as the attorneys-in-fact may determine; and (iv) execute, acknowledge and deliver: (A) any declaration or other instrument affecting the Residential Section which the Residential Board deems necessary or appropriate to comply with any Laws applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Residential Section, or (B) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting only the Residential Section which the Residential Board, in its reasonable discretion, deems necessary or appropriate; and

(b) the Condominium Board, an irrevocable power of attorney, coupled with an interest (in such form and content as the Residential Board shall determine) to: (i) purchase or otherwise acquire in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, title to any Unit, together with its Appurtenant Interests: (A) in connection with the enforcement of the Condominium Board's lien for unpaid General Common Charges; or (B) that becomes the subject of a foreclosure or other similar sale; on such terms, including, without limitation, price (with respect to clause (B) immediately above) as said attorneys-in-fact shall deem proper; and (ii) convey, sell, lease, mortgage, or otherwise deal with (but not to vote the Common Interest appurtenant to) any Unit so acquired or to sublease any Unit so leased by them, without the necessity of any authorization by the Unit Owners or any other Person, on such terms as said attorneys-in-fact may determine, granting to said attorneys-in-fact the power to do all things in and to said Unit which the undersigned could do if personally present; (iii) execute, acknowledge, deliver and (if determined to be necessary or desirable by said attorneys-in-fact) cause to be recorded in the City Register's Office: (A) any declaration or other instrument affecting the Condominium that the Condominium Board deems necessary or appropriate to comply with any Laws applicable to the maintenance, demolition, construction, Alteration or Repair of the Condominium; or (B) any consent, covenant, restriction, easement or declaration, or amendment thereto, affecting the Condominium or any of the Common Elements, that the Condominium Board deems necessary or appropriate, provided that in no event shall the Condominium Board execute, acknowledge and deliver any document pursuant to clause (iii)(B) of this sentence prior to the approval thereof by any Unit Owner(s) whose Unit is affected, unless such approval is expressly not required under any of the provisions hereof or of the Condominium By-Laws.

16.2 From Hotel Unit Owners. Each Hotel Unit Owner shall grant to the persons who shall from time to time constitute:

(a) the Hotel Board, an irrevocable power of attorney, coupled with an interest (in such form and with such content as the Hotel Board shall determine) to: (i) acquire or lease on behalf of all Hotel Unit Owners any Hotel Unit, together with its Appurtenant Interests, whose Owner desires to sell, convey, transfer, assign or lease the same; (ii) acquire on behalf of all Hotel Unit Owners any Hotel Unit, together with its Appurtenant Interests, whose Owner

elects to surrender the same pursuant to the terms of the Hotel By-Laws; (iii) purchase or otherwise acquire any Hotel Unit, together with its Appurtenant Interests, which becomes the subject of a foreclosure or other similar sale, or with respect to which liens for real estate taxes are being sold, in each case on such terms and at such price or rental, as the case may be, as the attorneys-in-fact deem proper, in the name of the Hotel Board or its designee (corporate or otherwise), on behalf of all Hotel Unit Owners, and after any such acquisition or leasing, to manage, convey, sell, lease, sublease, mortgage or otherwise deal with (but not vote the Common Interests appurtenant to) any such Unit so acquired by them, or to sublease any such Unit so leased by them without the necessity of further authorization by the Hotel Unit Owners or any other Person, on such terms as the attorneys-in-fact may determine; and (iv) execute, acknowledge and deliver: (A) any declaration or other instrument affecting the Hotel Section which the Hotel Board deems necessary or appropriate to comply with any Laws applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Hotel Section, including, but not limited to that certain Unit Management and Operation Agreement and Memorandum of Unit Management and Operation Agreement between the manager of the Hotel Section and the Condo Hotel Unit Owner or (B) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting only the Hotel Section which the Hotel Board, in its reasonable discretion, deems necessary or appropriate; and

(b) the Condominium Board, an irrevocable power of attorney, coupled with an interest (in such form and content as the Hotel Board shall determine) to: (i) purchase or otherwise acquire in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, title to any Unit, together with its Appurtenant Interests: (A) in connection with the enforcement of the Condominium Board's lien for unpaid General Common Charges; or (B) that becomes the subject of a foreclosure or other similar sale; on such terms, including, without limitation, price (with respect to clause (B) immediately above) as said attorneys-in-fact shall deem proper; and (ii) convey, sell, lease, mortgage, or otherwise deal with (but not to vote the Common Interest appurtenant to) any Unit so acquired or to sublease any Unit so leased by them, without the necessity of any authorization by the Unit Owners or any other Person, on such terms as said attorneys-in-fact may determine, granting to said attorneys-in-fact the power to do all things in and to said Unit which the undersigned could do if personally present; (iii) execute, acknowledge, deliver and (if determined to be necessary or desirable by said attorneys-in-fact) cause to be recorded in the City Register's Office: (A) any declaration or other instrument affecting the Condominium that the Condominium Board deems necessary or appropriate to comply with any Laws applicable to the maintenance, demolition, construction, Alteration or Repair of the Condominium; or (B) any consent, covenant, restriction, easement or declaration, or amendment thereto, affecting the Condominium or any of the Common Elements, that the Condominium Board deems necessary or appropriate, provided that in no event shall the Condominium Board execute, acknowledge and deliver any document pursuant to clause (iii)(B) of this sentence prior to the approval thereof by any Unit Owner(s) whose Unit is affected, unless such approval is expressly not required under any of the provisions hereof or of the Condominium By-Laws.

16.3 From Accessory Unit Owner and Club Unit Owner. Each of the Accessory Unit Owner and the Club Unit Owner shall grant to the persons who shall from time to time constitute the Condominium Board an irrevocable power of attorney, coupled with an interest (in such form and content as the Condominium Board shall determine): (i) to purchase or

otherwise acquire on behalf of all Unit Owners any Unit, together with its Appurtenant Interests, with respect to which liens for real estate taxes are being sold; (ii) to acquire any Unit, together with its Appurtenant Interests, whose Unit Owner elects to surrender the same to the Condominium Board as may be provided pursuant to the Condominium By-Laws to the extent the waiver with respect to the right to surrender such Unit set forth therein is inapplicable or unenforceable; (iii) to purchase or otherwise acquire any Unit, together with its Appurtenant Interests, which becomes the subject of a foreclosure or other similar sale, on such terms and at such price, as the attorneys-in-fact deem proper, in the name of the Condominium Board or its designee (corporate or otherwise), on behalf of all Unit Owners, and after any such acquisition, to convey, sell, lease, license, mortgage or otherwise deal with (but not vote the Common Interests appurtenant to) any such Unit so acquired by them without the necessity of further authorization by any of the Unit Owners, other Boards or any other Person, on such terms as the said attorneys-in-fact may determine; and (iv) to execute, acknowledge and deliver: (a) any declaration or other instrument affecting the Property or the Condominium which the Condominium Board deems reasonably necessary or appropriate to comply with any Laws applicable to the maintenance, demolition, construction, Alteration or Repair of the Property or the Condominium; or (b) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting the Property or the Condominium that the Condominium Board deems necessary or appropriate, provided that in no event shall the Condominium Board execute, acknowledge and deliver any document pursuant to clause (iv)(b) of this sentence prior to the approval thereof by any Unit Owner(s) whose Unit is affected, unless such approval is expressly not required under any of the provisions hereof or of the Condominium By-Laws.

16.4 Each Unit Owner shall grant to Declarant a power of attorney to amend this Declaration and to effectuate the rights granted to Declarant under this Declaration and the Condominium By-Laws and to consent on behalf of each Unit Owner, as a party in interest, to any declaration or other agreement effecting a merger or division of the zoning lot in which the Property is located, with any other tax lots to form a single zoning lot (the "Merger") for the purpose of transferring to or from Declarant, or its successors or assigns, all or any portion of the Development Rights.

## ARTICLE 17

## ACQUISITIONS OF UNITS BY THE BOARDS

17.1 If: (a) the Transient Hotel Unit Owner, Accessory Unit Owner or Club Unit Owner surrenders its Unit to the Condominium Board to the extent permitted and provided herein and the Condominium By-Laws, together with its Appurtenant Interests pursuant to the provisions of Section 339-x of the New York Condominium Act; or (b) the Condominium Board purchases, at a foreclosure or other similar sale, a Unit, together with its Appurtenant Interests, then, in any such event, title to any such Unit, together with its Appurtenant Interests, shall be held by the Condominium Board or its designee, on behalf of all Unit Owners, in proportion to their respective interests in the Common Elements. The lease or sublease covering any Unit leased or subleased by the Condominium Board or its designee shall be held by the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective interests in the Common Elements.

17.2 If: (a) any Residential Unit Owner surrenders its Unit to the Residential Board, together with its Appurtenant Interests pursuant to the provisions of Section 339-x of the New York Condominium Act; (b) the Residential Board, pursuant to Article 8 of the Residential By-Laws, acquires or leases a Unit, together with its Appurtenant Interests; or (c) the Residential Board purchases, at a foreclosure or other similar sale, a Unit, together with its Appurtenant Interests, then, in any such event, title to any such Unit, together with its Appurtenant Interests, shall be held by the Residential Board or its designee, on behalf of all Residential Unit Owners, in proportion to their respective interests in the Common Elements. The lease or sublease covering any Residential Unit leased or subleased by the Residential Board or its designee shall be held by the Residential Board or its designee, corporate or otherwise, on behalf of all Residential Unit Owners in proportion to their respective Common Interests.

17.3 If: (a) any Condo Hotel Unit Owner surrenders its Unit to the Hotel Board, together with its Appurtenant Interests pursuant to the provisions of Section 339-x of the New York Condominium Act; (b) the Hotel Board, pursuant to Article 8 of the Hotel By-Laws, acquires or leases a Unit, together with its Appurtenant Interests; or (c) the Hotel Board purchases, at a foreclosure or other similar sale, a Unit, together with its Appurtenant Interests, then, in any such event, title to any such Unit, together with its Appurtenant Interests, shall be held by the Hotel Board or its designee, on behalf of the Hotel Unit Owners, in proportion to their respective interests in the Common Elements. The lease or sublease covering any Hotel Unit leased or subleased by the Hotel Board or its designee shall be held by the Hotel Board or its designee, corporate or otherwise, on behalf of the Hotel Unit Owners in proportion to their respective interests in the Common Elements.

17.4 As used in this Article 17, "Appurtenant Interests" means with respect to the Accessory Unit or Club Unit: (i) the undivided interest in the Common Elements appurtenant thereto; (ii) the interest of the Unit Owner of such Unit in any other Units owned at the time in question by the Condominium Board or its designee on behalf of all Unit Owners, or the proceeds of the sale or lease of any such Units theretofore acquired; and (iii) the interest of the Unit Owner of such Unit in all other assets of the Condominium Board or the Condominium. With respect to a Residential Unit or Hotel Unit: (i) the undivided interest in the Common Elements appurtenant thereto; (ii) the interest of the Unit Owner of such Unit in any other Units owned at the time in question by the Residential Board or Hotel Board, as applicable, or such Board's designee on behalf of all Residential Unit Owner or Hotel Unit Owners, as applicable, or in any other Units then owned by the Condominium Board or its designee on behalf of all Unit Owners, or in each case the proceeds of the sale or lease of any such Units theretofore acquired; and (iii) the interest of the Unit Owner of such Unit in any other assets of the Residential Board or Hotel Board, as applicable, and of the Condominium Board or the Condominium.

## ARTICLE 18

## COVENANTS RUNNING WITH THE LAND

18.1 Applicability. All provisions of this Declaration, the Condominium By-Laws and the General Rules and Regulations (if any) (and in the case of a Residential Unit, the Residential By-Laws and Residential Rules and Regulations, and in the case of a Hotel Unit, the Hotel By-Laws and Hotel Rules and Regulations), as may be adopted and amended from time to

time, 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 Unit Owners and all the occupants, and their 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. All present and future Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Condominium By-Laws and the General Rules and Regulations, if any, as they may be amended from time to time (and the Residential By-Laws and Residential Rules and Regulations or Hotel By-Laws and Hotel Rules and Regulations, as applicable).

18.2 Subordination; Non-Disturbance. Notwithstanding anything in Section 18.1, however, at the request of any of the Transient Hotel Unit Owner, Accessory Unit Owner or Club Unit Owner made from time to time, the Condominium Board (and the Hotel Board in the case of the Transient Hotel Unit) shall, at the sole cost and expense of the requesting Unit Owner, execute and deliver a non-disturbance agreement (in such form as may be reasonably proposed by the requesting Unit Owner and reasonably acceptable to the Condominium Board (and the Hotel Board in the case of the Transient Hotel Unit), a "Non-Disturbance Agreement") to any occupant of such Unit Owner's Unit.

18.3 Deemed Acceptance of Condominium Documents. The acceptance of a deed or conveyance, or the succeeding to title to, the acquisition of any interest in, or the entering into a lease, sublease or license for, or the act of occupancy of, all or any portion of any Unit by any person shall constitute an agreement that the provisions of this Declaration, the Condominium By-Laws, the General Rules and Regulations (if any), (and in the case of a Residential Unit, the Residential By-Laws and Residential Rules and Regulations and in the case of a Hotel Unit, the Hotel By-Laws and the Hotel Rules and Regulations), as any of the same may be adopted and amended from time to time, are accepted, ratified and will be complied with by such Owner, tenant, or occupant or other party, 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 or Common Element, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease or license thereof.

18.4 Unenforceability. If any provision of this Declaration or the other Condominium Documents is invalid under, or would cause this Declaration and the other Condominium Documents to be insufficient to submit the Property to the provisions of, the New York Condominium Act, such provision shall be deemed deleted from this Declaration or the other Condominium Documents, as applicable, for the purpose of submitting the Property to the provisions of the New York Condominium Act but shall nevertheless be valid and binding upon and inure to the benefit of the Unit Owners 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, 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 other Condominium Documents to be sufficient to submit the Property to the

provisions of the New York Condominium Act is missing herefrom or therefrom, then such provision shall be deemed included as part hereof or thereof, as the case may be, for the purposes of submitting the Property to the provisions of the New York Condominium Act.

## ARTICLE 19

## AMENDMENTS OF DECLARATION

Article 16 of the Condominium By-Laws is incorporated herein in its entirety; and, except as otherwise expressly set forth herein, the provisions thereof shall govern the amendment and/or modification of, addition to and/or deletion of any of the provisions of this Declaration.

## ARTICLE 20

## TERMINATION OF CONDOMINIUM

20.1 The Condominium shall continue and the Property shall not be subject to an action for partition until: (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in the Condominium By-Laws; or (b) such time as withdrawal of the Property from the provisions of the New York Condominium Act is authorized by a vote of at least 80% both in number and aggregate of the Common Interests of all Unit Owners. No such vote shall be effective, however: (a) without the written consent (which consent shall not be unreasonably withheld or delayed) of a majority of the Residential Mortgagee Representatives, if any, and a majority of the Condo Hotel Mortgagee Representatives, if any; and (b) without the written consent of Declarant, Residential Sponsor, Condo Hotel Sponsor or any other owner of Unsold Units for so long as any such Person owns any Unsold Unit(s), provided that in no event shall any such consents in this clause (b) be required more than five years after the earlier to occur of the First Residential Closing or the First Condo Hotel Closing.

20.2 To the fullest extent permissible under Law, each Unit Owner shall be deemed to have waived any right to seek partition of the Property. In the event said withdrawal is authorized as aforesaid, and only to the extent the waiver contained in the preceding sentence shall be inapplicable or unenforceable, 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, together with the net proceeds of any applicable insurance policies, shall be divided among all Unit Owners: (i) first, by apportioning such proceeds among the Residential Units (in the aggregate), the Hotel Units (in the aggregate), the Club Unit and the Accessory Unit pursuant to an appraisal of fair market values to be performed by a panel of three independent appraisers (one of whom shall be selected by the Residential Board, one of whom shall be selected by the Transient Hotel Unit Owner and the third selected by the Accessory Unit Owner); and (ii) then, among the Unit Owners of each class of Unit 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 its share of such funds, such amounts as may be necessary to discharge all unpaid liens on its Unit (other than mortgages which are not Permitted Mortgages or Registered Mortgages, as applicable) in the order of the priority of such liens.

## ARTICLE 21

## 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 22

## 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 nor the intent of any provision hereof.

## ARTICLE 23

## CERTAIN REFERENCES

23.1 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.

23.2 The terms "herein," "hereof" 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.

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

## ARTICLE 24

## SEVERABILITY

Subject to the provisions of Section 18.4, 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 enforceable to the fullest extent permitted by Law.

## ARTICLE 25

## COVENANT OF FURTHER ASSURANCES

25.1 Any party which is subject to the terms of this Declaration, whether such party is a Unit Owner, a lessee or sublessee of a Unit Owner, an occupant of a Unit, a member or officer of a Board, or otherwise, shall, at the expense of any such other party (or the holder of a

lien on its Unit) requesting the same, execute, acknowledge and deliver to such other party (or the holder of a lien on its Unit) such instruments, in addition to those specifically provided for herein, and take such other action, as such other party (or the holder of a lien on its Unit) may reasonably request to effectuate the provisions of this Declaration or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction. Without intending to limit the generality of the foregoing, each Board and each Unit Owner shall be required, upon the request of Declarant or the Development Rights Purchaser, to execute and deliver any documents or applications reasonably required in connection with any Merger, any declaration of zoning lot restrictions, any ZLDA or the transfer of the Development Rights to the Development Rights Purchaser.

25.2 If any Unit Owner, Board or other Person which is subject to the terms of this Declaration fails to execute, acknowledge or deliver any instrument, or fails or refuses, within ten (10) days after receipt of a written request therefor, to take any action which such Unit Owner, Board or other Person is required to take pursuant to this Declaration and/or the Condominium By-Laws, and such failure continues for an additional ten (10) day period following receipt of a second written request therefor (together with written advice that the requesting party shall be entitled to take specified action upon the recipient's failure or refusal to perform) then the Condominium Board is hereby authorized as attorney-in-fact for such Unit Owner, other Board or other Person, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Unit Owner, Board or other Person and such document or action shall be binding on such Unit Owner, Board or other Person.

25.3 If any Unit Owner, Board or other Person which is subject to the terms of this Declaration fails to execute, acknowledge or deliver any instrument, or fails or refuses, within ten (10) days after receipt of a written request therefor, to take any action which such Unit Owner, Board or other Person is required to take pursuant to this Declaration, the Condominium By-Laws, Hotel By-Laws or the Residential By-Laws, as the case may be, at the request of Declarant (or its designee), and such failure continues for an additional ten (10) day period following receipt of a second written request therefor (together with written advice that Declarant (or its designee) shall be entitled to take specified action upon the recipient's failure or refusal to perform), then Declarant (or its designee) is hereby authorized as attorney-in-fact for such Unit Owner, Board or other Person, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Unit Owner, Board or other Person and such document or action of Declarant (or its designee) shall be binding on such Unit Owner, Board or other Person.

## ARTICLE 26

## NAME OF CONDOMINIUM AND BUILDING

26.1 The Condominium and the Building shall be designated and known as "The Plaza Condominium." Declarant (or its designee) shall own and control all rights and interests, and shall be responsible for all obligations and liabilities, appurtenant to the name of the Condominium and/or the Building. Only Declarant (or its designee) shall have the right to change or assign the name of the Condominium and/or the Building. In addition, Declarant shall

have the right and all necessary easements, for so long as the Property is a condominium, to maintain one or more plaque(s) identifying Declarant (or its affiliate(s)) as the sponsor of the Condominium and/or development of the Property, together with such other information as Declarant (or its designee) determines in its sole discretion.

26.2 Notwithstanding the foregoing, however, but subject to the rights of Declarant, if the Transient Hotel Unit, the Hotel Section, the Residential Section, the Accessory Unit or the Club Unit is operated under an identifying name, the Unit Owner(s) thereof shall be free to use whatever name(s) it/they designate(s) for such Unit(s) or Section in press releases or publicly distributed materials or permitted signage.

## ARTICLE 27

## INITIAL CONSTRUCTION OF THE UNITS AND THE COMMON ELEMENTS

27.1 Initial Construction of the Property; Hotel Development Agreement; Construction Loan Documents. Notwithstanding anything to the contrary in Article 8 of the Condominium By-Laws, each of Declarant (with respect to all or any portion of the Property), Residential Sponsor (with respect to the Residential Section), Condo Hotel Sponsor (with respect to the Condo Hotel Units and the Hotel Limited Common Elements), the Transient Hotel Unit Owner (with respect to the Transient Hotel Unit and the Hotel Limited Common Elements), the Accessory Unit Owner (with respect to the Accessory Unit) and the Club Unit Owner (with respect to the Club Unit) shall have the right, without the vote or consent of any Board or any other Unit Owner or Person, but subject in each case to all applicable Laws and the applicable provisions of the Hotel Development Agreement, the Construction Loan Documents, the Residential Offering Plan and the Condo Hotel Offering Plan, as applicable, to perform (which term, for the purposes of this Section, shall also include permit, cause and suffer) the development, renovation, design, construction and making of all initial installations, finishes, Alterations and Repairs in or to, and equipping and fitting-out of, the Property or such Person's aforementioned portion of the Property (including, without limitation, performing structural or non-structural, interior or exterior, ordinary or extraordinary work) which such Person may be permitted or required to make or do pursuant to the above-described documents and in accordance with the approved construction plans and specifications therefor as filed with applicable Governmental Authorities having jurisdiction or otherwise in furtherance of its/their respective obligations under the Construction Loan Documents (such work, the scope of which may be modified from time to time, is hereinafter the "Initial Construction and Fit-Out Work"), in each case, subject to such standards with respect to the performance of such work as are specified with respect thereto in Article 15 hereof, as applicable.

27.2 Declarant's Rights. All Initial Construction and Fit-Out Work performed shall be subject to the documents and matters described in this Section and otherwise subject only to Declarant's right to review, approve, condition, consent to, monitor, coordinate and supervise such work.

## ARTICLE 28

## PLAZA INTELLECTUAL PROPERTY

Use. Each of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor may, from time to time either own or obtain licenses to rights in certain trademarks, trade names, copyrights and/or other intellectual property, including, without limitation, for example, THE PLAZA, the "PP Design" and/or derivations thereof or successor corporate identifiers (collectively, "Plaza Intellectual Property"). Except as expressly provided herein, in no event shall: (i) any Hotel Unit Owner (other than the Transient Hotel Unit Owner) or the Hotel Board, without the express consent of the Transient Hotel Unit Owner; (ii) any Occupant of the Accessory Unit, without the express consent of the Accessory Unit Owner; (iii) any Occupant of the Club Unit, without the express consent of the Club Unit Owner; or (iv) any Residential Unit Owner, Occupant of any Residential Unit, or the Residential Board, without the express consent of the Residential Sponsor, use any of the Plaza Intellectual Property in connection with any advertisement, promotion, rental or sale of any such Unit (or portion thereof or interest therein) or any business being operated therein of therefrom or in any other commercial manner. The consent requirements of the preceding clauses "(i)-(iv)" shall not apply in the event that a Person subject to such clauses (i)-(iv) is using only the name of the Building, the Residential Section, the Hotel Section or the name 'The Plaza' (*i.e.*, excluding any logos or other proprietary elements of the Plaza Intellectual Property) in a descriptive manner in conjunction with the sale or rental of its Unit or the provision of any services therein or therefrom. Without limiting any other right or remedy available at law or in equity, the foregoing may be enforced by an action for specific performance and/or injunctive relief. Under no circumstances shall the Plaza Intellectual Property be deemed part of the Property or an appurtenance of any Unit or any Person subject to the foregoing. The Plaza Intellectual Property shall at all times remain the sole and exclusive property of the Transient Hotel Unit Owner, Accessory Unit Owner, Club Unit Owner and Residential Sponsor or their licensors.

28.1 Standards for Use. Each of the Persons subject to clauses (i)-(iv) above shall, to the extent and for the duration that such Person is permitted to use the Plaza Intellectual Property hereunder, maintain and/or operate the portion(s) of the Property that such Person(s) own and/or for which such Person(s) is/are responsible as well as any services within the control of such Person(s) that are associated with such portion(s) of the Property, in accordance with a standard of quality, service and appearance as are consistent with or exceed such standards as are then being maintained by the hotel being operated in the Transient Hotel Unit.

## ARTICLE 29

## SUCCESSORS AND ASSIGNS

Except as set forth herein or in the Condominium By-Laws to the contrary, the rights and obligations of: (i) Declarant or its designee, as set forth in the Condominium Documents, shall inure to the benefit of and be binding upon any successor or assign of Declarant, its designee or, with the consent of Declarant or its designee, any transferee of some or all of the then Unsold Units then owned by Declarant or its designee; (ii) Residential Sponsor or its designee, as set forth herein, shall inure to the benefit of and be binding upon any successor

or assign of Residential Sponsor, its designee or, with the consent of Residential Sponsor or its designee, any transferee of some or all of the then Unsold Residential Units then owned by Residential Sponsor or its designee; and (iii) Condo Hotel Sponsor or its designee, as set forth herein, shall inure to the benefit of and be binding upon any successor or assign of Condo Hotel Sponsor, its designee or, with the consent of Condo Hotel Sponsor or its designee, any transferee of some or all of the then Unsold Condo Hotel Units then owned by Condo Hotel Sponsor or its designee. For purposes hereof, references to Declarant or its designee, Residential Sponsor or its designee, or Condo Hotel Sponsor or its designee, as the case may be, shall also include any mortgagee (or its nominee or designee) or other Person taking title from such party/ies upon a foreclosure or by deed-in-lieu of foreclosure. The rights and/or obligations of the Unit Owners as set forth in the Condominium Documents shall inure to the benefit of and be binding upon any successors or assigns of the respective Unit Owners.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the 13th day of March, 2006.

CPS 1 REALTY LP

By: CPS 1 Realty GP LLC, its general partner

By:_____
Name: Miki Naftali
Title: President

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

On the _____ day of April in the year 2006, before me, the undersigned, personally appeared Miki Naftali, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

# SCHEDULE A
# TO DECLARATION ESTABLISHING CONDOMINIUM OWNERSHIP OF THE PLAZA CONDOMINIUM

## DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of West 58th Street with the westerly side of Fifth Avenue Plaza;

RUNNING THENCE northerly along the westerly side of Fifth Avenue Plaza, 200 feet 10 inches to the corner formed by the intersection of the southerly side of West 59th Street with the said westerly side of Fifth Avenue Plaza;

THENCE westerly along the southerly side of West 59th Street, 275 feet;

THENCE southerly parallel with Fifth Avenue Plaza, 100 feet 5 inches to the center line of the block;

THENCE westerly parallel with West 59th Street and along said center line, 35 feet:

THENCE southerly parallel with Fifth Avenue Plaza, 100 feet 5 inches to the northerly side of West 58th Street;

THENCE easterly along the northerly side of West 58th Street, 285 feet to the first mentioned corner, the point or place of BEGINNING.

Fifth Avenue Plaza is now known as Grand Army Plaza.

59th Street is now known as Central Park South.

# SCHEDULES B
# TO DECLARATION ESTABLISHING
# CONDOMINIUM OWNERSHIP OF
# THE PLAZA CONDOMINIUM

## DESCRIPTION OF THE UNITS

# SCHEDULE B-1

## ACCESSORY UNIT and CLUB UNIT

| Unit Designation | Tax Lot No. | Location (Floors within Building where Unit Space is Located) | Approx. Total Area | % Interest in Common Elements (Common Interest) |
|---|---|---|---|---|
| Accessory | 1301 | Lower Concourse C, Main Concourse A, Floors 1-4* | 141,885 | 16.9958% |
| Club | 1302 | Fourth Floor | 5,772 | 0.6914% |

* Includes the Building Façade (as defined in the Declaration).

**SCHEDULE B-2**

**DECLARATION ESTABLISHING CONDOMINIUM OWNERSHIP OF THE PLAZA CONDOMINIUM**
**768 Fifth Avenue (a/k/a One Central Park South), New York, New York 10019**

**DESCRIPTION OF THE RESIDENTIAL UNITS**

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Residential Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 201 | 1456 | North | 4,283 | | 3/4.5 (Duplex) | 0.5994% | 1.1919% | Corridor |
| 301 | 1457 | North | 3,416 | | 3/4.5 | 0.4780% | 0.9506% | Corridor |
| 305 | 1458 | North | 1,795 | | 2/2.5 | 0.2512% | 0.4995% | Corridor |
| 309 | 1459 | North & East | 4,542 | | 2/2.5 | 0.6356% | 1.2639% | Corridor |
| 311 | 1460 | East | 2,816 | | 2/2.5 | 0.3941% | 0.7836% | Corridor |
| 315 | 1461 | East & South | 2,668 | | 2/2.5 | 0.3734% | 0.7425% | Corridor |
| 401 | 1462 | North | 2,357 | | 2/2.5 | 0.3298% | 0.6559% | Corridor |
| 405 | 1463 | North | 2,162 | | 2/2.5 | 0.3025% | 0.6016% | Corridor |
| 407 | 1464 | North | 1,452 | | 1/1.5 | 0.2032% | 0.4041% | Corridor |
| 409 | 1465 | North & East | 3,531 | | 3/4 | 0.4941% | 0.9826% | Corridor |
| 411 | 1466 | East | 2,834 | | 3/3.5 | 0.3966% | 0.7886% | Corridor |
| 501 | 1467 | North, West & South | 2,656 | 953 | 2/3.5 | 0.4384% | 0.8717% | Corridor/Terrace |
| 502 | 1468 | South | 1,155 | 728 | 1/1.5 | 0.2126% | 0.4227% | Corridor/Terrace |
| 503 | 1469 | North | 1,994 | | 2/2.5 | 0.2790% | 0.5549% | Corridor |
| 506 | 1470 | South | 1,676 | 985 | 2/2 | 0.3035% | 0.6034% | Corridor/Terrace |
| 507 | 1471 | North | 1,843 | | 2/2.5 | 0.2579% | 0.5129% | Corridor |
| 508 | 1472 | South | 782 | 522 | 1/1 | 0.1460% | 0.2902% | Corridor/Terrace |
| 509 | 1473 | North & East | 4,284 | | 3/5 | 0.5995% | 1.1922% | Corridor |
| 510 | 1474 | West | 1,192 | 429 | 2/2 | 0.1968% | 0.3914% | Corridor/Terrace |
| 513 | 1475 | East | 2,520 | | 2/2.5 | 0.3526% | 0.7013% | Corridor |
| 515 | 1476 | East & South | 3,068 | | 3/3.5 | 0.4293% | 0.8538% | Corridor |
| 601 | 1477 | North, West & South | 2,656 | | 2/3.5 | 0.3717% | 0.7391% | Corridor |
| 602 | 1478 | South | 1,155 | | 1/1.5 | 0.1616% | 0.3214% | Corridor |
| 603 | 1479 | North | 1,994 | | 2/2.5 | 0.2790% | 0.5549% | Corridor |
| 605 | 1480 | North | 1,202 | | 1/1.5 | 0.1682% | 0.3345% | Corridor |
| 606 | 1481 | South | 1,676 | | 2/2 | 0.2345% | 0.4664% | Corridor |
| 607 | 1482 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |
| 608 | 1483 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 609 | 1484 | North & East | 2,799 | | 3/3 | 0.3917% | 0.7789% | Corridor |
| 610 | 1485 | West | 1,328 | | 2/2 | 0.1858% | 0.3696% | Corridor |
| 613 | 1486 | East | 2,418 | | 2/2.5 | 0.3384% | 0.6729% | Corridor |

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Residential Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 615 | 1487 | East & South | 3,068 | | 3/3.5 | 0.4293% | 0.8538% | Corridor |
| 701 | 1488 | North, West & South | 2,656 | | 2/3.5 | 0.3717% | 0.7391% | Corridor |
| 702 | 1489 | South | 1,155 | | 1/1.5 | 0.1616% | 0.3214% | Corridor |
| 703 | 1490 | North | 1,994 | | 2/2.5 | 0.2790% | 0.5549% | Corridor |
| 705 | 1491 | North | 1,202 | | 1/1.5 | 0.1682% | 0.3345% | Corridor |
| 706 | 1492 | South | 1,676 | | 2/2 | 0.2345% | 0.4664% | Corridor |
| 707 | 1493 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |
| 708 | 1494 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 709 | 1495 | North & East | 2,799 | | 3/3 | 0.3917% | 0.7789% | Corridor |
| 710 | 1496 | West | 1,328 | | 2/2 | 0.1858% | 0.3696% | Corridor |
| 713 | 1497 | East | 2,418 | | 2/2.5 | 0.3384% | 0.6729% | Corridor |
| 715 | 1498 | East & South | 3,068 | | 3/3.5 | 0.4293% | 0.8538% | Corridor |
| 801 | 1499 | North, West & South | 2,656 | | 2/3.5 | 0.3717% | 0.7391% | Corridor |
| 802 | 1500 | South | 1,155 | | 1/1.5 | 0.1616% | 0.3214% | Corridor |
| 803 | 1501 | North | 1,994 | | 2/2.5 | 0.2790% | 0.5549% | Corridor |
| 805 | 1502 | North | 1,202 | | 1/1.5 | 0.1682% | 0.3345% | Corridor |
| 806 | 1503 | South | 1,676 | | 2/2 | 0.2345% | 0.4664% | Corridor |
| 807 | 1504 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |
| 808 | 1505 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 809 | 1506 | North & East | 2,799 | | 3/3 | 0.3917% | 0.7789% | Corridor |
| 810 | 1507 | West | 1,328 | | 2/2 | 0.1858% | 0.3696% | Corridor |
| 813 | 1508 | East | 2,418 | | 2/2.5 | 0.3384% | 0.6729% | Corridor |
| 815 | 1509 | East & South | 3,068 | | 3/3.5 | 0.4293% | 0.8538% | Corridor |
| 901 | 1510 | North, West & South | 2,656 | | 2/3.5 | 0.3717% | 0.7391% | Corridor |
| 902 | 1511 | South | 1,155 | | 1/1.5 | 0.1616% | 0.3214% | Corridor |
| 903 | 1512 | North | 1,985 | | 2/2.5 | 0.2778% | 0.5524% | Corridor |
| 905 | 1513 | North | 1,212 | | 1/1.5 | 0.1696% | 0.3373% | Corridor |
| 906 | 1514 | South | 1,676 | | 2/2 | 0.2345% | 0.4664% | Corridor |
| 907 | 1515 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |
| 908 | 1516 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 909 | 1517 | North & East | 2,799 | | 3/3 | 0.3917% | 0.7789% | Corridor |
| 910 | 1518 | West | 1,328 | | 2/2 | 0.1858% | 0.3696% | Corridor |
| 913 | 1519 | East | 2,418 | | 2/2.5 | 0.3384% | 0.6729% | Corridor |
| 915 | 1520 | East & South | 3,068 | | 3/3 | 0.4293% | 0.8538% | Corridor |
| 1001 | 1521 | North, West & South | 2,656 | | 2/3.5 | 0.3717% | 0.7391% | Corridor |
| 1002 | 1522 | South | 1,155 | | 1/1.5 | 0.1616% | 0.3214% | Corridor |
| 1003 | 1523 | North | 1,985 | | 2/2.5 | 0.2778% | 0.5524% | Corridor |
| 1005 | 1524 | North | 1,212 | | 1/1.5 | 0.1696% | 0.3373% | Corridor |
| 1006 | 1525 | South | 1,676 | | 2/2 | 0.2345% | 0.4664% | Corridor |
| 1007 | 1526 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |



Schedule B-2

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Residential Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 1008 | 1527 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 1009 | 1528 | North & East | 2,799 | | 3/3 | 0.3917% | 0.7789% | Corridor |
| 1010 | 1529 | West | 1,328 | | 2/2 | 0.1858% | 0.3696% | Corridor |
| 1013 | 1530 | East | 2,418 | | 2/2.5 | 0.3384% | 0.6729% | Corridor |
| 1015 | 1531 | East & South | 3,068 | | 3/3.5 | 0.4293% | 0.8538% | Corridor |
| 1101 | 1532 | North, West & South | 2,656 | | 2/3.5 | 0.3717% | 0.7391% | Corridor |
| 1102 | 1533 | South | 1,155 | | 1/1.5 | 0.1616% | 0.3214% | Corridor |
| 1103 | 1534 | North | 1,985 | | 2/2.5 | 0.2778% | 0.5524% | Corridor |
| 1105 | 1535 | North | 1,212 | | 1/1.5 | 0.1696% | 0.3373% | Corridor |
| 1106 | 1536 | South | 1,676 | | 2/2 | 0.2345% | 0.4664% | Corridor |
| 1107 | 1537 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |
| 1108 | 1538 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 1109 | 1539 | North & East | 2,799 | | 3/3 | 0.3917% | 0.7789% | Corridor |
| 1110 | 1540 | West | 1,328 | | 2/2 | 0.1858% | 0.3696% | Corridor |
| 1113 | 1541 | East | 2,418 | | 2/2.5 | 0.3384% | 0.6729% | Corridor |
| 1115 | 1542 | East & South | 3,068 | | 3/3.5 | 0.4293% | 0.8538% | Corridor |
| 1201 | 1543 | North, West & South | 2,656 | | 3/3.5 | 0.3717% | 0.7391% | Corridor |
| 1202 | 1544 | South | 695 | | 0/1 | 0.0973% | 0.1934% | Corridor |
| 1203 | 1545 | North | 1,985 | | 2/2.5 | 0.2778% | 0.5524% | Corridor |
| 1204 | 1546 | South | 1,279 | | 1/2 | 0.1790% | 0.3559% | Corridor |
| 1205 | 1547 | North | 1,212 | | 1/1.5 | 0.1696% | 0.3373% | Corridor |
| 1206 | 1548 | South | 887 | | AL STU/1 | 0.1241% | 0.2468% | Corridor |
| 1207 | 1549 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |
| 1208 | 1550 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 1209 | 1551 | North & East | 2,798 | | 3/3 | 0.3916% | 0.7786% | Corridor |
| 1210 | 1552 | West | 857 | | 1/1 | 0.1199% | 0.2385% | Corridor |
| 1211 | 1553 | East | 1,245 | | 1/1.5 | 0.1742% | 0.3465% | Corridor |
| 1213 | 1554 | East & South | 2,339 | | 2/2.5 | 0.3273% | 0.6509% | Corridor |
| 1301 | 1555 | North, West & South | 2,656 | | 3/3.5 | 0.3717% | 0.7391% | Corridor |
| 1302 | 1556 | South | 695 | | 0/1 | 0.0973% | 0.1934% | Corridor |
| 1303 | 1557 | North | 1,882 | | 2/2.5 | 0.2634% | 0.5237% | Corridor |
| 1304 | 1558 | South | 1,279 | | 1/2 (Super) | 0.1790% | 0.3559% | Corridor |
| 1305 | 1559 | North | 1,199 | | 1/1.5 | 0.1678% | 0.3337% | Corridor |
| 1306 | 1560 | South | 887 | | AL STU/1 | 0.1241% | 0.2468% | Corridor |
| 1307 | 1561 | North | 2,307 | | 3/3 | 0.3228% | 0.6420% | Corridor |
| 1308 | 1562 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 1309 | 1563 | North & East | 2,798 | | 3/3 | 0.3916% | 0.7786% | Corridor |
| 1310 | 1564 | West | 857 | | 1/1 | 0.1199% | 0.2385% | Corridor |
| 1311 | 1565 | East | 1,245 | | 1/1.5 | 0.1742% | 0.3465% | Corridor |
| 1313 | 1566 | East & South | 2,339 | | 2/2.5 | 0.3273% | 0.6509% | Corridor |



Schedule B-2

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Residential Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 1401 | 1567 | North, West & South | 2,656 | | 3/3.5 | 0.3717% | 0.7391% | Corridor |
| 1402 | 1568 | South | 695 | | 0/1 | 0.0973% | 0.1934% | Corridor |
| 1403 | 1569 | North | 1,886 | | 2/2.5 | 0.2639% | 0.5248% | Corridor |
| 1404 | 1570 | South | 1,279 | | 1/2 | 0.1790% | 0.3559% | Corridor |
| 1405 | 1571 | North | 1,189 | | 1/1.5 | 0.1664% | 0.3309% | Corridor |
| 1406 | 1572 | South | 887 | | AL STU/1 | 0.1241% | 0.2468% | Corridor |
| 1407 | 1573 | North | 2,310 | | 3/3 | 0.3233% | 0.6428% | Corridor |
| 1408 | 1574 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 1409 | 1575 | North & East | 2,798 | | 3/3 | 0.3916% | 0.7786% | Corridor |
| 1410 | 1576 | West | 857 | | 1/1 | 0.1199% | 0.2385% | Corridor |
| 1411 | 1577 | East | 1,245 | | 1/1.5 | 0.1742% | 0.3465% | Corridor |
| 1413 | 1578 | East & South | 2,339 | | 2/2.5 | 0.3273% | 0.6509% | Corridor |
| 1501 | 1579 | North, West & South | 2,656 | | 3/3.5 | 0.3717% | 0.7391% | Corridor |
| 1502 | 1580 | South | 695 | | 0/1 | 0.0973% | 0.1934% | Corridor |
| 1503 | 1581 | North | 1,985 | | 2/2.5 | 0.2778% | 0.5524% | Corridor |
| 1504 | 1582 | South | 1,279 | | 1/2 | 0.1790% | 0.3559% | Corridor |
| 1505 | 1583 | North | 1,212 | | 1/1.5 | 0.1696% | 0.3373% | Corridor |
| 1506 | 1584 | South | 887 | | AL STU/1 | 0.1241% | 0.2468% | Corridor |
| 1507 | 1585 | North | 2,248 | | 3/3 | 0.3146% | 0.6256% | Corridor |
| 1508 | 1586 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 1509 | 1587 | North & East | 2,791 | | 3/3 | 0.3906% | 0.7767% | Corridor |
| 1510 | 1588 | West | 849 | | 1/1 | 0.1188% | 0.2363% | Corridor |
| 1511 | 1589 | East | 1,142 | | 1/1.5 | 0.1598% | 0.3178% | Corridor |
| 1513 | 1590 | East & South | 2,285 | | 2/2.5 | 0.3198% | 0.6359% | Corridor |
| 1601 | 1591 | North, West & South | 2,656 | | 3/3.5 | 0.3717% | 0.7391% | Corridor |
| 1602 | 1592 | South | 695 | | 0/1 | 0.0973% | 0.1934% | Corridor |
| 1603 | 1593 | North | 1,930 | | 2/2.5 | 0.2701% | 0.5371% | Corridor |
| 1604 | 1594 | South | 1,279 | | 1/2 | 0.1790% | 0.3559% | Corridor |
| 1605 | 1595 | North | 1,212 | | 1/1.5 | 0.1696% | 0.3373% | Corridor |
| 1606 | 1596 | South | 887 | | AL STU/1 | 0.1241% | 0.2468% | Corridor |
| 1607 | 1597 | North | 2,290 | | 3/3 | 0.3205% | 0.6373% | Corridor |
| 1608 | 1598 | South | 782 | | 1/1 | 0.1094% | 0.2176% | Corridor |
| 1609 | 1599 | North & East | 2,791 | | 3/3 | 0.3906% | 0.7767% | Corridor |
| 1610 | 1600 | West | 849 | | 1/1 | 0.1188% | 0.2363% | Corridor |
| 1611 | 1601 | East | 1,142 | | 1/1.5 | 0.1598% | 0.3178% | Corridor |
| 1613 | 1602 | East & South | 2,285 | | 2/2.5 | 0.3198% | 0.6359% | Corridor |
| 1701 | 1603 | North & West | 2,089 | | 2/2.5 | 0.2923% | 0.5813% | Corridor |
| 1702 | 1604 | West & South | 1,767 | | 2/2.5 | 0.2473% | 0.4917% | Corridor |
| 1703 | 1605 | North | 2,230 | | 2/2.5 | 0.3121% | 0.6206% | Corridor |
| 1704 | 1606 | South | 1,239 | | 1/2 | 0.1734% | 0.3448% | Corridor |



Schedule B-2

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Residential Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 1706 | 1607 | South | 817 | | AL STU/1 | 0.1143% | 0.2274% | Corridor |
| 1707 | 1608 | North | 2,975 | | 3/3.5 | 0.4163% | 0.8279% | Corridor |
| 1709 | 1609 | North & East | 2,841 | | 3/3 | 0.3976% | 0.7906% | Corridor |
| 1710 | 1610 | West | 849 | | 1/1 | 0.1188% | 0.2363% | Corridor |
| 1711 | 1611 | East | 1,383 | | 1/1.5 | 0.1935% | 0.3849% | Corridor |
| 1713 | 1612 | East & South | 2,380 | | 2/2.5 | 0.3331% | 0.6623% | Corridor |
| 1801 | 1613 | North & West | 1,980 | | 2/2.5 | 0.2771% | 0.5510% | Corridor |
| 1802 | 1614 | West & South | 1,767 | | 2/2.5 | 0.2473% | 0.4917% | Corridor |
| 1803 | 1615 | North | 1,915 | | 2/2 | 0.2680% | 0.5329% | Corridor |
| 1804 | 1616 | South | 1,208 | | 1/2 | 0.1690% | 0.3362% | Corridor |
| 1806 | 1617 | South | 817 | | AL STU/1 | 0.1143% | 0.2274% | Corridor |
| 1807 | 1618 | North | 2,601 | | 3/3.5 | 0.3640% | 0.7238% | Corridor |
| 1809 | 1619 | North & East | 2,728 | | 3/3 | 0.3818% | 0.7591% | Corridor |
| 1810 | 1620 | West | 849 | | 1/1 | 0.1188% | 0.2363% | Corridor |
| 1811 | 1621 | East | 1,125 | | 1/1.5 | 0.1574% | 0.3131% | Corridor |
| 1813 | 1622 | East & South | 2,196 | | 2/2.5 | 0.3073% | 0.6111% | Corridor |
| 1901 | 1623 | North, West & South | 3,698 | | 4/4 | 0.5175% | 1.0291% | Corridor |
| 1903 | 1624 | North | 1,628 | | 2/2.5 | 0.2278% | 0.4530% | Corridor |
| 1904 | 1625 | South | 1,059 | | 1/1.5 | 0.1482% | 0.2947% | Corridor |
| 1906 | 1626 | South | 1,879 | | 1/2 | 0.2629% | 0.5229% | Corridor |
| 1907 | 1627 | North | 1,378 | | 2/2 | 0.1928% | 0.3835% | Corridor |
| 1911 | 1628 | North & East | 2,927 | 127 | 2/2.5 | 0.4185% | 0.8322% | Corridor/Terrace |
| 1915 | 1629 | East, West & South | 4,904 | 127 | 3/4.5 | 0.6951% | 1.3824% | Corridor/Terrace |
| 2001 | 1630 | North, West & South | 5,613 | 285 | 5/5.5 (Duplex) | 0.8054% | 1.6016% | Corridor/Terrace |
| 2002 | 1631 | West & South | 1,582 | | 2/2 | 0.2214% | 0.4402% | Corridor |
| 2003 | 1632 | North & South | 3,974 | 548 | 3/3.5 (Duplex) | 0.5945% | 1.1821% | Corridor/Terrace |
| 2006 | 1633 | South | 1,176 | | 1/1.5 | 0.1646% | 0.3273% | Corridor |
| 2009 | 1634 | North, East & South | 6,316 | 229 | 4/5.5.5 (Triplex) | 0.8999% | 1.7895% | Corridor/Terrace |
| 2011 | 1635 | East & West | 2,906 | 403 | 3/3.5.5 (Duplex) | 0.4349% | 0.8648% | Corridor/Terrace |
| 2015 | 1636 | East, West & South | 6,306 | 309 | 4/5.5 (Duplex) | 0.9041% | 1.7978% | Corridor/Terrace |
| | | | | | | 50.2872% | 100.0000% | |

**SCHEDULE B-3**

**DECLARATION ESTABLISHING CONDOMINIUM OWNERSHIP OF THE PLAZA CONDOMINIUM**
**768 Fifth Avenue, New York, New York 10019**

**DESCRIPTION OF THE HOTEL UNITS**

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Hotel Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 1126 | 1304 | North | 533 | | King Suite/1 bath | 0.0887% | 0.2770% | Corridor |
| 1127 | 1305 | South | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1129 | 1306 | South | 810 | | 1 BR / 1.5 BTH | 0.1348% | 0.4210% | Corridor |
| 1130 | 1307 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1131 | 1308 | South | 870 | | 1 BR / 1.5 BTH | 0.1448% | 0.4522% | Corridor |
| 1132 | 1309 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1133 | 1310 | South | 607 | | Jr. Suite (1 bath) | 0.1010% | 0.3155% | Corridor |
| 1134 | 1311 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1135 | 1312 | South | 639 | | Jr. Suite (1 bath) | 0.1064% | 0.3321% | Corridor |
| 1136 | 1313 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1137 | 1314 | South | 485 | | King Suite/1 bath | 0.0807% | 0.2521% | Corridor |
| 1138 | 1315 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1139 | 1316 | South | 1,055 | | 1 BR / 1.5 BTH | 0.1756% | 0.5483% | Corridor |
| 1140 | 1317 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1141 | 1318 | South | 580 | | King Suite/1 bath | 0.0965% | 0.3014% | Corridor |
| 1221 | 1319 | East | 933 | | 1 BR / 1.5 BTH | 0.1553% | 0.4849% | Corridor |
| 1223 | 1320 | East & South | 1,469 | | 2 BR / 2 BTH | 0.2445% | 0.7635% | Corridor |
| 1226 | 1321 | North | 652 | | Jr. Suite (1.5 bath) | 0.1085% | 0.3389% | Corridor |
| 1227 | 1322 | South | 693 | | Jr. Suite (1 bath) | 0.1153% | 0.3602% | Corridor |
| 1229 | 1323 | South | 718 | | Jr. Suite (1 bath) | 0.1195% | 0.3732% | Corridor |
| 1230 | 1324 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1231 | 1325 | South | 870 | | 1 BR / 1.5 BTH | 0.1448% | 0.4522% | Corridor |
| 1232 | 1326 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1233 | 1327 | South | 607 | | Jr. Suite (1 bath) | 0.1010% | 0.3155% | Corridor |
| 1234 | 1328 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1235 | 1329 | South | 639 | | Jr. Suite (1 bath) | 0.1064% | 0.3321% | Corridor |
| 1236 | 1330 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1237 | 1331 | South | 485 | | King Suite/1 bath | 0.0807% | 0.2521% | Corridor |
| 1238 | 1332 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1239 | 1333 | South | 1,055 | | 1 BR / 1.5 BTH | 0.1756% | 0.5483% | Corridor |
| 1240 | 1334 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1241 | 1335 | South | 580 | | King Suite/1 bath | 0.0965% | 0.3014% | Corridor |

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Hotel Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 1321 | 1336 | East | 933 | | 1 BR / 1.5 BTH | 0.1553% | 0.4849% | Corridor |
| 1323 | 1337 | East & South | 1,469 | | 2 BR / 2 BTH | 0.2445% | 0.7635% | Corridor |
| 1326 | 1338 | North | 652 | | Jr. Suite (1.5 bath) | 0.1085% | 0.3389% | Corridor |
| 1327 | 1339 | South | 693 | | Jr. Suite (1 bath) | 0.1153% | 0.3602% | Corridor |
| 1329 | 1340 | South | 718 | | Jr. Suite (1 bath) | 0.1195% | 0.3732% | Corridor |
| 1330 | 1341 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1331 | 1342 | South | 870 | | 1 BR / 1.5 BTH | 0.1448% | 0.4522% | Corridor |
| 1332 | 1343 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1333 | 1344 | South | 607 | | Jr. Suite (1 bath) | 0.1010% | 0.3155% | Corridor |
| 1334 | 1345 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1335 | 1346 | South | 639 | | Jr. Suite (1 bath) | 0.1064% | 0.3321% | Corridor |
| 1336 | 1347 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1337 | 1348 | South | 485 | | King Suite/1 bath | 0.0807% | 0.2521% | Corridor |
| 1338 | 1349 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1339 | 1350 | South | 1,055 | | 1 BR / 1.5 BTH | 0.1756% | 0.5483% | Corridor |
| 1340 | 1351 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1341 | 1352 | South | 580 | | King Suite/1 bath | 0.0965% | 0.3014% | Corridor |
| 1421 | 1353 | East | 933 | | 1 BR / 1.5 BTH | 0.1553% | 0.4849% | Corridor |
| 1423 | 1354 | East & South | 1,469 | | 2 BR / 2 BTH | 0.2445% | 0.7635% | Corridor |
| 1426 | 1355 | North | 652 | | Jr. Suite (1.5 bath) | 0.1085% | 0.3389% | Corridor |
| 1427 | 1356 | South | 693 | | Jr. Suite (1 bath) | 0.1153% | 0.3602% | Corridor |
| 1429 | 1357 | South | 718 | | Jr. Suite (1 bath) | 0.1195% | 0.3732% | Corridor |
| 1430 | 1358 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1431 | 1359 | South | 870 | | 1 BR / 1.5 BTH | 0.1448% | 0.4522% | Corridor |
| 1432 | 1360 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1433 | 1361 | South | 607 | | Jr. Suite (1 bath) | 0.1010% | 0.3155% | Corridor |
| 1434 | 1362 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1435 | 1363 | South | 639 | | Jr. Suite (1 bath) | 0.1064% | 0.3321% | Corridor |
| 1436 | 1364 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1437 | 1365 | South | 485 | | King Suite/1 bath | 0.0807% | 0.2521% | Corridor |
| 1438 | 1366 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1439 | 1367 | South | 1,055 | | 1 BR / 1.5 BTH | 0.1756% | 0.5483% | Corridor |
| 1440 | 1368 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1441 | 1369 | South | 580 | | King Suite/1 bath | 0.0965% | 0.3014% | Corridor |
| 1521 | 1370 | East | 933 | | 1 BR / 1.5 BTH | 0.1553% | 0.4849% | Corridor |
| 1523 | 1371 | East & South | 1,469 | | 2 BR / 2 BTH | 0.2445% | 0.7635% | Corridor |
| 1526 | 1372 | North | 652 | | Jr. Suite (1.5 bath) | 0.1085% | 0.3389% | Corridor |
| 1527 | 1373 | South | 693 | | Jr. Suite (1 bath) | 0.1153% | 0.3602% | Corridor |
| 1529 | 1374 | South | 718 | | Jr. Suite (1 bath) | 0.1195% | 0.3732% | Corridor |

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | [redacted]entage of Common Interest | Proportionate Share of Aggregate Hotel Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 1530 | 1375 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1531 | 1376 | South | 870 | | 1 BR / 1.5 BTH | 0.1448% | 0.4522% | Corridor |
| 1532 | 1377 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1533 | 1378 | South | 607 | | Jr. Suite (1 bath) | 0.1010% | 0.3155% | Corridor |
| 1534 | 1379 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1535 | 1380 | South | 639 | | Jr. Suite (1 bath) | 0.1064% | 0.3321% | Corridor |
| 1536 | 1381 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1537 | 1382 | South | 485 | | King Suite/1 bath | 0.0807% | 0.2521% | Corridor |
| 1538 | 1383 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1539 | 1384 | South | 1,055 | | 1 BR / 1.5 BTH | 0.1756% | 0.5483% | Corridor |
| 1540 | 1385 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1541 | 1386 | South | 580 | | King Suite/1 bath | 0.0965% | 0.3014% | Corridor |
| 1621 | 1387 | East | 933 | | 1 BR / 1.5 BTH | 0.1553% | 0.4849% | Corridor |
| 1623 | 1388 | East & South | 1,469 | | 2 BR / 2 BTH | 0.2445% | 0.7635% | Corridor |
| 1626 | 1389 | North | 652 | | Jr. Suite (1.5 bath) | 0.1085% | 0.3389% | Corridor |
| 1627 | 1390 | South | 693 | | Jr. Suite (1 bath) | 0.1153% | 0.3602% | Corridor |
| 1629 | 1391 | South | 718 | | Jr. Suite (1 bath) | 0.1195% | 0.3732% | Corridor |
| 1630 | 1392 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1631 | 1393 | South | 870 | | 1 BR / 1.5 BTH | 0.1448% | 0.4522% | Corridor |
| 1632 | 1394 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1633 | 1395 | South | 607 | | Jr. Suite (1 bath) | 0.1010% | 0.3155% | Corridor |
| 1634 | 1396 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1635 | 1397 | South | 639 | | Jr. Suite (1 bath) | 0.1064% | 0.3321% | Corridor |
| 1636 | 1398 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1637 | 1399 | South | 485 | | King Suite/1 bath | 0.0807% | 0.2521% | Corridor |
| 1638 | 1400 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1639 | 1401 | South | 1,055 | | 1 BR / 1.5 BTH | 0.1756% | 0.5483% | Corridor |
| 1640 | 1402 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1641 | 1403 | South | 580 | | King Suite/1 bath | 0.0965% | 0.3014% | Corridor |
| 1721 | 1404 | East | 920 | | 1 BR / 1.5 BTH | 0.1531% | 0.4782% | Corridor |
| 1723 | 1405 | East & South | 1,463 | | 2 BR / 2 BTH | 0.2435% | 0.7604% | Corridor |
| 1726 | 1406 | North | 652 | | Jr. Suite (1.5 bath) | 0.1085% | 0.3389% | Corridor |
| 1727 | 1407 | South | 599 | | King Suite/1 bath | 0.0997% | 0.3113% | Corridor |
| 1729 | 1408 | South | 752 | | Jr. Suite (1 bath) | 0.1252% | 0.3908% | Corridor |
| 1730 | 1409 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1731 | 1410 | South | 790 | | 1 BR / 1.5 BTH | 0.1315% | 0.4106% | Corridor |
| 1732 | 1411 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1733 | 1412 | South | 731 | | Jr. Suite (1 bath) | 0.1217% | 0.3799% | Corridor |
| 1734 | 1413 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |



Schedule B-3

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Hotel Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| 1735 | 1414 | South | 511 | | King Suite/1 bath | 0.0851% | 0.2656% | Corridor |
| 1736 | 1415 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1737 | 1416 | South | 773 | | Jr. Suite (1 bath) | 0.1287% | 0.4018% | Corridor |
| 1738 | 1417 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1739 | 1418 | South | 742 | | 1 BR / 1.5 BTH | 0.1235% | 0.3856% | Corridor |
| 1740 | 1419 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1741 | 1420 | South | 519 | | King Suite/1 bath | 0.0864% | 0.2697% | Corridor |
| 1821 | 1421 | East | 933 | | 1 BR / 1.5 BTH | 0.1553% | 0.4849% | Corridor |
| 1823 | 1422 | East & South | 610 | | King Suite/1 bath | 0.1015% | 0.3170% | Corridor |
| 1825 | 1423 | South | 651 | | King Suite/1 bath | 0.1084% | 0.3383% | Corridor |
| 1826 | 1424 | North | 652 | | Jr. Suite (1.5 bath) | 0.1085% | 0.3389% | Corridor |
| 1827 | 1425 | South | 579 | | King Suite/1 bath | 0.0964% | 0.3009% | Corridor |
| 1829 | 1426 | South | 676 | | Jr. Suite (1 bath) | 0.1125% | 0.3513% | Corridor |
| 1830 | 1427 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1831 | 1428 | South | 731 | | 1 BR / 1.5 BTH | 0.1217% | 0.3799% | Corridor |
| 1832 | 1429 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1833 | 1430 | South | 672 | | Jr. Suite (1 bath) | 0.1119% | 0.3493% | Corridor |
| 1834 | 1431 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1835 | 1432 | South | 510 | | King Suite/1 bath | 0.0849% | 0.2651% | Corridor |
| 1836 | 1433 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1837 | 1434 | South | 727 | | Jr. Suite (1 bath) | 0.1210% | 0.3778% | Corridor |
| 1838 | 1435 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1839 | 1436 | South | 659 | | 1 BR / 1.5 BTH | 0.1097% | 0.3425% | Corridor |
| 1840 | 1437 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1841 | 1438 | South | 520 | | King Suite/1 bath | 0.0866% | 0.2703% | Corridor |
| 1930 | 1439 | North | 889 | | 1 BR / 1.5 BTH | 0.1480% | 0.4620% | Corridor |
| 1931 | 1440 | South | 1,104 | | 1 BR / 1.5 BTH | 0.1838% | 0.5738% | Corridor |
| 1932 | 1441 | North | 539 | | King Suite/1 bath | 0.0897% | 0.2801% | Corridor |
| 1933 | 1442 | South | 541 | | King Suite/1 bath | 0.0900% | 0.2812% | Corridor |
| 1934 | 1443 | North | 711 | | Jr. Suite (1 bath) | 0.1183% | 0.3695% | Corridor |
| 1935 | 1444 | South | 709 | | Jr. Suite (1 bath) | 0.1180% | 0.3685% | Corridor |
| 1936 | 1445 | North | 493 | | King Suite/1 bath | 0.0821% | 0.2562% | Corridor |
| 1937 | 1446 | South | 502 | | King Suite/1 bath | 0.0836% | 0.2609% | Corridor |
| 1938 | 1447 | North | 494 | | King Suite/1 bath | 0.0822% | 0.2567% | Corridor |
| 1940 | 1448 | North | 941 | | 1 BR / 1.5 BTH | 0.1566% | 0.4891% | Corridor |
| 1941 | 1449 | South | 550 | | King Suite/1 bath | 0.0915% | 0.2859% | Corridor |
| PH2030 | 1450 | North & South | 1,545 | 136 | Duplex 1BR / 2Bth | 0.2685% | 0.8383% | Corridor/Terrace |
| PH2032 | 1451 | North & South | 1,392 | 264 | Duplex 1BR / 2Bth | 0.2537% | 0.7921% | Corridor/Terrace |
| PH2034 | 1452 | North & South | 1,342 | 201 | Duplex 1BR / 2Bth | 0.2401% | 0.7497% | Corridor/Terrace |

| Unit Designation | Tax Lot Number | Statement of Location (Direction Faced) | Approximate Sq. Ft. Unit Area | Approximate Sq. Ft. Terrace Area | Number of Bedrooms/ Bathrooms | Percentage of Common Interest | Proportionate Share of Aggregate Hotel Section Common Interest | Common Elements to Which Unit Has Immediate Access |
|---|---|---|---|---|---|---|---|---|
| PH2036 | 1453 | North & South | 1,421 | 238 | Duplex 1BR / 2Bth | 0.2563% | 0.8004% | Corridor/Terrace |
| PH2038 | 1454 | North & South | 1,533 | 284 | Duplex 1BR / 2Bth | 0.2788% | 0.8705% | Corridor/Terrace |
| PH2040 | 1455 | North & South | 2,149 | 544 | Duplex 1BR / 2Bth | 0.4030% | 1.2583% | Corridor/Terrace |
| | Total Condo Hotel Units | | | | | 19.4110% | 60.6110% | |
| | | | | | | | | |
| THU | 1303 | Floor 2, Floor 4-10 | 74,468 | 2,639 | n/a | 12.6145% | 39.3890% | |
| | Total Transient Hotel Unit | | | | | 12.6145% | 39.3890% | |
| | | | | | | | | |
| Total for all Hotel Units | | | | | | 32.0255% | 100.0000% | |

405

Schedule B-3

KL3:2459222.22

# EXHIBIT A

CONDOMINIUM BY-LAWS
**See Exhibit 7 in Part II of the Hotel Offering Plan**

# EXHIBIT B

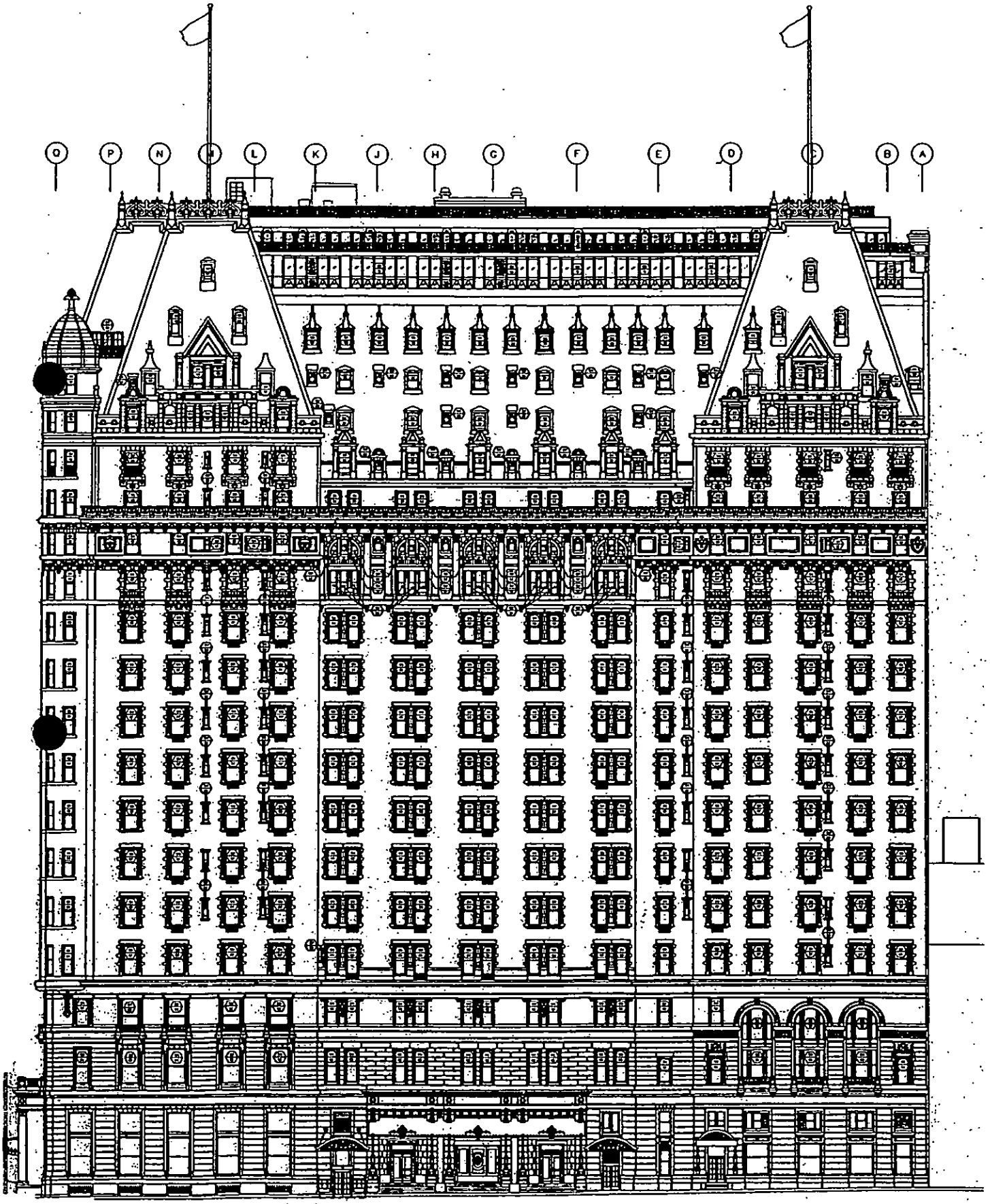
RESIDENTIAL BY-LAWS
**See Exhibit 8 in Part II of the Residential Offering Plan**

# EXHIBIT C

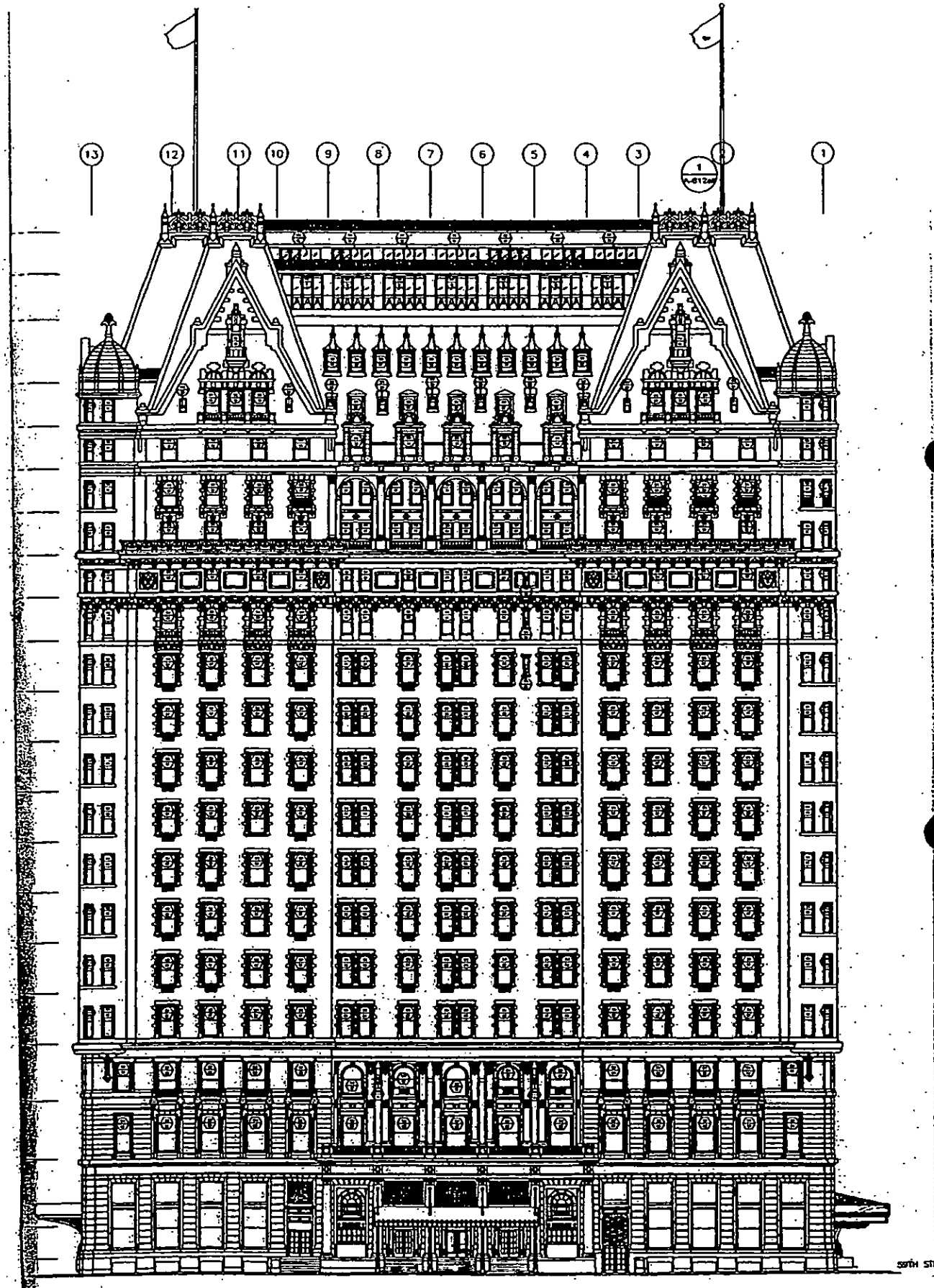
HOTEL BY-LAWS
**See Exhibit 8 in Part II of the Hotel Offering Plan**

# EXHIBIT D
## TO DECLARATION

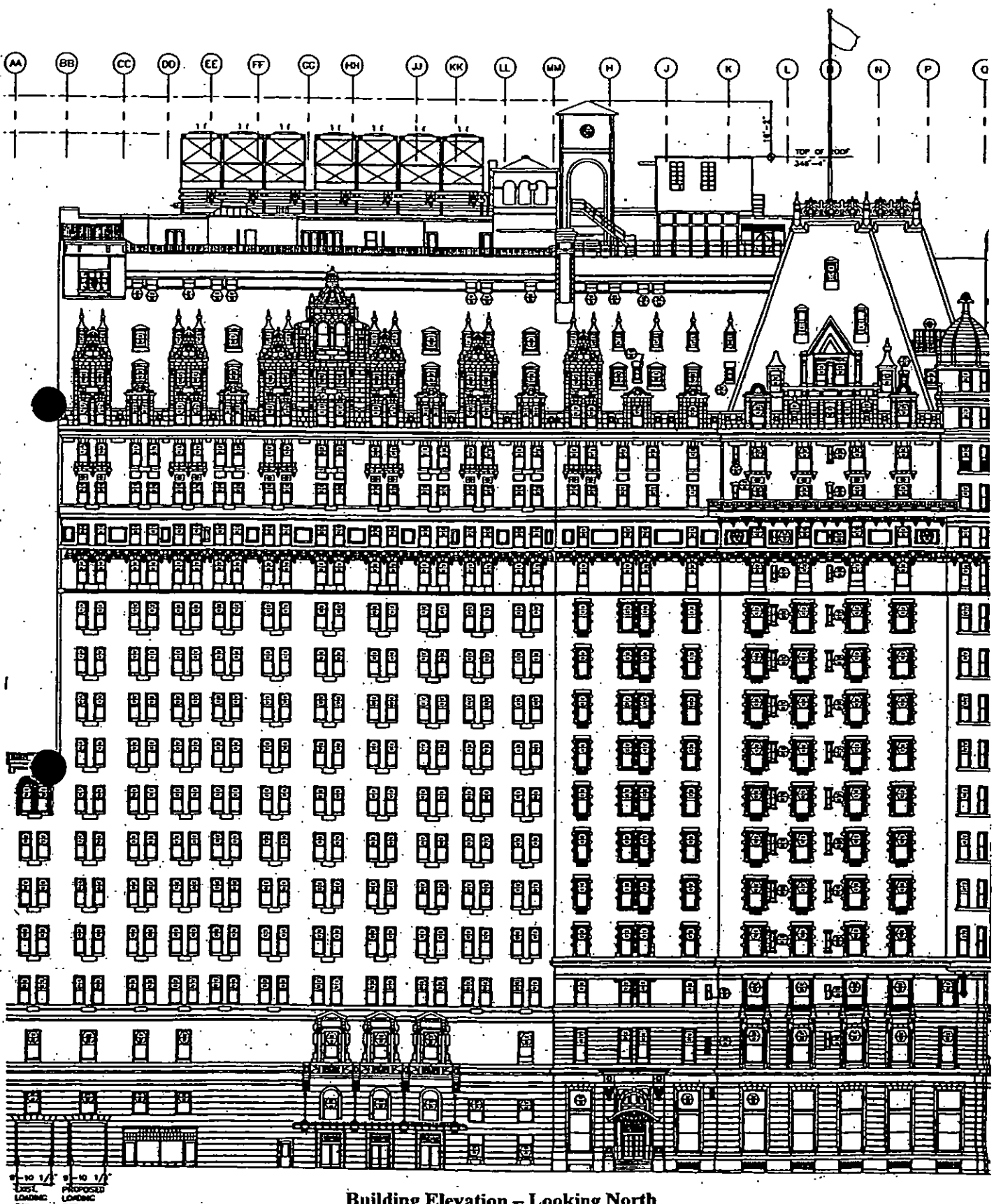
## BUILDING FAÇADE



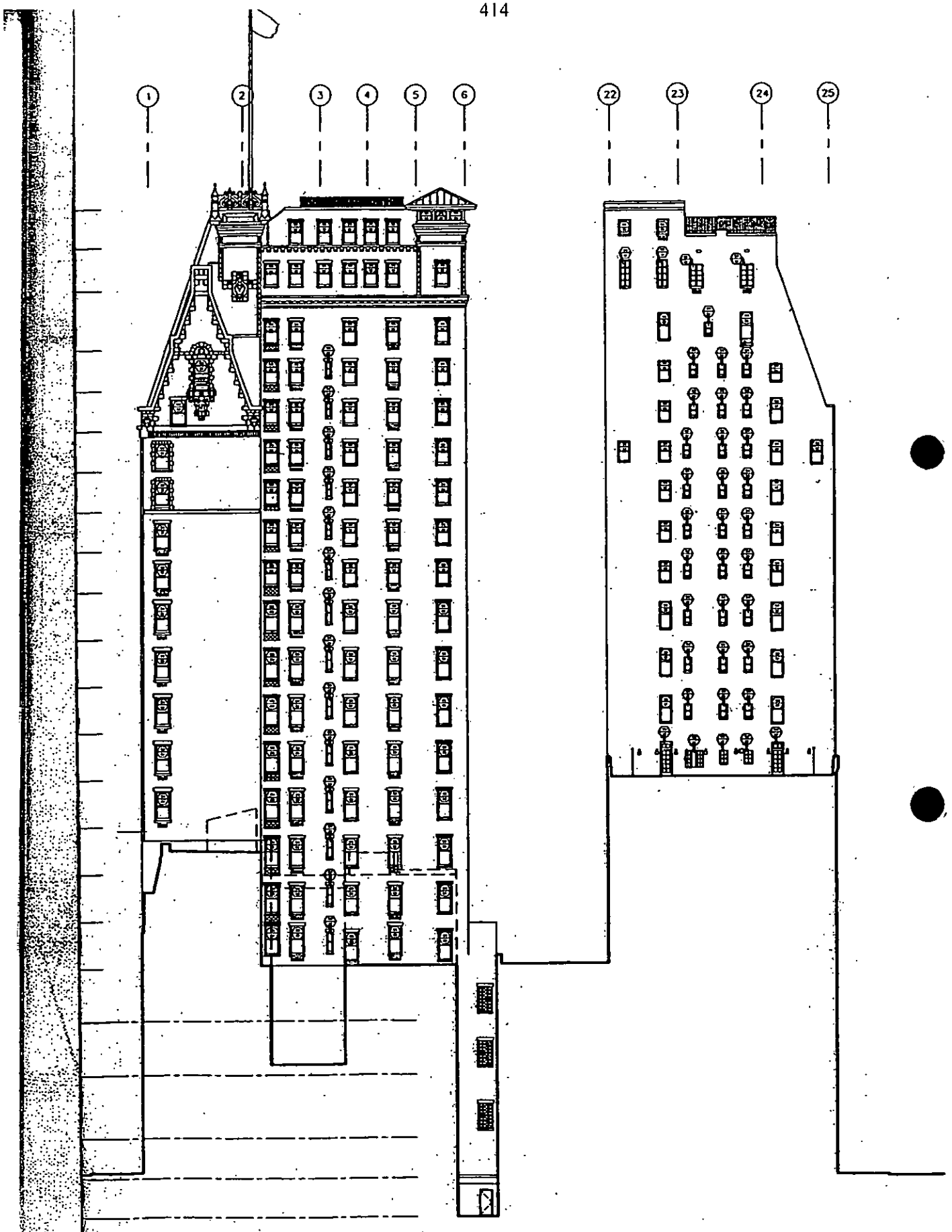

**Building Elevation – Looking South**



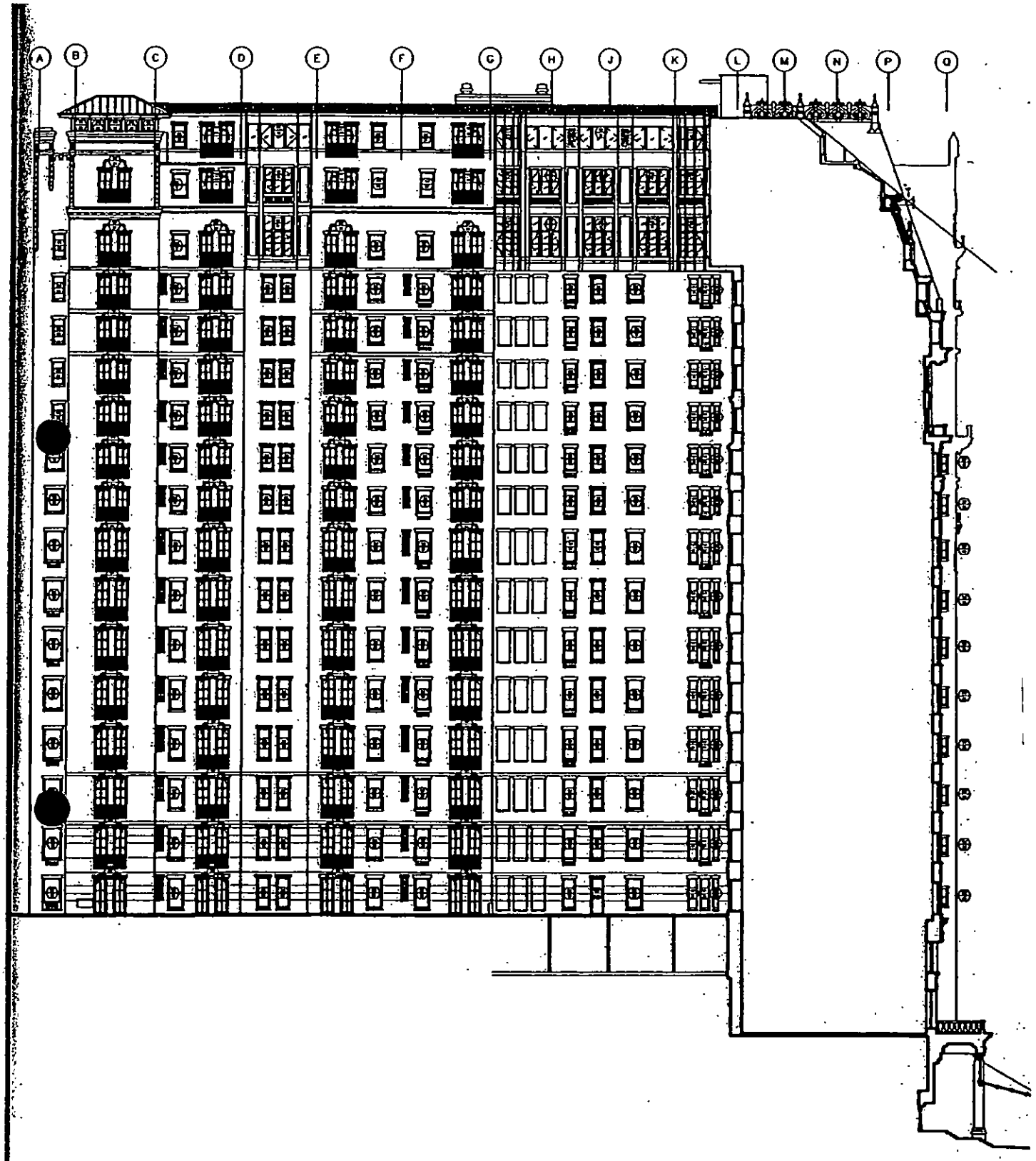

**Building Elevation – Looking West**



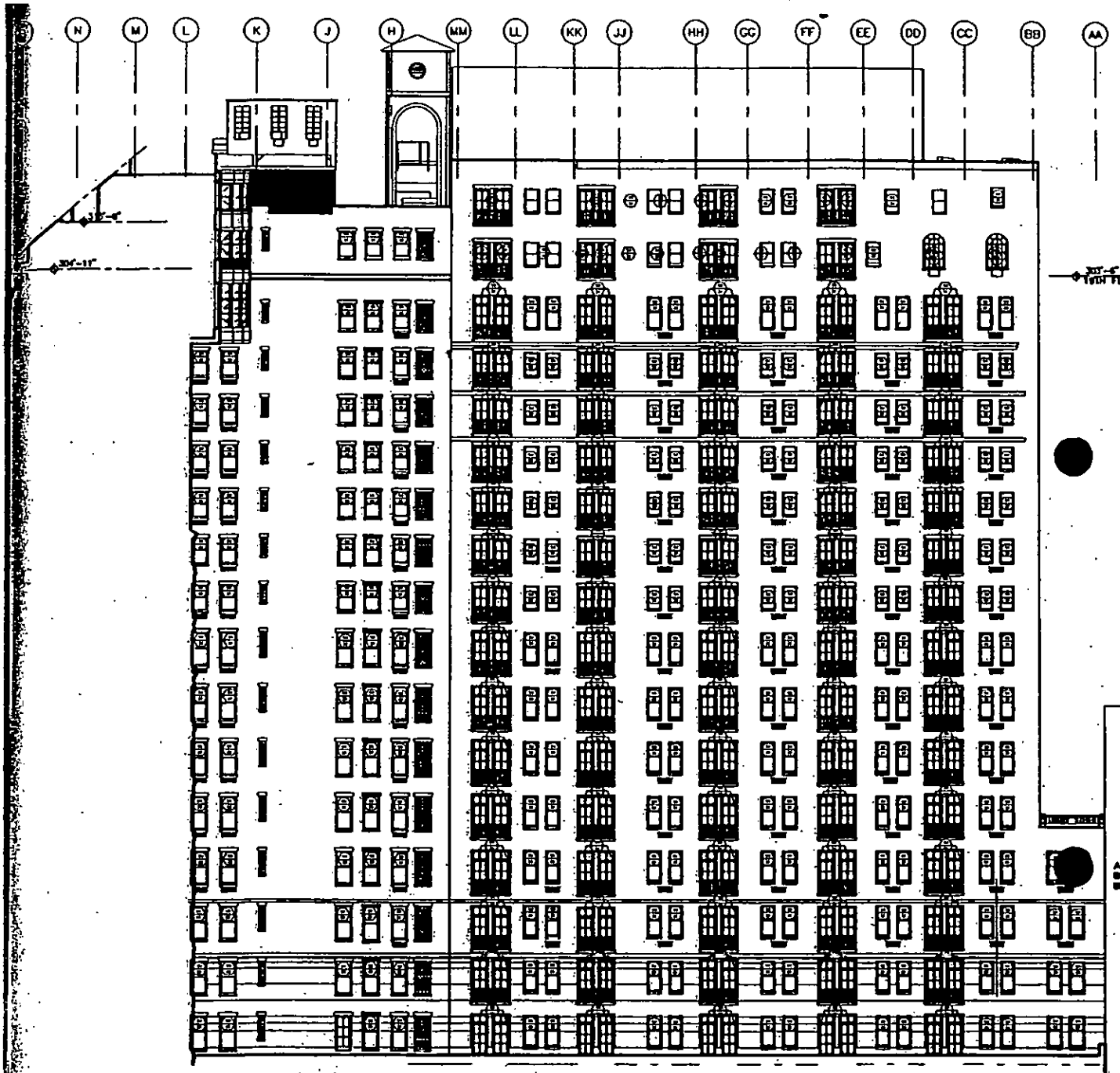

**Building Elevation – Looking North**




**Building Elevation – Looking East**

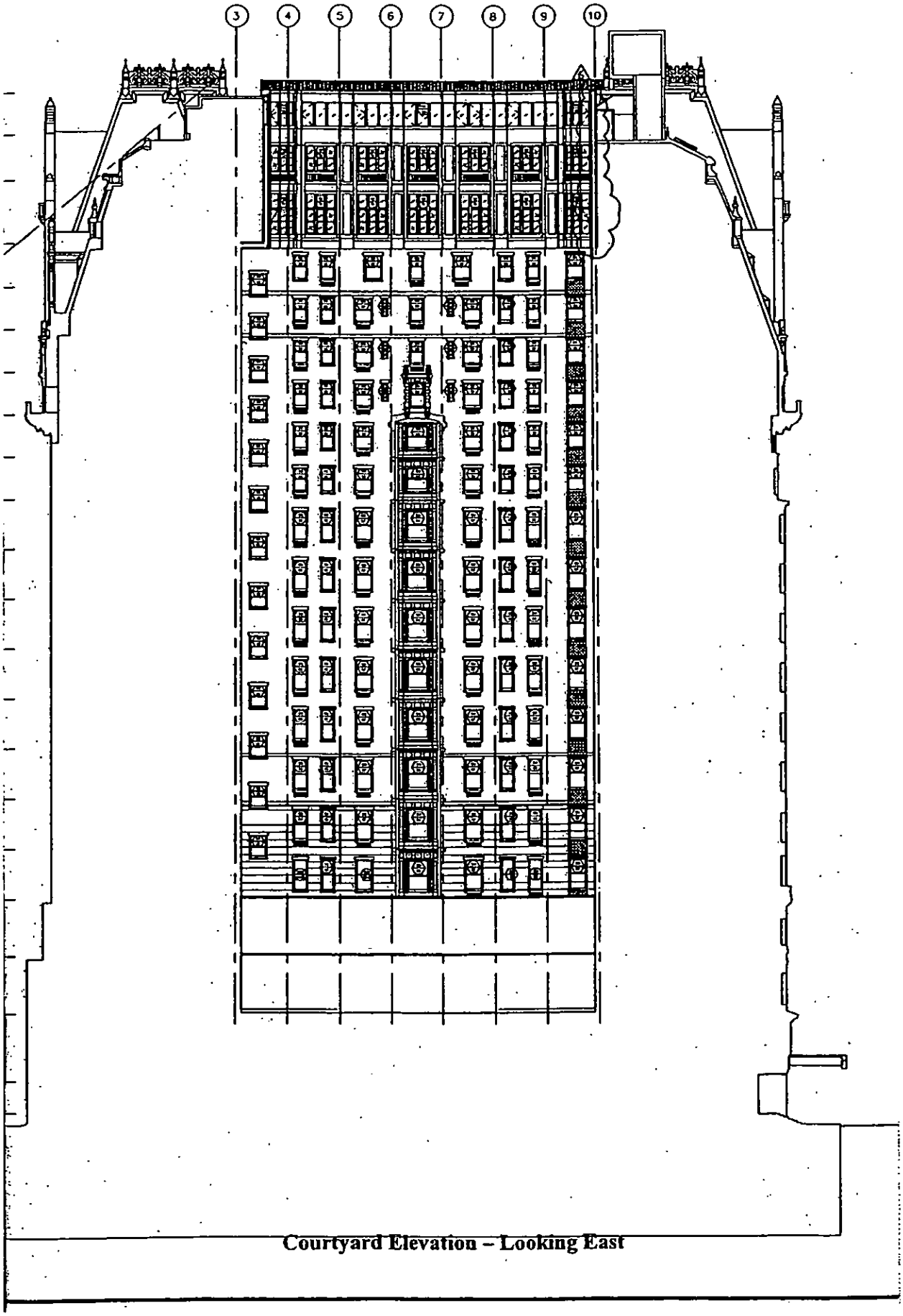



**Courtyard Elevation – Looking North**

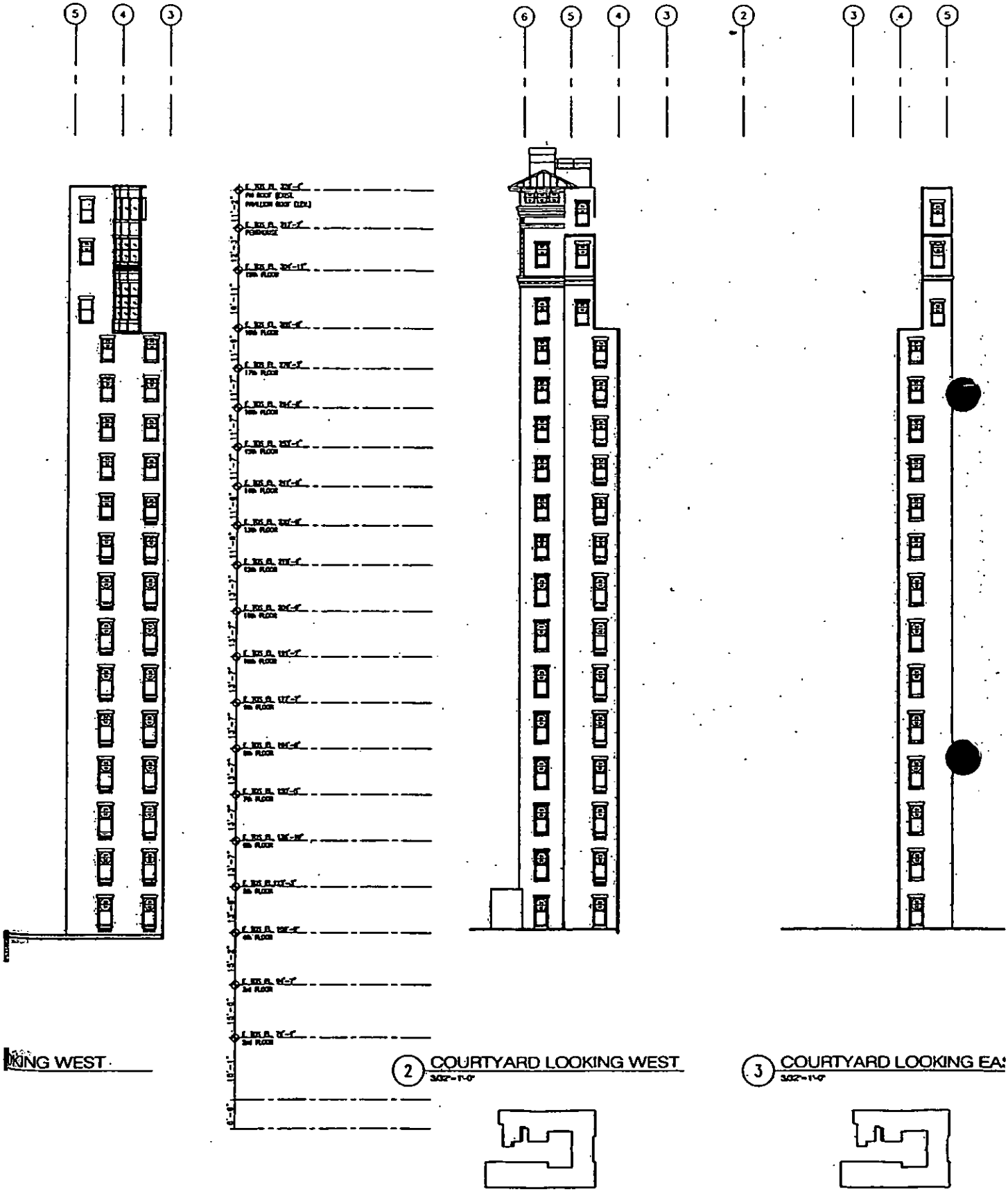



REFER TO DRAWING A-503 (DHS) FOR SECTION INFO.

1 COURTYARD ELEVATION LOOKING SOUTH
3/32"=1'-0"




**Courtyard Elevation – Looking East**




Misc. Courtyard Elevations

**EXHIBIT 7**

CONDOMINIUM BY-LAWS

**EXHIBIT A**

**TO DECLARATION**

# CONDOMINIUM BY-LAWS

# OF

# THE PLAZA CONDOMINIUM

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# CONDOMINIUM BY-LAWS

# OF

# THE PLAZA CONDOMINIUM

## ARTICLE 1

## GENERAL

1.1 Defined Terms. All capitalized terms used but which are not separately defined in these Condominium By-Laws shall have the meanings given to such terms in the Declaration or, if not defined in the Declaration, in the Table of Definitions annexed hereto as Exhibit 1 and made a part hereof.

1.2 Purpose. The purpose of these Condominium By-Laws is to set forth the rules and procedures concerning the conduct of the affairs of the Condominium.

1.3 Principal Office of Condominium. The principal office of the Condominium shall be located either within the Property or at such other place in the Borough of Manhattan as may be designated from time to time by the Condominium Board.

## ARTICLE 2

## CONDOMINIUM BOARD

2.1 General Description of Condominium Board.

2.1.1 As more particularly set forth in Section 2.2, the affairs of the Condominium shall be governed by a board of managers of the Condominium (the "Condominium Board"). As more particularly set forth in Sections 2.3 and 2.9, the Condominium Board shall consist of seven members (each, a "Board Member" or "Condominium Board Member") as follows: (i) three (3) Board Members designated by the Residential Board representing and on behalf of all the individual Residential Unit Owners; (ii) three (3) Board Members, designated by the Hotel Board representing and on behalf of the Hotel Unit Owners (at least one (1) of which shall at all times be designated by the Transient Hotel Unit Owner); and (iii) one (1) Board Member designated by the Accessory Unit Owner. Each Condominium Board Member shall vote the entire undivided Common Interest of such Board Member's Designator. The Club Unit Owner shall not have the right to designate a Board Member.

2.1.2 With respect to the Condominium Board Members: (i) any requirements set forth in the Residential By-Laws as to members of the Residential Board shall apply to the Condominium Board Members designated by the Residential Board, as applicable; (ii) any requirements set forth in the Hotel By-Laws as to members of the Hotel Board shall apply to the Condominium Board Members designated by the Hotel Board, as applicable; and (iii) no restrictions shall apply as to which person the Accessory Unit Owner may designate from time to

time to the Condominium Board except that each Board Member (and any proxy) must be a natural person and not an entity.

2.2 Powers and Duties of Condominium Board, Commercial Unit Owners and Residential Board.

2.2.1 General. 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 or the Condominium Documents may not be delegated to the Condominium Board by the Unit Owners). Subject to the terms of the Condominium Documents, all determinations, which do not (to more than an immaterial extent) relate to or affect or involve the Condominium generally or the General Common Elements, and: (A) do not affect (to more than an immaterial extent) any portion of the Building other than the Residential Section, shall be made by the Residential Board; and (B) do not affect (to more than an immaterial extent) any portion of the Building other than the Hotel Section shall be made by the Hotel Board.

2.2.2 Condominium Board. Subject to, and in accordance with, the provisions of Section 2.2.1, the further provisions of this Section 2.2.2, Sections 2.2.3 through 2.2.9 and Article 6 of these Condominium By-Laws and such other provisions, if any, of the Declaration and these By-Laws as may grant to one or more Unit Owner(s), the Residential Board, the Hotel Board or certain Board Member(s), as the case may be, rights of approval with respect to certain matters, the Condominium Board shall be entitled to make determinations and take actions with respect to all matters relating to the operation and the administration of the affairs of the Condominium, including, without limitation, the following:

(a) (i) Operation, care, upkeep and maintenance of; (ii) the making of alterations, additions and improvements (collectively, "Alterations") to; and (iii) the making of repairs, restorations and replacements (collectively, "Repairs") of, the General Common Elements and, as and to the extent provided in the Condominium Documents, the Limited Common Elements.

(b) Determination and imposition of General Common Charges, preparation and adoption of Budgets as hereinafter provided, and determination and imposition of Special Assessments.

(c) Methods of, and procedures with respect to, collection of General Common Charges and Special Assessments from the General Common Charge Obligors, and the implementation of such methods and procedures.

(d) Employment and dismissal of the personnel necessary for the maintenance and operation of the General Common Elements (and, as and to the extent provided in the Condominium Documents, the Limited Common Elements).

(e) Promulgation (and amendment) of General Rules and Regulations from time to time.

(f) In the name of the Condominium Board or its designee, on behalf of all Unit Owners: (i) acquiring the Accessory Unit and/or the Club Unit to the extent one or both is/are surrendered to the Condominium Board (to the extent the waiver contained in the Condominium Documents with respect to the right to surrender is inapplicable or unenforceable); (ii) purchasing or otherwise acquiring those Units (subject to any prior right of either Sub-Board with respect thereto) with respect to which liens for real estate taxes may be and are being sold in accordance with the Condominium Documents; and (iii) purchasing or otherwise acquiring Units at foreclosure or other similar sales (subject to any prior right of either Sub-Board with respect thereto).

(g) Selling, leasing, licensing, mortgaging and otherwise dealing with Units acquired by the Condominium Board or its designee on behalf of all Unit Owners (but not voting the Common Interest appurtenant thereto).

(h) Making Alterations to, and Repairs of, the General Common Elements (and, as and to the extent provided in the Condominium Documents, the Limited Common Elements) or parts thereof damaged or destroyed by fire or other casualty or necessitated as a result of condemnation or eminent domain proceedings.

(i) Enforcing obligations hereunder and under the Declaration and the General Rules and Regulations of the Accessory Unit Owner, the Club Unit Owner, the Hotel Board and the Residential Board, including, without limitation, commencing, prosecuting and settling litigation in connection therewith.

(j) Maintaining bank accounts on behalf of the Condominium and designating the signatories required therefor.

(k) Adjusting and settling insurance claims (and executing and delivering releases in connection therewith) if the loss is to be adjusted and settled by the Condominium Board in accordance with Article 11 hereof.

(l) Subject to the provisions of Section 2.2.8 below, borrowing money on behalf of the Condominium.

(m) Organizing (and owning shares of or membership interests in, as the case may be) corporations, limited liability companies and/or other entities to act as designees of the Condominium Board with respect to such matters as the Condominium Board may determine, including, without limitation, in connection with the acquisition of title to, or the leasing of, Units acquired by the Condominium Board on behalf of all Unit Owners.

(n) Subject to the provisions of Section 2.2.7 below, execution, acknowledgment and delivery of, without limitation: (i) any consent, agreement, document, covenant, restriction, easement, declaration or other instrument, or any amendment thereto, affecting the General Common Elements which the Condominium Board deems necessary or appropriate to comply with any Laws applicable to the maintenance, demolition, construction, Alteration, Repair or restoration of the Property or the Condominium; or (ii) any consent, agreement, document, covenant, restriction, easement, declaration or other instrument, or any amendment thereto, affecting: (x) the Property or the Condominium which the Condominium

Board deems necessary or appropriate; or (y) a Unit, if the owner of such Unit Owner (or the Residential Board on behalf of such Residential Unit Owner, or the Hotel Board on behalf of such Condo Hotel Unit Owner) requests, or under the Condominium Documents is required to request, that the Condominium Board take such action, and/or (except as otherwise provided in the Condominium Documents) the Condominium Board determines that taking such action is appropriate.

(o) Execution, acknowledgment and delivery of any documents or other instruments necessary to commence, pursue, compromise or settle certiorari proceedings to obtain reduced real estate tax assessments, or in connection with any real estate tax exemption or abatement, with respect to any or all of the Commercial Units for the benefit and on behalf of the respective Unit Owners thereof; but only to the extent requested and authorized to do so, in writing, by the respective Unit Owners thereof and provided such Unit Owners indemnify the Condominium Board and all other Unit Owners from and against all Costs resulting from or incurred in connection with such proceedings.

(p) Preparation, execution and recording, on behalf of all Unit Owners, as their attorney-in-fact, coupled with an interest, of a restatement of the Declaration and/or these By-Laws whenever, in the Condominium Board's estimation, it is advisable to consolidate and restate all amendments, modifications, additions and deletions theretofore made to the Declaration and/or these By-Laws; preparation, execution and recording, on behalf of the Residential Board and at the Residential Board's expense, as the Residential Board's attorney-in-fact, coupled with an interest, a restatement of the Residential By-Laws, as applicable, whenever, in the Residential Board's estimation, it is advisable to consolidate and restate all amendments, modifications, additions and deletions theretofore made to the Residential By-Laws; and preparation, execution and recording, on behalf of the Hotel Board and at the Hotel Board's expense, as the Hotel Board's attorney-in-fact, coupled with an interest, a restatement of the Hotel By-Laws, as applicable, whenever, in the Hotel Board's estimation, it is advisable to consolidate and restate all amendments, modifications, additions and deletions theretofore made to the Hotel By-Laws.

(q) Commencing, prosecuting and settling litigation and arbitration proceedings against third parties, and defending and settling litigation and arbitration proceedings against the Condominium and/or the Condominium Board.

(r) Obtaining and reviewing insurance in respect of the Property in accordance with the requirements of Article 11 hereof, and changing any of the insurance requirements set forth therein.

2.2.3 Residential Board and Residential Unit Owners. The Residential Section and the Residential Board will be governed by its Residential By-Laws as well as by the Declaration and the applicable provisions of these By-Laws; and subject to, and in accordance with, the provisions of Sections 2.2.1 and 2.2.2 hereof (and without limiting the generality thereof), the Residential Board shall be entitled to make determinations with respect to matters relating exclusively to the Residential Section and to the operation, care, upkeep, maintenance and administration of the affairs thereof, including, without limitation, the making of Repairs of, and performance of Alterations to, the Residential Limited Common Elements, and shall have

the powers and duties described in the Residential By-Laws, subject, however, to the rights of the Residential Unit Owners as may be provided in the Residential By-Laws and to those provisions in the Declaration and these Condominium By-Laws that provide otherwise and/or that set forth restrictions on the right to make such determinations. In addition, except as may otherwise be provided in (and subject to) the Condominium Documents, each of the Residential Unit Owners shall have such powers as are permitted by Law, and shall be entitled to make determinations, with respect to all matters relating exclusively to their respective Residential Units.

2.2.4 Hotel Board and Hotel Unit Owners. The Hotel Section and the Hotel Board will be governed by its Hotel By-Laws as well as by the Declaration and the applicable provisions of these By-Laws; and subject to, and in accordance with, the provisions of Sections 2.2.1 and 2.2.2 hereof (and without limiting the generality thereof), the Hotel Board shall be entitled to make determinations with respect to matters relating exclusively to the Hotel Section and to the operation, care, upkeep, maintenance and administration of the affairs thereof, including, without limitation, the making of Repairs of, and performance of Alterations to, the Hotel Limited Common Elements, and shall have the powers and duties described in the Hotel By-Laws, subject, however, to the rights of the Hotel Unit Owners as may be provided in the Hotel By-Laws and to those provisions in the Declaration and these Condominium By-Laws that provide otherwise and/or that set forth restrictions on the right to make such determinations. In addition, except as may otherwise be provided in (and subject to) the Condominium Documents, each of the Hotel Unit Owners shall have such powers as are permitted by Law, and shall be entitled to make determinations, with respect to all matters relating exclusively to their respective Hotel Units.

2.2.5 Accessory Unit Owner and Club Unit Owner. Subject to, and in accordance with, the provisions of Sections 2.2.1 and 2.2.2 hereof (and without limiting the generality thereof), each of the Accessory Unit Owner and the Club Unit Owner shall be entitled to make determinations with respect to all matters relating exclusively to its Unit and the operation, care, upkeep, maintenance and administration of the affairs thereof, including, without limitation, the making of Repairs of, and performance of Alterations to, its Unit, subject, however to those provisions in the Declaration and these Condominium By-Laws that provide otherwise and/or that set forth restrictions on the right to make such determinations.

2.2.6 Agents for the Condominium Board, Residential Board, Hotel Board, Accessory Unit Owner and Club Unit Owner. (a) Any action required or permitted to be taken by the Condominium Board pursuant to the provisions of the Declaration and/or these By-Laws shall be done or performed by the Condominium Board or on behalf of the Condominium Board and at its direction by the agents, officers, employees or designees of the Condominium Board, and the Condominium Board may employ one or more managing agents and/or managers, at a compensation established by the Condominium Board, to perform such duties and services as the Condominium Board shall authorize, except (unless in specific instances provided in the Declaration and/or these By-Laws or as otherwise authorized by a Unanimous vote of the Condominium Board) in connection with the actions set forth in subparagraphs 2.2.2(b), (e), (f), (g), (i), (j), (k), (m), (n), (o), (p) and (q) hereof.

(b) Any action required or permitted to be taken by the Residential Board pursuant to the provisions of these By-Laws, the Declaration or the Residential By-Laws, shall be done or performed by the Residential Board or on behalf of the Residential Board and at its direction by the agents, officers, employees or designees of the Residential Board, and the Residential Board may employ one or more managing agents and/or managers, at a compensation established by the Residential Board, to perform such duties and services as the Residential Board shall authorize in accordance with the Residential By-Laws.

(c) Any action required or permitted to be taken by the Hotel Board pursuant to the provisions of these By-Laws, the Declaration or the Hotel By-Laws, shall be done and performed by the Hotel Board or on behalf of the Hotel Board and at its direction by the agents, officers, employees or designees of the Hotel Board, and the Hotel Board may employ one or more managing agents and/or managers (including, without limitation, the Hotel Manager), at a compensation established by the Hotel Board, to perform such duties and services as the Hotel Board shall authorize in accordance with the Hotel By-Laws.

(d) Any managing agent designated and/or employed by the Condominium Board, the Residential Section, the Hotel Section, the Accessory Unit Owner or the Club Unit Owner, may be an affiliate of Declarant, either Sponsor and/or the Transient Hotel Unit Owner.

2.2.7 Board as Agent. Any action required or permitted to be taken pursuant to the provisions of the Condominium Documents by the Residential Board, the Hotel Board or a Commercial Unit Owner, shall, if required by applicable Laws, be taken by the Residential Board, Hotel Board or such Unit Owner in the name of the Condominium Board which shall, upon request (at the sole expense of the Board or Commercial Unit Owner, as applicable, making such request or taking such action), execute, acknowledge and deliver any and all instruments, documents or applications in connection therewith; provided, however, that: (i) no such action shall be taken in the name of the Condominium Board except upon at least fifteen (15) Business Days' advance notice delivered to each Board and Commercial Unit Owner (unless such action is required in connection with an Emergency, in which event only such prior notice as is practicable under the circumstances (which may be, but shall not be presumed to be, none) shall apply and if no prior notice is given, notice shall be given promptly thereafter), which notice shall specify the action proposed to be taken, the grounds upon which such Board or Commercial Unit Owner as the case may be is entitled to take such action, and shall include complete and accurate copies of all documents proposed to be executed or filed in connection with the exercise of the rights provided in this Section; and (ii) the Board or Commercial Unit Owner making such request or taking such action shall, subject to the provisions of Section 2.11, indemnify and hold harmless and all other Unit Owners and Boards from and against all Costs resulting therefrom or incurred in connection therewith.

2.2.8 Borrowing by the Condominium Board.

(a) The Condominium Board shall have the power to borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of, or the making of Repairs or Alterations of, the General Common Elements or otherwise in connection with any permitted action or activity of the Condominium Board,

provided, however, that: (i) a 66 2/3% vote of the members of the Condominium Board shall be required for any borrowings for such purposes if such borrowings are in excess of $500,000 (subject to increase by the CPI Increase Factor) in total in any one fiscal year or $1,500,000 (subject to increase by the CPI Increase Factor) in the aggregate (including borrowings from prior periods) at any one time; and (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant Common Interest without the prior written consent of the owner of such Unit, or on the General Common Elements without the consent of all Unit Owners. The powers and rights of the Residential Board and the Hotel Board to borrow money pursuant to the provisions of the Residential By-Laws and the Hotel By-Laws, respectively, is not limited or impaired by the foregoing.

(b) All such borrowing by the Condominium Board shall be by and in the name of the Condominium, and shall expressly provide that no individual Unit Owner (or shareholder, member, director or officer thereof) or Board Member shall be liable (primarily or otherwise) therefor in any respect (including, without limitation, for any fees, expenses, or other liabilities or obligations accruing or to be performed thereunder) unless specifically agreed to in writing by such Unit Owner or Board Member.

2.2.9 Insurance Requirements. The Condominium Board shall make all determinations and take all actions necessary to cause the insurance requirements set forth in Article 11 hereof with respect to the Condominium and Condominium Board to be complied with.

2.3 Number and Terms of Office of Board Members.

2.3.1 At all times, the Condominium Board shall consist of seven (7) individuals as follows: (a) three (3) Board Members designated by the Hotel Board in accordance with the Hotel By-Laws; (b) three (3) Board Members designated by the Residential Board in accordance with the Residential By-Laws; and (c) one (1) Board Member designated by the Accessory Unit Owner. The Club Unit Owner shall not have the right to designate a Board Member. Except as otherwise provided in the Condominium Documents, all designations (and substitute and further designations) which are provided for in the Declaration or these By-Laws shall be in writing and shall include an address specified for notice to such designated Board Member. Subject in all events to the provisions of Section 2.4 below, and, as applicable, the provisions of the Residential By-Laws with respect to Condominium Board Members designated by the Residential Board and the provisions of the Hotel By-Laws with respect to the Condominium Board Members designated by the Hotel Board, the term of each Board Member designated from time to time shall expire annually on the anniversary of such Board Member's designation; and, subject to the other provisions of this Section 2.3, the replacement for each such Board Member, which may be the same person, shall be made by such Board Member's Designator. There shall be no limit on the number of terms of office, successive or otherwise, that a Board Member may serve. Notwithstanding the expiration of the term of office of a member of the Condominium Board, such member shall serve until a successor has been elected and qualified.

2.3.2 If more than one (1) Person owns the Accessory Unit, such Persons shall jointly designate the Board Member hereinabove provided to be designated by the owner of the Accessory Unit. Failing such a joint designation, the concurrence of such Persons shall be

conclusively presumed if any one of them purports to make such designation, unless and until a protest of such designation is made by any other such Persons to the Condominium Board. From and after the day such protest is made until the dispute with respect thereto is resolved (which dispute shall be resolved in Arbitration), no such Board Member shall be deemed to have been appointed by the Designator in question; provided, however, that (i) for the limited purpose of determining whether a quorum exists at any meeting of the Condominium Board, such Board Member shall be deemed to have been appointed and Present In Person at any meeting of the Condominium Board and (ii) such protest shall not nullify any vote or action taken by such Board Member prior to such protest being made.

2.4 Resignation and Removal.

2.4.1 Any Board Member may resign at any time by notice given to the President or Secretary of the Condominium Board and to such Board Member's Designator. Any such resignation shall take effect at the time specified in such notice and, unless specifically requested, acceptance of such resignation shall not be necessary for the effectiveness thereof.

2.4.2 Any Board Member may be removed from office: (i) for cause, either (x) by the Designator of such Board Member or (y) notwithstanding any protest of such Designator, by a 66 2/3% vote of the Condominium Board; and (ii) without cause, only by the Designator of such Board Member. In the event of any removal described in the immediately preceding sentence, whether with or without cause, the Designator of such Board Member shall have the sole right to designate the replacement of such member.

2.5 Vacancies on Condominium Board. The vacancy of a Board Member's seat on the Condominium Board shall be filled only by designation of the Designator of such member.

2.6 Initial Meeting of Condominium Board; Regular and Special Meetings.

2.6.1 Within no more than ten (10) days following the initial recording of the Declaration in the Register's Office, each Designator shall designate its Board Member(s) by notice given to each other Designator and the first meeting of the Condominium Board shall take place.

2.6.2 Thereafter, regular meetings of the Condominium Board may be held at such time and place in the Borough of Manhattan as shall be determined by the Condominium Board from time to time but at least quarterly. Notice of regular meetings shall be given to each Board Member by the President, Vice President or Secretary of the Condominium Board or by the Condominium's managing agent, at least thirty (30) days prior to the day fixed for such meeting which notice shall state the date, time and place (in the Borough of Manhattan) and shall include an agenda therefor.

2.6.3 Special meetings of the Condominium Board may be called by the President or Vice President of the Condominium or by any two (2) Board Members in Good Standing and having different Designators, in each case by giving at least ten (10) Business Days' prior notice to each Board Member, which notice shall state the date, time, place (in the Borough of Manhattan) and purpose (including the agenda) for the meeting. In addition, the President of the Condominium Board shall, by written notice given in accordance with the last

sentence of Section 2.6.2 above, call a meeting of the Condominium Board upon the written request of any four Board Members.

2.7 Principal Offices of Condominium Board. The principal office of the Condominium Board shall be located either within the Property or at such other place in the Borough of Manhattan as may be designated from time to time by the Condominium Board.

2.8 Waiver of Notice. Any Board Member (or his or her proxy) may at any time waive notice of any Condominium Board meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board Member (or his or her proxy) at any meeting thereof shall constitute a waiver by such member of notice of the time and place thereof. If all the Board Members (or their proxies) 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 Condominium Board; Quorum.

2.9.1 Except as otherwise set forth in Section 2.9.3, all determinations of the Condominium Board shall be made at a meeting of the Condominium Board at which a quorum thereof is Present In Person. Only Board Members in Good Standing shall have the right to vote at meetings of the Condominium Board and only such Board Members shall count for purposes of determining whether a quorum is present. Subject to the preceding sentence, the Presence in Person, at any meeting of the Condominium Board, of Board Members sufficient to cast a Majority Member Vote shall constitute a quorum. Except as may otherwise be required by any Law, these By-Laws and/or the Declaration, a Majority Member Vote, shall constitute the decision of the Condominium Board.

2.9.2 If at any Condominium Board meeting a quorum (as defined in Section 2.9.1 hereof) does not exist, a majority of those present may adjourn the meeting from time to time to a time, in each case specified on at least ten (10) Business Days' notice to the Board Members not Present in Person, until a quorum shall exist. At any such adjourned meeting at which a quorum (determined as aforesaid) exists, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.9.3 A Board Member or Members shall be deemed "Present in Person" at a meeting of the Condominium Board if such Board Member(s) or its/their proxy (as described in this Section 2.9) is/are: (i) physically present; or (ii) participating by means of a conference telephone call or similar communications equipment by means of which all persons participating in such meeting can hear one another's voice. Notwithstanding anything to the contrary contained herein, any action permitted or required to be taken at a meeting of the Condominium Board, may be taken without a meeting if all Board Members consent thereto in writing.

2.9.4 In the event the Condominium Board or its designee shall own any Unit which the Owner of which on its own is otherwise entitled to designate a Condominium Board Member, then the Condominium Board shall not designate a Board Member to vote on behalf of (or otherwise in connection with) such Unit.

2.9.5 Board Members shall be entitled to vote by proxy at any meeting of the Condominium Board, and all references herein and in the Declaration and/or these By-Laws to votes by Board Members shall be deemed to be references to votes by Board Members or their properly designated proxies. The designation of any such proxy shall be made in a signed and dated writing to the Secretary of the Condominium and shall be revocable at any time as provided at law or by notice actually delivered to such Secretary by the Unit Owner or Board which had made the designation; provided, however, that no designation to act as a proxy shall be effective for a period in excess of twelve (12) months (except that the designation of a Board Member by a Registered Mortgagee pursuant to clause (i) of the first sentence of Section 13.4(f) hereof shall be effective until the Secretary of the Condominium shall have received written notice from such Registered Mortgagee of the first of the following events to occur: (i) the revocation of such designation by such Registered Mortgagee; (ii) the satisfaction of record of such mortgage; and (iii) the release of the encumbered Unit from the lien of such mortgage).

2.10 Compensation. No Board Member shall receive any compensation from the Condominium or the Condominium Board for acting in the capacity of a Condominium Board Member.

2.11 Liability of Condominium Board and Unit Owners.

2.11.1 (a) To the extent permitted by applicable Law, no Board Member shall have any personal liability with respect to any contract, act or omission of the Condominium, the Condominium Board or its members, or of any Managing Agent or manager, building engineer, superintendent or employee in connection with the affairs or operation of the Condominium (except to the extent arising from such Board Member's own bad faith, gross negligence or willful misconduct).

(b) Every contract made by the Condominium Board or by any managing agent or manager thereof shall state that it is made by the Condominium Board or the managing agent or manager only as agent for the Condominium, and that the Board Members or managing agent or manager shall have no personal liability thereon and may also state the applicable limitations of liability of Unit Owners provided for in Section 2.11.2 below; and the absence of such statement or statements in any such contract shall not be deemed to imply any personal liability on the part of the Condominium Board, its members, managing agent or manager, or any Unit Owner.

(c) The Condominium shall indemnify each Board Member against all Costs arising out of such Board Member's serving in such capacity except those matters arising out of such Board Member's own bad faith, gross negligence or willful misconduct.

(d) The Condominium Board may contract or effect any other transaction with any Board Member, any member of the Residential Board, any member of the Hotel Board, any Unit Owner, Declarant, Residential Sponsor, Condo Hotel Sponsor and/or Affiliates of any of the foregoing without incurring any liability for self-dealing or otherwise (except in the case of bad faith, gross negligence or willful misconduct which shall not be deemed presumed or established by the relationship between or among any such parties), but all

such contracts or transactions shall be made only in accordance with the provisions of Section 2.16 hereof.

2.11.2 No Unit Owner, in its capacity as a Unit Owner, shall be personally liable for any contract, act or omission of the Condominium. Nothing in the preceding sentence shall limit a Unit Owner's liability for the payment of Common Charges or Special Assessments.

2.12 Committees. The Condominium Board may, subject to such limitations and exceptions as the Condominium Board may prescribe, appoint such committees as the Condominium Board may deem appropriate, each to consist of two or more members of the Condominium Board. Each such committee, to the extent provided in the resolution which creates it, shall have and may exercise all the powers designated to it by the Condominium Board during the intervals between Condominium Board meetings insofar as may be permitted by applicable Law.

2.13 Status of Boards. In addition to the status conferred upon each of the Boards under or pursuant to the provisions of the New York Condominium Act, each independently shall, to the extent permitted by applicable Law, be deemed to constitute a separate unincorporated association for all purposes under and pursuant to the provisions of the General Associations Law of the State of New York, as the same may be amended from time to time. In the event of the incorporation or organization of any such Board pursuant to the applicable provisions of Section 2.14, the provisions of this Section 2.13 shall no longer be applicable to such Board.

2.14 Incorporation and Organization of Boards. To the extent and in the manner provided in the New York Condominium Act (or as may otherwise be permitted by Law), each of the Condominium Board, the Residential Board and the Hotel Board may, by action of such Board as provided in Article 2 of the Condominium By-Laws, the Residential By-Laws and the Hotel By-Laws, respectively, be organized as a limited liability company or incorporated under the applicable statutes of the State of New York. In the event that any such Board so organizes or incorporates, it shall have, to the extent permitted by applicable Law, the status conferred upon it under such statutes in addition to the status conferred upon it under or pursuant to the provisions of the New York Condominium Act. The certificate of incorporation and by-laws of any such resulting corporation or the articles of organization and operating agreement of such resulting limited liability company, as the case may be, shall conform as closely as practicable to the provisions of the Declaration and the applicable set of By-Laws (*i.e.*, for such purpose, the Condominium By-Laws with respect to the Condominium Board, the Residential By-Laws with respect to the Residential Board and the Hotel By-Laws with respect to the Hotel Board) and the provisions of the Declaration and the applicable set of By-Laws shall control in the event of any inconsistency or conflict between the provisions thereof and the provisions of such certificate of incorporation and by-laws or articles of organization and operating agreement, as applicable, and any such certificate, by-laws, articles and agreement shall in all events be subject and subordinate in all respects to the Declaration, the Condominium By-Laws and, with respect to the Residential Board and the Hotel Board, the Residential By-Laws or the Hotel By-Laws, as applicable.

2.15 Condominium Board as Agent of Unit Owners. In exercising its powers and performing its duties under the Declaration and these By-Laws (and, to the extent applicable, the Residential By-Laws and Hotel By-Laws), the Condominium Board shall act as, and shall be, the agent of the Accessory Unit Owner, the Club Unit Owner, the Hotel Board (itself the agent of the Hotel Unit Owners), and the Residential Board (itself the agent of the Residential Unit Owners), subject to and in accordance with the provisions of the Declaration and these By-Laws (and, to the extent applicable, the Residential By-Laws and Hotel By-Laws).

2.16 Affiliate/Prohibited Transactions. Each Condominium Board Member shall perform his or her duties, and shall exercise his or her powers, in good faith and with a view to the interests of the Condominium. To the extent permitted by Law, no contract or other transaction between the Condominium Board and either: (i) any of its members; or (ii) any corporation, partnership, fiduciary, firm, limited liability company, association or other entity in which any of the members of the Condominium Board are officers, directors, shareholders, employees, partners, fiduciaries, beneficiaries, members or principals, or are otherwise interested, pecuniarily or otherwise, shall be deemed either void or voidable because either: (a) any such Condominium Board Member was present at the meeting or meetings of the Condominium Board during which such contract or transaction was discussed, authorized, approved or ratified, or (b) the vote of any such Board Member was counted for such purpose; provided, however, that either: (1) the fact thereof is disclosed to, or known by, the Condominium Board or a majority of the members thereof and noted in the minutes thereof, and the Condominium Board shall authorize, approve or ratify such contract or transaction in good faith by a vote of a majority of the entire Condominium Board, less the number of such members involved in such contract or transaction; or (2) the fact thereof is disclosed to, or known by, a majority of Unit Owners and a majority of Unit Owners, present at a duly constituted meeting, shall in good faith authorize, approve or ratify such contract or transaction less the number of such Unit Owners who are also such members involved in such contract or transaction; and (3) the contract or transaction is commercially reasonable to the Condominium Board at the time the same is authorized, approved, ratified, executed or otherwise consummated. Any such members of the Condominium Board may be counted in determining the presence of a quorum of any meeting of the Condominium Board or of the Unit Owners which authorizes, approves or ratifies any such contract or transaction, but no such member shall be entitled to vote thereat in order to authorize, approve or ratify such contract or transaction. Notwithstanding the foregoing, the Condominium Board shall be authorized to employ an affiliate of Declarant as managing agent for the Condominium pursuant to Section 2.2.6 of the Condominium By-Laws; initially, and then, subject to reasonable market rate increases, for subsequent renewal terms.

## ARTICLE 3

## UNIT OWNERS

3.1 Annual Meetings. No annual meeting of all Unit Owners (a "Unit Owners Meeting") shall be required to be held unless required, in each case, by applicable Law, in which event any such meeting so required to be held shall be held on the date specified by the Condominium Board.

3.2 Place of Meetings. All Unit Owners Meetings required or permitted to be held, if any, shall be held at the principal office of the Condominium or at such other place in the Borough of Manhattan as may be designated from time to time by the Condominium Board.

3.3 Special Meetings. The President or the Vice President of the Condominium shall call a special Unit Owners Meeting if so directed by resolution of the Condominium Board or upon a petition signed and presented to the Secretary of the Condominium by Unit Owners owning Units representing not less than 50% of the aggregate Common Interest of all of Units (but which, in all events, must include at least one (1) of the Transient Hotel Unit Owner or the Accessory Unit Owner). Each such resolution or petition shall state, in reasonable detail, the purposes for calling such Unit Owners Meeting.

3.4 Notice of Meetings and Actions Taken. Notice of annual or special Unit Owners Meetings (in each case, if any) shall be given by the Secretary of the Condominium to all Unit Owners of record at their address at the Condominium (or at such other address as any Unit Owner has designated by notice given to the Secretary of the Condominium at least forty-five (45) days prior to the giving of notice of the applicable meeting). Each such notice shall state the purpose(s) of the meeting and the date, time and place (in the Borough of Manhattan) where it is to be held, and no business shall be transacted at such meeting except as stated in the notice. All notices hereunder shall be given at least ten (10) Business Days prior to the date fixed for the meeting. However, if the business to be conducted at any Unit Owners Meeting shall include consideration of a proposed amendment to the Declaration or to these By-Laws which requires a vote of the Unit Owners at such a meeting, the notice of such meeting shall be given to all Unit Owners, Registered Mortgagees, Residential Mortgagee Representatives and Condo Hotel Mortgagee Representatives at least thirty (30) days prior to the date fixed for such meeting and such notice shall be accompanied by a copy of the text of such proposed amendment. The Condominium Board shall have the exclusive right to vote on the matters and take the actions delegated to it by the Condominium Documents.

3.5 Quorum.

3.5.1 Except as otherwise provided in these By-Laws, the presence in person or by proxy of Unit Owners representing more than 50% (in Common Interest) of all Unit Owners shall constitute a quorum at all Unit Owners Meetings; provided that the Transient Hotel Unit Owner and/or the Accessory Unit Owner shall each have the absolute right (except in the case of an Emergency) to require an adjournment of any such Unit Owners Meeting (notwithstanding the presence of a quorum) for a period not longer than thirty (30) days.

3.5.2 Subject to Section 3.5.1, if at any Unit Owners Meeting a quorum does not exist, the Unit Owners who are present at such meeting, either in person or by proxy, may act by majority vote to adjourn the meeting and reconvene at a time (specified on at least ten (10) Business Days' notice to the absent Unit Owners). At any such adjourned and reconvened Unit Owners Meeting at which a quorum (determined as aforesaid) exists, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.6 Order of Business. The order of business at all annual Unit Owners Meetings, if any, shall be as follows:

(a) Call to order.

(b) Proof of notice of meeting.

(c) Reading of minutes of preceding meeting, if any.

(d) Reports of officers, if any.

(e) Reports of Board Members.

(f) Reports of committees, if any.

(g) Election of inspectors of election (when so required).

(h) Unfinished business.

(i) New business.

3.7 Voting at Unit Owners Meetings.

3.7.1 Each Unit Owner, or a person designated by each such Unit Owner to act as proxy on its behalf and who need not be a Unit Owner, shall be entitled to cast the votes appurtenant to such Unit Owner's Unit (determined on a Common Interest basis), as set forth herein and in the Declaration, at all Unit Owners Meetings, if any. The designation of any such proxy shall be made in a signed and dated writing to the Secretary of the Condominium and shall be revocable at any time by notice actually delivered to such Secretary by the Unit Owner which had made the designation; provided, however, that no designation to act as a proxy shall be effective for a period in excess of twelve (12) months. If a Registered Mortgagee is entitled to vote at a Unit Owners Meeting pursuant to clause (ii) of the first sentence of Section 13.4(f) hereof (which vote may be by proxy), such Registered Mortgagee shall continue to so vote until the Secretary of the Condominium shall have received written notice from such Registered Mortgagee of the first of the following events to occur: (i) the revocation of such designation by such Registered Mortgagee; (ii) the satisfaction of record of such mortgage; and (iii) the release of the encumbered Unit from the lien of such mortgage. A fiduciary shall be the voting member with respect to any Unit owned in a fiduciary capacity. Except as otherwise provided herein or in the Declaration or as otherwise required by Law, a majority of votes duly cast at any Unit Owner's Meeting at which a quorum is present or is not required shall be binding.

3.7.2 If two (2) or more Persons own a Unit, they shall designate one (1) Person amongst them to vote the Common Interest appurtenant to their Unit in a writing given to the Secretary of the Condominium, and the vote of such designee shall be binding upon such Persons. Failing such a designation, all of such Persons shall mutually vote such Common Interest under one ballot, without division, and the concurrence of such Persons shall be conclusively presumed if any one of them purports to vote such Common Interest without protest being made contemporaneously to the party presiding over the meeting at which such vote is taken. From and after the day such protest is made until the dispute with respect thereto is resolved (which dispute shall be resolved in Arbitration), the Common Interest of such Unit shall not be voted; provided, however, that (i) such Unit shall be counted solely for determining

whether a quorum is present for such voting and (ii) such protest shall not nullify any vote made by any such Person on behalf of such jointly-owned Unit prior to such protest being made.

3.7.3 At Unit Owners Meetings, the Condominium Board (or its designee) shall not be entitled to vote the Common Interest appurtenant to any Unit owned by the Condominium Board (or such designee) on behalf of all Unit Owners.

3.7.4 Except as otherwise set forth herein or in the Declaration, at all Unit Owners Meetings, if any, each Unit Owner (or its proxy) entitled to vote thereat shall be entitled to cast one vote for each .0001% (rounded off to the nearest .0001%) of Common Interest attributable to its Unit or Units. If a matter requires the consent of a Unit Owner prior to its being approved by the Condominium Board, then such action, if and when raised at a Unit Owners Meeting, shall require the consent of such Unit Owner. Notwithstanding any provision of these By-Laws or the Condominium Documents to the contrary, however, a Unit Owner (or his or her or its proxy) shall be entitled and authorized to vote at any Unit Owners Meeting or any other annual, regular or special meeting of any or all Unit Owners if, and only if, such Unit Owner shall be a Unit Owner in Good Standing at the time of such annual, regular or special meeting.

3.8 Voting By Certain Unit Owners or Groups of Units Owners. Whenever a particular percentage of Common Interest must be reached for voting purposes and such required percentage is described in terms of a specified group of Unit Owners (e.g., "50% in Common Interest of all Residential Unit Owners") as opposed to all Unit Owners as a whole, such required percentage shall mean a percentage in terms of the total Common Interests attributable to all Unit Owners within such specified group and not the percentage of Common Interests attributable to all Unit Owners.

## ARTICLE 4

## OFFICERS

4.1 Designation. (a) The principal officers of the Condominium shall be a President, a Vice President, a Secretary and a Treasurer thereof, all of whom shall be elected by the Condominium Board. The Condominium Board may elect one or more Assistant Vice Presidents, Assistant Treasurers and Assistant Secretaries and such other officers as in its judgment may be desirable. Nothing herein shall preclude any officer of the Residential Board or the Hotel Board from also being an officer of the Condominium or any officer of the Condominium from also being an officer of the Residential Board or the Hotel Board, if otherwise qualified under the terms of these By-Laws, the Residential By-Laws or the Hotel By-Laws, as the case may be; and any Condominium Board Member may also be an officer of the Condominium.

(b) An officer of the Condominium need not be a Unit Owner or have any interest therein or be a member of the Condominium Board.

4.2 Election of Officers. The officers of the Condominium shall each be elected annually by a majority vote of the Condominium Board (including at the first meeting thereof)

and at any other meeting as may be required to fill a vacancy, and shall serve at the pleasure of the Condominium Board.

4.3 Resignation and Removal of Officers. Any officer may resign at any time by notice given to the Condominium Board; such resignation shall take effect at the time specified in such notice and, unless specifically requested by the resigning officer, acceptance of such resignation shall not be necessary to make such resignation effective. Upon a majority vote at a regular meeting of the Condominium Board, or at a special meeting of the Condominium Board called for such purpose, at which a quorum is present, any officer may be removed, either with or without cause, and his or her successor shall be elected.

4.4 President. The President of the Condominium shall be the chief executive officer of the Condominium and shall preside at all Unit Owners Meetings and 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 subject to the provisions of Section 2.13) committees from among the Board Members and/or Unit Owners, from time to time as such President, in his or her discretion, may decide are appropriate to assist in the conduct of the affairs of the Condominium.

4.5 Vice President. The Vice President of the Condominium shall take the place of the President under whom he or she serves and shall perform the duties of the President whenever the 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 other Condominium Board Member 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, from time to time, shall be imposed by the Condominium Board or by the President.

4.6 Secretary. The Secretary of the Condominium shall keep the minutes of all Unit Owners Meetings, if any, and of all meetings of the Condominium Board. The Secretary shall have charge of such books and papers as the Condominium Board shall direct and, in general, shall perform all of the duties incident to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York.

4.7 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 Board (or in the name of the managing agent or manager appointed by the Condominium Board) in such depositories as may from time to time be designated by the Condominium Board and shall, in general but subject to the proviso clause of the first sentence of Section 4.8 below, 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.

4.8 Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed by the President or Vice-President,

acting alone, or by any other two officers thereof or by such other person or persons as may be designated by the Condominium Board. In addition to the foregoing, the Condominium Board may authorize the managing agent serving on its behalf to execute checks, provided that the expenditures, and the managing agent's paying for same, have been approved in advance by resolution of the Condominium Board or have been authorized by two officers of the Condominium.

4.9 Compensation of Officers. Except as otherwise determined by a unanimous vote of the Condominium Board, no officer of the Condominium shall receive any compensation for acting as such.

4.10 Liability of Officers. To the extent permitted by applicable Law, no officer of the Condominium shall have any personal liability with respect to any contract, act or omission of the Condominium, the Condominium Board or its members or officers, or of any managing agent or manager, building engineer, superintendent or employee in connection with the affairs or operation of the Condominium (except to the extent arising from such officer's bad faith, gross negligence or willful misconduct) including, without limitation: (i) any failure or interruption of any utility or other services to be obtained by, or on behalf of, any such officer or to be paid for as a General Common Expense; or (ii) any injury, loss or damage to any individual or property, occurring in or upon either a Unit or any Common Element, which is either: (a) caused by the elements, by any Unit Owner or by any other individual; (b) resulting from electricity, water, snow or ice that may leak or flow from a Unit or any portion of any Common Element; or (c) arising out of theft or otherwise. The Condominium shall indemnify each officer of the Condominium against all Costs arising out of such officer's service in such capacity, except those matters arising out of such officer's bad faith, gross negligence or willful misconduct.

## ARTICLE 5

## NOTICES

5.1 Notices. Except as otherwise expressly provided in the Declaration or these By-Laws, all requests, notices, reports, demands, approvals and other communications required or desired to be given pursuant to the Declaration and/or the Condominium By-Laws shall be in writing and shall be delivered: (a) if to any of the Boards or Commercial Unit Owners, in person or sent to the principal office of the applicable Board or such Unit Owner, as the case may be (or to such other address as: (i) the applicable Board may designate from time to time, by notice in writing to the other Boards and such other Unit Owners; and (ii) each such Unit Owner may designate from time to time, by notice in writing to each Board and to each other such Unit Owner); and a duplicate shall be sent in like manner to the managing agent of the Condominium, of the Residential Section, of the Hotel Section and of each Commercial Unit having a managing agent, if any; (b) if to a Residential Unit Owner or Condo Hotel Unit Owner, in person or sent to the address of such Unit Owner at the Building, or to such other address as may have been designated by such Unit Owner from time to time in writing to the applicable Sub-Board; and (if such notice is from a Person other than the applicable Sub-Board) a duplicate shall be sent in like manner to the applicable Sub-Board and managing agent, if any, of the Residential Section or Hotel Section, as the case may be; (c) if to a Condominium Board Member, to the address of such Board Member as shall be specified in the written designation thereof by such individual's

Designator (provided that, failing such specification, the address of such Designator shall be deemed to be the specified address for such Board Member), or to such other address as may have been designated by such Board Member from time to time in writing to the Secretary of the Condominium Board and to the other Condominium Board Members; and (d) if to the Registered Mortgagees, Residential Mortgagee Representatives and Condo Hotel Mortgagee Representatives, either delivered in person or sent to their respective addresses, as designated by them from time to time in writing to the Condominium Board, the Residential Board or the Hotel Board, as the case may be. All notices delivered in person (to the extent permitted herein) shall be deemed to have been given when delivered in person. Unless other means of giving certain notices are specifically required or permitted pursuant to the Condominium Documents, all notices which are "sent" shall be sent either (x) by registered or certified mail, return receipt requested, and shall be deemed to have been given three (3) days after deposit in a depository maintained by the U.S. Postal Service in a postage prepaid sealed wrapper or (y) by nationally recognized overnight courier service and shall be deemed to have been given the first Business Day (for domestic delivery) and the third Business Day (for international delivery), after deposit with an overnight courier service, provided that notices of change of address shall in all events be deemed to have been given when received.

5.2 Waiver of Service of Notice; Consent to Other Notices. Whenever any notice is required to be given by applicable Law or the Condominium Documents, a waiver thereof in writing, signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed effective as a waiver thereof and no such notice shall be required. Additionally, any Person may consent (with respect to notices given to it) to additional means of service including, without limitation, transmission by facsimile or electronic means. Such consent, if given, shall in all events be in writing and given and treated as if the same were a change of address (as described in Section 5.1 above). With respect to notices given by facsimile, the transmission shall be to a telephone number designated for such purpose. Notices sent by facsimile shall be deemed to have been given upon receipt by the sender of a signal from the equipment of the Person served confirming that the transmission was received. A Person may change or rescind a facsimile telephone number by giving notice thereof to the Condominium Board, the Residential Board, the Hotel Board and each Commercial Unit Owner. With respect to notices given by electronic transmission (*e.g.*, e-mail), the transmission shall be in a manner authorized by the Person consenting to such transmission. The foregoing provisions of this Section 5.2 are intended to facilitate additional means of notification and shall not be construed to permit any Person to refuse receipt of any notices given in any of the manners specified in Section 5.1.

5.3 Notices by a Residential Unit Owner or Hotel Unit Owner to its Applicable Sub-Board. Notwithstanding anything contained in this Article 5, all notices required or desired to be given by a Residential Unit Owner or Hotel Unit Owner to such Unit Owner's applicable Sub-Board or to another Unit Owner with such Unit Owner's Section shall be given in the manner prescribed in the applicable Sub-By-Laws; however, any additional or duplicate notices required thereunder to be given to any Board and/or any other Unit Owner shall be given in any of the manners herein provided.

5.4 Record of Addresses.

5.4.1 The Condominium Board shall keep and maintain correct, current and complete records containing the names and addresses of all Condominium Board Members (and their proxies, if any), each Commercial Unit Owner, the Residential Board (and its members), the Hotel Board (and its members), Registered Mortgagees, Residential Mortgagee Representatives and Condo Hotel Mortgagee Representatives. The foregoing records shall be in written form or in any other form capable of being converted into written form within a reasonable time. A Condominium Board Member, a Unit Owner, the Residential Board, the Hotel Board, any Registered Mortgagee or Residential Mortgagee Representative or Condo Hotel Mortgagee Representative shall have the right to examine in person or by agent or attorney, during usual business hours on Business Days, such records and, at such Person's expense, to make extracts or copies therefrom (including electronic copies to the extent such records are in electronic form) for any purpose reasonably related to such Person's interest in the Condominium.

5.4.2 Each Sub-Board shall keep and maintain correct, current and complete records containing the names and addresses of all of its members, all of its applicable Unit Owners and Mortgagee Representatives. The foregoing records shall be in written form or in any other form capable of being converted into written form within one Business Day. The Condominium Board shall have the right to examine in person or by agent or attorney, during usual business hours on Business Days, such records and, at the Condominium Board's expense, to make extracts or copies therefrom (including electronic copies to the extent such records are in electronic form) for any purpose reasonably related to the exercise and fulfillment of the Condominium Board's rights and obligations, respectively.

## ARTICLE 6

## GENERAL COMMON EXPENSES AND CHARGES; BUDGETS; MAINTENANCE OBLIGATIONS AND COSTS; UTILITIES

6.1 Determination of General Common Expenses and Fixing of General Common Charges.

6.1.1 (a) The Condominium Board shall determine and allocate all costs and expenses incurred by the Condominium Board in connection with the operation, care, upkeep and maintenance of, and the making of Alterations to, and Repairs of, the General Common Elements (all such costs and expenses, together with all other items which are provided for in these By-Laws and the Declaration to be General Common Expenses, the "General Common Expenses"). From time to time, but at least once per year, the Condominium Board will prepare a budget ("Budget") for setting forth its projection of General Common Expenses and will allocate the General Common Expenses among the Accessory Unit, the Club Unit, the Hotel Section (as a whole) and the Residential Section (as a whole) (each, a "General Common Charge Obligor") and assess charges ("General Common Charges") accordingly to meet the General Common Expenses. General Common Charges shall also be deemed to include any Special Assessment imposed by the Condominium Board. Except as otherwise expressly set forth in the Declaration or the Condominium By-Laws, the allocation of General Common Expenses among the General

Common Charge Obligors shall be made as shown in Exhibit 2 annexed hereto and made a part hereof (the "Expense Allocation Schedule"). The Condominium Board shall advise the General Common Charge Obligors promptly in writing of the amount of General Common Charges payable by each of them and shall furnish to such parties copies of each Budget on which such General Common Charges are based.

(b) The allocations methodology for the General Common Charges set forth on the Expense Allocation Schedule shall not change, except pursuant to Article 11 hereof.

(c) Pending the resolution in Arbitration of any dispute with respect to the allocation of General Common Expenses, the allocation to the affected General Common Charge Obligors of the disputed components of the General Common Expenses shall remain as determined by the Condominium Board, provided that upon such resolution, any resulting change in the allocation of such General Common Expenses shall be effective retroactive to the effective date of the allocation or re-allocation that gave rise to the dispute.

6.1.2 The Condominium Board may, at its sole discretion, from time to time increase or decrease the amount of General Common Charges allocated to and payable by the General Common Charge Obligors, and may modify its prior determination of the General Common Expenses for any fiscal year so as to increase or decrease the amount of General Common Charges payable for such fiscal year or portion thereof; however, no such revised determination of General Common Expenses shall have a retroactive effect on the amount of General Common Charges payable for any period prior to the date of such new determination. However, a prior period's deficit may be included in General Common Charges for a subsequent period or paid from a Special Assessment levied against all General Common Charge Obligors.

6.1.3 The failure or delay of the Condominium Board to prepare or adopt a budget or to determine the General Common Expenses for any fiscal year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof or a release of any General Common Charge Obligor from the obligation to pay General Common Charges. In such event, the General Common Charges that were computed on the basis of the General Common Expenses last determined for any fiscal year or portion thereof shall continue thereafter to be the General Common Charges payable until a new determination of the General Common Expenses shall be made.

6.1.4 In addition to the foregoing duty to determine the amount of and assess General Common Charges, the Condominium Board shall have the right to levy special assessments ("Special Assessments") to meet the General Common Expenses. All Special Assessments shall be levied against all General Common Obligors equitably in proportion to: (a) their respective Common Interests, or (b) the anticipated benefit(s) to the affected Unit Owners, as determined by the Condominium Board (and in the latter case, all disputes with respect thereto shall be resolved in Arbitration). The Condominium Board shall have all rights and remedies for the collection of Special Assessments as are provided herein for the collection of General Common Charges.

6.1.5 Except as otherwise set forth to the contrary herein or in the Declaration, the excess of all rents, profits and revenues derived from the rental or use of any space or facility forming part of or included in any General Common Element remaining after the deduction of any non-capital expenses paid or incurred in connection therewith shall be collected by the Condominium Board, as agent for and on behalf of the Unit Owners, and shall constitute income of the Unit Owners. Notwithstanding any provision contained in these Condominium By-Laws or in the Declaration to the contrary, in no event shall any rent, profit or revenue derived from the rental or use of any space in the Building be deemed to be derived from the rental or use of any floor slabs, ceilings or walls delineating or enclosing such space or the incidental use of any portion of any Common Elements appurtenant to such space.

6.1.6 There shall be no right of a General Common Charge Obligor or a Unit Owner to reduce its General Common Charges by opting out of any services or waiving any benefits provided by the Condominium Board.

6.1.7 Except as otherwise provided herein, all costs and expenses in connection with the operation, care, upkeep and maintenance of, and the making of Alterations to, and Repairs of, the Residential Limited Common Elements and the Residential Section generally (the "Residential Common Expenses") shall be determined and incurred and paid by the Residential Board, and borne by the Residential Unit Owners in the manner determined by the Residential Board, but in all events in accordance with the Residential By-Laws. The Residential Board shall be the sole holder of any lien for unpaid General Common Charges, Residential Common Charges or Special Assessments that may be allocated to and/or assessed individually against Residential Unit Owners.

6.1.8 The Residential Common Charges collected by the Residential Board shall, in all instances, first be payable by the Residential Board to the Condominium Board in payment of the Residential Section's allocated share of General Common Charges and before application for any other purpose. If such priority of payment fails to occur, the Condominium Board shall have the right, without limitation, and in addition to all other remedies available at Law, to avail itself of the remedy of specific performance with respect to the obligations of the Residential Board.

6.1.9 Except as otherwise provided herein, all costs and expenses in connection with the operation, care, upkeep and maintenance of, and the making of Alterations to, and Repairs of, the Hotel Limited Common Elements and the Hotel Section generally (the "Hotel Common Expenses") shall be determined and incurred and paid by the Hotel Board, and borne by the Condo Hotel Unit Owners in the manner determined by the Hotel Board, but in all events in accordance with the Hotel By-Laws. The Hotel Board shall be the sole holder of any lien for unpaid General Common Charges, Hotel Common Charges or Special Assessments that may be allocated to and/or assessed individually against the Condo Hotel Unit Owners.

6.1.10 The Hotel Common Charges collected by the Hotel Board shall, in all instances, first be payable by the Hotel Board to the Condominium Board in payment of the Hotel Section's allocated share of General Common Charges and before application for any other purpose. If such priority of payment fails to occur, the Condominium Board shall have the

right, without limitation, and in addition to all other remedies available at Law, to avail itself of the remedy of specific performance with respect to the obligations of the Hotel Board.

6.2 Payment of General Common Charges. All General Common Charge Obligors shall be obligated to pay General Common Charges assessed by the Condominium Board pursuant to the provisions of Section 6.1 at such time or times (but not less than monthly) as the Condominium Board determines. Unless otherwise determined by the Condominium Board, General Common Charges shall be payable monthly, in advance, on the first day of each month.

6.3 Maintenance Obligations; Costs of Same.

6.3.1 General. Except as otherwise provided in the Declaration or these By-Laws (including, without limitation, Section 6.1.2 and Article 8 hereof), all operation, care, upkeep, maintenance, insurance, Repairs and Alterations, painting and decorating, whether structural or non-structural, ordinary or extraordinary, including, without limitation, with respect to the building systems and other plumbing, heating, ventilating, electrical (including emergency power systems), air-conditioning and telecommunications systems, fixtures, Equipment and appliances:

(a) in or of the Residential Section (but excluding any General Common Elements that may be included therein, as and to the extent provided in these By-Laws) shall be made or performed in the manner, and by and at the sole cost and expense of the Residential Unit Owners, as is provided for, described and allocated within the Residential By-Laws;

(b) in or of the Hotel Section (but excluding any General Common Elements that may be included therein, as and to the extent provided in these By-Laws) shall be made or performed in the manner, and by and at the sole cost and expense of the Hotel Unit Owners, as is provided for, described and allocated within the Hotel By-Laws;

(c) in or of and exclusively relating to a Unit (but excluding any Common Elements that may be included therein, as and to the extent provided in these By-Laws) shall be made or performed by the Unit Owner thereof at its sole cost and expense; and

(d) in or of the General Common Elements shall be made or performed by the Condominium Board and the cost and expense thereof shall be charged as a General Common Expense to the General Common Charge Obligors as and in the manner provided in these By-Laws.

6.3.2 Exceptions. Notwithstanding the provisions of Section 6.3.1:

(a) Negligence; Fault. In the event and to the extent that any operation, care, upkeep, maintenance, Repair and Alteration, painting and decorating, whether structural or non-structural, ordinary or extraordinary (collectively, any "Necessary Work"), is required to be made or performed, or any increase in insurance premiums is required to be paid, the entire cost thereof (the "Resulting Cost") with respect to the General Common Elements as a result of the negligence, misuse, neglect or abuse of: (i) the Residential Board or its Occupants or Permittees (including, for the purposes of this Section, the Residential Unit

Owners), the Resulting Cost shall be borne by the Residential Board as an obligation of such Board (but the Residential Board may for its own purposes allocate such cost to one or more Residential Unit Owners if such cost is attributable to such Unit Owner(s), or as otherwise provided in the Residential By-Laws); (ii) the Hotel Board or its Occupants or Permittees (including, for purposes of this Section, the Hotel Unit Owners), the Resulting Cost shall be borne by the Hotel Board as an obligation of such Board (but the Hotel Board may for its own purposes allocate such cost to one or more Hotel Unit Owners if such cost is attributable to such Unit Owner(s), or as otherwise provided in the Hotel By-Laws); (iii) the Accessory Unit Owner or its Occupants or Permittees, the Resulting Cost shall be borne entirely by the Accessory Unit Owner; or (iv) the Club Unit Owner or its Occupants or Permittees, the Resulting Cost shall be borne entirely by the Club Unit Owner; except, with respect to all of the foregoing in each case, to the extent that the Resulting Cost is covered by the proceeds of any insurance actually maintained, or would have been so covered had the insurance that was required to be maintained pursuant to the provisions of these Condominium By-Laws, the Residential By-Laws or the Hotel By-Laws actually been maintained. The Resulting Cost shall not be deemed covered by insurance proceeds pursuant to the preceding sentence to the extent of any applicable deductibles. The foregoing shall not give rise to any claim on the part of any Person for consequential, special, exemplary or punitive damages.

(b) Cleaning of Windows. The washing and cleaning of interior glass surfaces of the exterior windows of the Building shall be the responsibility of the respective Unit Owner(s) (or the Sub-Board(s), as applicable) into whose Unit(s) (or Limited Common Element(s), as applicable) such windows face. All window interiors shall be cleaned a minimum of five times per calendar year. The Condominium Board may from time to time enforce the responsibility of Unit Owners (or Sub-Boards) to wash and clean the interior surfaces of windows as aforesaid. Notwithstanding that certain of the windows and window frames of the Building shall be part of the Building Façade, the exterior glass surfaces of the exterior windows of the Building will be washed and cleaned: (i) by the Residential Board with respect to the windows enclosing the Residential Section (and the cost thereof allocated as a Residential Common Expense); (ii) by the Hotel Board with respect to the windows enclosing the Hotel Section (and the cost thereof allocated as a Hotel Common Expense); and (iii) by the Accessory Unit Owner and the Club Unit Owner with respect to the windows enclosing their respective Units. All other windows of the Building shall be washed and cleaned at the direction of the Condominium Board and the cost thereof charged as a General Common Expense of all General Common Charge Obligors.

(c) Repair or Replacement of Windows. Any repair or replacement of exterior glass windows in the Building, because of breakage or otherwise, shall be made, by, subject to the provisions of the Condominium Documents (*e.g.*, regarding consents required in connection with Alterations and/or Repairs) and at the expense of the Person charged (as set forth in subsection (b) above) with the cleaning thereof (although each of the Residential Board and the Hotel Board may allocate and assess the cost thereof in accordance with the terms of the applicable Sub-By-Laws). The cost of any window replaced by the Condominium Board shall be charged to the General Common Charge Obligors as a General Common Expense, on an allocated basis (as shown on the Expense Allocation Schedule), unless such breakage is caused by or attributable to the negligence, misuse or abuse of a Board or a Unit Owner or its Occupants or Permittees, in which event such replacement of glass windows shall be made by

the Condominium Board and the cost thereof shall be allocated as described in subsection 6.3.2(a) above.

(d) Certain General Common Elements. Subject to the foregoing terms of this Section 6.3.2 and Article 8 of these By-Laws and Article 15 of the Declaration, all operation (including the cost of any utilities), care, upkeep, maintenance, Repairs and Alterations (subject to the next sentence), and painting and decorating, of any General Common Element over which any Unit Owner has exclusive control and an exclusive right to use (*e.g.*, roof terrace), shall be made by the applicable Unit Owner having such control and right (as provided in Article 15 of the Declaration) at its/their sole cost and expense, but in each case subject to the reasonable approval of the Condominium Board. Subject to Sections 6.3.2(a) and 8.3 hereof, any structural or extraordinary Repairs or Alterations of or to such category of General Common Elements shall be made by the Condominium Board and charged to the General Common Charge Obligors as a General Common Expense and allocated as shown on the Expense Allocation Schedule. Additional requirements regarding the maintenance and Repair of terraces appurtenant to Residential Units and/or Hotel Units are addressed in the applicable set of Sub-By-Laws.

(e) Roofs; Roof Telecom Platforms. Although maintenance and Repairs of the roof, as General Common Elements, shall be made by the Condominium Board and chargeable to the General Common Charge Obligors as a General Common Expense, if the Transient Hotel Unit Owner or its designee exercises its rights under Article 15 of the Declaration to install and erect a Roof Telecom Platform, which shall be the property of the Transient Hotel Unit Owner on the roof of the Condominium, then the maintenance and Repair of any such Roof Telecom Platform, whether ordinary or extraordinary in nature, shall be the obligation of, and the expense thereof shall be borne by, the Transient Hotel Unit Owner.

6.3.3 Manner of Performing Maintenance and Repairs. All maintenance and Repairs by any Unit Owner or Board shall be made in accordance with the applicable provisions of Article 8 hereof as if the references therein to Alterations were references to maintenance and Repairs.

6.3.4 Standard of Maintenance. Each Unit (and all portions thereof), each Residential Limited Common Element, Hotel Limited Common Element and the General Common Elements shall be kept and maintained in a good and proper manner, consistent with standards of maintenance and appearance as are commensurate with other similar properties in the vicinity of the Building, by whichever Person is responsible for the maintenance and Repair thereof under the Condominium Documents; and each such Unit Owner or Board shall promptly make or perform, or cause to be made or performed, all maintenance work, Repairs, Alterations, painting or decoration as are necessary in connection therewith and to ensure that such Unit, Residential Limited Common Element, Hotel Limited Common Element and General Common Element meets or exceeds such standards.

6.4 Utility Services. Utilities are provided and supplied to the Property and are distributed within the Building to each Utility Service Area and to the General Common Elements, and shall be paid for, as hereinafter set forth. For purposes of this Section 6.4, a

"Utility Service Area" means the Accessory Unit, the Club Unit, the Hotel Section and the Residential Section.

6.4.1 Electricity.

(a) General. Electricity service for the Building will be provided by Consolidated Edison Company of New York, Inc. ("Con Ed") or other utility company/ies or supplier(s) from time to time serving the Property and distributed to and for each Utility Service Area. The Accessory Unit has its own direct Con Ed electricity meter and will responsible for paying directly to ConEd or the utility supplying such electricity for the usage therein. Electricity usage in the remainder of the Building will be measured through one or more direct electric meters; and then submetered to each of the Hotel Section, Residential Section and Club Unit. Each of the Hotel Board, Residential Board and Club Unit Owner shall be required to make payment for electricity usage in its applicable portion of the Property in accordance with such submeters to the Condominium Board which shall be responsible for paying the utility company/ies or supplier(s) supplying such electricity.

(b) Direct Metering. Notwithstanding the foregoing, in the event and to the extent that any General Common Charge Obligor shall at any time have or arrange to have all or some of its electricity service supplied directly and exclusively to and for all or any portion of its Utility Service Area, by Con Ed or another utility or supplier, the cost of such electricity shall be paid by such General Common Charge Obligor directly to such supplier and the Condominium Board shall not be obligated to pay any part of any cost required for such direct electric service.

6.4.2 Gas. Gas for the Building will be supplied by Con Edison or other utility company/ies or supplier(s) from time to time serving the Property. Each General Common Charge Obligor having or arranging to have gas service supplied and metered directly to all or any portion of its Utility Service Area shall pay the cost of such gas service directly to the applicable utility company or supplier and the Condominium Board shall not be obligated to pay any part of any cost required for such direct gas service.

6.4.3 Domestic Water; Sewer Rents. Domestic water and sewer services for the Building shall be supplied by The City of New York or other utility servicing the Property. Domestic water supplied to each Utility Service Area for the benefit of the applicable General Common Charge Obligor will be sub-metered by the Condominium Board; and each General Common Charge Obligor shall be required to make payment therefor to the Condominium Board, which shall be responsible for paying the domestic water and sewer charges to The City of New York (or other utility).

6.4.4 Chilled Water. Chilled water (for air conditioning) will be provided by the Condominium Board throughout the Building. Chilled water supplied to each Utility Service Area for the benefit of the applicable General Common Charge Obligor will be sub-metered by the Condominium Board; and each General Common Charge Obligor shall be required to make payment to the Condominium Board in respect of the allocated costs and charges therefor.

6.4.5 Steam. Steam service for the Building will be provided by ConEd or other utility company/ies or supplier(s) from time to time serving the Property and distributed to and for each Utility Service Area. The Residential Section will purchase steam directly from Con Ed and will responsible for paying directly to ConEd or the utility supplying such steam for its usage thereof. Steam usage in the remainder of the Building will be measured through one or more direct steam meters; and then submetered to each of the Hotel Section, the Accessory Unit and Club Unit. Each of the Hotel Board, the Accessory Unit Owner and Club Unit Owner shall be required to make payment for steam usage in its applicable portion of the Property in accordance with such submeters to the Condominium Board which shall be responsible for paying the utility company/ies or supplier(s) supplying such steam. The steam charges in respect of the General Common Elements shall be allocated among the General Common Charge Obligors in accordance with their respective Common Interests.

6.4.6 Utilities for General Common Elements. The usage and consumption of electricity, gas, domestic water, sewer service, chilled water, steam and any other utility by, for or in respect of the General Common Elements will be separately metered, submetered or otherwise determined and the costs and charges therefor will be allocated among the General Common Charge Obligors as a General Common Expense on the basis of Common Interest.

6.4.7 Utility Costs Payable as General Common Charges. The Condominium Board may require each General Common Charge Obligor to pay monthly in advance to the Condominium Board the charges reasonably estimated or anticipated as being attributable to each such General Common Charge Obligor with respect to the aforementioned utilities. All such estimated charges shall be subject to periodic adjustment based upon actual usage.

6.4.8 Meter Readings.

(a) The Condominium Board shall, as necessary, engage the services of a reputable meter reading and/or billing company to act on its behalf in properly billing and accounting for each General Common Charge Obligor's share of utility costs reimbursable to the Condominium Board.

(b) All such billings to General Common Charge Obligors by or on behalf of the Condominium Board with respect to metered or submetered utilities shall be at the Building's and/or Condominium Board's cost; except that the allocable cost of reading the meters or submeters of each General Common Charge Obligor may be added to the charges payable to the Condominium Board by each such General Common Charge Obligor.

6.4.9 Further Submetering. Each General Common Charge Obligor shall have the right to sub-submeter or allocate, as applicable and as determined in its sole discretion, all or any portion of the utilities within its Utility Service Area and, to bill or otherwise collect amounts from its Occupants, Residential Unit Owners or Hotel Unit Owners, as the case may be, with respect thereto. The individual Residential Unit Owners shall pay their share of their Residential Section's utility costs to the Residential Board in the manner provided in the Residential By-Laws. The Hotel Unit Owners shall pay their share of the Hotel Section utility costs to the Hotel Board in the manner provided in the Hotel By-Laws. No such sub-submetering or other allocations or arrangements made by a General Common Charge Obligor,

however, shall affect or diminish the primary obligation of such General Common Charge Obligor to the Condominium Board with respect to any such charges, as applicable.

## ARTICLE 7

## REAL ESTATE TAXES; TAX CERTIORARI PROCEEDINGS

7.1 Real Estate Taxes; Impositions.

7.1.1 Until the Units are separately assessed and billed for real estate tax purposes, the Condominium Board will pay all real estate taxes with respect to the Property to the Department of Finance of The City of New York (or directly to Declarant if and to the extent Declarant has paid such taxes) and allocate the cost thereof (and all refunds thereof) among all the Units as hereinafter set forth. The Condominium Board will first allocate such taxes to each General Common Charge Obligor in accordance with their respective proportionate Common Interests. The allocation of the Property's taxes to the Residential Section as a whole will then be pro-rated among the individual Residential Units in the manner set forth in the Residential By-Laws. The allocation of the Property's taxes to the Hotel Section as a whole will then be pro-rated among the Hotel Unit Owners in the manner set forth in the Hotel By-Laws. The General Common Charge Obligors shall be responsible and shall pay the Condominium Board for their respective allocated shares (determined as aforesaid), which payments shall be payable as if the same were General Common Charges and will be due at least ten (10) Business Days prior to the due date of such taxes. Such taxes will be paid by the Condominium Board in a timely manner so that no lien will be placed on the Property or on any Unit. A Unit Owner will not be responsible for the payment of, and will not be subject to any lien arising from, the non-payment of real estate taxes assessed against or allocated to any other Unit(s). Each Unit Owner shall be responsible for the Impositions payable in respect of its Unit.

7.2 Tax Certiorari Proceedings. The Condominium Board, on behalf of and as agent for the Commercial Unit Owners, shall commence, pursue and settle certiorari proceedings to obtain reduced real estate tax assessments with respect to such Unit Owners' Units but only to the extent requested and authorized to do so, in writing, by the applicable Commercial Unit Owner, and provided such Unit Owner indemnifies the Condominium Board and the other Unit Owners from and against all Costs resulting from such proceedings. During the pendency of any such proceedings, the Unit Owner(s) making such request to the Condominium Board and joining therein shall share in the costs thereof in relative proportion to their respective Common Interest; and upon the conclusion of any such proceedings, such Persons shall, after retroactive adjustment for any overpayments or underpayments as a result of prior sharing on the basis of Common Interest, share in the costs thereof in relative proportion to the benefits derived by such Unit Owners therefrom. In the event any such Unit Owner individually seeks to have the assessed valuation of its Unit reduced by bringing a separate certiorari proceeding, the Condominium Board, if necessary or desirable for such proceeding, will execute any documents or other papers required for, and otherwise cooperate with such Unit Owner (at such Unit Owner's cost and expense) in pursuing, such reduction, provided that such Unit Owner indemnifies the Condominium Board from all Costs resulting from such proceedings. Certiorari proceedings to obtain reduced real estate tax assessments with respect to the Residential Units shall be commenced, pursued, compromised and settled as and to the extent set forth in the

Residential By-Laws. Certiorari proceedings to obtain reduced real estate tax assessments with respect to the Condo Hotel Units shall be commenced, pursued, compromised and settled as and to the extent set forth in the Hotel By-Laws.

## ARTICLE 8

## ALTERATIONS

8.1 Alterations to Units.

8.1.1 Except as otherwise provided in the Declaration, no Unit Owner (other than Declarant or its designee, or Residential Sponsor or Condo Hotel Sponsor or their respective designee(s) as the owner of Unsold Residential Units or Unsold Condo Hotel Units, as the case may be) shall make any Alteration or Repair in or to its Unit if the same would affect the structure or systems of the Building, without the prior written approval of the Condominium Board, which approval will not be unreasonably withheld. Prior to, and as a condition of, the granting of its consent to the making of any such Alteration or Repair in or to a Unit (to the extent such consent is required), the Condominium Board, at its option, may require the Unit Owner to execute an agreement, in form and substance satisfactory to the Condominium Board, setting forth the terms and conditions under which such Alteration may be made.

8.1.2 All Repairs which would affect the structure or systems of the Building and all Alterations to any Unit shall be made in accordance with plans and specifications, which plans and specifications shall be subject to review and approval by the Condominium Board. All Alterations shall be performed: (i) at the Unit Owner's sole cost and expense; (ii) in a manner which will not interfere with, or cause any labor disturbances or stoppages in, the work of Condominium employees or other contractors or subcontractors employed in the Units or the Building; (iii) during only such days and hours as may be specified by the Condominium Board in its reasonable judgment; (iv) only after obtaining such insurance, naming the Condominium Board and its managing agent, the Residential Board and its managing agent, and the Hotel Board and its managing agent as additional insureds, as the Condominium Board may require; (v) employing such architects, engineers, contractors, subcontractors, suppliers and other laborers who are on the managing agent's then approved list, as such list may change from time to time, in the sole discretion of the Condominium Board; and (vi) in compliance with the Declaration, these By-Laws, the Residential By-Laws (including the Residential Rules and Regulations), as applicable, the Hotel By-Laws (including the Hotel Rules and Regulations), as applicable, and the General Rules and Regulations, if any, the overall Building standards and all Laws.

8.1.3 The Unit Owner performing or causing, permitting or suffering such Alterations to be performed shall, if required by the Condominium Board, pay the cost of (x) any necessary amendment of the Declaration and the floor plans of the Condominium, if appropriate, to reflect any such Alterations, (y) obtaining all necessary governmental permits, authorizations, certificates and licenses for the commencement and completion of any Alterations (and copies thereof shall be delivered to the Condominium Board promptly after the issuance thereof and prior to the commencement of any Alterations or Repairs), and obtaining any amendment to the Certificate of Occupancy for such Unit, if necessary, and (z) any architectural, engineering and

legal fees incurred by the Condominium Board in connection with such work. Neither the Condominium Board nor any Unit Owner (other than the Unit Owner making or causing, permitting or suffering any Alterations to be made in or to its Unit) shall incur any liability, cost, or expense either: (a) in connection with the preparation, execution, or submission of the applications referred to above; (b) to any contractor, subcontractor, supplier, architect, engineer or laborer on account of any Alterations made or caused, permitted or suffered to be made by any Unit Owner; (c) to any person or entity asserting any claim for personal injury or property damage arising therefrom; or (d) arising out of a Unit Owner's failure to obtain any permit, authorization, certificate or license, or to comply with the Declaration, these By-Laws, the Residential By-Laws (including the Residential Rules and Regulations), as applicable, the Hotel By-Laws (including the Hotel Rules and Regulations), as applicable, and the General Rules and Regulations, if any, and all Laws insofar as the same relate to Alterations. A Unit Owner making or causing, permitting or suffering any tenant or occupant to make, any Alteration shall be deemed to have agreed to indemnify and hold the Condominium Board and its managing agent, the Residential Board and its managing agent, the Hotel Board and its managing agent and all other Unit Owners harmless from and against any liability, loss, cost, or expense arising therefrom, and from and against all Costs resulting from, arising out of, or in any way connected with, any of the foregoing.

8.1.4 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 an Alteration in or to any Unit so approved by the Condominium Board 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, supplier, architect or engineer on account of such Alteration or to any person having any claim for injury to person or damage to property arising therefrom.

8.1.5 Notwithstanding anything to the contrary contained in this Section 8.1 (but subject to all Laws), however, Declarant, the Sponsors and their designees shall have the right pursuant (and subject) to the terms of the Declaration, without the approval of any Board, to: (i) make any Alterations and Repairs in or to any Unsold Units, whether structural or non-structural, interior or exterior, ordinary or extraordinary; and (ii) subdivide, combine and change the boundary walls of Unsold Units. Additionally, an initial purchaser of an Unsold Unit shall have the right, without the approval of the Board, to make any Alterations in or to its Unit, provided that Declarant, the applicable Sponsor or their designee has consented to the same in writing at or prior to the initial closing of title to such Unit, and that such purchaser complies with all of the other requirements of this Article 8.

8.1.6 In addition to the requirements set forth above in this Section 8.1, until a permanent Certificate of Occupancy is obtained for the Building, no Unit Owner shall make any Alterations in or to its Unit without first notifying Declarant and the Sponsors of the same in writing and complying with Declarant's and the applicable Sponsor's reasonable requirements with respect to the same. Such requirements may include, but need not be limited to, the requirements that:

(a) such work not include any change that would result in a delay in obtaining a temporary or permanent Certificate of Occupancy for the Building, or any amendment to, or extension of, the same if theretofore issued;

(b) the Unit Owner posts a bond or other similar security that is reasonably acceptable to Declarant or the applicable Sponsor in an amount sufficient (in Declarant or such Sponsor's reasonable judgment) to insure the diligent completion of the work and the filing of any required notices or certificates with respect to such work and the completion of the same with all Governmental Authorities having jurisdiction;

(c) such work not be commenced until the Unit Owner causes all required plans, specifications, notices and/or certifications to be filed with all Governmental Authorities having jurisdiction, procures all required permits and licenses with respect to the same, and delivers copies of all such plans, specifications, notices, certifications, permits and licenses to Declarant and the applicable Sponsor;

(d) such work be diligently prosecuted to completion in compliance with all plans, specifications, notices and/or certifications and in conformity with all permits and licenses;

(e) Declarant and the applicable Sponsor and their representatives shall be given reasonable opportunity, from time to time, to inspect such work as it progresses;

(f) promptly after the completion of such work, all necessary inspections and approvals of the same shall be obtained, all necessary notices and/or certifications shall be filed with the appropriate Governmental Authorities and Declarant and the applicable Sponsor shall be given a copy of all such inspections, approvals, notices and certifications;

(g) the Unit Owner shall indemnify and hold Declarant and the Sponsors harmless from any cost, expense, claim, or liability arising, directly or indirectly, from such work, including, without limitation, any cost, expense, claim, or liability incurred or suffered by the Sponsors due to any violation of a Law or due to any delay in obtaining a temporary or permanent Certificate of Occupancy for the Building (or any amendment to, or extension of, the same if theretofore issued) as a result of such work or the failure to make all appropriate governmental filings in connection with the same; and

(h) all contractors shall be duly licensed to the extent required by applicable Laws and, if required under any contract with any union whose members are performing services at the Building (including, without limitation, services directly or indirectly at the behest, for the benefit, or for the account of Declarant or the Sponsors, any other Unit Owner, or Board), such work shall be performed solely by union members.

8.1.7 If any Unit Owner commences any such Alterations in violation of the foregoing terms and conditions, or fails to comply with the reasonable requirements of Declarant or the applicable Sponsor in connection with the same, Declarant or the applicable Sponsor, as the case may be, shall be entitled to cause such work by the Unit Owner to be halted, including, without limitation, to cause the managing agent to deny access to the Building to the Unit

Owner's workers and suppliers, until the Unit Owner complies with the same. During the period until such Unit Owner is permitted hereunder to resume its work, Declarant and the applicable Sponsor shall have the right to perform any and all work in and to such Unit Owner's Unit as shall be necessary, in Declarant or the applicable Sponsor's sole judgment, in order to avoid any delay in obtaining a temporary or permanent Certificate of Occupancy for the Building (or any amendment to, or extension of, the same if theretofore issued), whether or not such work shall be in compliance with the plans and specifications for the work theretofore performed by, or on behalf of, such Unit Owner. The cost and expense of any such work performed by Declarant or such Sponsor, as the case may be, shall be borne by such Unit Owner and shall be paid to Declarant or such Sponsor, as applicable, within fifteen (15) days of written demand therefor.

8.2 Alterations to Residential Units. Unless otherwise provided in the Residential By-Laws, the Residential Board shall have the exclusive right to make Alterations to the Residential Limited Common Elements. In addition, subject in all events to the provisions hereof regarding conflicting terms, Alterations to the Residential Units and the Residential Limited Common Elements shall be further subject to such additional terms, conditions and requirements as may be contained in the Residential By-Laws from time to time or as shall be imposed by the Residential Board (including, without limitation, requiring that any approvals or consents required or permitted to be obtained by a Residential Unit Owner from the Condominium Board, a Unit Owner other than another Residential Unit Owner or the Hotel Board be obtained by the Residential Board on the Residential Unit Owner's behalf). Any of the foregoing requirements and authority of the Condominium Board set forth in Section 8.1 may be delegated by the Condominium Board to the Residential Board with the agreement of the Residential Board.

8.3 Alterations to Transient Hotel Unit or Condo Hotel Units. Unless otherwise provided in the Hotel By-Laws, the Hotel Board shall have the exclusive right to make Alterations to the Hotel Limited Common Elements. In addition, subject in all events to the provisions hereof regarding conflicting terms, Repairs to and Alterations of the Condo Hotel Units and the Hotel Limited Common Elements shall be further subject to such additional terms, conditions and requirements as may be contained in the Hotel By-Laws from time to time or as shall be imposed by the Hotel Board (including, without limitation, requiring that any approvals or consents required or permitted to be obtained by the Condo Hotel Unit Owner from the Condominium Board, a Unit Owner other than another Condo Hotel Unit Owner, or the Residential Board be obtained by the Hotel Board on the Condo Hotel Unit Owner's behalf). Repairs to and Alterations of the Transient Hotel Unit shall be subject only to the requirements set forth herein and in the Declaration and applicable Law. Any of the foregoing requirements and authority of the Condominium Board set forth in Section 8.1 may be delegated by the Condominium Board to the Hotel Board with the agreement of the Hotel Board.

8.4 Alterations to General Common Elements.

8.4.1 Cost and Approval. Alterations in or to any General Common Element may be made only by the Condominium Board, authorized in accordance with the provisions hereof and the cost thereof shall be charged to the General Common Charge Obligors in accordance with Article 6 hereof.

8.4.2 Without Consent of Affected Unit Owner(s) or Board(s). Notwithstanding any other provision of the Condominium Documents, to the extent that any Alteration (including Repair) of the General Common Elements is necessary to comply with Laws or Insurance Requirements, or for the health or safety (but not the general comfort or welfare) of the Unit Owners or their Occupants or Permittees or in the case of an Emergency, the Condominium Board may make and perform the same without the consent of any Unit Owner(s) or any other Board that would, or whose Unit(s) or Limited Common Elements would, be affected thereby.

8.5 Subdivision and Combination of Commercial Units. Each of the Commercial Unit Owners will have the right to alter, divide, subdivide and combine portions of its Unit (including, without limitation, subdividing the Transient Hotel Unit and establishing the resulting Units as additional Condo Hotel Units) subject to the provisions of all applicable Laws, the Declaration and these By-Laws.

## ARTICLE 9

## MECHANIC'S LIENS, VIOLATIONS; COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS; HAZARDOUS MATERIALS

9.1 Mechanic's Liens. In the event that any mechanic's lien is filed against any Unit or other portion of the Property as a result of services provided or materials furnished to, or Alterations or Repairs or other work performed for: (a) the Accessory Unit Owner or Club Unit Owner (or such Unit Owner's Occupants or Permittees) with respect to all or any portion of its Unit; a Hotel Unit Owner (or such Unit Owner's Occupants or Permittees) with respect to all or any portion of its Unit, or any Hotel Limited Common Elements over which it exercises exclusive control pursuant to the Declaration or the Hotel By-Laws; or a Residential Unit Owner (or such Unit Owner's Occupants or Permittees) with respect to its Unit, or any Residential Limited Common Elements over which it exercises exclusive control pursuant to the Declaration or the Residential By-Laws (each such Unit Owner, for purposes of this Section 9.1, being referred to as the "Lien-Causing Unit Owner"); (b) the Residential Board (or its managing agent or such Board's Occupant's or Permittees) with respect to the Residential Limited Common Elements (other than those over which one or more Residential Unit Owners exercises exclusive control pursuant to the Declaration or the Residential By-Laws) or any Residential Unit owned by the Residential Board or its designee; or (c) the Hotel Board (or its managing agent or such Board's Occupant's or Permittees) with respect to the Hotel Limited Common Elements (other than those over which one or more Hotel Unit Owners exercises exclusive control pursuant to the Declaration or the Hotel By-Laws) or any Hotel Unit owned by the Hotel Board or its designee; (d) the Condominium Board (or its managing agent or such Board's Occupants or Permittees) with respect to the General Common Elements or any Unit owned by the Condominium Board or its designee (in each such case (b), (c) or (d), for purposes of this Section, such Board being referred to as the "Lien-Causing Board"), or alleged to have been provided or furnished to, or performed for, any such Lien-Causing Unit Owner or Lien-Causing Board, as the case may be, then such Lien-Causing Unit Owner or Lien-Causing Board shall promptly notify the Condominium's managing agent (or, if there is no managing agent, the Condominium Board) of same, and shall cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting a bond or other security as shall be required by law to obtain such release and discharge, in each case within sixty (60) days after

receiving from the Residential Board, Hotel Board or Unit Owner whose Unit (and/or Residential Limited Common Element or Hotel Limited Common Element, as applicable) has been adversely affected by such mechanic's lien, or from the Condominium Board if any General Common Elements have been adversely affected by such mechanic's lien, a notice (a "Lien Notice") identifying the lien and requesting that the same be released or discharged, failing which: (y) the Condominium Board (in the case of a Lien-Causing Unit Owner or the Residential Board or Hotel Board that is a Lien-Causing Board), or (z) each of the Unit Owners, the Residential Board or the Hotel Board (if the Condominium Board is the Lien-Causing Board), shall have the rights set forth in Article 12 of these By-Laws. For purposes of this Section 9.1, the Residential Board, Hotel Board or Unit Owner shall be deemed to be "adversely affected" by a mechanic's lien (which is the responsibility of a Lien-Causing Unit Owner or Lien-Causing Board to remove, as aforesaid) if: (i) in the case of the Residential Board or Hotel Board that is affected, any of the Residential Units within its Residential Section, or any of the Hotel Units within its Hotel Section, any Residential Limited Common Elements within the Residential Section or any Hotel Limited Common Elements within the Hotel Section, or (ii) in the case of a Unit Owner that is affected, such Unit Owner's Unit and/or any Limited Common Elements over which such Unit Owner exercises exclusive control pursuant to the Condominium Documents, as applicable, is/are reasonably purportedly (whether or not actually) encumbered by or subjected to the mechanic's lien (provided such mechanic's lien arises from services provided or materials furnished to, or Alterations or Repairs or other work performed for or alleged to have been provided or furnished to, or performed for, the Lien-Causing Unit Owner or the Lien-Causing Board, and not by, to or for the putatively 'adversely affected' Unit Owner or Board or its/their Occupants or Permittees). In all events, the Lien-Causing Unit Owner or Board shall defend, protect, indemnify and hold harmless all other Unit Owners and Boards (and their Occupants) from and against any and all Costs arising out of or resulting from the applicable mechanic's lien. Copies of all Lien Notices sent by the Residential Board, Hotel Board or Unit Owner shall be simultaneously sent to the Condominium Board.

9.2 Violations. In the event that any violation shall be noted or noticed against any Unit or other portion of the Property as a result of any condition at the Property created or suffered by or existing with respect to: (a) the Accessory Unit Owner or Club Unit Owner (or such Unit Owner's Occupants or Permittees) with respect to all or any portion of its Unit; a Hotel Unit Owner (or such Unit Owner's Occupants or Permittees) with respect to all or any portion of its Unit, or any Hotel Limited Common Elements over which it exercises exclusive control pursuant to the Declaration or the Hotel By-Laws; or a Residential Unit Owner (or such Unit Owner's Occupants or Permittees) with respect to its Unit, or any Residential Limited Common Elements over which it exercises exclusive control pursuant to the Declaration or the Residential By-Laws (each such Unit Owner, for purposes of this Section 9.2, being referred to as the "Violation-Causing Unit Owner"); (b) the Residential Board (or its managing agent or such Board's Occupant's or Permittees) with respect to the Residential Limited Common Elements (other than those over which one or more Residential Unit Owners exercises exclusive control pursuant to the Declaration or the Residential By-Laws) or any Residential Unit owned by the Residential Board or its designee; or (c) the Hotel Board (or its managing agent or such Board's Occupant's or Permittees) with respect to the Hotel Limited Common Elements (other than those over which one or more Hotel Unit Owners exercises exclusive control pursuant to the Declaration or the Hotel By-Laws) or any Hotel Unit owned by the Hotel Board or its designee; (d) the Condominium Board (or its managing agent or such Board's Occupants or Permittees)

with respect to the General Common Elements or any Unit owned by the Condominium Board or its designee (in each such case (b), (c) or (d), for purposes of this Section, such Board being referred to as the "Violation-Causing Board"), the Violation-Causing Unit Owner or the Violation-Causing Board, as the case may be, shall promptly notify the Condominium's managing agent (or, if there is no managing agent, the Condominium Board) of same, and shall cause the violation to be removed and the condition giving rise to the violation to be cured, in each case within sixty (60) days after receiving, from the Residential Board, Hotel Board or Unit Owner whose Unit or Residential Limited Common Element or Hotel Limited Common Element, as applicable, has been adversely affected by such violation, or from the Condominium Board if any General Common Elements have been adversely affected by such violation, a notice (a "Violations Notice") identifying the violation and requesting that the same be removed and the condition giving rise to it be cured (provided that if such violation cannot, notwithstanding diligent efforts, be removed and/or such condition cured within such sixty (60) day period, the Violation-Causing Unit Owner or the Violation Causing Board, as the case may be, commences the removal of such violation and/or the curing of such condition as promptly as practicable within such sixty (60) day period and thereafter proceeds with diligence and continuity to complete such removal and/or cure); failing which: (y) the Condominium Board (in the case of a Violation-Causing Unit Owner or the Residential Board or Hotel Board that is a Violation-Causing Board), or (z) each of the Unit Owners and the Sub-Boards (if the Condominium Board is the Violation-Causing Board), shall have the rights set forth in Article 12 of these By-Laws. For purposes of this Section 9.2, a Board or a Unit Owner shall be deemed to be "adversely affected" by a violation or condition giving rise to a violation (which is the responsibility of a Violation-Causing Unit Owner or Violation-Causing Board to remove or cure, as aforesaid) if: (i) in the case of the Residential Board or Hotel Board that is affected, any of the Residential Limited Common Elements or Hotel Limited Common Elements, as applicable; or (ii) in the case of a Unit Owner that is affected, any of such Unit Owner's Unit or appurtenant Limited Common Elements over which such Unit Owner exercises exclusive control pursuant to the Condominium Documents, as applicable, in each case, is/are reasonably purportedly (whether or not actually) subjected to the violation or the violation is noted against same (provided such violation arises from a condition at the Property created or suffered by the Violation-Causing Unit Owner or the Violation-Causing Board, and not by the putatively 'adversely affected' Unit Owner, Residential Board or Hotel Board or its/their Occupants or Permittees). In all events, the contesting Unit Owner or Board shall defend, protect, indemnify and hold harmless all other Unit Owners and Boards (and their Occupants) from and against any and all Costs arising out of or resulting from any proceeding undertaken pursuant to this Section 9.2 or the underlying violation or non-compliance related thereto. Copies of all Violations Notices sent by the Residential Board, Hotel Board or Unit Owner shall be simultaneously sent to the Condominium Board.

9.3 Compliance With Laws, Insurance Requirements. Each Unit Owner and each Board, without cost or expense to the other Unit Owner(s) and Boards (except that costs and expenses incurred by the Condominium Board pursuant to this sentence are General Common Expenses), shall promptly comply and/or cause its Occupants or Permittees to comply with all Laws and Insurance Requirements applicable to such Unit Owner's or Board's Unit, Limited Common Elements or General Common Elements, as applicable; provided, however, that each Unit Owner and each Board shall have the right to contest, by appropriate legal or administrative proceedings diligently conducted in good faith, the validity or applicability to it of any such Law or Insurance Requirement and may delay compliance until a final decision has been rendered in

such proceedings and appeal is no longer possible, unless such delay is reasonably likely to (1) render the other Unit(s) or any portion of any of the Common Elements liable to forfeiture, involuntary sale or loss, (2) result in involuntary closing of any business conducted thereon or therein, (3) subject another Unit Owner or Board to potential or real civil or criminal liability, (4) impair or prohibit any insurance required to be maintained hereunder or under any of the other Condominium Documents, or (5) subject any other Unit or Common Element to any lien or encumbrance, in which case (with respect to any of the foregoing clauses (1)-(5)) the contesting Unit Owner or Board shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security for complying with such Law or Insurance Requirement. If such alternate measures shall not be effective to prevent any of the foregoing, then such contesting Person shall comply with the applicable requirements pending the resolution of any such contest. Each non-contesting Unit Owner and Board shall cooperate to the fullest extent necessary with any contesting Unit Owner or Board in any proceeding undertaken pursuant to this provision, including executing necessary documents or consents to such contest, provided all costs and expenses incurred with respect thereto are paid by the contesting Unit Owner or Board, as the case may be. In all events, the contesting Unit Owner or Board shall defend, protect, indemnify and hold harmless all other Unit Owners and Boards (and their Occupants) from and against any and all Costs arising out of or resulting from any proceeding undertaken pursuant to this Section 9.3 or the underlying violation or non-compliance related thereto.

9.4 Hazardous Materials. No Unit Owner (or its Occupants or Permittees) or Board shall store, use or permit the storage or use of Hazardous Materials on, about, under or in its Unit, Limited Common Element or otherwise in or on the Property, except to the extent that such Hazardous Materials are necessarily and customarily used in the ordinary course of usual business operations conducted thereon (in the case of the Commercial Units), and any such storage and/or use shall at all times be in compliance with all applicable Environmental Laws. Each Unit Owner and Board shall defend, protect, indemnify and hold harmless each other Board and each other Unit Owner (and the Occupants of each of the foregoing) from and against any and all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including, but not limited to, costs of investigation, remedial response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material stored, used, maintained, released, or otherwise introduced by such Unit Owner or Board (including its Occupants and Permittees) under or in its Unit, Residential Section, Hotel Section, Residential Limited Common Elements, Hotel Limited Common Elements and General Common Elements or otherwise in or on the Property.

## ARTICLE 10

## RECORDS AND AUDITS

10.1 The Condominium Board. The Condominium Board (or its managing agent) shall keep detailed records of the actions of the Condominium Board, minutes of the meetings of the Condominium Board, minutes of the meetings of the Unit Owners, if any, and financial records and books of account with respect to the activities of the Condominium Board, including a listing of all receipts and expenditures. In addition, the Condominium Board shall keep a separate account for each General Common Charge Obligor which, among other things, shall contain the

amount of each assessment of General Common Charges and other amounts required by the Condominium Board to be paid by such Person, the date when due, the amounts paid thereon and the balance, if any, remaining unpaid.

10.1.1 Within four months after the end of each fiscal year, an annual report of receipts and expenditures, prepared and certified by an independent certified public accountant or an independent certified public accounting firm, shall be submitted by the Condominium Board to all Unit Owners, Registered Mortgagees and Permitted Mortgagees who have requested the same in writing. The cost of such report submitted by the Condominium Board shall be a General Common Expense.

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

## ARTICLE 11

## INSURANCE; CASUALTY; CONDEMNATION

11.1 Condominium Board's Insurance Requirements. The Condominium Board shall exercise best efforts to obtain and maintain, to the extent obtainable and maintainable at commercially reasonable rates, the following insurance with respect to the General Common Elements:

11.1.1 Insurance against loss customarily included in so-called Special Causes of Loss or Special Form Perils property insurance written with Replacement Costs and Agreed Amount Endorsements, including building collapse and such other insurable hazards as, under good insurance practices from time to time, are insured against for other property and buildings similar to the Building in use, location, height, and type of construction. Such insurance policy shall also insure costs of demolition and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable laws and codes regulating reconstruction following a loss (which insurance for demolition and increased cost of construction shall be in an amount not less than $25,000,000), insuring the General Common Elements, and covering the interests of the Condominium, the Boards, all Unit Owners, all Permitted Mortgagees (as a group) and all Registered Mortgagees, as their respective interests may appear. In addition, the Special Causes of Loss property insurance shall also provide flood (including sewer backup) and earth movement coverage, which flood and earthquake coverages may contain a sublimit per occurrence and in the annual aggregate. The amount of such "All Risk" insurance shall be not less than one hundred percent (100%) of the aggregate replacement cost value of the General Common Elements (without deduction for depreciation), and such insurance shall include Extra Expense and Expediting Expense coverage in such amounts as the Condominium Board, from time to time, may determine. Each such insurance policy shall contain a removal or waiver of the co-insurance provisions and a replacement cost endorsement.

Such coverage shall not include any Unit, or any fixtures, improvements, furnishings or personal property within any Unit;

11.1.2 Workers' Compensation insurance and New York State Disability benefits insurance as required by law and Employer's Liability coverage with limits of not less than $1,000,000, covering any employees of the Condominium (provided, however, that if the Condominium Board does not have any direct employees, such insurance shall be purchased on an "if any" basis);

11.1.3 If not included in the coverage described in Section 11.1.1 hereof, Comprehensive Boiler & Machinery coverage on a replacement cost basis with the limits specified for in the Building's casualty policy (but in any event with a $20,000,000 minimum limit), covering all physical damage to the General Common Elements, and such insurance shall include Extra Expense and Expediting Expense coverage in such amounts as the Condominium Board, from time to time, may determine, and covering the interests of the Condominium, the Boards and all Unit Owners and Registered Mortgagees, as their respective interests may appear. Each such insurance policy shall contain a removal or waiver of the co-insurance provisions and a replacement cost endorsement.

11.1.4 Crime insurance covering the Condominium Board and all officers, directors and employees of the Condominium and of any Managing Agent(s) of the Condominium with limits of not less than $5,000,000, and with such deductible as is commercially reasonable and maintained by owners of properties similar in type, location and quality as the Building.

11.1.5 Directors' and Officers' Errors and Omissions insurance with respect to the Condominium Board with limits of no less than $5,000,000.

11.1.6 Commercial General Liability policy of insurance form ISO CG 001 07 98 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, including, Cross Liability coverage (if available) covering one insured against another, Owned, Hired and Non-Owned Auto Liability, Notice and Knowledge of Occurrence, Unintentional Errors and Omissions, elevators, escalators, independent contractors, and Contractual Liability (covering, to the maximum extent permitted by law, obligations to indemnify the holder of any mortgage covering the General Common Elements) Products and Completed Operations Liability coverage, with limits of not less than $100,000,000 per occurrence and annual aggregate per location, or in such higher limits as the Condominium Board, from time to time, may determine. The policy or policies described in this subsection shall cover the following entities as follows:

(a) The Condominium, Condominium Board, the Managing Agent(s) of the Condominium, the members of the Condominium Board and each officer and employee of the Condominium shall be the named insured on such Commercial General Liability policy;

(b) The Residential Board, together with its subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, servants and assignees,

Managing Agents and Permitted Mortgagees, if any, and such other entities as shall reasonably be requested shall be included as additional insured(s) on a primary basis, except that such policy will not cover the liability of the Residential Board arising from occurrences within or about the Residential Section;

(c) The Hotel Board, together with its subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, servants and assignees, Managing Agents and Permitted Mortgagees, if any, and such other entities as shall reasonably be requested shall be included as additional insured(s) on a primary basis, except that such policy will not cover the liability of the Hotel Board arising from occurrences within or about the Hotel Section; and

(d) Each of the Unit Owners, together with its subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, servants and assignees, Managing Agents and Registered or Permitted Mortgagees, if any, and such other entities as shall reasonably be requested shall be included as additional insured(s) on a primary basis, except that such policy will not cover the liability of a Unit Owner arising from occurrences within or about its own Unit or the Limited Common Elements appurtenant thereto.

11.1.7 If required by the holder of any mortgage covering the General Common Elements, Business Income and/or Rental Income due to an occurrence or accident insured under the policy described in Section 11.1.1 hereof in an amount not less than twenty-four (24) months of General Common Charges payable by the Commercial Unit Owners, the Residential Board and the Hotel Board at the time of purchase or renewal of such policy. The Insurance Trustee shall be named as loss payee as respects this coverage.

11.1.8 At all times prior to completion of the Building:

(a) In lieu of the insurance described in Section 11.1.1 hereof, the Condominium Board shall carry, or cause the owners of the Building or portions thereof (collectively, the "Owners") to carry, "Builder's Risk" insurance or an installation floater in such amount as Lender shall require but in no event less than one hundred percent (100%) of the replacement cost value of the completed Improvements (including, without limitation, one hundred (100%) percent of the replacement cost value of all tenant improvements and betterments (other than those that are owned by tenants and not required to be insured or replaced by the landlord under the applicable lease, but excluding foundations and any other improvements not subject to physical damage). Such policy shall be written on a Builder's Risk Completed Value Form (100% non-reporting) or its equivalent and shall include, without limitation, coverage for loss by testing, collapse, theft, flood, and earth movement. Such insurance policy shall also include coverage for:

(i) Loss suffered with respect to materials, equipment, heating and air conditioning machinery, machinery, and supplies, in each case owned by the Condominium Board or by the applicable Owner or required to be insured by the Condominium Board or an Owner, whether on-site, in transit, or stored offsite and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property in each case owned by

the Condominium Board or an Owner or required to by insured by the Condominium Board or an Owner;

(ii) Soft costs that are recurring costs, which shall include, without limitation, delayed opening loss of income/revenue coverage for a period of recovery of not less than twelve (12) months commencing from the date the Building was to be completed as agreed to by the holder of the mortgage on the General Common Elements, or such improvements and betterments, as the case may be, as well as costs to reproduce plans, specifications, blueprints and models in connection with any restoration following a casualty;

(iii) Demolition, debris removal and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable laws and codes; and

(iv) Operation of building laws (which insurance under this clause (iv) may contain a sublimit of $5,000,000).

(b) The Condominium Board (or the Owner of the Building) shall cause the Construction Manager responsible for the completion of the Building to obtain and maintain Commercial General Liability coverage, including, without limitation, products and completed operations and containing no "X", "C", "U" exclusion if excavation and/or demolition is to be provided, and Automobile Liability insurance with no less than $50,000,000 in limits per occurrence and in the aggregate per project through primary and umbrella liability coverages. Such insurance shall name the Condominium Board (or all Owners) as the insured and the holder of any mortgage on the Building or portion thereof as additional insured. The Condominium Board (or the Owner of the Building) shall also require that all trade contractors cause all of their respective subcontractors to maintain similar coverage with limits of no less than $3,000,000 per occurrence and shall include the Condominium Board, all Owners, and the holder of any mortgage on the Building or portion thereof as additional insureds. All Parsons engaged in work on improvements to the Building shall maintain statutory Workers Compensation and Disability insurance in force for all workers on the job.

(c) In lieu of the insurance described in Section 11.1.2, 11.1.6 and 11.1.8(c) hereof, the Condominium Board (or the Owner of the Building) may provide such insurance through the purchase of a Wrap-up or Owner Controlled Insurance Program. This program shall provide coverage for all Persons engaged in construction operations at the Building.

11.1.9 The Condominium Board shall, in the exercise of good business judgment and good insurance practices, as it shall determine, obtain and maintain terrorism insurance to the extent available at commercially reasonable rates, covering the General Common Elements, with limits, deductibles and terms as the Condominium Board, from time to time, may determine.

11.1.10 Such other insurance as the Condominium Board may determine advisable or necessary from time to time (the insurance referred to in Sections 11.1.1 through 11.1.10, collectively, the "Condominium Board Insurance"). The Condominium Board Insurance shall have deductibles in such amounts as the Condominium Board, from time to time,

may reasonably determine, taking into account market conditions, or as may be required by the holder of any mortgage covering the General Common Elements. The Condominium Board shall review the limits of Condominium Board Insurance at least once each year.

11.2 Commercial Unit Owner's Insurance Requirements. Each of the Commercial Unit Owners shall obtain and maintain the following insurance in such amounts and in such limits as described below, or in such higher amounts and in such higher limits as the Condominium Board, from time to time, may determine:

11.2.1 Commercial General (Public) Liability policy of insurance form ISO CG 001 07 98 (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, including, Cross Liability coverage (if available) covering one insured against another, Owned, Hired and Non-Owned Auto Liability, Notice and Knowledge of Occurrence, Unintentional Errors and Omissions, elevators, escalators, independent contractors, and Contractual Liability Products and Completed Operations Liability coverage, with limits of not less than $100,000,000 per occurrence and annual aggregate per location, except in the case of the Club Unit policy, which shall have limits of not less than $50,000,000 per occurrence and annual aggregate per location. The Commercial Unit Owner purchasing such Commercial General Liability policy shall be the named insured. Each of the Boards and the other Unit Owners, together with its or their respective subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, servants and assignees, Managing Agents and mortgagees, and such other entities as shall reasonably be requested shall be included as additional insured(s) on a primary basis.

11.2.2 Insurance against loss customarily included in so-called Special Causes of Loss or Special Form Perils property insurance (including Comprehensive Boiler & Machinery coverage), on a replacement cost basis, covering the interests of the Commercial Unit Owner and its Registered Mortgagee in the applicable Commercial Unit, as their respective interests may appear including the full replacement cost of any improvements and betterments made to the Commercial Unit, and otherwise in amounts reasonably sufficient to undertake and complete any Unit Restoration Work and otherwise comply with Section 11.11.4 below (and to the extent a portion of such Commercial Unit contains landmarked improvements, such Commercial Unit Owner's policy must include coverage for such landmarked improvements).

11.2.3 Business Income and/or Rental Income due to an occurrence or accident insured under the policies described in Section 11.2.2 hereof. The coverage shall be provided on "Actual Loss Sustained" forms in amounts of not less than twenty-four (24) months of the then annual General Common Charges payable by the applicable Commercial Unit Owner at the time of purchase or renewal of such policy. Such policy of Business Income and/or Rental Income shall have a maximum deductible of no more than six (6) months of the then annual General Common Charges payable by the applicable Commercial Unit Owner at the time of purchase or renewal of such policy. Each Commercial Owner shall use commercially reasonable efforts to name the Condominium Board as "loss payee", as its interest may appear, under such policy.

11.2.4 If the applicable Commercial Unit Owner is engaged in the sale of alcoholic beverages, so-called "dramshop" or other liability insurance required in connection therewith.

11.3 Residential Unit Owner's Insurance Requirements. Each Residential Unit Owner shall obtain and maintain the following insurance in such amounts and in such limits as described below, or in such higher amounts and in such higher limits as the Residential Board, from time to time, may determine:

11.3.1 Liability insurance, with a limit of not less than $1,000,000 per occurrence, and an Umbrella Liability Policy with limits of not less than $5,000,000 per occurrence and annual aggregate per location, covering the interests of the Residential Unit Owner and its Permitted Mortgagee in the applicable Residential Unit as their respective interests may appear. Such insurance may, at the option of the Residential Unit Owner, be effected by a Homeowners HO-6 form (or its equivalent). The Residential Unit Owner purchasing such policy shall be the named insured.

11.4 Residential Board's Insurance Requirements. The Residential Board (on behalf of the applicable Residential Section) shall obtain and maintain the following insurance in such amounts and in such limits as described below, or in such higher amounts and in such higher limits as the Condominium Board, from time to time, may determine:

11.4.1 Commercial General Liability policy of insurance form ISO CG 001 07 98 (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, including Cross Liability coverage (if available) covering one insured against another, Owned, Hired and Non-Owned Auto Liability, Notice and Knowledge of Occurrence, Unintentional Errors and Omissions, elevators, escalators and independent contractors, and Contractual Liability Products and Completed Operations Liability coverage, with limits of not less than $100,000,000 per occurrence and annual aggregate per location. The Residential Board purchasing such Commercial General Liability policy shall be the named insured. The Condominium Board and the other Unit Owners, together with its or their respective subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, servants and assignees, Managing Agents and mortgagees, and such other entities as shall reasonably be requested shall be included as additional insured(s) on a primary basis.

11.4.2 Insurance against loss customarily included in so-called Special Causes of Loss or Special Form Perils property insurance (including Comprehensive Boiler & Machinery coverage), on a replacement cost basis, covering the interests of, as the case may be, the Residential Unit Owners and the Permitted Mortgagees in the Residential Limited Common Elements, as their respective interests may appear, in amounts reasonably determined by the Condominium Board.

11.5 Condo Hotel Unit Owner's Insurance Requirements. Each Condo Hotel Unit Owner shall obtain and maintain the following insurance in such amounts and in such limits as described below, or in such higher amounts and in such higher limits as the Hotel Board, from time to time, may determine:

11.5.1 Liability insurance, with a limit of not less than $1,000,000 per occurrence, and an Umbrella Liability Policy with limits of not less than $5,000,000 per occurrence and annual aggregate per location, covering the interests of the Condo Hotel Unit Owner and its Permitted Mortgagee in the applicable Condo Hotel Unit as their respective interests may appear. Such insurance may, at the option of the Condo Hotel Unit Owner, be effected by a Homeowners HO-6 form (or its equivalent). The Condo Hotel Unit Owner purchasing such policy shall be the named insured.

11.6 Hotel Board's Insurance Requirements. The Hotel Board (on behalf of the applicable Hotel Section) shall obtain and maintain the following insurance in such amounts and in such limits as described below, or in such higher amounts and in such higher limits as the Condominium Board, from time to time, may determine:

11.6.1 Commercial General Liability policy of insurance form ISO CG 001 07 98 (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, including Cross Liability coverage (if available) covering one insured against another, Owned, Hired and Non-Owned Auto Liability, Notice and Knowledge of Occurrence, Unintentional Errors and Omissions, elevators, escalators, and independent contractors, and Contractual Liability Products and Completed Operations Liability coverage, with limits of not less than $100,000,000 per occurrence and annual aggregate per location. The Hotel Board purchasing such Commercial General Liability policy shall be the named insured. The Condominium Board and the other Unit Owners, together with its or their respective subsidiaries, affiliates, directors, officers, members, managers, partners, agents, employees, servants and assignees, Managing Agents and mortgagees, and such other entities as shall reasonably be requested shall be included as additional insured(s) on a primary basis.

11.6.2 Insurance against loss customarily included in so-called Special Causes of Loss or Special Form Perils property insurance (including Comprehensive Boiler & Machinery coverage), on a replacement cost basis, covering the interests of, as the case may be, the Condo Hotel Unit Owners, the Transient Hotel Unit Owner and the Permitted Mortgagees in the Hotel Limited Common Elements, as their respective interests may appear, in amounts reasonably determined by the Condominium Board.

11.6.3 So-called "dramshop" or other liability insurance required in connection with the sale of alcoholic beverages.

11.7 Insurance Requirements During the Course of Alterations and/or Repairs. The Condominium Board shall promulgate, as part of the General Rules and Regulations, rules and regulations specifying, with respect to the performance of Alterations and/or Repairs by any Person, whether insurance is required to be carried with respect to such Alteration and/or Repair and if so, the type of insurance required, the amount thereof, the Person required to carry any such insurance and such other related matters as the Condominium Board shall deem appropriate. Notwithstanding anything to the contrary contained in these By-Laws, provisions consistent with Section 11.7 hereof shall be part of such rules and regulations only to the extent, if any, deemed appropriate by the Condominium Board.

11.8 Insurance as a General Common Charge.

11.8.1 The premiums for all insurance referred to in Section 11.1 above shall be a General Common Expense and shall be borne by each of the General Common Charge Obligors as a General Common Charge in proportion to the relative Common Interests. Any General Common Charge Obligor may request the Condominium Board to obtain and maintain for its benefit any additional coverages and any changes or amendments to the terms and conditions of existing coverages as such requesting General Common Charge Obligor sees fit (collectively, the "Additional Insurance Coverage") and may require that all proceeds of any such Additional Insurance Coverage (to the extent that it can be determined with reasonable certainty that such proceeds relate to such Additional Insurance Coverage and not to insurance purchased by the Condominium Board on its own behalf) be payable to such General Common Charge Obligor (and if, notwithstanding such requirement, proceeds are paid to the Condominium Board or the Insurance Trustee, then notwithstanding any other provision of these By-Laws to the contrary, such proceeds shall be turned over to such General Common Charge Obligor); provided, however, that (A) the cost of such Additional Insurance Coverage shall be borne entirely by the Person requesting it and such Person shall indemnify the Condominium Board from any loss, cost and expense (including reasonable attorney's fees) in connection therewith and (B) the Additional Insurance Coverage shall not (i) preclude the Condominium Board from purchasing, for itself, insurance coverage similar to such Additional Insurance Coverage, (ii) preclude the Condominium Board from receiving proceeds from any Condominium Board Insurance, (iii) cause the Condominium Board Insurance to be less protective or (iv) adversely affect the interests of the Unit Owners or Boards.

11.8.2 If the use of all or any portion of any portion of the Building in violation of these By-Laws or the Declaration causes an increase in the premium for the insurance which the Condominium Board or any Unit Owner is required to obtain and maintain as set forth herein or otherwise, then the General Common Charge Obligor responsible for such portion of the Building shall be obligated to pay to the Condominium Board, as an additional General Common Charge, or to pay to such Unit Owner, as the case may be, a sum equal to the amount of such increase attributable to such use. If the use of any Residential Unit or Hotel Unit is in violation of these By-Laws or the Declaration causes an increase in General Common Charges payable by the Sub-Board of such Unit Owner in accordance with the preceding sentence of this subsection, then the owner of such Residential Unit or Hotel Unit, as the case may be, shall be obligated to pay to the affected Sub-Board, as an Common Charge (as defined in the applicable Sub-By-Laws), a sum equal to the amount of such increase attributable to such use.

11.9 General Insurance Matters.

11.9.1 Self-Insurance. Notwithstanding anything in these By-Laws to the contrary, no Person may provide the insurance coverages required under these By-Laws pursuant to any plan of self-insurance, provided, however, that the Condominium Board, in the exercise of good business judgment and good insurance practices, may permit a Unit Owner to self insure on the following terms and conditions: (a) Any self-insured exposure shall be deemed to be an insured risk under these By-Laws; (b) the beneficiaries of such insurance shall be afforded no less insurance protection as if such self-insured portion was fully insured by an insurance company of the quality and caliber required under these By-Laws (including, without limitation,

the protection of a legal defense, by attorneys reasonably acceptable to beneficiaries, and the payment of claims within the same time period that a third party insurance carrier of the quality and caliber otherwise required hereunder would have paid such claims); (c) waiver of subrogation pursuant hereunder shall be applicable to any self-insured exposure; and (d) the self-insurance retention can be no greater than an amount specified by the Condominium Board and the insurance required under these By-Laws must be maintained in excess of such self- insurance retention.

11.9.2 Blanket Policy. The insurance coverage required of any Person under this Article 11, at the option of such Person, may be offered under a blanket policy or policies, provided that any such blanket policy shall otherwise comply with the provisions of these By-Laws. With respect to blanket property polices covering the applicable property to be insured pursuant to these By-Laws (the "Insured Property") and other properties and assets not constituting a part of such Insured Property, such blanket policies shall be without possibility of co-insurance or reduction below the limits required by this Article 11 by reason of, or damage to, any other property (real or personal) named therein. If the insurance required by these By-Laws shall be effected by any such blanket policy, such Person shall furnish to the Person or Persons specified in Section 11.7.4 hereof (when and as such deliveries would be required for the insurance regularly required by these By-Laws not constituting blanket coverage) valid certificates of insurance evidencing such policy, with schedules thereto attached (with respect to property or building insurance) showing the amount of insurance afforded by such policies applicable to the Insured Property.

11.9.3 Policy Requirements. (a) All policies required to be obtained pursuant to these By-Laws shall:

(b) be purchased from and maintained with financially sound and responsible insurance companies duly authorized, and preferably admitted to do business in the State of New York, which are rated at the time of purchase or renewal of such policy in the then most current A.M. Best Key Rating Guide with a claims paying ability rating of A-5 or better (or the equivalent of such rating if there is a change in the basis of the rating, or any successor publication of comparable standing) and are also rated "A" or better (and the equivalent thereof) by at least two (2) of the rating agencies rating any mortgage covering the General Common Elements (one of which shall be Standard & Poor's if they are rating such mortgage and one of which will be Moody's if they are rating such mortgage), or if only one (1) rating agency is rating such mortgage, then only by such rating agency, with respect to policies required to be obtained by the Condominium Board, the Commercial Unit Owners, the Residential Board and the Hotel Board pursuant to Sections 11.1, 11.2, 11.4 and 11.6 of these By-Laws, respectively. The foregoing shall not apply to the Residential Unit Owners and Condo Hotel Unit Owners, and the insurance companies furnishing the policies required to be obtained by the Residential Unit Owners and Condo Hotel Unit Owners pursuant to these By-Laws shall be rated pursuant to and in accordance with applicable standards, if any, to be determined by the applicable Sub-Board.

(c) with respect to Special Causes of Loss or other property coverage, contain a waiver of the insurer's right of subrogation against the Unit Owners, the Boards, any Registered Mortgagee and all Occupants.

(d) provide that before any material change or cancellation of a policy for which an additional insured or loss payee is required to be named pursuant to this Article 11, at least thirty (30) days' advance written notice shall be given in the case of insurance required to be maintained by (w) the Condominium Board, to the Commercial Unit Owners and each Registered Mortgagee, the Hotel Board and the Residential Board, (x) the Commercial Unit Owners, to the Boards, (y) the Residential Board, to the Condominium Board, the Hotel Board and the Commercial Unit Owners, and (z) a Residential Unit Owner or Condo Hotel Unit Owner, to its applicable Sub-Board.

(e) be primary as to the named insured and not be entitled to contribution from any other insurance that may be maintained by any other party.

(f) contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the policy holder.

(g) All policies of "All Risk" and Comprehensive Boiler & Machinery property coverage required to be obtained by any Person pursuant to these By-Laws shall name its Registered Mortgagee, if any, as a "mortgagee" under a standard New York State mortgagee clause or its equivalent which shall provide that the loss, if any, thereunder shall be payable to such Registered Mortgagee, as its interest may appear, subject, however, to the provisions of Sections 11.12.1 and 11.12.2 with respect to insurance maintained by the Condominium Board and subject to the provisions of Sections 11.12.4, 11.12.5 and 11.12.6 with respect to insurance required to be maintained by the Unit Owners, the Residential Board6 and the Hotel Board,. respectively.

(h) All policies of "All Risk" and Comprehensive Boiler & Machinery property 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 Registered Mortgagees, if applicable, and (B) name the Insurance Trustee (as hereinafter defined) as "loss payee" as agent for the insured in the event the proceeds payable are in excess of $2,000,000.

(i) Prior to the Condominium Board obtaining any policy of property insurance, and at three (3) year intervals thereafter (or more often, if deemed appropriate by the Condominium Board), the Condominium Board shall obtain an appraisal of the full replacement value of the General Common Elements (including the General Common Elements which are underground), without deduction for depreciation, for the purpose of determining the amount of property insurance to be obtained pursuant to Section 11.1. The cost of any such appraisal shall be borne by the General Common Charge Obligors as a General Common Charge in the same proportion as each such party bears under the Budget with respect to insurance.

(j) Unless otherwise required of the Residential Unit Owners or Residential Board by the Residential By-Laws, or the Hotel Unit Owners or Residential Board by the Hotel By-Laws, the Boards and the Unit Owners shall not be required to obtain or maintain any insurance with respect to any personal property contained in the respective General Common Elements, Limited Common Elements or Unit, except as is mandated under any "All

Risk" or Comprehensive Boiler & Machinery property coverage required under these By-Laws. The Unit Owners and the Sub-Boards shall not be prohibited from carrying other insurance for their own benefit in addition to the insurance required to be carried by such Unit Owners and Sub-Board(s) under these By-Laws.

11.9.4 Condominium as Additional Insured. All policies required to be obtained pursuant to these By-Laws, the Residential By-Laws and/or the Hotel By-Laws shall name the Condominium as an additional insured.

11.9.5 Evidence of Insurance. (a) Condominium Board Insurance. The Condominium Board shall deliver to the Commercial Unit Owners, the Residential Board and the Hotel Board, and all Registered Mortgagees, a certificate of insurance evidencing the insurance required to be maintained by the Condominium Board under Section 11.1 above and all renewals thereof, evidencing same, and promptly after issuance of any renewal or replacement policy, together with proof of payment of premiums. Renewals shall be obtained at least twenty (20) days prior to the expiration of the then current policies.

(b) Commercial Unit Owner Insurance. Each Commercial Unit Owner shall deliver to the others and to the Boards a certificate of insurance evidencing the insurance required to be maintained by such Unit Owner under Section 11.2 above and all renewals thereof, evidencing same, and promptly after issuance of any renewal or replacement policy, together with proof of payment of premiums. Renewals shall be obtained at least twenty (20) days prior to the expiration of the then current policies.

(c) Residential Unit Owner Insurance. Each Residential Unit Owner shall deliver to the Residential Board a certificate of insurance evidencing the insurance required to be maintained by such Unit Owner under Section 11.3 above and all renewals thereof, evidencing same, and promptly after issuance of any renewal or replacement policy, together with proof of payment of premiums. Renewals shall be obtained at least twenty (20) days prior to the expiration of the then current policies.

(d) Residential Board Insurance. The Residential Board shall deliver to the Condominium Board, the Commercial Unit Owners and the Hotel Board a certificate of insurance evidencing the insurance required to be maintained by the Residential Board under Section 11.4 above and all renewals thereof, evidencing same, and promptly after issuance of any renewal or replacement policy, together with proof of payment of premiums. Renewals shall be obtained at least twenty (20) days prior to the expiration of the then current policies.

(e) Residential Board Monitoring of Residential Unit Owner Insurance. The Residential Board shall take commercially reasonable steps to enforce the obligations of its Residential Unit Owners under Section 11.3 and Article 12 of these By-Laws, and shall, on a semi-annual basis upon request, provide to the Condominium Board a report detailing those Residential Unit Owners that have not so complied, but the Residential Board shall have no liability for the failure of such Residential Unit Owners to so comply. Nothing contained in this Section 11.9.5(e) shall be deemed to limit the obligations of Residential Unit Owners under Section 11.3 and Article 12 of these By-Laws.

(f) Condo Hotel Unit Owner Insurance. Condo Hotel Unit Owners shall deliver to the Hotel Board a certificate of insurance evidencing the insurance required to be maintained by the Condo Hotel Unit Owners under Section 11.5 above and under the Hotel By-Laws and all renewals thereof, evidencing same, and promptly after issuance of any renewal or replacement policy, together with proof of payment of premiums. Renewals shall be obtained at least twenty (20) days prior to the expiration of the then current policies.

(g) Hotel Board Insurance. The Hotel Board shall deliver to the Commercial Unit Owners and the other Boards a certificate of insurance evidencing the insurance required to be maintained by the Hotel Board under Section 11.6 above and all renewals thereof, evidencing same, and promptly after issuance of any renewal or replacement policy, together with proof of payment of premiums. Renewals shall be obtained at lest twenty (20) days prior to the expiration of the then current policies.

(h) Hotel Board Monitoring of Condo Hotel Unit Owner Insurance. The Hotel Board shall take commercially reasonable steps to enforce the obligations of the Condo Hotel Unit Owners under Section 11.5 above and under the Hotel By-Laws, and shall, on a semi-annual basis upon request, provide to the Condominium Board a report detailing those Condo Hotel Unit Owners that have not so complied, but the Hotel Board shall have no liability for the failure of such Condo Hotel Unit Owner(s) to so comply. Nothing contained in this Section 11.9.5(h) shall be deemed to limit the obligations of the Condo Hotel Unit Owner(s) under the Hotel By-Laws.

(i) Certificates of Insurance; Policies. The certificates of insurance required to be obtained by any Person pursuant to this Section 11.9.5 shall be kept at the offices of such Person at the Property or at such other reasonably proximate location(s) in The City of New York. In the event that any certificate of insurance shall fail to contain detail reasonably sufficient enough to enable the Person(s) who are entitled to a copy of such certificate to reasonably determine if the insurance covered by such certificate complies with the provisions of this Article 12, then such Person or Persons shall have the right, upon reasonable notice to the Person maintaining such insurance, to inspect the policy or policies underlying such certificate.

11.10 Waiver of Subrogation. Each of the Boards and the Unit Owners (and their Occupants) (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Unit Owner and all Boards and their respective Occupants (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Property, which loss or damage is of the type covered by "All-Risk" or Comprehensive Boiler & Machinery property insurance policies required to be carried under these By-Laws, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible. The Releasing Party agrees to obtain, if needed, appropriate language in its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release.

11.11 Indemnification.

11.11.1 Indemnification by Unit Owners. Subject to the waiver of claims and waiver of subrogation set forth in this Article 11, each Unit Owner covenants to indemnify, defend and hold each other Unit Owner (and such other Unit Owner's Occupants) and each Board harmless (except for loss or damage resulting from the gross negligence, willful misconduct or bad faith of any such other Unit Owners or Boards, or their respective Occupants, directors, officers, agents, tenants, contractors, employees, servants, licensees (collectively, the "Related Parties")) from and against any and all claims, actions, suits, judgments, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Unit (or any Limited Common Element appurtenant to such Unit) owned by such Unit Owner, or occasioned wholly, or in part, by any gross negligence, willful misconduct or bad faith of such Unit Owner, or its respective Related Parties.

11.11.2 Indemnification by Boards. Subject to the waiver of claims and waiver of subrogation set forth in this Article 11, each of the Boards covenants to indemnify, defend and hold each Unit Owner (and each Unit Owner's Occupants) and each other Board harmless (except for loss or damage resulting from the gross negligence, willful misconduct or bad faith of such Unit Owner or any such other Board, or their respective Related Parties) from and against any and all claims, actions, suits, judgments, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon (i) with respect to the Condominium Board, the General Common Elements, (ii) with respect to the Residential Board, the Residential Limited Common Elements, and (iii) with respect to the Hotel Board, the Hotel Limited Common Elements or occasioned wholly or in part by any gross negligence, willful misconduct or bad faith of the Boards, or their respective Related Parties.

11.12 Casualty and Condemnation.

11.12.1 General Common Element Restoration Funds. All insurance proceeds under all policies required to be obtained by the Condominium Board with respect to any property loss (the "GCE Restoration Insurance Proceeds") and all condemnation awards, if any, with respect to the General Common Elements (such sums, together with any interest or income earned thereon, but net of the reasonable fees, compensation and expenses incurred by the Insurance Trustee hereunder, collectively, the "GCE Restoration Funds") shall be payable to the Condominium Board, except that if the GCE Restoration Funds shall exceed $2,000,000, all GCE Restoration Funds shall be payable to the Insurance Trustee.

11.12.2 Use of GCE Restoration Funds. The Condominium Board shall (i) hold in trust on behalf of all Unit Owners any GCE Restoration Funds it receives, (ii) subject to the provisions of Sections 11.11.3 and 11.11.7 of these By-Laws, use the GCE Restoration Funds only for GCE Restoration Work and (iii) not commingle the GCE Restoration Funds with other funds being held by the Condominium Board.

11.12.3 Casualty to or Condemnation of General Common Elements; Repair by Condominium Board; GCE Restoration Work.

(a) GCE Restoration Work. Except as provided herein, in the event of (i) the casualty of all or any part of the General Common Elements, (ii) the taking in condemnation or by eminent domain of all or any part of the General Common Elements, or (iii) the taking in condemnation or by eminent domain of all or any part of a Unit, then, subject to the provisions set forth below, the Condominium Board will arrange for the prompt repair and restoration of the part of the General Common Elements affected by such casualty or impaired by such taking which, pursuant to the provisions of the Declaration or By-Laws, are required to be maintained by the Condominium Board (the "GCE Restoration Work"). In the event of a casualty, such GCE Restoration Work shall restore the General Common Elements so that they are the same type and quality as existed immediately prior to such casualty; provided, however, that alterations to such General Common Elements may be made in accordance with Article 8 of these By-Laws. In the event of a taking, such GCE Restoration Work shall take into account the physical constraints imposed by such taking, and accordingly the General Common Elements may be altered (in accordance with Article 8 of these By-Laws) to account for such physical constraints; provided, however, that in no event shall the Condominium Board have the right to utilize additional space in any Unit in connection with such restoration, unless such right has otherwise been granted under these By-Laws or the Declaration or in connection with such taking. Notwithstanding anything herein to the contrary, in no event shall the Condominium Board be obligated to restore any Unit Owner's fit-out or personal property contained within such Unit Owner's Unit or any Residential Limited Common Elements or Hotel Limited Common Elements contained therein.

(b) Disbursement of GCE Restoration Funds; GCE Restoration Funds Request. In the event of any GCE Restoration Funds held by the Insurance Trustee, (a) the Condominium Board shall apply to the Insurance Trustee for disbursement of the GCE Restoration Funds and (b) the Insurance Trustee shall disburse the GCE Restoration Funds to the Condominium Board in installments as the GCE Restoration Work progresses and in accordance with the provisions hereof and the provisions of the Insurance Trustee Agreement. Each request for GCE Restoration Funds (each such request, together with all supporting documentation, herein called a "GCE Restoration Funds Request") shall also be sent to the Commercial Unit Owners, the Residential Board, the Hotel Board and all Registered Mortgagees. Advances by the Insurance Trustee shall be made not more than once a month, after the Insurance Trustee's receipt of a written request therefor from the Condominium Board, addressed to the Insurance Trustee, provided that:

(i) such GCE Restoration Funds Request shall be accompanied by a certificate of a Certifying Professional (as defined below) in charge of the GCE Restoration Work (A) requesting payment of specified amounts of the GCE Restoration Funds equal to the amounts then due and owing to contractors or other parties (less any retainage amounts, if any, as determined by the Condominium Board) for performance of all or a portion of the GCE Restoration Work under specific contracts or agreements in respect of the GCE Restoration Work, or to the Condominium Board as reimbursement for a cost of the GCE Restoration Work paid by the Condominium Board, (B) describing in reasonable detail the GCE Restoration Work performed or materials provided under such contracts or agreements, for which GCE Restoration

Funds are then being requested, (C) stating that such payment does not exceed the amount then due and owing (or reimbursable) in respect of the GCE Restoration Work completed to date and materials supplied under such contracts or agreements, (D) stating that all GCE Restoration Work has been performed substantially in accordance with the plans and specifications for such GCE Restoration Work, and that all such materials have theretofore been incorporated as General Common Elements into the Building (except for such materials specifically delineated as not yet being so incorporated into the Building, and with respect to such materials, stating the status of such materials (if such materials are being fabricated) or stating the location of such materials (if such materials are stored off-site)), (E) stating that the cost to complete the GCE Restoration Work does not exceed the amount of the remaining funds held by the Insurance Trustee and (F) stating that the cost of such GCE Restoration Work and materials has not been previously made the basis of any GCE Restoration Funds Request (such certificate being herein called the "Certificate"); and

(ii) the Insurance Trustee receives waivers of all mechanic's and other similar liens (or title endorsements or other satisfactory evidence) with respect to all of the GCE Restoration Work for which a GCE Restoration Funds Request has previously been made and funded (if and only to the extent that such lien waivers have not been previously provided).

Upon compliance with subsections (i) and (ii) above, the amount requisitioned for such GCE Restoration Work shall be paid to the Condominium Board or the Persons designated in the Certificate. "Certifying Professional" shall mean an architect or a licensed professional engineer or engineering or construction consulting firm retained by the Condominium Board in connection with the GCE Restoration Work, which is experienced in the design and operation in the City of New York of structures similar to the Building and has provided services comparable to those being requested hereunder within not less than three (3) of the immediately preceding ten (10) years, and which is selected by the Condominium Board.

(c) GCE Restoration Funds Deficiency. If, as part of the Certificate accompanying the GCE Restoration Funds Request, or prior to the commencement of (and also at any time during the prosecution of) the GCE Restoration Work, the Certifying Professional or the Condominium Board reasonably estimates that the cost to complete the GCE Restoration Work exceeds the GCE Restoration Funds then being held by the Insurance Trustee or the Condominium Board, as the case may be, then the Condominium Board shall be required to notify each General Common Charge Obligor of the amount of such estimated deficiency and each General Common Charge Obligor's pro rata allocation thereof (which such allocation shall be determined consistent with the Common Interest of each General Common Charge Obligor), and shall be payable by each General Common Charge Obligor as a Special Assessment (hereinafter referred to as a "Special GCE Restoration Assessment"; all such Special GCE Restoration Assessments received by the Condominium Board, the "Special GCE Restoration Assessment Proceeds"). At the election of the Condominium Board, each General Common Charge Obligor shall then pay its respective Special GCE Restoration Assessment either: (i) in a lump sum, to be paid as a Special Assessment pursuant to and in accordance with Section 6.1.1(m) of these By-Laws or (ii) in installments, as may be necessary, in the determination of the Condominium Board, to pay for the GCE Restoration Work. The Special

GCE Restoration Assessment Proceeds shall be treated as if such monies were GCE Restoration Funds.

(d) Excess GCE Restoration Insurance Proceeds. To the extent not drawn upon and/or applied to the GCE Restoration Work, the Insurance Trustee and/or the Condominium Board, as the case may be, shall, after the completion of the GCE Restoration Work, return all excess GCE Restoration Insurance Proceeds to the General Common Charge Obligors according to the Common Interest of such General Common Charge Obligors (after deducting from the amount to be distributed to each General Common Charge Obligor the amount, if any, of any General Common Charges or Special Assessments (and other charges related thereto imposed under Section 12.6.4 of these By-Laws)) then due and owing from such General Common Charge Obligor (such deducted amount, a "Delinquency Charge").

(e) Excess Special GCE Restoration Assessment Proceeds. To the extent not drawn upon and/or applied to the GCE Restoration Work, the Insurance Trustee and/or the Condominium Board, as the case may be, shall, after the completion of the GCE Restoration Work, return all excess Special GCE Restoration Assessment Proceeds it receives to each General Common Charge Obligor according to the pro rata share of such General Common Charge Obligor's contribution to such Special GCE Restoration Assessment Proceeds, after deducting any Delinquency Charge. If any General Common Charge Obligor fails to pay its Special GCE Restoration Assessment in accordance with the provisions of Section 11.12.3(c) of these By-Laws, then the Special GCE Restoration Assessment of such General Common Charge Obligor still due and payable (the "Delinquent Special GCE Restoration Assessment") shall be subject to late charges, interest, expenses and fees, all pursuant to and in accordance with Section 12.6.4 of these By-Laws (such charges, the "Special GCE Restoration Assessment Penalties"). Upon payment to the Condominium Board of the Delinquent Special GCE Restoration Assessment, and to the extent not drawn upon and/or applied to such completed GCE Restoration Work, then the Insurance Trustee and/or the Condominium Board, as the case may be, shall distribute the Delinquent Special GCE Restoration Assessment to each General Common Charge Obligor, after deducting any Delinquency Charge, according to the pro rata share of such General Common Charge Obligor's contribution to the Special GCE Restoration Assessment Proceeds. The Special GCE Restoration Assessment Penalties shall be distributed to each General Common Charge Obligor (excluding the General Common Charge Obligor paying such Special GCE Restoration Assessment Penalties) according to the pro rata share of such General Common Charge Obligor's contribution to the Special GCE Restoration Assessment Proceeds (taking into account any prior distribution of any excess Special GCE Restoration Assessment Proceeds and after deducting any Delinquency Charge) prior to the payment of the Delinquent Special GCE Restoration Assessment.

11.12.4 Casualty to or Condemnation of Units; Repair by Unit Owners; Unit Restoration Work. Except as provided herein, in the event a Unit is damaged or destroyed by casualty or impaired by a partial taking by condemnation or eminent domain, the affected Unit Owner(s) shall immediately remove any rubble and debris resulting from such event and, within a reasonable time thereafter, shall (at its election) either repair and restore the Unit (and the appurtenant Limited Common Elements, if applicable) so damaged or destroyed by casualty, or such of the Unit (and the appurtenant Limited Common Elements, if applicable) as shall remain following the taking: (i) to a complete, independent and self-contained architectural whole;

and/or (ii) to a safe and secure "core and shell" condition, with complete and sightly demising walls, doors and exterior visible surfaces separating such Unit (or any appurtenant Limited Common Elements) from any other Unit (or any appurtenant Limited Common Elements) or General Common Element visible from outside of the applicable Unit, having no adverse effect on any other Unit or the Common Elements (either of the foregoing (i) or (ii), the "Unit Restoration Work"). Notwithstanding anything herein to the contrary, the Unit Restoration Work with respect to any Residential Unit shall be performed by the Residential Board (on behalf of the Residential Unit Owner) and the Unit Restoration Work with respect to the Condo Hotel Units shall be performed by the Hotel Board (on behalf of the Condo Hotel Unit Owner). The Transient Hotel Unit Owner shall perform its own Unit Restoration Work.

11.12.5 Casualty to or Condemnation of Residential Limited Common Elements; Repair by Residential Board; Residential LCE Restoration. Except as provided herein, if any portion of the Residential Limited Common Elements are damaged or destroyed by casualty or impaired by a partial taking by condemnation or eminent domain, the Residential Board (on behalf of the affected Residential Unit Owner(s)), shall immediately remove any rubble and debris resulting from such event and, within a reasonable time thereafter, shall (at its election) either repair and restore the Residential Limited Common Elements so damaged or destroyed by casualty, or such of the Residential Limited Common Elements as shall remain following the taking, (i) to a condition substantially similar to the condition of such Residential Limited Common Elements as existed immediately prior to such casualty or taking or (ii) to a safe and secure "core and shell" condition, with secure, complete and sightly demising walls, doors and exterior visible surfaces separating such Residential Limited Common Elements from any other Unit (or from any Residential Limited Common Elements, if any) or General Common Element visible from outside of the Residential Limited Common Elements, having no adverse effect on any other Unit or the Common Elements (either of the foregoing (i) or (ii), with respect to a casualty or taking of the Residential Limited Common Elements, the "Residential LCE Restoration Work").

11.12.6 Casualty to or Condemnation of Hotel Limited Common Elements; Repair by Hotel Board; Hotel LCE Restoration. Except as provided herein, if any portion of the Hotel Limited Common Elements are damaged or destroyed by casualty or impaired by a partial taking by condemnation or eminent domain, the Hotel Board (on behalf of the affected Hotel Unit Owners), shall immediately remove any rubble and debris resulting from such event and, within a reasonable time thereafter, shall (at its election) either repair and restore the Hotel Limited Common Elements so damaged or destroyed by casualty, or such of the Hotel Limited Common Elements so damaged or destroyed by casualty, or such of the Hotel Limited Common Elements as shall remain following the taking, (i) to a condition substantially similar to the condition of such Hotel Limited Common Elements as existed immediately prior to such casualty or taking or (ii) to a safe and secure "core and shell" condition, with secure, complete and sightly demising walls, doors and exterior visible surfaces separating such Hotel Limited Common Elements from any other Unit (or from any Hotel Limited Common Elements, if any) or General Common Element visible from outside of the Hotel Limited Common Elements, having no adverse effect on any other Unit or the Common Elements (either of the foregoing (i) or (ii), with respect to a casualty or taking of the Hotel Limited Common Elements (the "Hotel LCE Restoration Work").

11.12.7 Casualty to Seventy-Five Percent (75%) or More of the Building. Notwithstanding any provision of the Declaration or these By-Laws to the contrary, if seventy-five (75%) percent or more of the Building is destroyed or damaged by fire or casualty (a "Significant Casualty") and if, at any time prior to the execution and delivery of any construction contract relating to the GCE Restoration Work, Unit Restoration Work, Residential LCE Restoration Work or Hotel LCE Restoration Work (other than a construction contract relating solely to Safety Work (as defined below) or other minor construction work not constituting restoration work), more than seventy-five percent (75%) in Common Interest duly vote not to proceed to make the necessary GCE Restoration Work or require the necessary Unit Restoration Work, Residential LCE Restoration Work or Hotel LCE Restoration Work, as the case may be, then: (i) the Condominium Board shall secure and fence in the Property boundary, and shall raze the Building, if necessary, and put the Building and Property into compliance with applicable Laws, and otherwise make the Property and Building safe (all of the activities described in this clause (i), the "Safety Work"); and (ii) the GCE Restoration Insurance Proceeds, net of the costs and expenses of the Condominium Board hereunder and the cost of any Safety Work, shall be divided among the Unit Owners in accordance with their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid out of its share of such fund all liens of Registered Mortgagees holding mortgages against such Unit Owner's respective Unit, and all unpaid charges, liens and Delinquency Charges applicable to such Unit.

11.12.8 Partial Condemnation. Notwithstanding anything in the Declaration or these By-Laws to the contrary, if the Building is partially taken by condemnation or eminent domain (a "Partial Condemnation"), then (i) the Condominium Board shall be required to restore only those General Common Elements necessary for the Units remaining after such Partial Condemnation and (ii) any Unit Owner whose Unit has been partially taken and irrespective of any condemnation award therefor, shall contribute to the Condominium Board the cost for any applicable GCE Restoration Work relating to such Unit Owner's Unit, and such funds shall be deemed to be GCE Restoration Funds; provided, however, that any excess GCE Restoration Funds shall, after the completion of the applicable GCE Restoration Work, be returned to such Unit Owner (after deducting any Delinquency Charges).

11.12.9 Total Condemnation. Notwithstanding any provision of the Declaration or By-Laws to the contrary, if all or substantially all of the Building is taken by condemnation or eminent domain (a "Total Condemnation") (a) the Condominium Board shall perform any Safety Work which it deems appropriate, (b) any award received by a Unit Owner with respect to the taking of its Unit as part of the Total Condemnation shall be payable to the applicable Unit Owner, after deducting any Delinquency Charges and (c) the Condominium Board shall have no obligation to restore the General Common Elements.

11.12.10 Restoration Work; Plans. All GCE Restoration Work, Unit Restoration Work, Residential LCE Restoration Work and Hotel LCE Restoration Work hereunder shall be performed in accordance with the applicable provisions of the Declaration and these By-Laws regarding the performance of Alterations and/or Repairs, including without limitation the approval provisions of Section 8.1.1 of these By-Laws.

11.12.11 Reallocation of Percentage Interests. (a) If, as a result of a taking or casualty, the gross square footage of any Unit changes, the Condominium Board shall promptly (x) adjust, as of the date of such taking or casualty, the Unit Owner's Common Interest percentage in a manner consistent with the allocation of the Common Interests in existence immediately preceding such casualty or taking and in accordance with the then applicable Real Property Law, (y) equitably adjust, as of the date of such taking or casualty, the then effective budget to take into account the casualty or taking, and (z) subject to the provisions of Article 17 of the Declaration and Article 16 of these By-Laws, prepare and record in the Register's office an amendment to the Declaration, confirming such reallocation. If the Condominium Board shall not agree on any of the matters referred to in the foregoing clauses (x), (y) and (z) within ninety (90) days following completion of the reconstruction, they shall submit such issue to Arbitration.

(b) If a Unit Owner or Board does not (in the course of restoring its Unit or Section, including any Residential Limited Common Elements or Hotel Limited Common Elements) restore the number of gross square feet existing immediately preceding the fire or other casualty, then, notwithstanding such reduction in the number of gross square feet, such Unit Owner's/s' Common Interest(s) and allocation(s) of General Common Charges shall not be diminished. Likewise, each Unit Owner's Common Interest and allocation of General Common Charges shall not be adjusted or diminished if a Unit Owner chooses to restore its Unit to a "core and shell" condition rather than to a fully operational condition (as each such condition is described in Section 11.11.4 above).

## ARTICLE 12

## EVENTS OF DEFAULT; RIGHTS OF CURE; CONDOMINIUM BOARD'S LIEN; GRANTEES LIABLE FOR UNPAID GENERAL COMMON CHARGES

12.1 Failure to Pay General Common Charges.

12.1.1 The Condominium Board shall take prompt action to collect any General Common Charges or Special Assessments which remain unpaid following notice and the expiration of applicable grace periods, including, without limitation, the institution of such actions and the recovery of interest and expenses as are provided in this Article 12.

12.1.2 The Condominium Board shall have a lien (the "Condominium Board's Lien") for all unpaid General Common Charges, Special Assessments, other sums payable to it as if part of General Common Charges or amounts otherwise due to the Condominium Board (together with interest thereon as provided in this Article) from a delinquent Unit Owner. Such lien(s) shall be subordinate only to liens for real estate taxes and other assessments by taxing authorities and, to the extent required by applicable Law, to prior recorded mortgages on the Unit(s) of such delinquent Unit Owner(s), which are first mortgages of record. Without limiting any of the foregoing, the Condominium Board may: (w) bring an action to foreclose the Condominium Board's Lien in accordance with Section 339-aa of the Real Property Law; (x) purchase the interest of the owner of such Unit at a foreclosure sale resulting from any such action; (y) proceed by appropriate judicial proceedings to enforce the specific performance or

observance by the defaulting General Common Charge Obligor of the applicable provisions of the Declaration or these By-Laws from which default arose; or (z) exercise any other remedy available at Law or in equity; however, in the event the net proceeds received on a foreclosure sale are insufficient to satisfy the defaulting Unit Owner's obligations, there shall be no further cause of action against such Unit Owner with respect to such deficit. Each of the remedies herein described as well as any other remedy available at Law or in equity may be exercised concurrently or sequentially. Any Registered Mortgagee may bid in a foreclosure sale of any Unit.

12.1.3 The Condominium Board shall not record any notice of any Condominium Board's Lien prior to the date on which all applicable notice and grace periods (including cure periods to which any Registered Mortgagee may be entitled) in respect of the default(s) giving rise to the Condominium Board's Lien have expired. Subject to the requirements with respect to notice, grace and cure periods set forth in the preceding sentence, the pendency of an Arbitration with respect to the obligations giving rise to any such lien shall not serve to prevent the Condominium Board from recording any Condominium Board's Lien; however, no proceedings or filings in furtherance thereof (other than as may be required in order to preserve the validity and priority of the lien so recorded) shall be had or made, as the case may be, until the resolution of the Arbitration with respect thereto, and to the extent it shall be determined in Arbitration that the Condominium Board was not entitled to record all or any portion of such Condominium Board's Lien, the Condominium Board shall, as promptly as practicable following such determination and at the Condominium Board's expense, cause its Condominium Board's Lien (or portion thereof) to be released and discharged. The Condominium Board's Lien shall be effective from and after the time of recording in the public records of New York County of a claim of lien stating the description of the Unit, the name, if any, and the address of the Unit, the City Register's File Number (or other identifying recording information) of record of the Declaration, the name of the record owner, the amount due and purpose of such amount and the date when due. Subject to the penultimate sentence of Section 12.1.4 hereof, such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the Condominium Board. Upon full payment of all sums evidenced by the lien including, without limitation, interest at the Default Rate, the party making payment shall be entitled to a recordable satisfaction of lien to be recorded at its expense. Liens for unpaid General Common Charges may also be reduced to a personal money judgment against the Unit Owner or may be foreclosed by suit brought in the name of the Condominium Board or the Unit Owner asserting the lien in the same manner as a contract or other action (and without waiving the lien securing the same); provided, however, that no Unit Owner shall be liable to the Condominium Board for any deficiency with respect to a Unit owned by such Unit Owner and upon which the Condominium Board has foreclosed its Condominium Board's Lien. In the event of the foreclosure of such lien, the Condominium Board shall have the power to bid on the Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit.

12.1.4 The Condominium Board shall charge any delinquent General Common Charge Obligor: (i) a late charge of $.04 for each dollar of such amounts which remain unpaid for more than ten (10) days from their initial due date (although nothing herein shall be deemed to extend the period within which such amounts are to be paid); (ii) interest at the Default Rate on such unpaid amounts (exclusive of any "late charges" theretofore collected on such amounts)

computed from the due date thereof to the date payment is actually received from the delinquent General Common Charge Obligor; and (iii) if the Condominium Board institutes a suit or other proceeding to collect sums due hereunder, all expenses, including, without limitation, attorneys' fees and expenses paid or incurred by the Condominium Board or by any managing agent in any proceeding brought to collect such unpaid General Common Charges or in an action to foreclose a Condominium Board's Lien with respect to such delinquent Person's Unit(s). All such late charges, interest, expenses and fees shall be added to and shall constitute General Common Charges payable by such General Common Charge Obligor (and the Condominium Board's Lien, as applicable, shall also secure the payment of such additional sums). A suit to recover a money judgment for unpaid General Common Charges shall be maintainable without foreclosing or waiving the lien securing such charges.

12.2 Other Defaults Under the Condominium Documents.

12.2.1 The violation of any of the General Rules and Regulations or the breach of any provision of these Condominium By-Laws, or the breach of any provision of the Declaration, shall give the Condominium Board the right, in addition to any other rights set forth in these By-Laws or the Declaration, (i) to enter any Unit, General Common Elements or Limited Common Elements in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition resulting in such violation or breach and the Condominium Board shall not thereby be deemed guilty or liable in any matter of trespass, and/or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at Law or in equity, the continuance of any such violation or breach, provided that the Condominium Board gives the Unit Owner notice (which may be by telephone) that such violation exists, that repairs or replacements are necessary and that the Condominium Board will complete such repairs or replacements in the event the Unit Owner does not promptly act or complete the repairs or replacements, and/or (iii) to levy such fines and penalties as the Condominium Board may deem appropriate, and the Condominium Board shall have the same remedies for non-payment of such fines and penalties as for non-payment of General Common Charges.

12.2.2 The violation or breach of any of the provisions of these By-Laws, any of the General Rules and Regulations or the Declaration with respect to any rights, easements, privileges or licenses granted to Declarant and Sponsors or their designees shall give to Declarant, the Sponsors or their designees, as the case may be, the right, in addition to any other rights set forth in these By-Laws or the Declaration, to enjoin, abate or remedy by appropriate legal proceedings, either at Law or in equity, the continuance of any such violation or breach.

12.2.3 In the event that any Unit Owner, after receipt of written notice from the Condominium Board, fails or neglects in any way to perform any of its obligations with respect to the maintenance, repair or replacement of its Unit as provided in the Condominium Documents or of any Common Element for which such Unit Owner is responsible under the Declaration or these By-Laws, the Condominium Board may perform or cause to be performed such obligation unless such Unit Owner, within five days after receiving notice of such default by the Condominium Board, cures such default, or in the case of a default not reasonably susceptible to cure within such period, commences and thereafter prosecutes to completion, with due diligence, the curing of such default. All sums expended and all costs and expenses incurred

in connection with the making of any such painting, decorating, maintenance, repair or replacement in such Unit Owner's Unit or to any such Common Element for which such Unit Owner is responsible as aforesaid, together with interest thereon at the Default Rate, shall be immediately payable by such Unit Owner to the Board and shall, for all purposes hereunder, constitute General Common Charges payable by such Unit Owner.

12.2.4 Without limiting the preceding provisions of this Section 12.2:

(a) in the event a Unit Owner, the Residential Board or the Hotel Board shall fail to obtain and maintain any insurance required to be obtained and maintained by it under such of the Condominium Documents as may be applicable, or fails to effect the renewal or substitution of any such policy at least fifteen (15) days prior to the date set forth in any notice received by any such Person from its insurance company or the Condominium Board as the date (the "Insurance Termination Date") on or as of which any such policy is being terminated, is expiring or will otherwise not be renewed (unless such notice is received by such Person with fewer than fifteen (15) days remaining prior to such Insurance Termination Date, in which case such renewal or substitution shall be required in all events prior to the Insurance Termination Date of the required coverage); and any such failure continues for a period of one (1) business day following receipt by the defaulting Unit Owner or Residential Board or Hotel Board, from the Condominium Board (and/or, in the case of a Residential Unit Owner, the Residential Board, and/or in the case of a Hotel Unit Owner, the Hotel Board), of a notice of default with respect thereto specifying the policy and coverage amount (as applicable) required to be obtained, maintained, or renewed (as the case may be) and stating in bold print: "THIS IS YOUR FINAL NOTICE THAT YOU ARE IN DEFAULT WITH RESPECT TO THE CONDOMINIUM'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN. FAILURE TO OBTAIN, MAINTAIN OR RENEW SUCH REQUIRED POLICY/IES OF INSURANCE WITHIN ONE (1) DAY AFTER THE DATE OF THIS NOTICE SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER ARTICLE 12 OF THE CONDOMINIUM BY-LAWS AND THE PROVISIONS OF ANY OTHER APPLICABLE BY-LAWS."; or

(b) in the event a Unit Owner, the Residential Board or the Hotel Board shall fail (whether due to its action or inaction, or the action or inaction of any Permittee or Occupant of any such Unit Owner or Board) to bond or obtain the release or discharge of any mechanic's lien, or to remove of record, and cure the condition resulting in, any violation required to be released, discharged, removed or cured, as the case may be, in accordance with the provisions of (and within the time periods set forth in) Sections 9.1 and 9.2 of these By-Laws, and such failure continues after notice from the person "adversely affected" by such lien or violation (as such term is used in Section 9.1 or 9.2, as applicable), and beyond the expiration of the cure periods therein, provided that such notice shall specify and identify in reasonable detail the mechanic's lien or violation or condition in question and state in bold print: "THIS IS YOUR FIRST AND ONLY REQUIRED NOTICE THAT YOU ARE OBLIGATED TO [RELEASE OR DISCHARGE A MECHANIC'S LIEN and/or REMOVE A VIOLATION AND CURE THE CONDITION GIVING RISE THERETO] [the inapplicable phrase(s) to be deleted], AS REQUIRED BY ARTICLE 9 OF THE CONDOMINIUM BY-LAWS. FAILURE TO EFFECT SUCH [RELEASE, DISCHARGE, REMOVAL OR CURE] [the inapplicable phrase to be deleted] WITHIN [insert applicable cure period] AFTER

RECEIPT OF THIS NOTICE SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER ARTICLE 12 OF THE CONDOMINIUM BY-LAWS.";

either of such cases (each, a "Special Non-Monetary Event of Default"), then upon such occurrence and for so long as such Special Non-Monetary Event of Default continues, the Condominium Board may (without the consent of the defaulting Board or defaulting Unit Owner (notwithstanding any other provision of the Condominium Documents which might otherwise require such consent and without notice other than as provided in this Article 12), subject to Section 12.5 below), but shall not be obligated to, pay the amount or perform or cause to be performed the obligation or otherwise cure or effect the cure of the default which is the basis for such Special Non-Monetary Event of Default (including, for example, by means of causing Repairs or Alterations, or curing violations or removing or bonding mechanic's liens or otherwise as the Condominium Board shall deem appropriate), if the defaulting Unit Owner or Board, as the case may be, shall after receiving a further notice from the Condominium Board specifying the nature of the Special Non-Monetary Event of Default, and stating "YOU ARE HEREBY NOTIFIED THAT THE CONDOMINIUM BOARD SHALL BE ENTITLED TO EXERCISE ITS RIGHTS TO CURE THE EVENT OF DEFAULT DESCRIBED HEREIN IF YOU DO NOT CURE OR (AS APPLICABLE UNDER SECTION [9.2]) COMMENCE THE CURE OF SAME, IN ACCORDANCE WITH ARTICLE 12 OF THE CONDOMINIUM BY-LAWS, WITHIN ___ DAYS [to be specified by the Condominium Board but which shall not be less than seven (7) Business Days] AFTER YOUR RECEIPT OF THIS NOTICE, WHICH MAY ENTAIL, WITHOUT LIMITATION, ENTRY BY THE CONDOMINIUM BOARD OR ITS AGENTS UPON YOUR UNIT AND/OR LIMITED COMMON ELEMENTS. AMONG OTHER THINGS, YOU WILL BE RESPONSIBLE FOR ALL COSTS INCURRED BY OR ON BEHALF OF THE CONDOMINIUM BOARD IN CONNECTION THEREWITH." fail to cure such circumstances giving rise to such Special Non-Monetary Event of Default, or, if the condition giving rise to a Special Non-Monetary Event of Default is of a nature such that it cannot reasonably be cured within the period specified in such further notice and after so notifying the Condominium Board within such period, fail, as promptly as practicable within such period, to commence such cure and thereafter proceed with diligence and continuity to complete such cure (unless, notwithstanding the foregoing requirements, such condition giving rise to the Special Non-Monetary Event of Default constitutes an Emergency, in which event only such prior notice as is practicable under the circumstances (which may be, but shall not be presumed to be, none) shall apply and if no prior notice is given, notice shall be given promptly thereafter). Such right on behalf of the Condominium Board to cure any such matters includes, without limitation, the right: (i) to enter the Unit and/or the Limited Common Elements of the defaulting Unit Owner or Board, as the case may be, in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner or Board, any structure, thing or condition resulting in such violation or breach and the Condominium Board shall not thereby be deemed guilty or liable in any matter of trespass; and/or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach. Any funds expended by the Condominium Board, together with interest at the Default Rate from the date of expenditure to the date of repayment, shall be reimbursed by the defaulting Unit Owner or Board to the Condominium Board on demand and, as applicable, the same shall, for all purposes hereunder, constitute part of the General Common Charges payable by such Person.

(c) Any Repairs or Alterations performed by the Condominium Board in accordance with the terms of this Section 12.2 shall be the sole responsibility of the Condominium Board with respect to the quality and the proper completion thereof, but the responsibility thereafter for maintenance and related obligations for such item or area shall remain with the Person who had that responsibility prior to such performance by the Condominium Board.

12.3 Default by Condominium Board; Performance by Commercial Unit Owners, Hotel Board or Residential Board. In the event that the Condominium Board fails or neglects (other than to a de minimis extent) to perform any obligations (for which appropriate provision has been made in the then applicable Budget or for which an expenditure is otherwise specifically approved by the Condominium Board) with respect to the operation, maintenance, care, upkeep, Alteration or Repair of any part of the Building required to be operated, maintained, cared for, Altered or Repaired by the Condominium Board under the Condominium Documents, any Commercial Unit Owner or the Residential Board or the Hotel Board, if adversely affected by such failure or neglect (in such case, a "Performing Party"), may, but shall not be obligated to, perform or cause to be performed, all such obligations (in accordance with any applicable provisions of the Condominium Documents with respect to consents and approvals, etc.), if the Condominium Board shall fail: (i) within a period of time not less than thirty (30) days after notice is given to the Secretary of the Condominium Board and to each Condominium Board Member specifying the precise nature and scope of such obligation and default, making demand for performance and/or cure thereof and stating in bold print: "YOU ARE HEREBY NOTIFIED THAT THE CONDOMINIUM BOARD HAS FAILED TO FULFILL ITS OBLIGATIONS WITH RESPECT TO THE OPERATION, MAINTENANCE, CARE, UPKEEP, ALTERATION OR REPAIR OF THE BUILDING AS SET FORTH IN DETAIL IN THIS NOTICE. THE CONDOMINIUM BOARD'S FAILURE TO: (a) CURE THIS DEFAULT OR (AS APPLICABLE) TO COMMENCE THE CURE OF SAME, IN ACCORDANCE WITH ARTICLE 12 OF THE CONDOMINIUM BY-LAWS, OR (b) COMMENCE AN ARBITRATION DISPUTING THE DEFAULT HEREIN DESCRIBED, IN EACH CASE WITHIN __ DAYS [to be specified by the Person giving notice but which shall not be less than thirty (30) days] AFTER YOUR RECEIPT OF THIS NOTICE, SHALL ENTITLE US TO PERFORM SUCH OBLIGATION IN THE NAME OF THE CONDOMINIUM BOARD" (unless, notwithstanding the foregoing requirements, such alleged default constitutes an Emergency, in which case only such prior notice as is practicable under the circumstances (which may, but shall not be presumed to be, none) shall apply and if no prior notice is given, notice shall be given promptly thereafter), to either: (x) cure (or if the default is of a nature such that it cannot reasonably be cured within the stated period (except in the case of an Emergency), commence to cure and thereafter proceed with diligence and continuity to complete such cure of) the alleged default; or (y) dispute the existence of such alleged default and submit such dispute to Arbitration (and if the Condominium Board does not comply with either clause (x) or clause (y) of this sentence, it shall not have any further right to commence an Arbitration disputing the alleged default). All reasonable sums expended and costs and expenses incurred by the Performing Party in connection with the making or performing of any such operation, maintenance, care, upkeep, Alteration or Repair (to the extent within the scope of nature and scope of the work described in the notices provided to the Condominium Board as set forth above), together with interest thereon (at the Prime Rate for the first twenty days after demand for payment, and at the Default Rate thereafter), shall be immediately payable upon

demand by the Condominium Board to the Performing Party; and shall otherwise be allocated to the Unit Owners, as a General Common Expense in the manner set forth in these Condominium By-Laws. The Performing Party shall have a right of offset against sums due to the Condominium Board with respect to amounts due from the Condominium Board as described in the preceding sentence.

12.4 Emergencies Caused by Unit Owners or Board(s); Certain Defaults by Accessory Unit Owner and/or Club Unit Owner.

12.4.1 In the event that an Emergency exists as a result of: (i) the failure or neglect by a Unit Owner (or its Occupants or Permittees) or any Board to perform any obligation with respect to the operation, maintenance, care, upkeep or Repair of its Unit or Common Elements (under its control and for which it is, under the Condominium Documents, responsible), as the case may be; (ii) a condition existing or an occurrence within a Unit or a Common Element, as the case may be; or (iii) the violation by a Unit Owner or a Board (or any Occupants or Permittees of a Unit Owner or a Board) of any of the Declaration, these By-Laws, the Residential By-Laws, the Hotel By-Laws or any Rules and Regulations, all the other Unit Owners and the Boards that are, or that have (or that have Occupants or Permittees that are or that have) Units, Common Elements, property or operations that are threatened or affected by such Emergency, shall have the right, but not the obligation, to enter that portion of the Property in or from which, or as to which, such Emergency exists and to perform or cause to be performed any such operation, maintenance, care, upkeep or Repair or otherwise take any reasonable action under the circumstances to summarily abate and remove, at the expense of the defaulting Unit Owner or Board, as the case may be, such Emergency, but in all events only to the extent reasonably and immediately necessary to do so (*i.e.*, until the Emergency no longer exists), and the party effecting such performance shall not thereby be deemed guilty or liable in any manner of trespass, provided that such party gives the defaulting Unit Owner or Board, as the case may be, such notice as is practicable under the circumstances (which may be, but shall not be presumed to be, none), which notice, to the fullest extent possible, shall describe the Emergency and the actions the party intending to effect performance intends to take, is taking, or has taken to abate such Emergency and further provided that such actions were taken only to the extent reasonably and immediately necessary to cause the Emergency no longer to exist. The reasonable costs and expenses incurred in connection with the making of any such maintenance, repair or replacement or the taking of any such action for which such applicable Unit Owner or Board, as the case may be, is or would be otherwise responsible, together with interest thereon (at the Prime Rate for the first twenty days after demand for payment, and at the Default Rate thereafter), shall be immediately payable upon demand by such Unit Owner or Board, as the case may be, to the Person effecting such performance (the "Curing Person"). The Condominium Board shall have a Condominium Board's Lien (hereinafter described) in respect of amounts owed pursuant to the preceding sentence as if the same were payable to the Condominium Board as part of the General Common Charges payable by such applicable Unit Owner or Board, but such lien shall be held (and enforced) by the Condominium Board for the benefit of the Curing Person.

12.4.2 In the event that the Accessory Unit Owner defaults in the keeping of the covenant set forth in Section 8.6.1 of the Declaration, then, subject to the terms thereof (including, without limitation, with respect to compensation to the Accessory Unit Owner in

respect of the use of such kitchens and the provision of such services), the Hotel Board and/or the Transient Hotel Unit Owner shall have the right, but not the obligation, but only for the duration of such default, to peaceably enter the Accessory Unit and to operate the kitchens in the Accessory Unit or such portions thereof as shall be necessary and appropriate for the keeping of such covenant (and the provision to the Hotel Units of the services described therein to be provided); and, except to the extent it shall be determined in Arbitration that no such default by the Accessory Unit Owner existed or that the Transient Hotel Unit Owner or the Hotel Board, as the case may be, otherwise acted wrongfully in exercising the rights of self-help in this subsection, the Person exercising such rights and effecting such performance shall not thereby be deemed guilty or liable in any manner of trespass. No more than one (1) days' notice shall be required in the case of such entry.

12.4.3 In the event that the Club Unit Owner defaults in the keeping of the covenant set forth in Section 8.6.2 of the Declaration, then, subject to the terms thereof (including, without limitation, with respect to compensation to the Club Unit Owner in respect of the access to and use of the Club Unit), the Hotel Board and/or the Transient Hotel Unit Owner shall have the right, but not the obligation, but only for the duration of such default, to peaceably enter the Club Unit and cause such portions thereof as shall be necessary and appropriate for the keeping of such covenant to be made available the guests of the Hotel Units; and, except to the extent it shall be determined in Arbitration that no such default by the Club Unit Owner existed or that the Transient Hotel Unit Owner or the Hotel Board, as the case may be, otherwise acted wrongfully in exercising the rights of self-help in this subsection, the Person exercising such rights and effecting such performance shall not thereby be deemed guilty or liable in any manner of trespass. No more than one (1) days' notice shall be required in the case of such entry.

12.4.4 Any operation, maintenance, Repair or other action taken to abate and remove any such Emergency in accordance with the terms of subsection 12.4.1, and any action taken by the Transient Hotel Unit Owner or Hotel Board, as the case may be, in accordance with the terms of subsections 12.4.2 and 12.4.3 above, shall be the sole responsibility of the Person taking such action (including, in the case of any Repair, with respect to the quality and the proper completion thereof) and such Person shall be liable for any and all Costs or damage caused thereby or in the course thereof and shall indemnify and hold the affected Board(s), managing agents, and Unit Owner(s) harmless with respect to the same; except that, in the case of any repair or physical maintenance performed during or as the result of an Emergency, the responsibility thereafter for maintenance and related obligations for the item or area repaired or replaced shall remain with the Person who had that responsibility prior to the Emergency.

12.5 Priority of Recourse Against Residential Unit Owners.

12.5.1 Notwithstanding anything to the contrary contained in this Article 12 and without limiting the rights of the Residential Board as set forth in the Residential By-Laws, the Residential Board shall in the first instance have the exclusive right of enforcement with respect to, and to exercise any remedy or recourse as against, a Residential Unit Owner as to whom or which any default under the Declaration, these By-Laws, the General Rules and Regulations, the Residential By-Laws and/or the Residential Rules and Regulations exists. The Residential Board shall, upon demand by the Condominium Board, use commercially reasonable efforts (and shall promptly, diligently and continuously attempt) to cause such defaulting Residential Unit Owner

to cure such default (including, without limitation, through the exercise of all remedies available to the Residential Board under the Residential By-Laws). However, a default shall in no event be deemed to exist with respect to the Residential Board by reason of any action or inaction by, or a default existing with respect to, a Residential Unit Owner (or such Board's action or inaction with respect to the enforcement or cure of the same).

12.5.2 In the event the Residential Board fails, within forty-five (45) days after demand is made by the Condominium Board to cause the Residential Unit Owner in question to cure its non-monetary default under the Declaration or these By-Laws (or, if such default is such that the Residential Board cannot reasonably cause the Residential Unit Owner in question to cure the same within such forty-five (45) day period, the Residential Board fails, as promptly as practicable within such forty-five (45) day period, to commence, and thereafter to proceed with diligence and continuity, to cause such Residential Unit to cure its default), then the Condominium Board shall be entitled to exercise its right to cure any such default in accordance with the applicable provisions of the Declaration or these By-Laws.

12.6 Priority of Recourse Against Hotel Unit Owners.

12.6.1 Notwithstanding anything to the contrary contained in this Article 12 and without limiting the rights of the Hotel Board as set forth in the Hotel By-Laws, the Hotel Board shall in the first instance have the exclusive right of enforcement with respect to, and to exercise any remedy or recourse as against, a Hotel Unit Owner as to whom or which any default under the Declaration, these By-Laws, the General Rules and Regulations, the Hotel By-Laws and/or the Hotel Rules and Regulations exists. The Hotel Board shall, upon demand by the Condominium Board, use commercially reasonable efforts (and shall promptly, diligently and continuously attempt) to cause such defaulting Hotel Unit Owner to cure such default (including, without limitation, through the exercise of all remedies available to the Hotel Board under the Hotel By-Laws). However, a default shall in no event be deemed to exist with respect to the Hotel Board by reason of any action or inaction by, or a default existing with respect to, a Hotel Unit Owner (or such Board's action or inaction with respect to the enforcement or cure of the same).

12.6.2 In the event the Hotel Board fails, within forty-five (45) days after demand is made by the Condominium Board to cause the Hotel Unit Owner in question to cure its default under the Declaration or these By-Laws (or, if such default is such that the Hotel Board cannot reasonably cause the Hotel Unit Owner in question to cure the same within such forty-five (45) day period, the Hotel Board fails, as promptly as practicable within such forty-five (45) day period, to commence, and thereafter to proceed with diligence and continuity, to cause such Hotel Unit Owner to cure its default), then the Condominium Board shall be entitled to exercise its right to cure ant such default in accordance with the applicable provisions of the Declaration or these By-Laws.

12.7 Grantee Liable for Unpaid General Common Charges; Statement of Defaults.

(a) To the extent applicable, upon any voluntary conveyance of either the Accessory Unit or the Club Unit, the grantee of such Unit shall (subject to the proviso clause of the penultimate sentence of Section 12.1.3 above) be liable for all unpaid General

Common Charges pertaining to such Unit (which Unit shall continue to be subject to any Condominium Board's Lien existing as of the date of such conveyance), whether accrued and in respect of the period up to and including the date of such conveyance or in respect of the period following conveyance, but without prejudice to any right of the grantee to recover from the grantor any amounts paid by the grantee.

(b) Any General Common Charge Obligor may request from the Condominium Board for the benefit of a prospective purchaser, lender or Occupant, or otherwise, a statement: showing the amount of unpaid General Common Charges pertaining to such General Common Charge Obligor; stating whether there exists any known default under the Declaration or these By-Laws by the requesting Person, and if there are known defaults, specifying the nature thereof; stating the date and recording information of any amendments to the Declaration and these By-Laws, and stating whether the Declaration and these By-Laws are in full force and effect; and the Condominium Board shall provide such statement within ten (10) Business Days after request therefor. The Condominium Board shall be entitled to charge the requesting General Common Charge Obligor a reasonable fee for preparing and rendering said statement. Any Registered Mortgagee may request a similar statement with respect to a Unit upon which it holds a Registered Mortgage, with any reasonable charge therefor to be paid by the applicable Unit Owner. From time to time, the Condominium Board may request a statement from each General Common Charge Obligor, that, except as may be otherwise specified, the Condominium Board is not in default under any of its obligations under the Declaration or these By-Laws, and such other reasonable information as may be reasonably requested. The addressee of any such statement shall be entitled to rely thereon; and each statement delivered pursuant to this Section 12.7 shall act as a waiver of any claim between the addressee and the Condominium Board or Person furnishing such statement to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement provided, however, that: (i) the issuance of such statement shall in no event subject the Condominium Board to any liability for the negligent or inadvertent failure of the Condominium Board to disclose correct and/or relevant information and (ii) such issuance shall not be construed to waive any rights of the issuer with respect to any audit of or adjustments to General Common Charges as provided for in the Declaration and/or these By-Laws, or to challenge acts committed by a Unit Owner for which approval by or consent of the Condominium Board was required but not sought or obtained.

12.8 Title of Condominium Board on Foreclosure. Subject to Section 13.6 of these Condominium By-Laws, in the event of the Condominium Board's purchase of any Unit at a foreclosure sale, or in the event that any Unit Owner (to the extent permitted in the Condominium Documents) shall convey its Unit to the Condominium Board in accordance with Section 339-X of the Real Property Law, title to such Unit shall be held by the Condominium Board or its designee on behalf of all Unit Owners, and the Condominium Board shall have the power to hold, lease, mortgage, sell or otherwise deal with (but not vote the Common Interest appurtenant to) such Unit.

12.9 Residential Unit Owners. The provisions of the Residential By-Laws provide for the remedies of the Residential Board in the event of a failure by a Residential Unit Owner to

pay the Residential Common Charges assessed against its Residential Unit (which Residential Common Charges include a portion of the General Common Charges allocated to the Residential Section by the Condominium Board).

12.10 Hotel Unit Owners. The provisions of the Hotel By-Laws provide for the remedies of the Hotel Board in the event of a failure by a Hotel Unit Owner to pay the Hotel Common Charges assessed against its Hotel Unit (which Hotel Common Charges include a portion of the General Common Charges allocated to the Hotel Section by the Condominium Board).

## ARTICLE 13

## SALES, LEASES AND MORTGAGES OF UNITS

13.1 Sales, Leases and Mortgages of Residential Units. The provisions of the Residential By-Laws, to the extent not in conflict with the Declaration and these By-Laws, shall govern the sale, leasing and mortgaging of the Residential Units; except that, notwithstanding the foregoing, Declarant and/or Residential Sponsor, shall have the right, at any time, in its sole discretion and without the consent of any Person, to sell, assign or otherwise transfer, lease or encumber any Unsold Residential Unit(s), whether by merger, consolidation, sale, lease, mortgage, assignment or otherwise. Notwithstanding any provision hereof to the contrary (but subject to the next sentence), however, prior to Completion of the Improvements (as defined in the Construction Loan Documents), in no event shall Residential Sponsor, without the consent of the Registered Mortgagee of the Transient Hotel Unit and of the Accessory Unit, convey to any single Person (or to such Person together with its Affiliates) in the aggregate more than five (5) separate Unsold Residential Units (it being understood that any such Unit that is combined with any other such Unit shall nevertheless be considered a separate Unit for purposes of such limitation), except to a Person acquiring such Units for its own individual residential use. The limitation set forth in the preceding sentence shall not apply to any mortgagee (or its nominee or designee) or other Person taking title to any Unsold Residential Unit(s) from Residential Sponsor upon a foreclosure or by deed-in-lieu of foreclosure.

13.2 Sales, Leases and Mortgages of Condo Hotel Units. The provisions of the Hotel By-Laws, to the extent not in conflict with the Declaration and these By-Laws, shall govern the sale, leasing and mortgaging of the Condo Hotel Units; except that, notwithstanding the foregoing, Declarant and/or Condo Hotel Sponsor, shall have the right, at any time, in its sole discretion and without the consent of any Person, to sell, assign or otherwise transfer, lease or encumber any Unsold Condo Hotel Unit(s), whether by merger, consolidation, sale, lease, mortgage, assignment or otherwise.

13.3 Sales, Leases and Mortgages of the Commercial Units. Each Commercial Unit Owner with respect to its Commercial Unit may, without the prior consent of any Board, Unit Owner or any other Person but subject to compliance with all Laws, sell, assign or otherwise transfer, lease or encumber its Unit (whether by merger, consolidation, sale, lease, mortgage, assignment or otherwise, but subject to the restrictions on use and leasing provided herein or in the Declaration); provided, however, that: (i) no lien to secure repayment of any sum borrowed may be created on any other Unit without the prior written consent of the owner of such other

Unit or on any of the Common Elements (as opposed to the applicable Unit Owner's undivided interest therein) without the prior written consent of all affected Boards and Unit Owners; and (ii) no Unit Owner (other than such borrowing Unit Owner), nor any Board, will be liable for repayment of any portion of any such loan, unless all such Unit Owner(s) and Boards, as applicable, otherwise so agree in writing.

13.4 Registered Mortgages; Rights of Registered Mortgagees.

(a) The term "Registered Mortgage" as used herein shall mean a mortgage, as the same may be amended, modified or restated from time to time, given to secure the repayment of money or other obligation owed by a Commercial Unit Owner: (i) which shall comply with the provisions of this Article 13; and (ii) a true and correct copy of such mortgage has been delivered to the Secretary of the Condominium Board (and, in the case of the Transient Hotel Unit Owner, the Secretary of the Hotel Board), together with a certification by the indebted Unit Owner or the mortgagee confirming that such copy is a true and correct copy of the mortgage in question. Such defined term shall also include the mortgages encumbering the Property as of the date of recording of the Declaration, as each mortgage may be increased, amended, restated, modified, split, severed and assigned from time to time (each, a "Construction Loan Mortgage"). In the event of any assignment of a Registered Mortgage or in the event of a change of address of a Registered Mortgagee or of an assignee of such Registered Mortgage, notice of the new or changed name and address shall be provided to the Secretary of the Condominium Board (and, in the case of the Transient Hotel Unit Owner, the Secretary of the Hotel Board). The term "Registered Mortgagee" as used herein shall mean the record holder of a Registered Mortgage from time to time (subject to the preceding sentence). All Registered Mortgages shall be deemed to include (whether or not such mortgage in fact includes) an express provision acknowledging: (y) that the lien of such mortgage is and shall be subordinate to the Declaration and these By-Laws (and the provisions thereof and hereof) but superior to the Condominium Board's Lien to the extent set forth in Section 12.1.2 above; and (z) that the mortgagee (and its successors and assigns) will take title (whether by foreclosure, deed-in-lieu of foreclosure or otherwise) subject to the Declaration and these By-Laws.

(b) If a Commercial Unit Owner or its Registered Mortgagee shall have served on the Secretary of the Condominium Board (and, in the case of the Transient Hotel Unit Owner, the Secretary of the Hotel Board), as described in the preceding subparagraph, a notice ("RM Notice") specifying the name and address of such Registered Mortgagee, such Registered Mortgagee shall be given a copy of each and every notice of the occurrence of a default or an Event of Default (including, without limitation, all notices (including notices that the Condominium Board (or, in the case of the Transient Hotel Unit Owner, the Hotel Board) or another Person intends to cure an Event of Default) described in Sections 12.1, 12.2 and 2.4 hereof) required or permitted to be given to such Registered Mortgagee's mortgagor pursuant to the Declaration or these By-Laws (or, in the case of the Transient Hotel Unit Owner, the Hotel By-Laws) at the same time as and whenever such notice shall thereafter be given thereunder or hereunder, at the address last furnished by the applicable Commercial Unit Owner, or Registered Mortgagee. After receipt of an RM Notice from a Commercial Unit Owner or Registered Mortgagee, no notice of the occurrence of a default or an Event of Default thereafter given with respect to such Registered Mortgagee's mortgagor

under the Declaration or these By-Laws by the Condominium Board (or, in the case of the Transient Hotel Unit Owner, the Hotel Board) or any other party entitled to give such notice shall be effective as to such Registered Mortgagee unless and until a copy thereof shall have been so given to the Registered Mortgagee(s). If a Registered Mortgage so provides or otherwise requires, then any insurance proceeds or condemnation award payable to a Commercial Unit Owner pursuant to the provisions hereof (or, in the case of the Transient Hotel Unit Owner, the Hotel By-Laws) shall, upon notice from a Registered Mortgagee of such mortgagor, be delivered instead to such Person's Registered Mortgagee but applied as provided in the applicable provisions hereof (including, without limitation, Section [11.10]) and of the Declaration.

(c) If more than one Registered Mortgagee having a lien on any Commercial Unit has exercised any of the rights afforded by this Section 13.4, only that Registered Mortgagee, to the exclusion of all other Registered Mortgagees, whose Registered Mortgage is most senior in priority of lien with respect to such Commercial Unit (the "Senior RM") shall be recognized by the other Unit Owner(s), the Residential Board, the Hotel Board and the Condominium Board as having exercised such right, for so long as such Registered Mortgagee shall be diligently exercising its rights hereunder with respect thereto; provided, however, that by written notice to the Condominium Board, such Registered Mortgagees may designate one of them which is not most senior in priority to be deemed the Senior RM for purposes of this Section 13.4(c).

(d) Each Registered Mortgagee shall have the right, but not the obligation, to cure any Event of Default by such Registered Mortgagee's mortgagor. The Condominium Board, the Residential Board, Hotel Board and all Unit Owners shall accept performance by a Registered Mortgagee (or its designee or nominee) of any covenant, condition or agreement on the part of a Commercial Unit Owner to be performed hereunder with the same force and effect as though performed by such Registered Mortgagee's mortgagor, even if such performance is after the applicable time period set forth in clause (e) below.

(e) Notwithstanding any other provision of the Declaration or these By-Laws to the contrary, upon the occurrence of an Event of Default by a Commercial Unit Owner, no remedies contemplated under the Condominium Documents (other than (y) the remedies set forth in Section 12.4.1 hereof; and (z) unless clause (2) of this sentence applies and the applicable Non-Monetary Event of Default is not an Event of Default under Section 12.2.4(a) or Section 12.2.4(b) hereof, the remedies set forth in Section 12.2.4(a) hereof) shall be exercised by any Board or Unit Owner with respect thereto if a Registered Mortgagee of such Commercial Unit Owner shall (1) with respect to a Monetary Event of Default, within thirty (30) days following its receipt of any notice to the effect that a Monetary Event of Default has occurred with respect to its mortgagor, cure (or cause to be cured) such Monetary Event of Default, (2) with respect to any Non-Monetary Event of Default that is reasonably capable of being cured without owning or controlling the applicable Unit, within thirty (30) days following its receipt of any notice to the effect that such Non-Monetary Event of Default has occurred with respect to its mortgagor (a "Default Notice"), cure (or cause to be cured) such Non-Monetary Event of Default, or (3) with respect to any Non-Monetary Default in respect of which ownership or control of the applicable Unit is reasonably necessary to cure the Non-Monetary Event of Default in question, within ninety (90) days following its receipt of a

Default Notice with respect thereto, commence to cure (or cause to be cured) the applicable Non-Monetary Event of Default, which cure may consist solely of exercising diligent efforts to obtain ownership or control of the applicable Units, and then diligently and continuously pursue such cure until completion.

(f) In addition, notwithstanding any provision hereof to the contrary, if one or more Events of Default have occurred with respect to a Commercial Unit Owner, but such defaulting Person's Registered Mortgagee is taking the actions described in the preceding subparagraph (e) (as and when provided therein) with respect to, and/or has cured, each such Event of Default, then: (i) the Registered Mortgagee shall be entitled to replace and designate the Condominium Board Members (and, in the case of the Transient Hotel Unit Owner, the members of the Hotel Board) that such defaulting Commercial Unit Owner would otherwise have been entitled to designate, as if such Registered Mortgagee were the Designator thereof; (ii) the Registered Mortgagee shall be entitled to vote at all Unit Owners Meetings the Common Interest that the Commercial Unit Owner would otherwise have been entitled to vote thereat and to give any consent or approval that its mortgagor could have given, which shall be granted or withheld under the same terms as are applicable to its mortgagor, as if such Registered Mortgagee were its mortgagor; and (iii) the Condominium Board (and, in the case of the Transient Hotel Unit, the Hotel Board) shall rely (and be entitled to rely) on the votes of or actions taken by the Registered Mortgagee or the Condominium Board Member (or member(s) of the Hotel Board, as applicable) designated by it in determining the appropriateness of any action to be taken. The rights of a Registered Mortgagee under the preceding sentence shall remain in effect until the Secretary of the Condominium receives the written notice described in the last sentence of Section 2.9.5 hereof and the third sentence of Section 3.7.1 hereof. Payment or performance of any obligation of a Commercial Unit Owner by a Registered Mortgagee (prior to the date on which such Registered Mortgagee or its assignee or designee or nominee shall take title to the defaulting Unit Owner's Unit) shall not give rise to any obligation on the part of the Registered Mortgagee to continue to pay or perform in the future.

13.5 No Severance of Ownership. No Commercial Unit Owner shall execute any mortgage or other instrument conveying or mortgaging title to its Commercial Unit without including therein its entire Common Interest appurtenant to such Unit. Any such mortgage or deed 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. Nothing in this Section 13.4 shall prohibit the lease of all or any portion of a Commercial Unit without the simultaneous lease of its appurtenant Common Interest.

13.6 Waiver of Right of Partition with Respect to Units Acquired on Behalf of Unit Owners as Tenants-in-Common; Waiver of Right of Surrender. (a) In the event that the Accessory Unit Owner or Club Unit Owner shall convey its Unit to the Condominium Board (to the extent permitted under the Condominium Documents) in accordance with Section 339-X of the Real Property Law, or any Commercial Unit shall be acquired by the Condominium Board or its designees (either at a foreclosure sale or otherwise) on behalf of all Unit Owners as tenants-in-common, all such Unit Owners shall be deemed to have waived all rights of partition with respect to such acquired Unit as herein provided.

(b) To the extent permitted by Law, each of the Commercial Unit Owners shall be deemed to have waived any and all right to surrender its Commercial Unit (in each case, together with its Appurtenant Interests), to the Condominium Board.

## ARTICLE 14

## ARBITRATION

14.1 General Procedure. Except as may otherwise be expressly provided in these By-Laws or the Declaration, any arbitration provided for in these By-Laws or the Declaration ("Arbitration") shall be conducted before one arbitrator (having 10 or more years experience in the field of Manhattan mixed use developments) by the American Arbitration Association or any successor organization thereto, in accordance with its rules then in effect. 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 the American Arbitration Association shall not then be in existence and has no 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 10 days after his or her appointment.

14.2 Costs and Expenses. The fees, costs and expenses of the arbitrator shall be borne by the losing party in the Arbitration or, if the position of neither party to a dispute shall be substantially upheld by the arbitrator, such fees, costs and expenses shall be borne equally by the parties to the dispute. Each disputant shall also bear the fees and expenses of its counsel and expert witnesses. Subject to the foregoing, all costs and expenses paid or incurred by the Condominium Board in connection with any Arbitration held hereunder (including, without limitation, the fees and expenses of counsel and expert witnesses) shall constitute General Common Expenses.

14.3 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 14.1 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."

## ARTICLE 15

## GENERAL RULES AND REGULATIONS

All General Rules and Regulations adopted from time to time by the Condominium Board shall be non-discriminatory and uniformly applied. None of the General Rules and Regulations shall be in conflict with these By-Laws or the Declaration. Each Commercial Unit Owner may adopt and, from time to time, modify, amend or add to rules and regulations concerning the use of its Commercial Unit. Notice and a copy of any newly adopted General Rules and Regulations or any modifications, amendments or additions thereto shall be

given by the Condominium Board to each Unit Owner not less than thirty (30) days prior to the effective date thereof.

## ARTICLE 16

## AMENDMENTS TO DECLARATION AND/OR BY-LAWS

16.1 General. Except as specifically provided herein and in the Declaration with respect to amendments, modifications, additions or deletions (each, an "Amendment") to the Declaration and/or these By-Laws: (i) solely for the purpose of, and to the extent required for, effecting the permitted subdivision and/or combination of Units; and/or (ii) affecting Declarant, Residential Sponsor (or its designee(s) or other Unsold Residential Unit Owner(s)), Condo Hotel Sponsor (or its designee(s) or other Unsold Condo Hotel Unit Owner(s)), or the Commercial Units or any Commercial Unit Owner: (a) the Condominium Board may add to, amend, modify or delete ("Amend") any provision of the Declaration and/or these By-Laws by a 75% vote of the Condominium Board Members Present in Person and entitled to vote at a duly called meeting of such Board at which a quorum is present; provided, however, 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 (and their Registered Mortgagee(s) (in the case of any Commercial Unit) or Permitted Mortgagee(s) (in the case of any Residential Unit(s) or Condo Hotel Unit(s)) directly affected; (b) any provision of the Declaration and/or these By-Laws benefiting, protecting or otherwise affecting only the Residential Section or the Residential Unit Owners may be Amended by the affirmative vote of at least 66-2/3% in number and in Common Interest of all Residential Unit Owners taken in accordance with the provisions of these By-Laws and the Residential By-Laws; (c) any provision of the Declaration and/or these By-Laws benefiting, protecting or otherwise affecting only the Hotel Section or the Hotel Unit Owners may be Amended by the affirmative vote of at least 66-2/3% in number and in Common Interest of all Hotel Unit Owners taken in accordance with the provisions of these By-Laws and the Hotel By-Laws; and (d) any provision of the Declaration and/or these By-Laws benefiting, protecting or otherwise affecting only the Commercial Units or the Commercial Unit Owners may be Amended by the affirmative vote of at least 66-2/3% in Common Interest of all Commercial Unit Owners taken in accordance with the provisions of these By-Laws. Notwithstanding the foregoing, but subject to the provisions of the Declaration and/or these By-Laws with respect to Amendments to the Declaration and/or these By-Laws: (i) solely for the purpose of, and to the extent required for, effecting the permitted subdivision and/or combination of Units; and/or (ii) affecting Declarant, Residential Sponsor (or its designee(s) or other Unsold Residential Unit Owner(s)), Condo Hotel Sponsor (or its designee(s) or other Unsold Condo Hotel Unit Owner(s)), or the Commercial Units or any Commercial Unit Owner: (1) no Amendment pursuant to the provisions of clause (a) above which would: (A) adversely affect the lien of any mortgagee under the Condominium Documents; (B) amend any enumerated rights, privileges, liabilities or obligations of a mortgagee of any Unit(s); or (C) subject to subsection 18.1.4 below, adversely affect any enumerated rights, privileges, liabilities or obligations of any Unit Owner; shall be effective without the written consent (which consent shall not be unreasonably withheld, conditioned or delayed) of the applicable Registered Mortgagee (in the case of any Commercial Unit(s)) or Permitted Mortgagee (in the case of any individual Residential Unit(s) or Condo Hotel Unit(s)) or majority of the applicable Mortgagee Representatives, if any (in the case of all Residential Units or all Condo Hotel Units, as the case may be); (2) no Amendment pursuant to

the provisions of clause (b) above shall be effective without the written consent (which consent shall not be unreasonably withheld or delayed) of a majority of the Residential Mortgagee Representatives, if any; (3) no Amendment pursuant to the provisions of clause (c) above shall be effective without the written consent (which consent shall not be unreasonably withheld or delayed) of a majority of the Condo Hotel Mortgagee Representatives, if any, and the Registered Mortgagee of the Transient Hotel Unit; and (4) the provisions of this Section 16.1 may not be Amended unless 80% in Common Interest of all Unit Owners affected thereby duly approve such Amendment.

16.2 Amendments Affecting Declarant or Sponsors. Notwithstanding any provision contained in the Declaration and/or these By-Laws to the contrary, no Amendment to the Condominium Documents shall be effective in any way: (a) without the prior written consent of the affected Commercial Unit Owner(s), with respect to any Amendment thereto modifying the permitted uses of any Commercial Unit or affecting the rights, privileges, easements, licenses or exemptions granted to any Commercial Unit Owner; (b) without the prior written consent of Residential Sponsor or its designee or the owner of any Unsold Residential Unit with respect to any amendment, modification, addition or deletion of or to the Condominium Documents modifying the permitted uses of the Residential Section or any portion thereof or affecting the rights, privileges, easements, licenses or exemptions granted to Residential Sponsor or its designee or the owner of any Unsold Residential Unit, or otherwise adversely affecting Residential Sponsor or its designee or the owner of any Unsold Residential Unit; (c) without the prior written consent of Condo Hotel Sponsor or its designee or the owner of any Unsold Condo Hotel Unit with respect to any amendment, modification, addition or deletion of or to the Condominium Documents modifying the permitted uses of the Hotel Section or any portion thereof or affecting the rights, privileges, easements, licenses or exemptions granted to Condo Hotel Sponsor or its designee or the owner of any Unsold Condo Hotel Unit, or otherwise adversely affecting Condo Hotel Sponsor or its designee or the owner of any Unsold Condo Hotel Unit; or (c) without the prior written consent of the holder of any present or future mortgage, pledge, or other lien or security interest covering any Unsold Unit with respect to any amendment, modification, addition or deletion of or to the Condominium Documents modifying the permitted uses of such Unsold Unit or affecting the rights, privileges, easements, licenses or exemptions granted to the owner of such Unsold Unit.

16.3 Special Amendments. Declarant, Residential Sponsor, Condo Hotel Sponsor and the Commercial Unit Owners shall have the right to amend the Declaration and these By-Laws, without the consent of any Board or any other Unit Owner, to effectuate the rights otherwise granted to such party under the terms of the Declaration and these By-Laws.

16.4 Amendments of Residential By-Laws. Subject to the provisions hereof or thereof with respect to amendments affecting Declarant, Residential Sponsor and/or the owner of any Unsold Residential Unit(s), and subject to compliance with any other requirements of this Article 16, the Residential Board and/or Residential Unit Owners shall have the right to amend, modify, add or delete any provision of the Residential By-Laws in accordance with the terms and conditions of the Residential By-Laws.

16.5 Amendments of Hotel By-Laws. Subject to the provisions hereof or thereof with respect to amendments affecting Declarant, Condo Hotel Sponsor, the Transient Hotel Unit

Owner and/or the owner of any Unsold Condo Hotel Units, and subject to compliance with this Article 16, the Hotel Board and/or Hotel Unit Owners shall have the right to amend, modify, add or delete any provision of the Hotel By-Laws in accordance with the terms and conditions of the Hotel By-Laws.

16.6 Recording of Amendments. No Amendment to the Declaration, Condominium By-Laws, Residential By-Laws and/or Hotel By-Laws shall be effective until approved in accordance with the applicable provisions of the Condominium Documents and recorded in the Register's Office.

16.7 Execution and Delivery of Amendments. Subject to the provisions contained herein or in the Declaration with respect to Amendments affecting Declarant, Residential Sponsor, Condo Hotel Sponsor, their respective designees or the holder of any Unsold Units, any Amendment to the Declaration and/or Condominium By-Laws, Residential By-Laws or Hotel By-Laws may be executed: (i) if on behalf of the applicable Board, by the President or Vice President and the Secretary or an Assistant Secretary of such Board; and (ii) if on behalf of a Commercial Unit Owner, by any general partner, managing member, officer or other authorized person of such owner.

16.8 Amendments Affecting the Condo Hotel Units. Notwithstanding any provision herein or in the Declaration to the contrary, the provisions of Section 8.2 of the Declaration with respect to the permitted uses of the Condo Hotel Units may not be amended without the written consent thereto of the New York City Department of Buildings.

## ARTICLE 17

## INSURANCE TRUSTEE

17.1 Insurance Trustee.

17.1.1 Insurance Trustee. (a) Appointment of Insurance Trustee; Voting. Initially, the servicer for the Construction Loans shall be the Insurance Trustee, unless such Person declines to do so or is no longer a Registered Mortgagee with respect to a Construction Loan Mortgage, and in such case, the Condominium Board shall appoint the Insurance Trustee with a Majority Member Vote; provided, however, that if the Insurance Trustee is not chosen pursuant to the initial Majority Member Vote, then the Person who was nominated to be the Insurance Trustee and who received the lowest number of votes shall be eliminated as a candidate for Insurance Trustee, and the Condominium Board shall then choose an Insurance Trustee from the remaining candidates with a Majority Member Vote. The afore described voting procedure for eliminating the candidate with the lowest number of votes shall be repeated until an Insurance Trustee is chosen.

(b) Qualifications. The Insurance Trustee shall at all times be (i) a savings bank, (ii) a savings and loan association, (iii) a credit union, (iv) a commercial bank or trust company (whether acting individually or in a fiduciary capacity), (v) an insurance company organized and existing under the laws of the United States or any state thereof, (vi) a governmental agency, body or entity, (vii) an employee benefit, pension or retirement plan or

fund, (viii) a commercial credit corporation, (ix) HSBC Bank USA, National Association (together with its successors, "HSBC"), (x) Credit Suisse (together with its successors, "CS"), (xi) an investment bank, a real estate investment trust or an opportunity fund; or (xii) any servicer for, or affiliate of, any of the foregoing ; provided, that each of the above entities shall qualify as an Insurance Trustee within the provisions of this subsection only if each such entity shall (a) be subject to (y) the jurisdiction of the courts of the United States of America or of the State of New York in any actions or (z) the supervision of (A) the Comptroller of the Currency or the Department of Labor of the United States or the Federal Home Loan Bank Board or the Insurance Department or the Banking Department or the Comptroller of the State of New York, or the Comptroller of New York City or any successor to any of the foregoing agencies or officials, or (B) any agency or official exercising comparable functions on behalf of any other state within the United States, or (C) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments that, in any manner, assist in the financing, development, operation and maintenance of improvements, or (D) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, and (b) except in the case of any servicer (as hereinabove provided, provided the party for which such servicer is acting) has/have individual or combined assets, as the case may be, of not less than Five Hundred Million and 00/100 Dollars ($500,000,000.00), and (c) not be an Affiliate of any Unit Owner or Board.

(c) Insurance Trustee Agreement. Any GCE Restoration Funds received by the Insurance Trustee shall be held by the Insurance Trustee for restoration of the General Common Elements or for distribution to the Unit Owners or Residential Boards, as applicable, as provided in these By-Laws, and the Insurance Trustee shall act otherwise in accordance with the terms and provisions hereof. If any GCE Restoration Funds exceed $2,500,000, the Condominium Board shall remit to the Insurance Trustee, promptly upon receipt of same, all GCE Restoration Funds. The Insurance Trustee shall be entitled to receive from the Condominium Board the Insurance Trustee's reasonable fees, compensation and expenses (all as approved by the Condominium Board) for acting as Insurance Trustee and may retain said fees, compensation and expenses, free of trust, from monies held by it. Each Non-Residential Unit Owner and Residential Board (on behalf of the applicable Residential Unit Owners) shall contribute to the Condominium Board the same percentage share of such fees, compensation and expenses as each such Unit Owner and Board bears with respect to the cost of insurance under the Budget.

17.1.2 Liability of Insurance Trustee. The Insurance Trustee shall not be liable or accountable for any action taken or disbursement made in good faith by the Insurance Trustee or any of its Related Parties, except that arising from the gross negligence, willful misconduct or bad faith of the Insurance Trustee or its Related Parties. The Insurance Trustee shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or award paid (or to be paid) in respect of the General Common Elements, unless the Insurance Trustee shall have been given an express written authorization from the Condominium Board. In addition, the Insurance Trustee may rely conclusively on any Certificate furnished by a Certifying Professional to the Insurance Trustee which appears on its face to have been properly furnished in accordance with the provisions of Section 12.10.3 above and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

17.1.3 Indemnification of Insurance Trustee. In consideration of the services rendered by the Insurance Trustee, the Condominium Board shall agree to indemnify and hold harmless the Insurance Trustee and its Related Parties from any and all damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Insurance Trustee's duties hereunder or in the defense of any claim or claims made against Insurance Trustee or any of its Related Parties by reason of its appointment hereunder, except where due to the gross negligence, willful misconduct or bad faith of the Insurance Trustee or its Related Parties.

17.1.4 Interest on Deposited Funds. (a) The Insurance Trustee shall hold any GCE Restoration Funds in trust for the uses and purposes herein provided, and shall not commingle such monies with the Insurance Trustee's own funds or any other funds. The Insurance Trustee shall hold such monies in an account or accounts maintained in the City of New York in an Approved Bank(s) (as hereinafter defined) which is a member of the New York Clearing House Association. Unless otherwise approved in writing by the Condominium Board, such proceeds shall be invested in reasonably prudent investments, including without limitation certificates of deposit, recognizing preservation of capital as the primary investment obligation, and which shall at all times provide sufficient liquidity necessary in order to have sufficient funds available for the disbursement of funds which may be required under these By-Laws. As used herein, the term "Approved Bank" shall mean a bank or financial institution that has a minimum long-term unsecured debt rating of at least "A" by at least two of the following rating agencies: Standard & Poor's Rating Services, a Division of the McGraw-Hill Companies, Inc., Duff & Phelps Credit Rating Co., Moody's Investors Service, Inc. and Fitch ICBA, Inc.

(b) GCE Restoration Funds shall be applied to the payment of the costs of GCE Restoration Work before using any portion of such funds for any other purpose (other than the Insurance Trustee's fees or expenses), and then in accordance with the terms and provisions of these By-Laws. Any interest paid or received by the Insurance Trustee on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Insurance Trustee. Each deposit of insurance proceeds and/or condemnation award shall be held and accounted for separately by the Insurance Trustee. Notwithstanding anything in the Declaration or these By-Laws to the contrary, if, pursuant to and in accordance with Section 12.10.6 of these By-Laws, the Condominium Board votes not to rebuild the Building after a Significant Casualty, then the Insurance Trustee shall remit all GCE Restoration Funds to the Condominium Board.

17.1.5 Resignation and Removal of Insurance Trustee; Successor Insurance Trustee. (a) The Insurance Trustee may resign by serving not less than sixty (60) days' prior notice to the Condominium Board. Within such sixty (60) day period, the Condominium Board shall appoint a substitute Insurance Trustee pursuant to and in accordance with Section 18.7.1(a), and the resigning Insurance Trustee shall transfer all funds, together with copies of all records, held by it as Insurance Trustee to such substitute, at which time its duties as Insurance Trustee shall cease. If a Insurance Trustee is not appointed within the sixty (60) day period, the resigning Insurance Trustee shall continue to hold, receive and invest any funds payable to the Insurance Trustee hereunder but shall have no other duties or obligations as Insurance Trustee other than to invest the funds as herein provided and to transfer all funds and records to the new Insurance Trustee when selected; provided, however, that the Insurance Trustee may, after not

less than twenty (20) days' prior written notice to the Condominium Board (given no sooner than forty (40) days after the resignation notice referred to above), deposit such funds with either a court of competent jurisdiction or with a bank or trust company in New York, New York who qualifies as a Insurance Trustee.

(b) If the Insurance Trustee is a Registered Mortgagee and such Insurance Trustee ceases to be a Registered Mortgagee, the Condominium Board may select a successor Insurance Trustee in accordance with the provisions hereof.

(c) The Condominium Board may replace the Insurance Trustee for any reason; provided, however, that if HSBC or CS is the Insurance Trustee while it is a Registered Mortgagee with respect to a Construction Loan Mortgage, HSBC or CS may be removed by the Condominium Board as Insurance Trustee only if it fails to materially comply with its obligations as Insurance Trustee or is otherwise removed for cause (including, without limitation, for the gross negligence, willful misconduct or bad faith of the Insurance Trustee or its Related Parties).

17.1.6 Insurance Trustee's Compliance with Law. The Insurance Trustee shall hold all proceeds and discharge its obligations in accordance with all applicable Laws, including, without limitation, Section 254(4) of the Real property Law of the State of New York.

## ARTICLE 18

## MISCELLANEOUS

18.1 Approvals and Consents.

18.1.1 Wherever the consent or approval of Declarant, Residential Sponsor or Condo Hotel Sponsor is required under these By-Laws or the Declaration, such consent or approval shall not be required when such Person (either directly or through its affiliates) no longer owns any Units.

18.1.2 Any approval or consent of a Board, Declarant, Sponsor or any Unit Owner or Board Member required under the Declaration or these By-Laws may, except to the extent expressly provided to the contrary in the Declaration or these By-Laws, be granted or withheld in such Person's sole discretion. Whenever the approval or consent of a Board, Sponsor, or any Unit Owner or Board Member is required under the Declarations or these By-Laws not to be unreasonably withheld, such approval shall also not be unreasonably conditioned or delayed.

18.1.3 Notwithstanding that the consent and/or approval of any Board or Unit Owner may be required for or with respect to any particular matter, there shall be no separate or further requirement to obtain the consent or approval of the managing agent for any of the foregoing Persons.

18.1.4 Notwithstanding any other provision of the Declaration and these By-Laws, with respect to any right of approval or consent granted to any Person by virtue of any "affect" or "impact" on it or any portion of the Property owned or controlled by it, in each

instance the "affect" alleged must relate to the unique circumstances of such Person and the portion(s) of the Property owned or controlled by it; and no specific right of approval or consent shall apply with respect to any such matter which affects or impacts all Unit Owners, all General Common Charge Obligors, Commercial Unit Owners, the Hotel Board and the Residential Board, as the case may be, simply by virtue of their status as Unit Owners, General Common Charge Obligors, Unit Owner or Board, as the case may be.

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

18.3 Captions. The index hereof and 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 or the intent of any provision hereof.

18.4 Conflicts. In the event of a conflict between: (i) the terms of the Declaration and those of any of the Condominium By-Laws, Residential By-Laws or Hotel By-Laws, the terms of the Declaration shall in all events govern; (ii) the terms of the Condominium By-Laws and those of the Residential By-Laws or the Hotel By-Laws, the terms of these Condominium By-Laws shall in all events govern; and (iii) the terms of any General Rules and Regulations and those of the Residential Rules and Regulations (as defined in the Residential Offering Plan) or Hotel Rules and Regulations (as defined in the Condo Hotel Offering Plan), the terms of any General Rules and Regulations shall in all events govern.

18.5 Certain References.

18.5.1 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.

18.5.2 The terms "herein," "hereof" or "hereunder" or similar terms used in these By-Laws refer to these entire Condominium By-Laws and not to the particular provision in which the terms are used.

18.5.3 Unless otherwise stated, all references herein to Articles, Sections, subsections, paragraphs, subparagraphs or other provisions are references to Articles, Sections or other provisions of these Condominium By-Laws.

18.6 Severability. Subject to the provisions of the Declaration, if any provision of these By-Laws is invalid or unenforceable as against any Person or under certain circumstances, the remainder of these By-Laws and the applicability of such provision to other Persons or circumstances shall not be affected thereby. Each provision of these By-Laws shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by Law.

18.7 CPI Increases. All specific dollar amounts set forth in these By-Laws or the Declaration shall be adjusted by the CPI Increase Factor except to the extent otherwise provided. For such purposes, the "CPI Increase Factor" means an increase proportionate to any increase in

the cost of living from the date of the initial recording of the Declaration, as reflected by the change in the Consumer Price Index (CPI-U; All Items; 1982-84 = 100 standard reference base period) for New York, New York (or the smallest measured area including New York, New York), as published by the Bureau of Labor Statistics, United States Department of Labor or, if the same ceases to be published, a commonly used substitute therefor reasonably selected by the Condominium Board (such index or substitute, the "Consumer Price Index").

18.8 Covenant of Further Assurances.

18.8.1 Any party which is subject to the terms of these By-Laws, whether such party is a Unit Owner, a lessee or sublessee of a Unit Owner, an Occupant of a Unit, a member or an officer of any Board, a Registered Mortgagee, Residential Mortgagee Representative, Condo Hotel Mortgagee Representative or otherwise, shall, 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, as shall be reasonably necessary to effectuate the provisions of these By-Laws or any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction (but without expanding the scope of any liability or obligation on the part of the cooperating party beyond that set forth in the Condominium Documents).

18.8.2 If any Unit Owner or any other party which is subject to the terms of these By-Laws fails to execute, acknowledge or deliver any instrument, or fails or refuses to take any action which such Unit Owner or other party is required to perform pursuant to one or more specific provision of these By-Laws, in each case (unless a specific provision with respect thereto is provided for elsewhere in the Condominium Documents) within fifteen (15) Business Days after request therefor and within five (5) Business Days after receipt of a second request therefor (which second request shall be accompanied by a copy of the initial request (and any supporting materials)) and stating in bold print: "THIS IS A SECOND AND FINAL REQUEST FOR YOU TO EXECUTE, ACKNOWLEDGE AND/OR DELIVER THE DOCUMENTS, OR TO TAKE THE ACTIONS, DESCRIBED IN THE ENCLOSED PRIOR REQUEST THEREFOR, WHICH IS REQUIRED UNDER THE TERMS OF THE CONDOMINIUM DECLARATION AND/OR BY-LAWS. YOUR FAILURE TO EXECUTE, ACKNOWLEDGE AND/OR DELIVER THE DOCUMENTS, OR TO TAKE THE ACTIONS, AS THE CASE MAY BE, WITHIN FIVE BUSINESS DAYS FROM THE DATE HEREOF SHALL ENTITLE THE CONDOMINIUM BOARD TO DO SO ON YOUR BEHALF.", then the Condominium Board is hereby authorized, as attorney-in-fact, coupled with an interest, for such Unit Owner or other party, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Unit Owner or other party, and such instrument or action shall be binding on such Unit Owner or other party, as the case may be. Any dispute with respect to the foregoing shall be subject to Arbitration; provided, the Person refusing to execute, acknowledge or deliver any such instrument, or refusing to take any such action, expressly renders such refusal in writing (together with its rationale for such refusal) within the time period(s) provided in this Section 18.8.2.

18.8.3 If the Condominium Board, Hotel Board or Residential Board, as applicable, fails to execute, acknowledge or deliver any instrument, or fails or refuses to take any

action which is required of it to perform in furtherance of the granting of an historic preservation easement or similar right, then Declarant, the Accessory Unit Owner and/or their respective designees are authorized, as attorney-in-fact, coupled with an interest, for the Boards, and the Unit Owners, to execute, acknowledge and deliver any instrument, or to take action, in the name of the Boards and the Unit Owners in furtherance thereof, and such instrument or action shall be binding on the applicable Board(s) and the Unit Owners, as the case may be.

## ARTICLE 19

## BUILDING FAÇADE

19.1 Condominium Board Rights and Obligations. Notwithstanding that the Building Façade is part of the Accessory Unit, the Condominium Board shall, on behalf of the Accessory Unit Owner, but for the benefit of the Unit Owners and the Boards, have the right and obligation to supervise and/or perform all maintenance, Alterations and Repairs necessary in connection with the Building Façade (including, without limitation, in connection with the terms and conditions of any Historic Preservation Easement (defined below)), and grant consents with respect to and to insure (and to collect, use, apply, distribute and otherwise deal with the proceeds of insurance, or condemnation awards, with respect to) the Building Façade, in each case, as and to same extent as if the same were a General Common Element and subject to the terms and conditions of the Condominium Documents with respect to the Building Façade and the General Common Elements. In furtherance thereof, except as otherwise set forth in the Condominium Documents (*e.g.*, Section 6.3.2 of these Condominium By-Laws) all costs and expenses incurred by the Condominium Board in connection with the Building Façade shall be deemed to be General Common Expenses and payable by the General Common Charge Obligors as General Common Charges.

19.2 Historic Preservation Easement. In connection with any exercise by the Accessory Unit Owner of the rights reserved to it in Section 15.13 of the Declaration to grant, with respect to the Building Façade, a historic preservation easement or similar right, such grant may include a covenant, inter alia, not to demolish, remove or raze the Building Façade or to alter the Building Façade or the size, profile and silhouette of the Building, except as may be permitted in the agreement setting forth terms of such easement (a "Historic Preservation Easement Agreement"). The grantee under any Historic Preservation Easement Agreement shall be a third party beneficiary of the provisions of the Declaration and these Condominium By-Laws relating to the Building Façade and no provision of the Declaration or these Condominium By-Laws which alters the rights granted in the Condominium Documents (or in any amendment thereto) with respect to the Building Façade may be changed or modified without the written consent of such grantee or its successors in interest, which consent shall not be unreasonably withheld, delayed or denied.

19.3 Building Façade as Initial Construction and Fit-Out Work. Any work with respect to the Building Façade that would constitute Initial Construction and Fit-Out Work if the Building Façade were a General Common Element shall nevertheless be included within and constitute Initial Construction and Fit-Out Work notwithstanding that the Building Façade is part of the Accessory Unit.

# EXHIBIT 1
# TO CONDOMINIUM BY-LAWS

## TABLE OF DEFINITIONS

Accessory Unit: As defined in Section 3.1 of the Declaration.

Accessory Unit Owner: the record owner, whether one or more Persons, of the Accessory Unit, in fee simple absolute, from time to time, including, without limitation, any mortgagee (or its designee) succeeding to such owner's interest in the Unit in question by foreclosure or by deed-in-lieu of foreclosure.

Affiliate: with respect to any Person, means (except as may be provided more specifically in any instance in the Condominium Documents) a Person which directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with, such Person. For purposes hereof, the term "control" (including the related terms "controlled by" and "under common control with") mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person (whether through the ownership of voting securities or other ownership interest, by contract or otherwise); and the ownership, either directly or indirectly, of at least 51% of the legal or beneficial interest in such Person.

Alterations: As defined in Section 2.2.2(a) of the Condominium By-Laws; and "Altering" shall mean performing an Alteration.

Amendment: As defined in Section 16.1(b) of the Condominium By-Laws.

Appurtenant Interests: As defined in Section 17.4 of the Declaration.

Arbitration: As defined in Section 14.1 of the Condominium By-Laws.

Board Member: means a Condominium Board Member as defined in Article 2 of the Condominium By-Laws.

Board: means any of the Residential Board, the Hotel Board or the Condominium Board, as the context may require; and such boards are collectively referred to as the "Boards".

Budget: As defined in Section 6.1.1 of the Condominium By-Laws.

Building: As defined in Article 3 of the Declaration.

Building Façade: As defined in Article 7 of the Declaration.

Business Days: means Monday to Friday, except holidays observed by the federal, state or local governments.

Club Unit: As defined in Section 3.1 of the Declaration.

Club Unit Owner: the record owner, whether one or more Persons, of the Club Unit, in fee simple absolute, from time to time, including, without limitation, any mortgagee (or its designee) succeeding to such owner's interest in the Unit in question by foreclosure or by deed-in-lieu of foreclosure.

Commercial Unit(s): Any of the Transient Hotel Unit, the Accessory Unit or the Club Unit, as the same may be subdivided or combined in accordance with the Declaration and/or Condominium By-Laws. All of any such Units are collectively referred to as the "Commercial Units."

Commercial Unit Owner: means the record owner, whether one or more Persons, of a Commercial Unit, in fee simple absolute, from time to time, including, without limitation, any Registered Mortgagee (or its designee or nominee) succeeding to such owner's interest in the Commercial Unit in question by foreclosure or by deed-in-lieu of foreclosure, and further described in Section 3.1 of the Declaration.

Common Charges: in respect of a General Common Charge Obligor means General Common Charges; and in respect of a Residential Unit Owner means Residential Common Charges and in respect of a Hotel Unit Owner means Hotel Common Charges.

Common Elements: means the General Common Elements, the Residential Limited Common Elements and the Hotel Limited Common Elements, each as defined in Article 7 of the Declaration.

Common Interest: means, at any given time, the proportionate, undivided interest in fee simple absolute appurtenant to each Unit, as expressed in percentage terms and set forth in Schedules B, to the Declaration, as such Schedule may be amended from time to time in accordance with and subject to the provisions of the Condominium Documents. References in the Declaration, the Condominium By-Laws and the Residential By-Laws to the Common Interest(s) of the Residential Section or the Residential Board shall mean, in each case, the aggregate of the Common Interests appurtenant to all the Residential Units. References in the Declaration, the Condominium By-Laws and the Hotel By-Laws to the Common Interest(s) of the Hotel Section or the Hotel Board shall mean, in each case, the aggregate of the Common Interests appurtenant to all the Hotel Units.

Condo Hotel Mortgagee Representatives: One or more (but not more than three) representatives which the holders of Institutional Mortgages constituting a majority in principal amount of all Institutional Mortgages encumbering the Condo Hotel Units may, at their election, designate in writing to the Hotel Board and the Condominium Board which representatives shall be empowered to act on behalf of all holders of Institutional Mortgages encumbering the Condo Hotel Units with respect to any matter requiring their consent or approval under the Condominium Documents.

Condo Hotel Offering Plan: means that certain offering plan in connection with the offering of the Condo Hotel Units, together will all amendments to such plan made from time to time.

Condo Hotel Sponsor: means Declarant or any affiliate thereof to which the Unsold Condo Hotel Units are initially conveyed following the recording of the Declaration for purposes of effecting the offering of Condo Hotel Units as set forth the Condo Hotel Offering Plan.

Condo Hotel Unit: As defined in Section 3.1 of the Declaration.

Condo Hotel Unit Owner: the record owner, whether one or more Persons, of a Condo Hotel Unit, in fee simple absolute, from time to time, including, without limitation, any mortgagee (or its designee) succeeding to such owner's interest in the Unit in question by foreclosure or by deed-in-lieu of foreclosure.

Condominium: means the condominium established pursuant the Declaration.

Condominium Board: As defined in Article 2 of the Condominium By-Laws.

Condominium Board Member or Board Member: As defined in Article 2 of the Condominium By-Laws.

Condominium Board's Lien: As defined in Article 12 of the Condominium By-Laws.

Condominium By-Laws or By-Laws: As defined in Section 1.2 of the Declaration.

Condominium Documents: the Declaration, the Condominium By-Laws (including the General Rules and Regulations, to the extent then adopted and in effect), the Residential By-Laws (including the Residential Rules and Regulations) and the Hotel By-Laws (including the Hotel Rules and Regulations, to the extent then adopted and in effect), as any of the foregoing may be amended from time to time.

Condominium Managing Agent:

Construction Lender: means any holder of a Construction Loan Mortgage.

Construction Loan Documents: means all documents evidencing or governing a Construction Loan Mortgage.

Construction Loan Mortgage: As defined in Section 13.4(a) of the Condominium By-Laws.

Construction Loans: means the mortgage loans secured by the Construction Loan Mortgage.

Consumer Price Index: As defined in Section 18.7 of the Condominium By-Laws.

Costs: claims, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements).

CPI Increase Factor: As defined in Section 18.7 of the Condominium By-Laws.

Declarant: means CPS 1 Realty LP, a limited partnership organized and existing under the Law of the State of Delaware duly authorized to do business in the State of New York.

Declaration: means that certain Declaration Establishing a Plan for Condominium Ownership of the Premises known as The Plaza Condominium, to which the initial form of these Condominium By-Laws are attached, as such Declaration may be amended from time to time.

Default Rate: means a rate per annum equal to the lesser of: (i) five (5) percentage points above the rate publicly announced from time to time by Citibank N.A. (or its successor) in New York, New York as its "prime rate"; and (ii) the maximum rate of interest permissible under applicable Laws, if any, with respect to the applicable amount payable hereunder.

Designator: means, with respect to a Condominium Board Member, the Person (*i.e.*, the Hotel Board, the Residential Board or the Unit Owner) entitled to designate such Board Member to the Condominium Board.

Designator in Good Standing: as of any given date, a Designator with respect to which no Event of Default has occurred and is continuing at the time in question.

Emergency: means a condition, event or occurrence (including, without limitation, leaks or cracks, structural problems or defects) requiring Repair, Alteration or abatement immediately and specifically necessary for the preservation or safety of the Building or any part thereof, or for the health or safety (but not the general comfort or welfare) of Occupants of the Building or other persons, or required to avoid the suspension of any necessary services in the Building.

Environmental Law(s): all federal, state and local laws, rules, regulations, ordinances, requirements and orders whether now existing or hereafter enacted, promulgated or issued, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material and/or the protection of human health and the environment.

Equipment: means equipment, facilities, parts, fixtures, apparatus, appurtenances, installations and other similar items and personalty as may be located or contained in a Unit, Limited Common Element or General Common Element, but not necessarily forming a part of such Unit, Limited Common Element or General Common Element, as the case may be, unless otherwise specifically set forth in the Condominium Documents.

Event of Default: A Monetary Event of Default or Non-Monetary Event of Default, as the case may be.

First Closing: means the first to occur of the First Condo Hotel Closing or the First Residential Closing.

First Condo Hotel Closing: means the first closing in which Condo Hotel Sponsor pursuant to the Condo Hotel Offering Plan conveys title to a Condo Hotel Unit to a Person other than an Affiliate.

First Residential Closing: means the first closing in which Residential Sponsor pursuant to the Residential Offering Plan conveys title to a Residential Unit to a Person other than an Affiliate.

Floor Plans: As defined in Section 5.1 of the Declaration.

General Common Charges: As defined in Section 6.1.1 of the Condominium By-Laws.

General Common Charge Obligors: means: (i) the Accessory Unit Owner as the Unit Owner of the Accessory Unit; (ii) the Club Unit Owner as the Unit Owner of the Club Unit; (iii) the Residential Board on behalf of and as agent for the owners of the Residential Units; and (iv) the Hotel Board on behalf of and as agent for the owners of the Hotel Units.

General Common Elements: As defined in Article 7 of the Declaration.

General Common Expenses: As defined in Section 6.1.1 of the Condominium By-Laws.

General Rules and Regulations: such non-discriminatory rules and regulations as may be promulgated (and amended) by the Condominium Board from time to time with respect to various matters relating to the use of all or any portion of the Property, which either supplement or elaborate upon the provisions of the Declaration or the Condominium By-Laws, and which shall be uniformly enforced.

Governmental Authority(ies): means the United States of America, the State of New York, The City of New York and any agency, department, commission, board, bureau, instrumentality, public authority or agency (whether governmental or quasi-governmental) or political subdivision of any of the foregoing, now existing or hereafter created (including, without limitation, the New York City Department of Buildings, the City Planning Commission and the boards of fire underwriters) having jurisdiction over the Property or any portion thereof.

Hazardous Materials: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.

Hotel Board: As defined in Offering Plan.

Hotel By-Laws: As defined in Section 1.4 of the Declaration.

Hotel Development Agreement: As defined in the Construction Loan Documents.

Hotel Manager: As defined in Section 8.2.1 of the Declaration.

Hotel Managing Agent: The manager of the Hotel Section at the time in question.

Hotel Rules and Regulations: As defined in the Offering Plan.

Hotel Section: As defined in the Offering Plan.

Impositions: each of the following imposed by any Governmental Authority: (i) real property general and Special Assessments (including, without limitation, any Special Assessments: (A) for business improvements; or (B) imposed by any Special Assessment district); (ii) personal property taxes; (iii) commercial rent or occupancy taxes; (iv) license and permit fees, if and to the extent such fees are not paid by the Condominium Board and charged to the Unit Owners as part of General Common Charges; (v) any fines, penalties and other similar governmental charges applicable to any of the foregoing, together with any interest or costs with respect to the foregoing; and (vi) any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever, together with any fines and penalties and any interest or costs with respect thereto.

Institutional Mortgage: means a mortgage loan made by and of the following Persons: (i) any bank, savings bank, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of the State of New York, the United States or any other state; (ii) any foreign banking corporation licensed by the Superintendent of Banks of New York or the Comptroller of the Currency to transact business in the State of New York; (iii) any insurance company or pension and/or annuity company duly organized or licensed to do business in New York State; and (iv) any instrumentality created by the United States or any state with the power to make mortgage loans.

Insurance Requirements: means all requirements of any insurance policy required to be carried pursuant to the Declaration and/or Condominium By-Laws and covering or applicable to all or any part of the Property or the use thereof, all requirements of the issuer of any such policy and all orders, rules, regulations, reasonable recommendations and other requirements of the New York Board of Fire Underwriters or any other body exercising the same or similar functions and having jurisdiction over all or any portion of the Property.

Insured Property: As defined in Section 11.7.1 of the Condominium By-Laws.

Land: As defined in Article 2 of the Declaration.

Laws (or, if used individually, Law): all applicable laws, statutes and ordinances (including, without limitation, Environmental laws, and all building codes, zoning ordinances and all requirements and limitations with respect to certificate(s) of occupancy for the Property), case law, and the written orders, rules, regulations, directives, binding resolutions and requirements of all Governmental Authorities, whether in force as of the date hereof or hereafter, which are or become, or purport to be, applicable to the Property or any part thereof.

Lien-Causing Board: As defined in Section 9.1 of the Condominium By-Laws.

Lien-Causing Unit Owner: As defined in Section 9.1 of the Condominium By-Laws.

Limited Common Elements: means the Hotel Limited Common Elements and Residential Limited Common Elements, individually or collectively, as the context may require.

Majority Member Vote: means the affirmative vote of a majority of those Board Members in Good Standing who are Present in Person or by proxy and authorized to vote and voting at a duly constituted meeting of the Condominium Board at which a quorum is present, subject to Section 2.9.3 of these By-Laws.

Majority Unit Owner Vote: means the affirmative vote of those Unit Owners having more than 50% of the total votes of all Unit Owners (determined in accordance with the provisions of Section 3.7 of the Condominium By-Laws), who are Present in Person or by proxy, authorized to vote and voting at a duly constituted meeting at which a quorum is present or is not required.

Member in Good Standing or Board Member in Good Standing: means, as of any given date, a Condominium Board Member whose Designator is a Designator in Good Standing.

Monetary Event of Default: The failure of any Unit Owner or Board, after all required notices and beyond the expiration of all applicable grace and cure periods, to pay any General Common Charges, Special Assessments and/or other sums payable by it directly to the Condominium Board.

New York Condominium Act: As defined in Article 1 of the Declaration.

Non-Monetary Event of Default: A default by any Unit Owner or the Hotel Board or Residential Board (whether due to its action or inaction, or the action or inaction of any Permittee or Occupant of any such Unit Owner or Board), in the performance of any non-monetary obligation set forth in the Declaration or these By-Laws, other than a Monetary Event of Default (but including a Special Non-Monetary Event of Default), if such default continues for a period of thirty (30) days following receipt by the defaulting Unit Owner (in the case of any default by a Unit Owner or such Unit Owner's Occupants or Permittees; with a copy to the applicable Sub-Board if such defaulting Unit Owner is a Residential Unit Owner or Hotel Unit Owner) or the defaulting Board (in the case of any default by a Sub-Board or the Occupants or Permittees of any Units owned by it) of a notice of default from the Condominium Board, or, if the default is of a nature that it cannot reasonably be cured within such thirty (30) day period, if the defaulting Unit Owner (or its Occupant or Permittee) or Board (or its Occupant or Permittee) fails to: (i) commence such cure as promptly as practicable within such thirty (30) day period; and (ii) thereafter proceed with diligence and continuity to complete such cure (however if a Unit Owner's or Board's Occupant shall be the cause of or otherwise give rise to the default as to which such notice has been given, no Event of Default shall exist if the Unit Owner or Board, as the case may be, uses commercially reasonable efforts (and promptly, diligently and continuously attempts) to cause such defaulting Occupant to cure such default (including,

without limitation, the commencement and prosecution of an action to evict such Occupant or seeking an order to compel such Occupant to comply)).

Occupant: means any Person from time to time entitled to the use and occupancy of all or any portion of: (i) in the case of the Accessory Unit Owner or Club Unit Owner, the Unit of such Commercial Unit Owner; (ii) in the case of a Residential Unit Owner or Hotel Unit Owner, the Unit of such Unit Owner, and any Limited Common Elements under the exclusive control of such Unit Owner (in accordance with the applicable Sub-By-Laws); and (iii) in the case of a Sub-Board, the Limited Common Elements (other than those under the exclusive control of a Unit Owner in accordance with the Declaration or the applicable Sub-By-Laws) of such Board and any Units owned by such Board or its designee; in each case under an ownership right or any lease, sublease, license, concession, or other similar agreement (but an Occupant of a Residential Unit or Hotel Unit not owned by a Sub-Board shall not, unless otherwise provided herein, be deemed an Occupant of such Board).

Permitted Mortgagee: with respect to a Residential Unit, shall (with respect to such Residential Unit), in each case, have the meaning given to such term, if any, in the Residential By-Laws; and with respect to a Condo Hotel Unit, shall (with respect to such Condo Hotel Unit), in each case, have the meaning given to such term, if any, in the Hotel By-Laws.

Permittee(s): the Persons (including the officers, directors, employees, agents, contractors, subcontractors, customers, vendors, suppliers, visitors, invitees, licensees, tenants, subtenants, and concessionaires of any Unit Owner or Board, or of any Occupant) who are, at any given time, in a Unit Owner's Unit, Residential Section, Hotel Section or Residential Limited Common Element or Hotel Limited Common Element, if any (to the extent such Residential Limited Common Element or Hotel Limited Common Element is under its/his/her exclusive control pursuant to the Residential By-Laws or Hotel By-Laws, as applicable), in each case as the context requires.

Person: means any individual, corporation, partnership, limited liability company, trust, unincorporated association, Governmental Authority or other legal entity, including, without limitation, each of the Boards.

Present in Person or Presence in Person: As defined in 2.9.3 of the Condominium By-Laws.

Prime Rate: means a rate per annum equal to the lesser of: (i) the rate publicly announced from time to time by Citibank N.A. (or its successor) in New York, New York as its "prime rate"; and (ii) the maximum rate of interest permissible under applicable Laws, if any, with respect to the applicable amount payable hereunder.

Property: As defined in Section 1.1 of the Declaration.

Records: As defined in Section 10.1 of the Condominium By-Laws.

Register's Office: means the Office of the Register of the City of New York, New York County.

Registered Mortgage: As defined in Section 13.3 of the Condominium By-Laws.

Registered Mortgagee: As defined in Section 13.3 of the Condominium By-Laws.

Repairs: As defined in Section 2.2.2(a) of the Condominium By-Laws; and "Repairing" shall mean performing a Repair.

Residential By-Laws: As defined in Section 1.3 of the Declaration.

Residential Common Expenses: As defined in Section 6.1.8 of the Condominium By-Laws.

Residential Limited Common Elements: As defined in Section 7.3 of the Declaration.

Residential Managing Agent: The manager of the Residential Section at the time in question.

Residential Mortgagee Representatives: One or more (but not more than three) representatives which the holders of Institutional Mortgages constituting a majority in principal amount of all Institutional Mortgages encumbering the Residential Units may, at their election, designate in writing to the Residential Board and the Condominium Board which representatives shall be empowered to act on behalf of all holders of Institutional Mortgages encumbering the Residential Units with respect to any matter requiring their consent or approval under the Condominium Documents.

Residential Offering Plan: means that certain offering plan, initially accepted for filing by the Office of the Attorney General of the State of New York as of December 7, 2005, in connection with the offering of the Residential Units, together will all amendments to such plan made from time to time.

Residential Rules and Regulations: As defined in the Residential By-Laws.

Residential Section: As defined in Section 1.4.1 of the Declaration.

Residential Sponsor: means Declarant or any affiliate thereof to which the Unsold Residential Units are initially conveyed following the recording of the Declaration for purposes of effecting the offering of Residential Units as set forth the Residential Offering Plan.

Residential Unit: As defined in Section 3.1 of the Declaration.

Residential Unit Owner: the record owner, whether one or more Persons, of a Residential Unit, in fee simple absolute, from time to time, including, without limitation, any mortgagee (or its designee) succeeding to such owner's interest in the Unit in question by foreclosure or by deed-in-lieu of foreclosure.

RM Notice: As defined in Section 13.3(b) of the Condominium By-Laws.

Roofs: means each of the roofs of the Building (including any machine room levels or bulkhead levels thereof or thereon), including, without limitation, those roofs which are the subject of easements for terraces and otherwise as specified in Article 15 of the Declaration.

Rules and Regulations: means, collectively, the General Rules and Regulations, the Residential Rules and Regulations and the Hotel Rules and Regulations (in each case, if any), and those rules and regulations, if any, adopted by the Club Unit Owner or Accessory Unit Owner; and in all events, together with all amendments, additions and modifications thereto.

Sale, Sell or like terms, including the term conveyance (in each case, whether or not capitalized): means the sale or conveyance or transfer by a Unit Owner of its fee title interest in its Unit and its undivided common ownership interest in the Common Elements appurtenant thereto.

Special GCE Restoration Assessment: As defined in Section 11.10.3(c) of the Condominium By-Laws.

Special GCE Restoration Assessment Proceeds: As defined in Section 11.10.3(c) of the Condominium By-Laws.

Sponsors: Residential Sponsor and Condo Hotel Sponsor (each, a "Sponsor").

Sub-Board: the Residential Board or the Hotel Board, as the context may require (and both of such Boards, the "Sub-Boards").

Sub-By-Laws: the Residential By-Laws and/or the Hotel By-Laws, as the context may require.

Transient Hotel Unit Owner: the record owner, whether one or more Persons, of the Transient Hotel Unit, in fee simple absolute, from time to time, including, without limitation, any mortgagee (or its designee) succeeding to such owner's interest in the Unit in question by foreclosure or by deed-in-lieu of foreclosure.

Unanimous or "unanimous", "unanimously" and words of similar import (whether or not capitalized): used in the Declaration and By-Laws, when referring to the Condominium Board shall mean the affirmative vote of all Condominium Board Members in Good Standing; and when referring to a group of some or all Unit Owners, shall mean the affirmative vote of all Unit Owners in Good Standing within the identified group.

Unit: means any of the Commercial Units, Residential Units, or any condominium units resulting from a subdivision or combination of any of the foregoing Units (as and to the extent permitted under the Condominium Documents).

Unit Owner: the record owner, whether one or more Persons, of a Unit in fee simple absolute, from time to time, including, without limitation, Declarant, Residential Sponsor and Condo Hotel Sponsor as the record owner of any Unit or any Registered Mortgagee (or its designee or nominee) succeeding to such owner's interest in a Unit by foreclosure or by deed-in-lieu of foreclosure. All references to a Unit Owner shall be deemed to include such Unit

Owner's successors and assigns. Every Unit Owner shall be treated for all purposes as a single owner, irrespective of whether such ownership is joint, in common, or by a tenancy by the entirety.

Unit Owner in Good Standing: as of any given date, a Unit Owner with respect to which no Event of Default has occurred and is continuing at the time in question.

Unit Owners Meeting: As defined in Section 3.1 of the Condominium By-Laws.

Unsold Condo Hotel Unit: As defined in Section 8.2.2 of the Declaration.

Unsold Residential Unit: As defined in Section 8.1.2 of the Declaration.

Unsold Unit(s): Unsold Residential Unit(s) and/or Unsold Condo Hotel Unit(s), as the context may require.

Zoning Resolution: means the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time.

# EXHIBIT 2
# TO CONDOMINIUM BY-LAWS

## EXPENSE ALLOCATION SCHEDULE

| Condominium Budget Expense | Method of Allocation |
|---|---|
| | |
| Insurance | % Interest |
| Management Fee | % Interest |
| Repairs and Improvements | % Interest |
| Building Façade | % Interest |

**EXHIBIT 8**

HOTEL BY-LAWS

**EXHIBIT C**

**TO DECLARATION**

# HOTEL BY-LAWS
# OF
# THE PLAZA CONDOMINIUM

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# HOTEL BY-LAWS
# OF
# THE PLAZA CONDOMINIUM

## ARTICLE 1

## GENERAL

1.1 Purpose. The purpose of these by-laws (the "Hotel By-Laws") is to set forth the rules and procedures concerning the conduct of the exclusive affairs of the Hotel Section (the "Hotel Section") of The Plaza Condominium (the "Condominium"). As described in the Declaration (to which these by-laws are annexed), the Hotel Section consists of the Transient Hotel Unit, the Condo Hotel Units and the Hotel Limited Common Elements. The by-laws of the Condominium (the "Condominium By-Laws") detail the rules and procedures concerning the conduct of the affairs of the Condominium overall; and the by-laws of the Residential Section (the "Residential By-Laws") detail the rules and procedures concerning the conduct of the exclusive affairs of the Residential Section. The Hotel Section and these Hotel By-Laws shall be subject to the provisions of the Declaration and the Condominium By-Laws; and, as provided (and subject to any express provision to the contrary) therein, the rights of the Hotel Unit Owners (as hereinafter defined) with respect to the Condominium, the Condominium Board (as hereinafter defined) and the Non-Hotel Unit Owners (as hereinafter defined) shall generally only be enforced by the Hotel Board (as hereinafter defined) or the Transient Hotel Unit Owners on behalf of the Hotel Unit Owners. All terms used herein (including, without limitation, those in the previous sentence) which are not separately defined herein, shall have the meanings given to those terms in the Declaration and/or the Condominium By-Laws (including Exhibit 1 (the "Table of Definitions") annexed thereto).

1.2 Applicability of By-Laws. These Hotel By-Laws are applicable to the Hotel Section and to the use and occupancy thereof. All present and future Hotel Unit Owners, mortgagees, lessees, sublessees and occupants of Hotel Units and their respective employees, invitees and guests, as well as all other persons who may use the facilities located on, or forming a part of, the Hotel Section, are and shall be subject to these Hotel By-Laws, the Hotel Rules and Regulations, the Declaration, the Condominium By-Laws and the General Rules and Regulations, if any. The acceptance of a deed or conveyance, or the succeeding to title to, or the execution of a lease, sublease or license for, or the act of occupancy of, all or any portion of a Hotel Unit or the Hotel Section shall constitute an agreement that the provisions of these Hotel By-Laws, the Hotel Rules and Regulations, the Declaration, the Condominium By-Laws and the General Rules and Regulations, if any, as any of the same may be amended from time to time, are accepted, ratified and will be complied with.

1.3 Principal Office of the Hotel Section. The principal office of the Hotel Section shall be located either within the Property or at such other place in the Borough of Manhattan as may be designated from time to time by the Hotel Board.

## ARTICLE 2

## THE HOTEL BOARD

2.1 General Description of the Hotel Board.

2.1.1 (a) As more particularly set forth in Section 2.2, the affairs of the Hotel Section shall be governed by a board of managers of the Hotel Section (the "Hotel Board"). From and after the First Annual Hotel Unit Owners Meeting (as hereinafter defined), the Hotel Board shall consist of five persons – three members elected and/or designated (as hereinafter set forth) by the Condo Hotel Unit Owners (including Hotel Sponsor and/or its designee) and representing such Unit Owners, and two members designated by and representing the Transient Hotel Unit Owner.

(b) Each member of the Hotel Board, except for the First Hotel Board (as hereinafter defined) and except as otherwise provided herein, shall be elected and/or designated (as hereinafter set forth) at an annual meeting of the Hotel Unit Owners and shall serve until the expiration of their term in office on the third regularly scheduled annual meeting thereafter. Notwithstanding the expiration of the term of office of a member of the Hotel Board, each member shall serve until a successor for such member has been elected and qualified.

(c) In addition, three of the members of the Hotel Board shall also serve as the representatives of the Hotel Section on the Condominium Board (as hereinafter described).

2.1.2 Hotel Board members elected by the Condo Hotel Unit Owners shall at all times be: (i) individual Condo Hotel Unit Owners or Permitted Mortgagees (as hereinafter defined) of Condo Hotel Units; (ii) partners or employees of a partnership owning, or holding a mortgage encumbering, a Condo Hotel Unit; (iii) officers, directors, shareholders or employees of corporate owners or corporate Permitted Mortgagees of Condo Hotel Units; (iv) members or employees of a limited liability company owning, or holding a Permitted Mortgage encumbering, a Condo Hotel Unit; (v) fiduciaries or their beneficiaries who are owners or Permitted Mortgagees of Condo Hotel Units (or directors, officers, shareholders or employees of corporate fiduciaries or partners or employees of partnership fiduciaries); (vi) adult family members (as defined in Section 8.7 hereof), or domestic partners of any of the foregoing individuals; or (vii) individuals designated by a sovereign government, consulate or other similar entity that is a Condo Hotel Unit Owner or a Permitted Mortgagee of a Condo Hotel Unit. No Hotel Board member elected by the Condo Hotel Unit Owners shall continue to serve after he or she ceases to be qualified as set forth above. The foregoing requirements shall not apply to any Hotel Board member(s) designated by Hotel Sponsor or its designee, or to any Hotel Board member(s) designated by the Transient Hotel Unit Owner. Notwithstanding anything otherwise contained herein, any member of the Hotel Board may also be a member of the Condominium Board and any member of the Condominium Board may also be a member of the Hotel Board, in each case, if otherwise qualified.

2.1.3 As used herein, the term "Permitted Mortgagee" means the holder of any mortgage (a "Permitted Mortgage") of a Hotel Unit or Hotel Units which is permitted to be

placed thereon in accordance with these Hotel By-Laws and the Condominium By-Laws, as applicable.

2.1.4 In no event shall any Hotel Unit Owner (or its proxy) or another interested party be eligible for election to the Hotel Board and any such Unit Owner (or its proxy) or other party may be removed as a Hotel Board member by a majority vote of the other Hotel Board members if such Hotel Unit Owner is then in arrears, beyond any applicable grace and cure period, in the payment of Hotel Common Charges or any other amounts required by the Hotel Board to be paid. In addition, no member of the Hotel Board (or his or her proxy) may continue to participate as a member thereof after the Hotel Board has perfected a lien against his or her Unit, for so long as such lien remains unsatisfied.

2.2 Powers and Duties of the Hotel Board.

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

2.2.2 Hotel Board. Subject to and in accordance with the provisions of subsection 2.2.1 and without limiting the generality thereof (and in addition to all other powers and duties granted to the Hotel Board by Law, the Declaration, the Condominium By-Laws or these Hotel By-Laws), the Hotel Board shall be entitled to make determinations with respect to all matters relating to the operation and the affairs of the Hotel Section and not relating (to more than a de minimis extent) to: (i) the General Common Elements; (ii) the Residential Limited Common Elements; (iii) the Transient Hotel Unit or (iv) the operation and affairs of any Unit which is not a Hotel Unit (a "Non-Hotel Unit") or the use of same for their permitted purposes; such determinations, subject to the foregoing, including, without limitation:

(a) Operation (including leasing and licensing), care, supervision, upkeep and maintenance of; repair, restoration and/or replacement ("Repair") of, and; addition, alteration and/or improvement ("Alteration") to, in each case, the Hotel Limited Common Elements in accordance with the terms of these Hotel By-Laws and the Condominium By-Laws; and in the condition and otherwise in such a manner that maintains the Hotel Flag Standards (as defined in Article 14 below) (or, if the Transient Hotel Unit is not flagged at such time, then in a manner which is consistent with standards of quality, service, image and appearance commensurate with those of the hotel being operated in the Transient Hotel Unit at the time in question);

(b) The amount of Hotel Common Charges and any special assessments to be levied against Hotel Unit Owners;

(c) Collection of Hotel Common Charges and any special assessments from Hotel Unit Owners;

(d) Employment and dismissal of the personnel necessary for the maintenance and operation of the Hotel Limited Common Elements and the Condo Hotel Units

and the provision of the services offered therein, subject, however, to any rights of the Transient Hotel Unit Owner with respect thereto;

(e) Adoption of, and amendments and additions to, the Hotel Rules and Regulations (as hereinafter defined);

(f) Purchasing, leasing and otherwise acquiring in the name of the Hotel Board (or, if required by Law, in the name of the Condominium Board as nominee for the Hotel Board), or its designee, corporate or otherwise, on behalf of all Hotel Unit Owners, those Condo Hotel Units offered for sale or lease by, or Hotel Units surrendered by, the owners of such Units to the Hotel Board, or those Hotel Units with respect to which liens for real estate taxes are being sold by the City of New York;

(g) Purchasing Hotel Units at foreclosure or other similar sales (including, without limitation, in connection with the enforcement of the Hotel Board's lien for unpaid Hotel Common Charges), in the name of the Hotel Board (or, if required by Law, in the name of the Condominium Board as nominee for the Hotel Board), or its designee, corporate or otherwise, on behalf of all Hotel Unit Owners;

(h) Selling, leasing, operating, mortgaging, refinancing and otherwise dealing with (but not voting the interests appurtenant to) Hotel Units acquired by, and subleasing Hotel Units leased by, the Hotel Board or its designee, on behalf of all Hotel Unit Owners;

(i) Making Repairs of, and Alterations to, the Hotel Limited Common Elements;

(j) Making Repairs of, and Alterations to, the Hotel Limited Common Elements or Condo Hotel Units or parts thereof damaged or destroyed by fire or other casualty or necessitated as a result of condemnation or eminent domain proceedings, all in accordance with the terms of these Hotel By-Laws and the Condominium By-Laws;

(k) Enforcing obligations of Hotel Unit Owners, including, without limitation, commencing, prosecuting and settling litigation in connection therewith;

(l) Levying fines against Condo Hotel Unit Owners for violations of the Hotel Rules and Regulations, if any, and/or the General Rules and Regulations, if any (any such fines shall constitute Hotel Common Charges payable by the Condo Hotel Unit Owner against whom they are levied in the same manner as Hotel Common Charges);

(m) Maintaining bank accounts on behalf of the Hotel Section (with respect to matters within its jurisdiction as provided in these Hotel By-Laws) and designating the signatories required therefor;

(n) Adjusting and settling insurance claims (and executing and delivering releases in connection therewith) if the loss involves only the Hotel Limited Common Elements or Condo Hotel Units and if the loss is to be adjusted by the Hotel Board in accordance with Article 6 hereof;

(o) Borrowing money, at any time, on behalf of the Hotel Section when required in connection with: (x) the operation, care, upkeep and maintenance of, or the making of Repairs of, or Alterations to, the Hotel Limited Common Elements, or (y) any permitted action or activity of the Hotel Board, provided, however, that: (i) except as provided in Section 8.6, in the case of borrowings which are in excess of the amount of $500,000 in any one fiscal year or $1,000,000 in the aggregate at any one time (in each case excluding the pro-rata share of the Hotel Section with respect to any borrowing made by the Condominium Board pursuant to the Condominium By-Laws), the consent of at least 66-2/3% of the total authorized votes of all Hotel Unit Owners (determined in accordance with the provisions of Section 3.8 hereof) who are present, in person or by proxy, and voting at a duly constituted meeting of Hotel Unit Owners at which a quorum is present or is not required, shall be required for any borrowings for such purposes; (ii) no lien to secure repayment of any sum borrowed may be created on any Hotel Unit or its appurtenant interest in any of the Common Elements (except to the extent permitted by applicable Law) without the prior written consent of the owner of such Unit; and (iii) none of the Non-Hotel Unit Owners, the Condominium Board or the Residential Board will be liable for repayment of any portion of any such borrowing and all loan documentation entered into by or on behalf of the Hotel Board with respect to such loans shall specifically so provide. Subject to Section 6.1.1(b) of these Hotel By-Laws and Section 2.2.8 of the Condominium By-Laws, any such debt may be secured by future income and Hotel Common Charges in which event the Hotel Common Charges, subject to the rights of the Condominium Board with respect thereto as described in such Sections, shall be deemed trust funds for the purpose of paying such debt. The Hotel Board cannot secure such debt by a lien on the Hotel Limited Common Elements (or any other Common Elements) without the consent of all Hotel Unit Owners (or in the case of any other Common Elements, the consent of all Unit Owners). In addition to the debt described above, the Hotel Board, without approval of the Unit Owners may, at any time, incur, or refinance, debt from time to time, secured by a lien on any property acquired by the Hotel Board pursuant to the Declaration, Condominium By-Laws and/or these Hotel By-Laws; provided, however, that no such financing or refinancing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Hotel Unit owned or to be purchased (together with its appurtenant interest in the Common Elements). If any sum borrowed by the Hotel Board pursuant to the authority contained in this subsection 2.2.2(o) is not repaid by the Hotel Board, a Hotel Unit Owner who pays to the creditor such proportion thereof as its interest in the Common Elements bears to the interest of all Hotel 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 Hotel Unit Owner's Unit, and all loan documentation entered into by or on behalf of the Hotel Board shall specifically (or otherwise be deemed to) so provide;

(p) Organizing corporations, limited liability companies and/or other entities to act as designees of the Hotel Board with respect to such matters as the Hotel Board may determine, including, without limitation, in connection with the acquisition of title to, or the leasing or subleasing of, Hotel Units acquired or leased by the Hotel Board on behalf of the Hotel Unit Owners;

(q) Execution, acknowledgment and delivery of, without limitation: (i) any consent, agreement, document, covenant, restriction, easement, declaration or other instrument, or any amendment thereto, affecting the Hotel Limited Common Elements or the

Condo Hotel Units and not relating (to more than a de minimis extent) to: (A) the General Common Elements; (B) the Residential Limited Common Elements; or (C) the operation and affairs of any Non-Hotel Unit or the use of same for their permitted purposes, which the Hotel Board deems necessary or appropriate to comply with the Laws applicable to the maintenance, demolition, construction, Alteration or Repair of the Hotel Section; or (ii) any consent, agreement, document, covenant, restriction, easement, declaration or other instrument, or any amendment thereto, affecting a Hotel Unit (and not relating (to more than a de minimis extent) to: (A) the General Common Elements; (B) the Residential Limited Common Elements; or (C) the operation and affairs of any Non-Hotel Unit or the use of same for their permitted purposes), if the owner of such Hotel Unit requests, or under the Declaration, the Condominium By-Laws or these Hotel By-Laws is required to request, that the Hotel Board take such action, and (except as otherwise provided in the Declaration, the Condominium By-Laws or these Hotel By-Laws) the Hotel Board determines that taking such action is appropriate;

(r) Execution, acknowledgment and delivery of any documents or other instruments necessary to commence, pursue, compromise or settle certiorari proceedings to obtain reduced real estate tax assessments, or in connection with any real estate tax exemption or abatement, with respect to: (i) all Condo Hotel Units for the benefit and on behalf of the Unit Owners thereof; and (ii) the Transient Hotel Unit, but only to the extent requested and authorized to do so, in writing, by the Unit Owner thereof; and, in each case, all such Condo Hotel Unit Owners, and, only to the extent of such request by the Transient Hotel Unit Owner, the Transient Hotel Unit Owner, shall indemnify the Board from and against all claims, costs and expenses (including, without limitation, reasonable attorneys' fees) resulting from such proceedings;

(s) Commencing, prosecuting and settling litigation to the extent relating to the Hotel Board, the Hotel Limited Common Elements or the Condo Hotel Units (and not relating (to more than a de minimis extent) to: (A) the General Common Elements; (B) the Residential Limited Common Elements; or (C) the operation and affairs of any Non-Hotel Unit or the use of same for their permitted purposes);

(t) Obtaining and reviewing insurance with respect to the Hotel Limited Common Elements and the Condo Hotel Units and otherwise as provided in Section 6.4 hereof;

(u) Imposition, increase, decrease or elimination of move-in fees and charges, and transfer fees payable to the Hotel Board, or as such Board directs, in connection with the sale or lease of a Condo Hotel Unit, provided that no such fees or charges or any other conditions of transfer or lease may be imposed upon Hotel Sponsor or its designee or any Units bought, sold or leased by the Hotel Board;

(v) Establishing, changing and otherwise making determinations with respect to reserves, including, without limitation, a general operating reserve or a reserve for working capital or for replacements with respect to the Hotel Limited Common Elements, or reserves for replacements and upgrades to the Basic FF&E Package (as defined in the Hotel Offering Plan) ;

(w) Approving any revisions or amendments (which approval may not be unreasonably withheld, conditioned or delayed) proposed by the Hotel Manager to the then approved form of Unit Management and Operation Agreement (as described in Article 15 below); and

(x) Leasing and licensing all or a portion of the Hotel Limited Common Elements to third parties.

2.2.3 Powers of the Transient Hotel Unit Owner. Subject to the provisions of Section 2.2.2 hereof (and without limiting the generality thereof) and except as otherwise provided in the Condominium By-Laws, these Hotel By-Laws or in the Declaration, without limitation, the Transient Hotel Unit Owner shall be entitled to make determinations with respect to all matters relating exclusively to Transient Hotel Unit and the operation, care, upkeep, maintenance and administration of the affairs thereof, including, without limitation, the making of Repairs of, performance of Alterations to, and the exclusive right to hire employees with respect to, such Unit.

2.2.4 Limitations on Hotel Board. Notwithstanding anything to the contrary contained in these Hotel By-Laws (including, without limitation, in subsection 2.2.2 above), for a period (the "Initial Hotel Control Period") which shall end upon the later to occur of: (a) the fifth anniversary of the first closing of title to a Condo Hotel Unit (the "First Condo Hotel Closing") by Hotel Sponsor, pursuant to the Hotel Offering Plan (as defined below), or (b) the closing of title by Hotel Sponsor to Condo Hotel Units representing at least 90%, both in number and in aggregate Common Interests, of all Condo Hotel Units, the Hotel Board may not, without the prior written consent of Hotel Sponsor or its designee: (i) make or approve any addition, alteration or improvement to the Hotel Limited Common Elements unless required by any Laws; (ii) assess any Hotel Common Charges for the creation of, addition to or replacement of all or any reserve, contingency or surplus fund in respect of the Hotel Section; (iii) increase or decrease the number of, or change the kind of, employees initially hired for the Hotel Section (and in no event has the right to hire employees), as provided for in Schedule B-1 "Projected Budget for First Year of Hotel Section Operation" (the "First Year's Budget") set forth in that certain Hotel Offering Plan for the sale of Condo Hotel Units at the Condominium (the "Hotel Offering Plan"); (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the First Condo Hotel Closing or otherwise provide services in excess of those referred to in the Hotel Offering Plan, except as is required to reflect normal annual increases in operating services; (v) borrow money on behalf of the Hotel Section, or unless such borrowing is approved by the owners of Units representing at least 66-2/3% in number and aggregate Common Interests of all Hotel Units); or (vi) exercise any right of first refusal to lease or purchase a Condo Hotel Unit. However, the Hotel Board may take any of the actions enumerated in subsections (i) through (v) above, without the consent of Hotel Sponsor if, and only if such action is necessary, and no other alternative is available, either to enable the Hotel Board to comply with any Law, or to remedy any notice of violation entered against the Hotel Section or the Building, or to comply with any proper work order by an insurer of the Hotel Section or the Building, or for the health and safety (but not the general conduct or welfare) of the occupants of the Hotel Section or the Building. Hotel Sponsor may not exercise veto power over expenses described in said Schedule B-1, or over expenses required: (i) to comply with

applicable Laws; or (ii) to remedy any notice of violation; or (iii) to remedy any work ordered by an insurer. Hotel Sponsor, through its control over the Hotel Board, may not exercise veto power over expenses applicable exclusively to the Hotel Section as described in said Schedule B-1, or over expenses required to comply with any Laws applicable to the Building or the Hotel Section, or to remedy any notice of violation entered against the Building or the Hotel Section or to comply with any proper work order by an insurer of the Building or the Hotel Section. Hotel Sponsor may, however, exercise veto power over expenses other than those described in the preceding sentence, to the extent provided herein or in the Hotel Plan, for a period ending not more than five (5) years after the First Condo Hotel Closing or whenever the Unsold Condo Hotel Units constitute less than 25% of the Common Interest of all Condo Hotel Units, whichever is sooner, or as the Unit Owner of any one or more Non-Hotel Units.

2.2.5 (a) Any action required or permitted to be taken pursuant to the provisions of these Hotel By-Laws or the Declaration or Condominium By-Laws by the Hotel Board shall be done or performed by the Hotel Board (subject to the rights of the Transient Unit Owner and/or Hotel Manager as set forth in the Declaration, Condominium By-Laws or herein), or shall be done on behalf of the Hotel Board and at its direction by the agents, employees or designees of the Hotel Board including the Transient Hotel Unit Owner or its designee as set forth in such documents, and the Hotel Board shall employ the Hotel Manager, at a compensation established by the Hotel Board, to perform such duties and services as the Hotel Board shall authorize, including, but not limited to, the duties listed in 2.2.2(a), (c), (d), (i), (j), (m) (u) and (x). In addition to the items provided herein which shall be delegated to the Hotel Manager, the Hotel Board may delegate to the Hotel Manager other powers granted to the Hotel Board by these Hotel By-Laws, except the powers set forth in subparagraphs 2.2.2(b), (e), (f), (g), (h), (k), (l), (n) and (v) through (w). The Hotel Board and the Transient Hotel Unit shall at all times be managed by the same Person, even in the event of the termination of the initial Hotel Manager.

(b) Subject to the limitations set forth in this subsection 2.2.5, the Hotel Board may, together with any or all of the Non-Hotel Unit Owners and the Condominium Board, employ the same managing agent and/or manager to act on behalf of each.

2.2.6 For convenience of operation of the Condominium, the Hotel Board and the Condominium Board may each designate one of the other entities enumerated, to act as its agent with respect to any matter the determination of which is entitled to be made by such designating party and, in connection with such designation, may execute, acknowledge and deliver any application, instrument or document, including, without limitation, any power of attorney or indemnification from liability that such designated party may request.

2.2.7 Any action required or permitted to be taken pursuant to the provisions of these Hotel By-Laws, the Condominium By-Laws or the Declaration by the Hotel Board may, if required by any applicable Laws, be taken by the Hotel Board (upon prior written notice to the Condominium Board in accordance with the Condominium By-Laws) in the name of the Condominium Board which shall, upon request, execute, acknowledge and deliver any and all instruments, documents or applications in connection therewith; provided, however, that the Hotel Board shall, subject to the provisions of Section 2.13, indemnify and hold harmless the

Condominium Board and the Non-Hotel Unit Owners from any expense thereof or liability therefrom.

2.3 Number and Terms of Office of Members of Hotel Board.

2.3.1 (a) Until the First Annual Hotel Unit Owners Meeting held by the Hotel Unit Owners pursuant to the terms of Section 3.1 hereof, the Hotel Board (the "First Hotel Board") shall consist of three (3) persons – two (2) of which shall be designated by Hotel Sponsor and one (1) of which shall be designated by the Transient Hotel Unit Owner from time to time. Prior to the First Annual Hotel Unit Owners Meeting, the terms of each such member of the First Hotel Board shall expire annually and, subject to the other provisions of this Section, Hotel Sponsor and the Transient Hotel Unit Owner, as the case may be, shall have the right to designate the replacement for each such member designated by it, even though such replacement may be the same person. In accordance with, and within the time periods set forth in, the provisions of Section 3.1, the First Hotel Board shall cause the President of the Hotel Section to call the First Annual Hotel Unit Owners Meeting. The term of office of the three (3) members of the First Hotel Board so designated prior to the First Annual Hotel Unit Owners Meeting shall expire when the five (5) persons to be elected and/or designated at the First Annual Hotel Unit Owners Meeting are so elected and/or designated and qualified.

(b) From and after the holding of the First Annual Hotel Unit Owners Meeting, the Hotel Board shall consist of five (5) persons: three (3) members elected and/or designated (as hereinafter provided) by the Condo Hotel Unit Owners (including Hotel Sponsor) and two (2) members designated by the Transient Hotel Unit Owner. The Transient Hotel Unit Owner shall at all times have the right to designate such two (2) Hotel Board members as aforesaid. For so long as Hotel Sponsor or its designee is entitled to designate one (1) member of the Hotel Board, as provided for in subsection 2.4.3 hereof, the Hotel Board may not be expanded beyond five (5) members without the prior written consent thereto of Hotel Sponsor; notwithstanding anything otherwise herein contained, this provision may not be amended or modified without the consent thereto of Hotel Sponsor.

(c) The term of office of each of the five (5) members comprising the Hotel Board elected at the First Annual Hotel Unit Owners Meeting pursuant to Section 3.1 shall be fixed at such meeting as follows: (a) the two (2) designees of the Transient Hotel Unit Owner will serve for a term of approximately one (1) year; (b) two (2) of the three remaining Hotel Board Members will serve for a term of approximately two years (2) years; and (c) the one (1) remaining member will serve for a term of approximately three (3) years. Those members of the first five (5) member Hotel Board (other than the designees of the Transient Hotel Unit Owner) who receive the highest number of votes will serve for the longest terms of office but, except as set forth in subsection 2.4.4 hereof, any members elected or designated by Hotel Sponsor or its designee pursuant to the terms of subsection 2.4.3 hereof, shall serve for the shorter terms of office. At each annual meeting of Hotel Unit Owners subsequent to the First Annual Hotel Unit Owners Meeting, the Hotel Unit Owners shall elect and/or designate, as the case may be, pursuant to the terms of Section 2.4 hereof, Hotel Board members to replace the Hotel Board members whose terms of office are then expiring, each to serve a term of office fixed at three years. Notwithstanding the expiration of the term of office of a member of the Hotel Board or anything contained herein to the contrary, such member of the Hotel Board (including any

member of the Hotel Board designated by Hotel Sponsor or its designee) shall serve until his or her successor shall be elected (or designated, as the case may be) and qualified. There shall be no limit on the number of terms of office, successive or otherwise, that a Hotel Board member (including any member of the Hotel Board designated by Hotel Sponsor or its designee or the Transient Hotel Unit Owner) may serve until his or her successor shall be elected and qualified.

2.4 Election of Hotel Board Members; Rights of Hotel Sponsor.

2.4.1 Subject to the terms of subsections 2.4.3, all members of the Hotel Board to be elected by the Condo Hotel Unit Owners shall be determined by plurality of the votes cast by those Condo Hotel Unit Owners (including Hotel Sponsor or its designee, and subject in all events to the rights of Hotel Sponsor under subsection 2.4.3 for so long as Hotel Sponsor or its designee shall own at least one (1) Hotel Unit) entitled to vote for such board member(s) who are present (in person or by proxy) and voting at a meeting at which a quorum of all Hotel Unit Owners is present or not required.

2.4.2 When the Condo Hotel Unit Owners are voting for members of the Hotel Board, the voting shall be by ballot and each ballot shall state the name of the Condo Hotel Unit Owner voting, the Condo Hotel Unit owned by such Unit Owner and the percentage of Common Interest attributable to each Condo Hotel Unit owned by such Unit Owner and, in addition, the name of the proxy if such ballot is cast by a proxy. Nothing contained in these Hotel By-Laws shall be deemed to permit cumulative voting.

2.4.3 At the First Annual Hotel Unit Owners Meeting and at all times theretofore and thereafter, Hotel Sponsor and/or its designee and/or any owner of Unsold Condo Hotel Units shall be able to vote in accordance with its/their ownership of Hotel Units and thus may be able to elect members of the Hotel Board by virtue of its/their ownership of Condo Hotel Units. In addition, at elections of members to the Hotel Board held at and after the First Annual Hotel Unit Owners Meeting and before the expiration of the Initial Condo Hotel Control Period, Hotel Sponsor and/or its designee will have the right to designate two (2) of the three (3) members of the Hotel Board that are (but for this provision) otherwise to be elected by the Condo Hotel Unit Owners who may be persons related to or affiliated with Hotel Sponsor, such designee or other Unsold Condo Hotel Unit Owners, and Hotel Sponsor, its designee, and all other Condo Hotel Unit Owners shall have the right to elect the remaining one (1) member of the Hotel Board to be elected by the Condo Hotel Unit Owners who shall not be related to or affiliated with Hotel Sponsor, such designee or other Unsold Condo Hotel Unit Owner. In addition, at elections of members to the Hotel Board held following the expiration of the Initial Condo Hotel Control Period (but for so long as Hotel Sponsor, its designee or other owner of Unsold Condo Hotel Units owns at least one (1) Unsold Condo Hotel Unit), Hotel Sponsor will have the right to designate one (1) of the three (3) members of the Hotel Board (who may be related to or affiliated with Hotel Sponsor, such designee or other Unsold Unit Owner) that are otherwise to be elected (but for this provision) by the Condo Hotel Unit Owners, and Hotel Sponsor, its designee, and all other Condo Hotel Unit Owners shall have the right to elect the remaining two (2) members of the Hotel Board to elected by the Condo Hotel Unit Owners which members shall not be related to or affiliated with Hotel Sponsor, such designee or other Unsold Unit Owner. The Transient Hotel Unit Owner shall at all times have the right to designate the two (2) remaining members of the Hotel Board. Accordingly, from and after the

expiration of the Initial Condo Hotel Control Period, Hotel Sponsor and/or its designee shall have the right to designate not more than one of the three members of the Hotel Board to be elected by the Condo Hotel Unit Owners (although Hotel Sponsor, if the Unit Owner of the Transient Hotel Unit, shall at all times nevertheless have the right to designate the two (2) Hotel Board members that are to be designated by the Transient Hotel Unit Owner). There is no restriction on the right of Hotel Sponsor and its designee(s) or any Unsold Condo Hotel Unit Owner to vote for members of the Hotel Board who are not related to or affiliated with Hotel Sponsor or such designee or Unsold Condo Hotel Unit Owner; however, after the expiration of the Initial Condo Hotel Control Period, neither Hotel Sponsor nor its designee will designate a majority of the three members of the Hotel Board to be elected by the Condo Hotel Unit Owners.

2.5 Resignation and Removal.

2.5.1 Any member of the Hotel Board may resign at any time by written notice given in accordance with the terms of Section 5.1 of these Hotel By-Laws to the President or Secretary of the Hotel Section and, with respect to members of the Hotel Board designated as such or elected by Hotel Sponsor (or its designee), by also giving such written notice to such party. Any such resignation shall take effect at the time specified in such notice and, unless specifically requested by the resigning member, acceptance of such resignation shall not be necessary for the effectiveness thereof.

2.5.2 Subject to the provisions of Sections 2.3 and 2.4, and except as provided in the following sentence, any Hotel Board member elected by the Condo Hotel Unit Owners or by the Hotel Board pursuant to the terms of Section 2.4 or 2.6 hereof, respectively, may be removed from office, with or without cause, by a Majority of Hotel Unit Owners (as hereinafter defined). Any Hotel Board member who was designated by Hotel Sponsor (or its designee) or by the Transient Hotel Unit Owners may be removed from office: (i) for cause, by a Majority of Hotel Unit Owners; and (ii) without cause, only by Hotel Sponsor (or its designee) or the Transient Hotel Unit Owner, as the case may be. In the event of any removal described in the previous sentence, whether with or without cause, Hotel Sponsor (or its designee) ) or the Transient Hotel Unit Owner, as the case may be, shall have the sole right to designate the replacement of such member. Any Hotel Board member whose removal for cause has been proposed shall be given an opportunity to be heard at the meeting of Hotel Unit Owners at which such removal is to be considered.

2.6 Vacancies on Hotel Board. Subject to the provisions of Sections 2.3 and 2.4, any vacancy on the Hotel Board for whatever reason shall be filled by the members of the Hotel Board then in office, at a special meeting of the Hotel Board held for that purpose promptly after the occurrence of any such vacancy even though the members present at such meeting may constitute less than a quorum, and any person so elected shall be a member of the Hotel Board until the next annual meeting of Hotel Unit Owners, when a successor shall be elected for the remainder of the term of the member creating such vacancy. However, any vacancy on the Hotel Board created by the resignation, removal or any other reason of any Hotel Board member designated or elected as such by Hotel Sponsor (or its designee) or the Transient Hotel Unit Owner, as the case may be, shall be filled only by Hotel Sponsor (or its designee) or the Transient Hotel Unit Owners, as the case may be.

2.7 Organizational Meeting of Hotel Board. The first meeting of the Hotel Board following each annual meeting of Hotel Unit Owners shall be held within twenty (20) days after such annual meeting at such time and place in the Borough of Manhattan as shall be fixed by a majority of the members thereof, and no notice shall be necessary to the Hotel Board members in order to legally constitute such meeting, provided that a majority of the members of the Hotel Board shall be present thereat.

2.8 Regular Meetings of Hotel Board. Regular meetings of the Hotel Board may be held at such time and place in the Borough of Manhattan as shall be determined from time to time by a majority of the members thereof, provided that at least one (1) such meeting shall be held every three (3) months during each fiscal year of the Hotel Section. Notice of regular meetings shall be given to each member thereof, by personal delivery, nationally recognized overnight courier or telecopy, at least five (5) business days prior to the day named for such meeting.

2.9 Special Meetings of Hotel Board. Special meetings of the Hotel Board may be called by the President or Vice President of the Hotel Section by giving at least five (5) business days' prior notice to each member of the Hotel Board, by personal delivery, nationally recognized overnight courier or telecopy, which notice shall state the time, place (in the Borough of Manhattan) and purpose of the meeting. In addition, the President shall call a special meeting upon the written request of two (2) or more members of the Hotel Board.

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

2.11 Determinations by Hotel Board; Quorums; Voting Following Subdivision of the Transient Hotel Unit.

2.11.1 Except as otherwise set forth in subsections 2.6 and 2.11.3, all determinations of the Hotel Board shall be made at a meeting of the Hotel Board at which a quorum thereof is present. At any meeting of the Hotel Board, except as may otherwise be provided herein, a majority of the members thereof (but which must include at least one member who is a designee of the Transient Hotel Unit Owner) shall constitute a quorum and, except as may otherwise be provided herein with respect to certain required voting percentages or otherwise, the votes of a majority of such members present shall constitute the decision of the Hotel Board.

2.11.2 If at any Hotel Board meeting there is less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum exists. 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.

2.11.3 Members of the Hotel Board may participate in a meeting thereof by means of a conference telephone call or similar communications equipment by means of which all persons participating in such meeting can hear one another, and such participation shall constitute presence at such meeting. Notwithstanding anything to the contrary contained herein, any action permitted or required to be taken at a meeting of the Hotel Board may be taken without a meeting if all members of the Hotel Board consent thereto in writing.

2.11.4 In the event the Transient Hotel Unit is subdivided as set forth in Section 10.1 of the Declaration and additional Condo Hotel Units (and/or a new classification of Units) are created, the provisions of this subsection shall thereafter apply so that thereafter all votes by Hotel Board members shall be cast in accordance with the Common Interest represented by such Hotel Board member rather than on a per capita basis. The Common Interest represented by the Hotel Board members elected and/or designated by the Condo Hotel Unit Owners shall be the aggregate Common Interest of all the Condo Hotel Units; the Common Interest represented by the Hotel Board member(s) designated by the Transient Unit Owner shall be the aggregate Common Interest of the Transient Hotel Unit; and the Common Interest represented by the Hotel Board member, if any, (as shall be set forth in the amendment to the Declaration incident to the subdivision of the Transient Hotel Unit which may establish a new classification of Unit within the Hotel Section) elected and/or designated by such class of new Unit Owner(s) shall be the aggregate Common Interest of such Unit(s) (with each such Hotel Board member in each group, as applicable, having an equally weighted share of the aggregate Common Interest of the Person so designating or electing such Hotel Board member(s), allocated in accordance with the number of such Hotel Board members designated by such Unit Owner(s) voting in such instance). And in such instance, all votes and determinations of the Hotel Board shall thereafter be in accordance with the foregoing methodology and all references in the Declaration, the Condominium By-Laws and the Hotel By-Laws and otherwise to a "majority" or other fraction or percentage vote of the Hotel Board shall refer to such a vote determined on a Common Interest basis.

2.12 Compensation. No member of the Hotel Board shall receive any compensation for acting as such.

2.13 Liability of Hotel Board and Unit Owners.

2.13.1 To the extent permitted by applicable Law, no member of the Hotel Board shall have any personal liability with respect to any contract, act or omission of the Hotel Board, the Condominium Board, the Residential Board or of any managing agent or manager, building engineer or superintendent in connection with the affairs or operation of all or any portion of the Condominium or the Hotel Section (except in its or their capacities as Unit Owners) and the liability of any Hotel Unit Owner with respect thereto shall be limited as hereinafter set forth. Every contract made by the Hotel Board or by any managing agent or manager thereof shall state that it is made by the Hotel Board or the managing agent or manager, as the case may be, only as agent for all Hotel Unit Owners, and that the Hotel Board members or managing agent or manager shall, as the case may be, have no personal liability thereon (except in its or their capacities as Unit Owners) and may also state the applicable limitations of liability of the Hotel Unit Owners provided for in the next sentence; the absence of such statement or statements in any such contract shall not be deemed to imply any personal liability on the part of the Hotel

Board, the managing agent or manager or any greater liability on the part of any Hotel Unit Owner than as provided in the next sentence. The liability of any Hotel Unit Owner for any contract, act or omission with respect to all or any portion of the Condominium shall be limited to such Unit Owner's share of the total liability of the Hotel Section with respect thereto in such proportion as the Common Interest of such Hotel Unit Owner bears to the aggregate Common Interests of all Hotel Unit Owners; and the liability of any Hotel Unit Owner for any contract, act or omission with respect to the Hotel Section shall be limited to such proportionate share of the total liability as the Common Interest of such Hotel Unit Owner bears to the aggregate Common Interests of all Hotel Unit Owners; and in each case, to the extent permitted by applicable Law, shall be limited to such Hotel Unit Owner's interest in its Hotel Unit and its appurtenant Common Interest, so that such Hotel Unit Owner to the fullest extent permitted by Law, shall have no personal liability for any such contract, act or omission.

2.13.2 Nothing in the preceding Section shall limit a Hotel Unit Owner's liability for the payment of Hotel Common Charges. To the extent permitted by applicable Law, Hotel Board members shall have no liability to Hotel Unit Owners except that a Hotel Board member shall be liable for his or her own bad faith or willful misconduct. All Hotel Unit Owners shall severally, to the extent of their respective interests in their Units and their appurtenant Common Interests, indemnify each Hotel Board member against any liability or claim except those arising out of such Hotel Board member's own bad faith or willful misconduct. The Hotel Board, subject to the provisions of Section 2.19 hereof, may contract or effect any other transaction with any member of the Hotel Board, any member of the other Boards, any Unit Owner, Hotel Sponsor, Hotel Sponsor's designees, or any Non-Hotel Unit Owner, its designee, or any affiliate of any of them without incurring any liability for self-dealing, except in cases of bad faith or willful misconduct. A Unit Owner shall have no personal liability for any damages caused by or in connection with the use of the Common Elements.

2.13.3 Neither the Hotel Board nor any member thereof shall be liable for either: (i) any failure or interruption of any utility or other services to be provided or obtained by, or on behalf of, the Hotel Board or Condominium Board or to be paid for as either a Hotel Common Expense or General Common Expense, except when any such failure or interruption is caused by the acts of bad faith or willful misconduct of the Hotel Board or such member thereof, as the case may be; or (ii) any injury, loss or damage to any individual or property, occurring in or upon either a Unit or any Common Element, which is either: (a) caused by the elements, by any Unit Owner or by any other individual, (b) resulting from electricity, water, snow or ice that may leak or flow from a Unit or any portion of any Common Element, or (c) arising out of theft or otherwise; except in each case when caused by the acts of bad faith or willful misconduct of the Hotel Board or such member thereof.

2.14 Fidelity Bonds. The Hotel Board shall obtain fidelity bonds (or similar bonds or insurance), 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 or on its behalf and the premiums on such bonds (or insurance) shall constitute Hotel Common Expenses.

2.15 Committees. The Hotel Board may, subject to such limitations and exceptions as the Hotel Board may prescribe, appoint such committees as the Hotel Board may deem appropriate, each to consist of three or more members of the Hotel Board. Each such committee,

to the extent provided in the resolution which creates it, shall have and may exercise all the powers of the Hotel Board during the intervals between the meetings of the Hotel Board, insofar as may be permitted by Law. For so long as Hotel Sponsor or the Transient Hotel Unit Owner is entitled to designate member(s) to the Hotel Board, any committee appointed by the Hotel Board shall have as its members at least one member of the Hotel Board appointed by such party.

2.16 Status of Hotel Board. In addition to the status conferred upon the Hotel Board under or pursuant to the provisions of the New York Condominium Act, the Hotel Board shall, to the extent permitted by applicable Law, be deemed to constitute a separate unincorporated association for all purposes under and pursuant to the provisions of the General Associations Law of the State of New York. In the event of the incorporation or organization of the Hotel Board pursuant to the provisions of Section 2.17, the provisions of this Section 2.16 shall no longer be applicable to the Hotel Board.

2.17 Incorporation and Organization of Hotel Board. To the extent and in the manner provided in the New York Condominium Act, the Hotel Board may, by action of the Hotel Board as provided in this Article 2, be organized as a limited liability company or incorporated under the applicable statutes of the State of New York. In the event that the Hotel Board so incorporates or organizes, it shall have, to the extent permitted by applicable Law, the status conferred upon it under such statutes in addition to the status conferred upon the Hotel Board under or pursuant to the provisions of the New York Condominium Act. The certificate of incorporation and by-laws of any such resulting corporation or the articles of organization and operating agreement of such resulting limited liability company, as the case may be, shall conform as closely as practicable to the provisions of the Declaration, these Hotel By-Laws and, to the extent applicable, the Condominium By-Laws, and the provisions of the Declaration, these Hotel By-Laws and, to the extent applicable, the Condominium By-Laws, shall control in the event of any inconsistency or conflict between the provisions thereof and the provisions of such certificate of incorporation and by-laws or articles of organization and operating agreement.

2.18 Hotel Board as Agent of Hotel Unit Owners. In exercising its powers and performing its duties under the Declaration, these Hotel By-Laws and, to the extent applicable, the Condominium By-Laws, the Hotel Board shall act as and in the capacity of, and shall be, the agent of the Hotel Unit Owners, subject to and in accordance with the provisions of the Declaration, these Hotel By-Laws and, to the extent applicable, the Condominium By-Laws.

2.19 Prohibited Transactions. Each member of the Hotel Board shall perform his or her duties, and shall exercise his or her powers, in good faith. To the extent permitted by applicable Law, no contract or other transaction between the Hotel Board and either: (i) any of its members, or (ii) any corporation, partnership, fiduciary, firm, limited liability company, association or other entity in which any of the members of the Hotel Board are officers, directors, shareholders, employees, partners, fiduciaries, beneficiaries, members or principals, or are otherwise interested, peculiarly or otherwise, shall be deemed either void or voidable because either: (a) any such member of the Hotel Board was present at the meeting or meetings of the Hotel Board during which such contract or transaction was discussed, authorized, approved or ratified, or (b) the vote of any such member was counted for such purpose; provided, however, that either: (1) the fact thereof is disclosed to, or known by, the Hotel Board or a majority of the members thereof and noted in the minutes thereof, and the Hotel Board shall authorize, approve

or ratify such contract or transaction in good faith by a vote of a majority of the entire Hotel Board, less the number of such members involved in such contract or transaction; or (2) the fact thereof is disclosed to, or known by, a majority of Hotel Unit Owners, present at a duly constituted meeting, shall in good faith authorize, approve or ratify such contract or transaction less the number of such Hotel Unit Owners who are also such members involved in such contract or transaction; and (3) the contract or transaction is commercially reasonable to the Hotel Board at the time the same is authorized, approved, ratified, executed or otherwise consummated. Any such members of the Hotel Board may be counted in determining the presence of a quorum of any meeting of the Hotel Board less the number of any such Hotel Board members who are also such members involved in such contract or transaction which authorizes, approves or ratifies any such contract or transaction, but no such member shall be entitled to vote thereat in order to authorize, approve or ratify such contract or transaction. Notwithstanding the foregoing requirements, any managing agent designated and/or employed by the Hotel Board and/or the Condominium Board may be an affiliate of Declarant and/or Hotel Sponsor.

2.20 Principal Office of Hotel Board. The principal office of the Hotel Board shall be located either within the Property or at such other place in the Borough of Manhattan, as may be designated from time to time by the Hotel Board.

## ARTICLE 3

## HOTEL UNIT OWNERS

3.1 Annual Meetings. The first annual meeting of Hotel Unit Owners (the "First Annual Hotel Unit Owners Meeting") shall be held not later than 30 days following the later to occur of: (i) the second anniversary of the First Condo Hotel Closing; or (ii) the closing of title by Hotel Sponsor (or its designee), as seller, to Condo Hotel Units representing at least 50%, both in number and in aggregate Common Interests, of all Condo Hotel Units to Purchasers (as defined in the Hotel Offering Plan). At such meeting a new Hotel Board shall be elected and/or designated (as provided in Sections 2.3 and 2.4) consisting of five (5) persons and the incumbent Hotel Board shall resign. Thereafter, annual meetings of Hotel Unit Owners shall be held within four weeks after the anniversary of such first meeting in each succeeding year on a date to be set by the Hotel Board. At such meetings, the Hotel Unit Owners shall elect or designate, as the case may be, successors to the members of the Hotel Board whose terms of office are due to expire on or about the day of such meeting or have already expired and there shall also be transacted such other business as may properly come before such meeting.

3.2 Place of Meetings. Meetings of Hotel Unit Owners shall be held at the principal office of the Hotel Section or at such other place in the Borough of Manhattan as may be designated from time to time by the Hotel Board.

3.3 Special Meetings. The President or the Vice President of the Hotel Section shall call a special meeting of Hotel Unit Owners if so directed by resolution of the Hotel Board or upon a petition signed and presented to the Secretary of the Hotel Section by Hotel Unit Owners owning Hotel Units representing not less than 50% of the Common Interests of all of the Hotel Units. Each such resolution or petition shall state, in reasonable detail, the purposes for calling such meeting.

3.4 Notice of Meetings and Actions Taken. Notice of each annual or special meeting of Hotel Unit Owners shall be given by the Secretary of the Hotel Section to all Hotel Unit Owners of record entitled to vote thereat, at their address at the Condominium (or at such other address as any Hotel Unit Owner has designated by notice in writing to the Secretary of the Hotel Section at least fifteen (15) business days prior to the giving of notice of the applicable meeting) in the case of the original scheduled date therefor, on at least thirty (30) days prior notice. Each such notice shall state the purposes of the meeting and the time and place where it is to be held, and no business shall be transacted at such meeting except as stated in the notice. All notices hereunder shall be given by personal delivery, mail, nationally recognized overnight courier or telecopy, at least ten (10) business days prior to the date fixed for the meeting. However, if the business to be conducted at any meeting of the Hotel Unit Owners shall include consideration of a proposed amendment to the Declaration, these Hotel By-Laws or the Condominium By-Laws, the notice of such meeting shall be given to all Hotel Unit Owners, in the manner provided above, at least thirty (30) days prior to the date fixed for such meeting and such notice shall be accompanied by a copy of the text of such proposed amendment.

3.5 Lack of Quorum. If any meeting of Hotel Unit Owners cannot be held because a quorum is not present, the Hotel Unit Owners who are present at such meeting, either in person or by proxy, may act by majority vote to adjourn the meeting from time to time until a quorum exists.

3.6 Order of Business. The order of business at all regular meetings of Hotel Unit Owners shall be as follows:

(a) Call to order.
(b) Roll call.
(c) Proof of notice of meeting.
(d) Reading of minutes of preceding meeting.
(e) Reports of officers.
(f) Reports of members of the Hotel Board.
(g) Reports of committees.
(h) Election of inspectors of election (when so required).
(i) Election of members of the Hotel Board.
(j) Unfinished business.
(k) New business.
(l) Adjournment.

3.7 Title to Hotel Units. Title to Hotel Units may be taken by any individual, corporation, partnership, limited liability company, association, trust, fiduciary or other entity, or any two or more of such owners as joint tenants, tenants in common or tenants by the entirety, as may be appropriate.

3.8 Voting.

3.8.1 Each Hotel Unit Owner, or a person designated by such Hotel Unit Owner to act as proxy on its behalf and who need not be a Unit Owner, shall be entitled to cast the votes appurtenant to such Hotel Unit as set forth herein, in the Condominium By-Laws (to the extent

applicable) and in the Declaration at all meetings of Hotel Unit Owners and at all joint meetings of Unit Owners. The designation of any such proxy shall be made in a signed and dated writing to the Secretary of the Hotel Section and shall be revocable at any time by written notice actually delivered to such Secretary by the Hotel Unit Owner which had made the designation; provided, however, that no designation to act as a proxy shall be effective for a period in excess of six (6) months (except that the designation of a Permitted Mortgagee to act as the proxy of its mortgagor shall be effective until duly revoked).

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

3.8.3 If two (2) or more persons or entities own a Hotel Unit, they shall designate one (1) person or entity amongst them to vote the entire Common Interest appurtenant to their Unit in a writing given to the Secretary of the Hotel Section, and the vote of such designee shall be binding upon such designors. Failing such a designation, all of such persons or entities shall mutually vote such Common Interest under one ballot, without division, and the concurrence of such persons or entities shall be conclusively presumed if any one of them purports to vote such Common Interest without protest being made contemporaneously to the party presiding over the meeting at which such vote is taken. If protest is made, the Common Interest appurtenant to such Hotel Unit shall be counted solely for the purpose of determining whether a quorum is present for such voting.

3.8.4 Neither the Hotel Board nor its designee shall be entitled to vote the interest appurtenant to any Hotel Unit owned by the Hotel Board or such designee, and the Common Interest of such Unit shall be excluded from the total Common Interests when computing the interests of Hotel Unit Owners for quorum and voting purposes.

3.8.5 Except as otherwise set forth herein, in the Condominium By-Laws (to the extent applicable) or in the Declaration, at all meetings of Hotel Unit Owners, each Hotel Unit Owner (or its proxy) entitled to vote thereat (including, without limitation, Hotel Sponsor or its designee or other owner of Unsold Condo Hotel Units) shall be entitled to cast one vote for each .0001% (rounded off to the nearest .0001%) of Common Interest attributable to its Hotel Unit or Units (including, without limitation, subject to the provisions of Article 2 hereof, for each Hotel Board member to be elected) in proportion to the Common Interest of all Hotel Units.

3.9 Majority of Hotel Unit Owners. Except as may otherwise be provided by Law, as used in these Hotel By-Laws, the Condominium By-Laws (to the extent applicable) and the Declaration, the term "Majority of Hotel Unit Owners" means those Hotel Unit Owners having more than 50% of the total authorized votes of all Hotel Unit Owners (determined in accordance with the provisions of Section 3.8), who are present in person or by proxy and voting at a duly constituted meeting at which a quorum is present or is not required.

3.10 Quorum. Except as otherwise provided in these Hotel By-Laws, (i) the presence in person or by proxy of Condo Hotel Unit Owners owning Hotel Units to which appertain at least 35% of the aggregate Common Interests attributable to all Condo Hotel Units and (ii) the presence of the Transient Hotel Unit Owner shall constitute a quorum at all meetings of Hotel Unit Owners.

3.11 Majority Vote. Except where otherwise provided by Law, the Declaration or these Hotel By-Laws, at all meetings solely of Hotel Unit Owners, the affirmative vote of a Majority of Hotel Unit Owners shall be binding upon all Hotel Unit Owners for all purposes.

3.12 Representation on Condominium Board. Hotel Unit Owners shall not be entitled to vote in their individual capacities as Unit Owners at any meeting of the Condominium Board. Three (3) of the five (5) members of the Hotel Board shall also serve as members of the Condominium Board and shall be entitled to vote at any such meeting(s) in accordance with the terms of Section 2.1 and the provisions of the Condominium By-Laws. Until the expiration of the Initial Condo Hotel Control Period, two of such three Hotel Board members also serving as the Hotel Board's designees to the Condominium Board shall be the two Hotel Board members designated by Hotel Sponsor in respect of the Condo Hotel Units; and the third Hotel Board member also serving as a Hotel Board designee to the Condominium Board shall be one of the Hotel Board members designated thereto by the Transient Hotel Unit Owner. After the expiration of the Initial Condo Hotel Control Period, the two Hotel Board members designated by the Transient Hotel Unit Owner and one of the Hotel Board members to be elected by the Condo Hotel Unit Owners and who is not designated by Hotel Sponsor and/or its designee shall be the three Hotel Board members who also serve on the Condominium Board.

## ARTICLE 4

## OFFICERS

4.1 Designation. (a) The principal officers of the Hotel Section shall be a President, Vice President/Treasurer and Secretary, all of whom shall be elected by the Hotel Board. The Hotel Board may elect more than one Vice President, or an Assistant Treasurer or Assistant Secretary and such other officers as in its judgment may be desirable. Nothing herein shall preclude any officer of the Hotel Section from also being an officer of the Condominium or any officer of the Condominium from also being an officer of the Hotel Section, if otherwise qualified under the terms of these Hotel By-Laws and the Condominium By-Laws, as applicable. Unless prohibited by applicable Law, any two or more offices of the Hotel Section may be held by the same person.

(b) None of the officers of the Hotel Section need be Hotel Unit Owners or have any interest therein or be members of the Hotel Board; except that, from and after the first organizational meeting of the Hotel Board after the First Annual Hotel Unit Owners Meeting, the President of the Hotel Section must be a member of the Hotel Board.

4.2 Election of Officers. The officers of the Hotel Section shall each be elected annually by the Hotel Board at the organizational meeting(s) thereof and at any other meeting as may be required to fill a vacancy, and shall serve at the pleasure of the Hotel Board; except that the initial officers of the Hotel Section shall be elected by the First Hotel Board and shall hold office at the pleasure of such First Hotel Board and until their successors are elected.

4.3 Resignation and Removal of Officers. Any officer may resign at any time by written notice given in accordance with the terms of Section 5.1 of these Hotel By-Laws to the Hotel Board; such resignation shall take effect at the time specified and, unless specifically

requested by the resigning officer, acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by these Hotel By-Laws with respect to designation of the Hotel Section upon the affirmative vote of a majority of the members of the Hotel Board, present in person or by proxy at a regular meeting of the Hotel Board, or at a special meeting of the Hotel Board called for such purpose, at which a quorum is present or is not required pursuant to Section 2.12.2, any officer may be removed, either with or without cause, and his or her successor shall be elected.

4.4 President. The President of the Hotel Section shall be the chief executive officer of the Hotel Section and shall preside at all meetings of Hotel Unit Owners and of the Hotel 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 from among Hotel Unit Owners from time to time as such President, in his or her discretion, may decide are appropriate to assist in the conduct of the affairs of the Hotel Section.

4.5 Vice President. The Vice President of the Hotel Section shall take the place of the President under whom he or she serves and shall perform the duties of the President whenever the President shall be absent or unable to act. If both the President and the Vice President of the Hotel Section are unable to act, the Hotel Board shall appoint some other member of the Hotel 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, from time to time, shall be imposed by the Hotel Board or by the President.

4.6 Secretary. The Secretary of the Hotel Section shall keep the minutes of the meetings of the Hotel Unit Owners and of the Hotel Board. The Secretary shall have charge of such books and papers as the Hotel Board shall direct and, in general, shall perform all of the duties incident to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York.

4.7 Treasurer. The Treasurer shall have the care and custody of the funds and securities of the Hotel Section 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 Hotel Board (or in the name of the managing agent or manager appointed by the Hotel Board) in such depositories as may from time to time be designated by such Hotel 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.

4.8 Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Hotel Section shall be executed by the President or Vice-President, acting alone, or by any other two officers thereof or by such other person or persons as may be designated by the Hotel Board. In addition to the foregoing, the Hotel Board may authorize the managing agent serving on its behalf to execute checks, provided that the expenditures, and the managing agent's paying for same, have been approved in advance by resolution of the Hotel Board or have been authorized by two officers of the Hotel Section (at least one of whom shall

be a Hotel Board member) or are otherwise within the scope of the approved budget then in effect.

4.9 Compensation of Officers. Except as otherwise determined by the Hotel Board, no officer shall receive any compensation for acting as such.

4.10 Liability of Officers.

4.10.1 To the extent permitted by applicable Law, no officer of the Hotel Section shall have any personal liability with respect to any contract, act or omission of the officers in connection with the affairs or operation of the Hotel Section (except in their capacities as Hotel Unit Owners). To the extent permitted by applicable Law, officers shall have no liability to Hotel Unit Owners, except that an officer shall be liable for his or her own bad faith or willful misconduct. All Hotel Unit Owners shall severally, to the extent of their respective interests in their Hotel Units and their appurtenant Common Interests, indemnify, defend and hold harmless each officer of the Hotel Section against any liability or claim except those arising out of such officer's own bad faith or willful misconduct.

4.10.2 None of the officers of the Hotel Section shall be liable for either: (i) any failure or interruption of any utility or other services to be obtained by, or on behalf of, any such officer or to be paid for as either a Hotel Common Expense or General Common Expense, except when any such failure or interruption is caused by the acts of bad faith or willful misconduct of such officer; or (ii) any injury, loss or damage to any individual or property, occurring in or upon either a Unit or any Common Element, which is either: (a) caused by the elements, by any Unit Owner or by any other individual, (b) resulting from electricity, water, snow or ice that may leak or flow from a Unit or any portion of any Common Element, or (c) arising out of theft or otherwise; except in each case when caused by the acts of bad faith or willful misconduct of such officer.

## ARTICLE 5

## NOTICES

5.1 Notices. Except as otherwise provided in these Hotel By-Laws or the Condominium By-Laws, all requests, notices, reports, demands, approvals and other communications required or desired to be given shall be in writing and shall be delivered: (a) if to the Hotel Board, in person or sent to the principal office of the Hotel Board (or to such other address as the Hotel Board may designate from time to time by notice in writing to all Unit Owners and to all Permitted Mortgagees having requested in writing notice of same); and a duplicate shall be sent in like manner to the managing agent of the Hotel Section, if any; (b) if to a Hotel Unit Owner, in person or sent to the address of such Hotel Unit Owner at the Building, or to such other address as may have been designated by such Hotel Unit Owner from time to time in writing to the Hotel Board; (c) if to Permitted Mortgagees, either delivered in person or sent by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service to their respective addresses, as may have been designated by such Permitted Mortgagees from time to time in writing to the Hotel Board; and (d) if to any other Person, in the manner provided in Article 5 of the Condominium By-Laws. All notices delivered in person (to

the extent permitted herein) shall be deemed to have been given when delivered in person. Unless other means of giving certain notices are specifically required or permitted pursuant to the Declaration, Condominium By-Laws or Hotel By-Laws (including the Hotel Rules and Regulations) as applicable, all notices which are "sent" shall be sent either: (x) by registered or certified mail, return receipt requested, and shall be deemed to have been given three (3) days after deposit in a depository maintained by the U.S. Postal Service in a postage prepaid sealed wrapper; or (y) by nationally recognized overnight courier service and shall be deemed to have been given the first Business Day (for domestic delivery) and the third Business Day (for international delivery), after deposit with an overnight courier service, provided that notices of change of address shall in all events be deemed to have been given when received.

5.2 Waiver of Service of Notice. Whenever any notice is required to be given by Law, the Declaration or these Hotel 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.

## ARTICLE 6

## OPERATION OF THE HOTEL SECTION

6.1 Determination of Hotel Common Expenses and Fixing of Hotel Common Charges; Budgets

6.1.1 (a) As described more fully in the Condominium By-Laws, the Condominium Board shall from time to time, but at least annually, prepare a budget setting forth the projection of General Common Expenses and will allocate to the Hotel Section, in the manner described in the Condominium By-Laws, the General Common Charges necessary to meet the Hotel Section's allocated share of General Common Expenses. The Hotel Board will allocate and assess to each Hotel Unit Owner, in such proportion as the Common Interest of each such Unit Owner's Hotel Unit bears to the total aggregate Common Interests of all Hotel Units, a portion of the General Common Charges allocated to the Hotel Section, to be assessed against and paid by each Hotel Unit Owner as part of the Hotel Common Charges payable by such Hotel Unit Owner, as provided in subsection 6.1.2.

(b) Under the Condominium By-Laws, and to the extent permitted by Law, the Hotel Common Charges collected by the Hotel Board shall, in all instances, first be payable to the Condominium Board in payment of the Hotel Section's allocated share of General Common Charges, failing the occurrence of which, the Condominium Board shall have the right, without limitation, to avail itself of the remedy of specific performance with respect to the Hotel Board's obligations hereunder.

6.1.2 (a) The Transient Hotel Unit Owner and Hotel Sponsor, acting in the name of the Condo Hotel Unit Owners and the Hotel Board, shall, at or prior to the First Condo Hotel Closing, agree on and adopt an initial budget (the "Initial Hotel Section Budget") of the anticipated costs and expenses in connection with the Repair, maintenance, care, upkeep, supervision and operation of, and any Alteration to, the Hotel Limited Common Elements and the conduct of the business and affairs of the Hotel Section, all in compliance with Section 6.6.3

hereof and as may otherwise be required to meet the Hotel Flag Standards (all such costs and expenses, including without limitation: (i) such amounts as the Hotel Board may deem proper for the establishment of and/or changes to reserves, including, without limitation, a general operating reserve or a reserve for working capital or for Repairs with respect to the Hotel Limited Common Elements; (ii) such amounts, determined by the Hotel Board, as may be required for the purchase, lease or sublease by the Hotel Board or its designee, on behalf of all Hotel Unit Owners, of any Condo Hotel Unit whose owner has elected to sell, lease, transfer or convey such Condo Hotel Unit or which is to be sold at a foreclosure or other similar sale; and (iii) each Hotel Unit Owner's pro rata share of the General Common Charges allocated to and assessed against the Hotel Section; and (iv) all such other items as are provided for in the Declaration, the Condominium By-Laws or these Hotel By-Laws to be Hotel Common Expenses, the "Hotel Common Expenses") for the first fiscal year of Hotel Section operation, which Initial Hotel Section Budget shall substantially conform to the initial budget for the Hotel Section as set forth as Schedule B-1 in the Hotel Offering Plan (as the same may be amended from time to time prior to such First Condo Hotel Closing). In respect of each fiscal year following the period covered by the Initial Hotel Section Budget, the Hotel Board shall from time to time, but at least annually (no later than one hundred and twenty (120) days prior to the commencement of each fiscal year), cause the Hotel Manager to prepare a budget for the Hotel Section for the succeeding fiscal year, setting forth the projection of Hotel Common Expenses for such fiscal year and will allocate and assess charges ("Hotel Common Charges") among the Hotel Unit Owners pro rata in proportion to their respective Common Interests (except as otherwise provided in the Declaration, the Condominium By-Laws or these Hotel By-Laws) to meet the Hotel Common Expenses (each such budget approved in accordance with the terms of this Article 6, and each amended budget (a "Hotel Section Budget"). The failure or delay of the Hotel Board to prepare a budget or adopt a Hotel Section Budget or to otherwise determine the Hotel Common Expenses for any fiscal year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof or a release of any Hotel Unit Owner from the obligation to pay Hotel Common Charges. The Hotel Board members shall grant or withhold their approval in writing within thirty (30) days after receipt (whether at a meeting of the Hotel Board or otherwise) of any proposed Hotel Section budget or amendment thereto, and any Hotel Board member that does not so grant or withhold his or her approval within said thirty (30) day period shall be deemed to have approved the proposed Hotel Section budget or amendment thereto. In the event that in respect of any fiscal year of the Hotel Section, a Hotel Section Budget is not adopted by the Hotel Board (which in each case (whether for a budget or any amendment thereto) shall require an affirmative 66-2/3% vote of the Hotel Board) as and when required, then, until such adoption, the Hotel Section Budget in effect for the then concluding (or concluded) fiscal year of the Hotel Section, increased by: (i) anticipated expenditures for applicable Mandatory Costs (defined below); and (ii) the CPI Budget Factor (defined below) as applied against all budget items other than Mandatory Costs, shall remain in effect and shall be deemed to be the Hotel Section Budget for such fiscal year (each, a "Carryover Budget"). No amended Hotel Section Budget shall have a retroactive effect on the Hotel Common Charges payable by the Hotel Unit Owners for any period prior to the adoption of such amended Hotel Section Budget, although a prior period's deficit may be included in Hotel Common Charges for a subsequent period or paid from a Special Assessment levied in accordance with subsection 6.1.3 below.

(b) As used in this Section 6.1.2, "Mandatory Costs" means all costs attributable to: (1) insurance coverage the Hotel Board is required to obtain and maintain under these Hotel By-Laws or the Condominium By-Laws (which coverage, during the period of any Carryover Budget, shall include at least the same types and limits of coverages as were in place in the immediately prior fiscal year's Hotel Section Budget) ; (2) costs under previously executed multi-year contracts with third-parties (including, without limitation, union collective bargaining agreements); (3) taxes and other governmental charges; (4) utilities; (5) General Common Charges assessed by the Condominium Board against the Hotel Section; (6) compliance with all Laws and Insurance Requirements; (7) amounts payable to the Hotel Section's managing agent under the terms of the applicable management agreement(s); (8) actions that the Hotel Board is required to take under these Hotel By-Laws, the Condominium By-Laws or the Declaration; and (9) all other existing contractual requirements.

(c) As used herein, "CPI Budget Factor" means the percentage change, if any, between the Consumer Price Index for the calendar month which is five (5) months prior to the first month of the applicable prior fiscal year and the Consumer Price Index for the calendar month which is five (5) months prior to the first month of the fiscal year to which the proposed Hotel Section Budget or amendment relates.

(d) Notwithstanding the foregoing, in addition to basing certain line items of Hotel Common Charges on proportionate Common Interests, the Hotel Board may also or instead (by a 66-2/3% vote) determine to assess the same in accordance with submetering, design load, occupied nights, contract allocations, key count, or usage (both projected and actual) so long as such allocations are reasonable under the circumstances, as determined by the Hotel Board, and in accordance with applicable law. In the event of any dispute with respect to the method of allocation of Hotel Common Charges among the Hotel Units, the same shall be submitted for arbitration in accordance with the terms of Article 11 of these Hotel By-Laws. Pending the resolution of the dispute, the Unit Owners in question shall continue to pay Hotel Common Charges upon the allocations theretofore in force, and any variation in such Hotel Common Charges based upon such resolution shall be retroactive to the date of the review, redetermination, or request for redetermination, as the case may be.

(e) The Hotel Board shall advise all Hotel Unit Owners promptly in writing of the amount of Hotel Common Charges payable by each of them and shall furnish copies of each annual (or amended) Hotel Section Budget on which such Hotel Common Charges are based to all Hotel Unit Owners and, upon written request therefor, to Permitted Mortgagees thereof.

(f) Notwithstanding anything to the contrary contained in this subsection 6.1.2, the costs of Repair, maintenance, care, upkeep and operation of, and any Alteration to, the Hotel Limited Common Elements described in subsection 6.6.2(c) shall be paid for in the manner described therein.

6.1.3 In addition to the foregoing duty to determine the amount of and to assess Hotel Common Charges, the Hotel Board shall have the right (by a 66-2/3% vote of the Hotel Board) to levy special assessments to meet the Hotel Common Expenses (or a prior period's deficit, in accordance with subsection 6.1.2), including, without limitation, the Hotel Section's

allocated share of General Common Charges or any special assessment levied by the Condominium Board. The Hotel Board shall have all rights and remedies for the collection of special assessments as are provided herein for the collection of Hotel Common Charges (including, without limitation, perfecting a lien against the defaulting Hotel Unit Owner's Unit).

6.1.4 Except as otherwise provided herein or in the Declaration (including, among other things, with respect to certain easements in favor of the Transient Hotel Unit Owner) and/or Condominium By-Laws, the excess of all rents, profits and revenues derived from the rental or use of any space or facility forming part of or included in any Hotel Limited Common Element shall be collected by the Hotel Board, as agent for and on behalf of the Hotel Unit Owners, and shall constitute income of the Hotel Unit Owners, to be applied against Hotel Common Expenses next arising. Notwithstanding any provision contained in these Hotel By-Laws to the contrary, in no event shall any rent, profit or revenue derived from the rental, licensing or use of any space in the Hotel Section be deemed to be derived from the rental, licensing or use of any floor slabs, ceilings or walls delineating or enclosing such space or the incidental use of any portion of any Hotel Limited Common Elements appurtenant to such space. In addition, none of the Hotel Unit Owners, nor the Hotel Board will have any interest in the rents, profits or revenues from the rental or use of any space in the Non-Hotel Units.

6.2 Payment of Hotel Common Charges.

6.2.1 All Hotel Unit Owners shall be obligated to pay to the Hotel Manager, acting as the agent for the Hotel Board, the Hotel Common Charges assessed by the Hotel Board pursuant to the provision of Section 6.1, at such time or times as the Hotel Board determines. Unless otherwise determined by the Hotel Board, Hotel Common Charges shall be payable monthly, in advance, on the first day of each month.

6.2.2 No Hotel Unit Owner shall be liable for the payment of any part of the Hotel Common Charges assessed against such Hotel Unit Owner's Unit subsequent to a permissible sale, transfer or other conveyance by it (made in accordance with these Hotel By-Laws) of such Unit, together with its appurtenant Common Interest except as expressly provided herein. Any Hotel Unit Owner may, subject to the terms and conditions of these Hotel By-Laws, convey its Unit, together with its appurtenant Common Interest, without consideration, to the Hotel Board or its designee, on behalf of all Hotel Unit Owners, and in such event (except as hereinafter set forth) be exempt from Hotel Common Charges thereafter accruing, provided that such Hotel Unit is free and clear of liens and encumbrances other than the statutory lien for unpaid Hotel Common Charges (provided that no amounts are owing under any such lien). However, in no event may a Hotel Unit Owner exempt itself from liability for Hotel Common Charges by waiving use of any of the Common Elements or by abandonment of its Hotel Unit. A purchaser of a Hotel Unit shall be liable for the payment of Hotel Common Charges accrued and unpaid against such Unit prior to its acquisition thereof, except that, to the extent permitted by Law, a Permitted Mortgagee acquiring title to a Hotel Unit at a foreclosure sale shall not be liable for, and such Hotel Unit shall not be subject to, a lien for the payment of Hotel Common Charges assessed against such Hotel Unit subsequent to the recording of such Permitted Mortgage and prior to the acquisition of title of such Hotel Unit by such mortgagee; the foregoing is subject to the provisions of the last sentence of subsection 6.3.2 hereof. However, in the event of a foreclosure of a Hotel Unit by a Permitted Mortgagee (whether by sale, deed in

lieu of foreclosure or otherwise) or by the Hotel Board of its lien on any Hotel Unit for unpaid Hotel Common Charges, if the net proceeds of the foreclosure sale actually received (after deduction of all legal fees, advertising costs, brokerage commissions and other costs and expenses incurred by such Permitted Mortgagee in connection therewith) are insufficient to satisfy the defaulting Hotel Unit Owner's obligations, such Hotel Unit Owner shall remain liable for the deficit of all unpaid Hotel Common Charges, as provided in these Hotel By-Laws.

6.2.3 (a) Prior to any permissible sale, transfer or other conveyance of a Hotel Unit, any seller or purchaser of a Hotel Unit shall be entitled, upon request for same, to a statement from the Hotel Board, dated as of the date of the closing of title in connection with any such sale, transfer or other conveyance, setting forth the amount of unpaid Hotel Common Charges accrued against the Unit.

(b) The Hotel Board shall promptly provide any Hotel Unit Owner who so requests with a written statement of all unpaid Hotel Common Charges due to it from such Hotel Unit Owner.

6.2.4 Notwithstanding the provisions of subsection 6.2.1, any Hotel Unit Owner that 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) shall deposit with the Hotel Board an amount equal to two (2) times the then current annual Hotel Common Charges for such Unit, subject to increase from time to time as such Common Charges increase, together with the full amount of any special assessment levied against, or allocable to, such Unit, as security for the faithful observance by such Hotel Unit Owner of the terms, provisions and conditions of these Hotel By-Laws. In the event that such Hotel Unit Owner defaults in respect of the terms, provisions and conditions of these Hotel By-Laws, the Hotel Board may use, apply or retain the whole or any part of the security so deposited, to the extent required for the payment of any Hotel Common Charges or any other sum as to which such Hotel Unit Owner is in default. If the Hotel Board applies or retains any part of said security, the Hotel Unit Owner in questions, within ten (10) days after notice from the Hotel Board, shall deposit with the Hotel Board the amount so applied or retained so that such Hotel Board has the full amount of said security on hand at all times.

6.3 Default in Payment of Hotel Common Charges; Lien for Unpaid Hotel Common Charges; Other Remedies.

6.3.1 The Hotel Board shall take prompt action to collect any Hotel Common Charges which remain unpaid for more than thirty (30) days after the due date for payment thereof, including, without limitation, the institution of such actions and the recovery of interest and expenses as provided in this Article 6. Subject to the applicable terms of the Condominium By-Laws, in the event the Hotel Board, after notice from the Condominium Board, fails to take such action against a Hotel Unit Owner, then the Condominium Board may do so, in its own name or, if necessary, in the name of the Hotel Board.

6.3.2 Except to the extent prohibited by Law, the Hotel Board, on behalf of all Hotel Unit Owners, shall have a lien for Hotel Common Charges unpaid by any Hotel Unit Owner, together with interest thereon, on all Hotel Units owned by such Hotel Unit Owner.

Such lien for Hotel Common Charges shall be subordinate only to liens for real estate taxes and, to the extent required by applicable Law, to prior recorded Permitted Mortgages on such Hotel Units, which are first mortgages of record. In the event of a change in applicable Law which does not mandate that the lien for Hotel Common Charges be subordinate to the lien for prior recorded Permitted Mortgages which are first mortgages of record, then, to the extent then permitted by applicable Law, provided the Hotel Board determines (in its sole discretion) that such a change in Law is and a corresponding change to these Hotel By-Laws will be generally acceptable to mortgage lenders, the lien for Hotel Common Charges shall not be subordinate to the lien of any such Permitted Mortgages thereafter made or to the lien of any such Permitted Mortgages theretofore made to the extent that, after the implementation of such amendment to applicable Law, such Permitted Mortgages have been modified, amended or extended so that additional monies are secured thereby.

6.3.3 In the event any Hotel Unit Owner fails to make payment of Hotel Common Charges when due, such Unit Owner shall be obligated to pay: (a) a "late charge" of .04 for each dollar of such amounts which remain unpaid for more than ten (10) days from their due date (although nothing herein shall be deemed to extend the period within which such amounts are to be paid); and (b) interest at the rate of 1.5% per month (but in no event in excess of the maximum rate permitted by Law) on such unpaid amounts (exclusive of any "late charges" theretofore collected on such amounts) computed from the due date thereof, together with all expenses, including, without limitation, attorneys' fees and expenses paid or incurred by the Hotel Board or by any managing agent in any proceeding brought to collect such unpaid Hotel Common Charges or in an action to foreclose the lien on such Unit arising from said unpaid Hotel Common Charges, whether 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. In addition, if the Hotel Board shall bring an action to foreclose such lien because of unpaid Hotel Common Charges, the defaulting Hotel Unit Owner shall be required to pay a reasonable fee for the use and occupancy of its Unit and the plaintiff in such foreclosure action shall be entitled to the appointment, without notice, of a receiver to collect the same. All such "late charges," interest, expenses and fees shall be added to and shall constitute Hotel Common Charges payable by such Hotel Unit Owner; and the lien for unpaid Hotel Common Charges shall also secure the payment of such additional sums. A suit to recover a money judgment for unpaid Hotel Common Charges shall be maintainable without foreclosing or waiving the lien securing such charges.

6.3.4 In any action brought by the Hotel Board to foreclose a lien on a Hotel Unit because of unpaid Hotel Common Charges, the Hotel Board, acting on behalf of all Hotel Unit Owners, shall have the power (but shall not be obligated) to purchase any such Hotel Unit at the foreclosure sale thereof and to acquire, hold, lease, mortgage, convey or otherwise deal with such Unit (but not to vote the Common Interests appurtenant thereto). In the event the net proceeds received on a foreclosure sale (after deduction of all legal fees, advertising costs, brokerage commissions and other costs and expenses incurred in connection therewith) are insufficient to satisfy the defaulting Hotel Unit Owner's obligations, such Hotel Unit Owner shall remain liable for the deficit, as provided in these Hotel By-Laws.

6.3.5 (a) For the purposes of this subsection 6.3.5, "non-occupying owner" shall mean a Hotel Unit Owner who or which does not occupy its Hotel Unit.

(b) If a non-occupying owner rents any Hotel Unit to a rental tenant and then fails to make payments due for Hotel Common Charges or any other amounts payable by such Hotel Unit Owner to the Hotel Board, including, without limitation, assessments and/or late fees (all of the foregoing, collectively, "Payments") for such Hotel Unit within sixty days of the expiration of any grace period after the same are due, upon notice in accordance with subdivision (c) of this subsection, all rental payments from the tenant shall be directly payable to the Hotel Board.

(c) If the Payments for any Hotel Unit have not been paid in full, within sixty days after the expiration of any grace period of the earliest due date, the Hotel Board shall provide written notice to the tenant and the non-occupying owner providing that, commencing immediately and until such time as all Payments are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the Hotel Board at the address listed on the notice. Where a majority of the Hotel Board has been elected by and from among the Hotel Unit Owners who are in occupancy, the Hotel Board may elect not to require that rental payments be made payable to the Hotel Board. At such time as Payments from the non-occupying owner are once again current, notice of such fact shall be given within three business days to the rental tenant and non-occupying owner. Thereafter all rental payments shall be made payable to the non-occupying owner or a designated agent. A non-occupying owner who disputes the Hotel Board's claim to rental payments pursuant to this subsection shall be entitled to present facts supporting such Hotel Unit Owner's position at the next scheduled meeting of the Hotel Board, which must be held within thirty days of the date that such Hotel Board receives notice that such owner seeks to dispute such claim.

(d) Nothing in this subsection shall limit any rights of any Hotel Unit Owner or the Hotel Board existing under any other Law or agreement.

(e) Payment by a rental tenant to the Hotel Board made in connection with this subsection shall relieve that rental tenant from the obligation to pay such rent to the non-occupying owner and shall be an absolute defense in any non-payment proceeding commenced by such non-occupying owner against such tenant for such rent.

6.4 Insurance.

6.4.1 The Condominium By-Laws describe those types of insurance which the Condominium Board, the Hotel Board, the Residential Board, the Non-Hotel Unit Owners and the Hotel Unit Owners are required to obtain and maintain. Neither the Condominium Board nor the Hotel Board is required to obtain or maintain any insurance with respect to any personal property (including improvements, betterments, equipment, furniture, furnishings and the like) contained in or constituting part of a Hotel Unit or any liability with respect to occurrences within or about a Hotel Unit or the Limited Common Elements, if any, appurtenant thereto. Consequently, in addition to any other required coverages provided in the then applicable form of Unit Management and Operation Agreement, all Hotel Unit Owners are required, as specified in Section 11.5 of the Condominium By-Laws, to obtain and maintain liability insurance as specified therein. Subject to the requirements hereinafter and in subsection 6.4.2 set forth, Hotel Unit Owners shall not be prohibited from carrying other insurance for their own benefit, and the Hotel Board shall not be prohibited from requesting or seeking to cause the Condominium Board

to carry other insurance, or from carrying insurance itself, for the benefit of the Hotel Section or Hotel Unit Owners. To the extent any party is insured, or is required hereunder to be insured, for loss or damage to property, each party will look to its own insurance policies for recovery.

6.4.2 All policies obtained by any Hotel Unit Owner, or by the Hotel Board on behalf of the Hotel Section or the Hotel Unit Owners, shall provide that the liability of the carriers issuing insurance obtained by the Condominium Board shall not be affected or diminished by reason of any additional insurance carried by the Hotel Board or any other Unit Owner and shall contain a waiver of the insurer's right of subrogation against the Condominium Board, the Hotel Board and any Unit Owner.

6.4.3 If the use of any Hotel Unit causes an increase in the premium for the insurance which the Condominium Board, Hotel Board or Hotel Board is required to obtain and maintain as set forth herein or otherwise, then the owner of such Hotel Unit shall be obligated to pay to the Hotel Board (which, to the extent appropriate, shall in turn pay any necessary sums to the Condominium Board), as additional Hotel Common Charges, a sum equal to the amount of such increase attributable to such use.

6.4.4 All insurance policies carried by or on behalf of the Hotel Board shall provide that adjustment of loss shall be made exclusively by the Hotel Board if the loss involves only the Hotel Section; in all other instances, the provisions of the Condominium By-Laws shall control as to adjustment of loss. The Condominium By-laws shall also control as to those instances in which proceeds shall be payable to an Insurance Trustee.

6.5 Repair or Reconstruction after Fire or Other Casualty.

6.5.1 (a) If any portion of the Property other than solely the Hotel Section is damaged or destroyed by fire or other casualty, or if any portion of the Hotel Section is damaged or destroyed together with any other portion of the Property, the provisions of the Condominium By-Laws shall control as to control over repair and restoration. In the event that solely the Hotel Section (i.e., the Hotel Units and/or Hotel Limited Common Elements) or any part thereof is damaged or destroyed by fire or other casualty (unless, in accordance with the Condominium By-Laws or these Hotel By-Laws, the Building is not to be repaired), the Hotel Board will arrange for the prompt repair and restoration of the Hotel Section (including each Hotel Unit, but excluding improvements, betterments, equipment, furniture, furnishings or other personal property in any such Unit) and the Hotel Board, or Insurance Trustee, as provided in the Condominium By-Laws or herein, shall disburse the proceeds of all applicable insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If only the Transient Hotel Unit 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 Transient Hotel Unit Owner will bear the entire amount of the deficit, or shall receive all of the surplus, as the case may be, in proportion to their respective Hotel Common Interests. Similarly, if only the Condo Hotel Units are damaged or destroyed by fire or other casualty and the insurance proceed are less than sufficient to cover, or exceed, the cost of repairs and restoration, the deficit or surplus, as the case may be, will be borne or shared entirely by all Condo Hotel Unit Owners in proportion to their respective Hotel Common Interests. If said damage or destruction by fire or other casualty affects the Hotel Limited Common Elements, or

any combination of the Condo Hotel Units, the Transient Hotel Unit, then any deficit or surplus in insurance proceeds shall be borne or shared by all Hotel Unit Owners, or by the Unit Owners of the affected portions of the Building, as appropriate, in proportion to their respective Hotel Common Interests. Any surplus payable to any Unit Owner pursuant to this subsection 6.5.1 shall be lessened by such amounts as may be required to discharge unpaid liens (other than mortgages which are not Permitted Mortgages) on any such Unit in the order of priority of such liens.

(b) If only the Hotel Section is damaged or destroyed by fire or other casualty and the insurance proceeds are less than sufficient to cover, or exceed, the cost of repairs and restoration, the deficit or surplus, as the case may be, will be borne as a Hotel Common Expense or profit, respectively, and shared by all Hotel Unit Owners in proportion to their respective Common Interests. Any surplus allocable to any Hotel Unit pursuant to this subsection 6.5.1 shall first be lessened by such amounts as may be required to discharge unpaid liens (other than mortgages which are not Permitted Mortgages) on any such Unit in the order of priority of such liens, and the remaining surplus, if any, shall then be paid to the owner of such Unit. If any portion of the Property other than solely the Hotel Section is damaged or destroyed by fire or other casualty, or if any portion of the Hotel Section is damaged or destroyed together with any other portion of the Property, the provisions of the Condominium By-Laws shall control as to any deficit or surplus in insurance proceeds.

6.6 Maintenance and Repairs.

6.6.1 Except as otherwise provided in the Declaration, the Condominium By-Laws or these Hotel By-Laws, all painting, decorating, maintenance, repairs and replacements, whether structural or non-structural, ordinary or extraordinary, and all maintenance, repairs and replacements of all plumbing, heating and lighting fixtures, heating and air-conditioning units and appliances: (i) in or to any Hotel Unit (excluding General Common Elements and Hotel Limited Common Elements therein, except as otherwise provided in the Declaration, these Hotel By-Laws or in the applicable Unit Management and Operation Agreement) and the interior side of entrance doors thereto, shall be made by the owner of such Hotel Unit at its sole cost and expense; provided that, except in the case of work to be done in Unsold Condo Hotel Units, the Hotel Unit Owner of a Hotel Unit utilizes only such contractors, workers or suppliers as are on the then approved list of the then managing agent of the Hotel Section, which list may change from time to time in the sole discretion of such managing agent or the Hotel Board and, to the extent applicable, complies with the provisions of Section 6.7 hereof; and (ii) in or to the Hotel Limited Common Elements shall be made by the Hotel Manager as agent for the Hotel Board and the cost and expense thereof shall be shared by all Hotel Unit Owners as a Hotel Common Expense, in proportion to their respective Common Interests.

6.6.2 Notwithstanding the provisions of subsection 6.6.1:

(a) In the event that any painting, decorating, maintenance, repairs or replacements to the Property or any part thereof (including, without limitation, any Unit) is necessitated by or attributable to the negligence, misuse, neglect or abuse of: (i) any one or more Hotel Unit Owner(s) or its or their tenants, agents, invitees, licensees or guests, the entire cost thereof shall be borne entirely by such Hotel Unit Owner(s); or (ii) the Hotel Board or its tenants,

agents, invitees, licensees or guests, the entire cost thereof shall be charged to all Hotel Unit Owners as a Hotel Common Expense, except to the extent in any case under clause (i) or (ii) that such cost is covered by the proceeds of any insurance maintained pursuant to the provisions hereof and only in each case if such negligence, misuse, neglect or abuse is intentional and is within the control of such Hotel Unit Owner(s) or the Hotel Board, as applicable.

(b) Except as may otherwise be expressly provided herein, no Hotel Unit Owner may install, inscribe or expose any signage on or at any window or any other part of the Hotel Limited Common Elements. Notwithstanding the foregoing, (i) there are no restrictions on the ability of the Transient Hotel Unit Owner to place any signs inside the Transient Hotel Unit, provided such signs comply with all applicable Legal Requirements and (ii) the Transient Hotel Unit Owners will be permitted to place signs and awnings on the exterior of the Transient Hotel Unit, provided that (y) no flashing, blinking or neon sign shall be placed in the windows or in any display or other area visible to public view from the outside of the Transient Hotel Unit, and (z) such signs and awnings comply with applicable Legal Requirements and do not otherwise violate the provisions of these Bylaws (other than the first sentence of this subparagraph (b)) or the Declaration. Additionally, notwithstanding the foregoing, Hotel Sponsor, any holder of Unsold Condo Hotel Units and the Transient Hotel Unit Owner shall have an easement to erect, maintain, repair and replace signs, notices, advertisements and illuminations on reasonable portions of the Property, including, without limitation, on the portions of the Hotel Section, on or at windows and in interior public spaces of the Hotel Section (but in no event within the interior of or on the exterior of the Unit owned by any other party), for the purposes of advertising the availability of Condo Hotel Units for sale or lease by Hotel Sponsor or its designee and/or, in the case of the Transient Hotel Unit Owner, for any other valid business purpose.

(c) The interior and exterior glass surfaces of all windows located in any Hotel Unit shall not be altered, colored or painted. The washing and cleaning of interior glass surfaces of windows in the Hotel Units shall be the responsibility of the respective Hotel Unit Owners (or the management of the Hotel Section, as the case may be). All window interiors shall be cleaned a minimum of five times per calendar year. The Hotel Board may from time to time enforce the responsibility of Hotel Unit Owners to wash and clean the interior surfaces of windows located in their respective Units. The exterior glass surfaces of Hotel Units will be washed and cleaned by the Hotel Board and, except as provided in these Hotel By-Laws, the cost thereof charged as a Common Expense of the Hotel Unit Owners.

(d) All normal maintenance and repairs of any Common Element appurtenant to a particular Hotel Unit (*e.g.*, terraces) shall be made by the Hotel Unit Owner having access thereto (or the managing agent of the Hotel Section as the case may be), at its own cost and expense; any structural or extraordinary repairs or replacements thereto (including leaks) shall be made by or for the Hotel Board and the cost and expense thereof shall be charged to all Hotel Unit Owners as a Hotel Common Expense, unless due to the negligence, misuse, neglect or abuse of such Hotel Unit Owner or its tenant, agent, invitee, licensee or guest, in which event such Hotel Unit Owner shall bear the entire cost thereof, and the same shall, for all purposes hereunder, constitute part of the Hotel Common Charges payable by such Hotel Unit Owner.

(e) No Condo Hotel Unit Owner may install, inscribe or expose any signage on or at any window or any other part of the Common Elements. The foregoing restriction shall not apply to the Transient Hotel Unit or to any Unsold Condo Hotel Unit.

6.6.3 The Transient Hotel Unit, all Condo Hotel Units and the Hotel Limited Common Elements shall be kept in accordance with the Transient Hotel Unit Standard (as defined in Section 14.2 hereof) (and with respect to any roof or other part of the Property exposed to the elements, free of snow, ice and accumulation of water) by the Hotel Unit Owner or the Hotel Board, whichever is responsible for the maintenance thereof under the Declaration, these Hotel By-Laws or the Condominium By-Laws; and such Hotel Unit Owner or the Hotel Board shall promptly make or perform, or cause to be made or performed, all maintenance work, repairs and replacements necessary in connection therewith. In addition, the public areas of the Hotel Section and those areas which are exposed to public view shall be kept in good appearance, in conformity with the dignity and character of the Building, by: (a) the Hotel Board, with respect to such parts of the Building it is required to maintain under the Declaration, these Hotel By-Laws or the Condominium By-Laws; and; (b) each Hotel Unit Owner, with respect to the windows and shades, Venetian or other blinds, drapes, curtains or other window decorations in or appurtenant to its Hotel Unit, as well as those other areas of such Unit and its appurtenant Hotel Limited Common Elements which are exposed to public view.

6.6.4 In the event that any Hotel Unit Owner, within a reasonable time after receipt of written notice from the Hotel Board, fails or neglects in any way to perform any of its obligations with respect to maintenance, repair or replacement in or to its Hotel Unit as provided in this Article 6 or of any Common Element for which such Hotel Unit Owner is responsible under the Declaration, the Condominium By-Laws or these Hotel By-Laws, the Hotel Board may perform or cause to be performed such maintenance, repair or replacement, unless such Hotel Unit Owner, within ten (10) days after receiving notice of such default by the Hotel Board (except in the event of an "emergency," i.e., a condition requiring repair or replacement immediately necessary for the preservation or safety of the Building or for the safety of occupants of the Building or other persons, or required to avoid the suspension of any necessary services in the Building, in which case no notice is required), cures such default, or in the case of a default not reasonably susceptible to cure within such period, promptly commences (within such ten (10)-day period) and thereafter prosecutes to completion, with due diligence, the curing of such default. All sums expended and all costs and expenses incurred in connection with the making of any such maintenance, repair or replacement in or to such Hotel Unit Owner's Unit or to any such Common Element for which such Hotel Unit Owner is responsible as aforesaid, together with interest thereon at the rate of 1.5% per month (but in no event in excess of the maximum rate permitted by Law), shall be immediately payable by such Hotel Unit Owner to the Hotel Board and shall, for all purposes hereunder, constitute part of the Hotel Common Charges payable by such Hotel Unit Owner.

6.7 Alterations of Condo Hotel Units.

6.7.1 Except as otherwise provided in the Declaration, the Condominium By-Laws or these Hotel By-Laws:

(a) (i) No Condo Hotel Unit Owner (other than Declarant and/or Hotel Sponsor or its designee or other owner of Unsold Condo Hotel Units) shall make any Alteration or Repair in or to its Condo Hotel Unit which affects the structure or systems of the Building (including, without limitation, the mechanical, electrical, plumbing, heating, ventilating and/or air-conditioning systems thereof), without obtaining the prior written consent of the Hotel Board thereto. Prior to, and as a condition of, the granting of its consent to the making of any such Alteration or Repair in or to a Hotel Unit, the Hotel Board, at its option, may require the Condo Hotel Unit Owner to execute an agreement, in form and substance satisfactory to the Hotel Board, setting forth the terms and conditions under which such Alteration or Repair may be made.

(ii) Notwithstanding anything otherwise herein contained to the contrary (whether in clause (i) above or otherwise), no Condo Hotel Unit Owner shall make, and the Hotel Board shall not have the authority to consent to, any alteration, addition, improvement or repair to a Hotel Unit which affects the structural elements or the systems (including, without limitation, the mechanical, electrical, plumbing, heating, ventilating and/or air-conditioning systems) of: (x) the Building without the Hotel Board's obtaining the prior written consent thereto of the Condominium Board to the extent required under the terms of the Condominium By-Laws; and/or (y) any Non-Hotel Unit without the Hotel Board's obtaining (on behalf of such Hotel Unit Owner) the prior written consent thereto of the owner of such Non-Condo Hotel Unit(s) to the extent required under the terms of the Condominium By-Laws. In each of the foregoing cases, the Condo Hotel Unit Owner seeking to perform such work requiring such consent(s) shall be liable for all costs and expenses incurred by the Hotel Board in obtaining such consent(s).

(b) All Repairs which would affect the structure or the systems of the Building (including, without limitation, the mechanical, electrical, plumbing, heating, ventilating and/or air-conditioning systems thereof) and all Alterations to any Condo Hotel Unit shall be made in accordance with plans and specifications, which plans and specifications shall be: (1) subject to review and approval by the Hotel Board, in the case of Alterations to which the consent of the Hotel Board is otherwise required under subsection 6.7.1(a); (2) subject to review and approval by the Condominium Board, in the case of Alterations to which the consent of the Condominium Board is otherwise required under Article 8 of the Condominium By-Laws; (3) subject to the approval of the appropriate Non-Condo Hotel Unit Owner(s) in the case of Alterations to which the consent of such Non-Condo Hotel Unit Owner(s) is otherwise required under Article 8 of the Condominium By-Laws; and/or (4) subject to the approval of the Residential Board in the case of Alterations to which the consent of such Board as otherwise required under Article 8 of the Condominium By-Laws. Prior to, and as a condition of, the granting of its consent to the making of any such Alteration, the Hotel Board, the Condominium Board, the Non-Condo Hotel Unit Owner or the Residential Board, as the case may be, may require the Hotel Unit Owner to execute an agreement, in form and substance satisfactory to the consenting party, setting forth the terms and conditions under which such Alteration may be made.

6.7.2 All Alterations (whether to a Unit or to any Common Element) by a Condo Hotel Unit Owner shall be performed:

(a) at the Condo Hotel Unit Owner's sole cost and expense (including, without limitation, the reasonable costs of the Hotel Board, the Condominium Board, the Non-Condo Hotel Unit Owner(s) and/or Residential Board, as the case may be, incurred in reviewing and approving such Hotel Unit Owner's submission for approval (if such approval is required) and in monitoring such Hotel Unit Owner's compliance with the provisions of this Section 6.7);

(b) only after obtaining such insurance, naming the Condominium Board and the Hotel Board, and the managing agent(s) thereof, and any affected Non-Condo Hotel Unit Owner(s) and/or Residential Board as additional insureds, as such Boards or such managing agent(s) or such Non-Hotel Unit Owner(s) may reasonably require;

(c) in compliance with the Declaration, these Hotel By-Laws, the Condominium By-Laws, the General Rules and Regulations, the Hotel Rules and Regulations, and all Laws (including, without limitation, those regarding licensing of contractors, obtaining of all necessary governmental permits, authorizations, certificates and licenses for the commencement and completion of any Alterations and obtaining of any amendment to the Certificate of Occupancy for such Condo Hotel Unit, if necessary);

(d) in a manner which will not interfere with, or cause any labor disturbances or stoppages in, the work of Condominium, Hotel Section, Residential Section or Non-Condo Hotel Units Owners' employees or other contractors or subcontractors employed in the Units or the Building; and

(e) (i) only during such days and hours as may be specified by the Hotel Board in its reasonable judgment; and (ii) employing such architects, engineers, contractors, subcontractors, suppliers and other laborers who are on the then approved list of the then managing agent of the Hotel Section, as such list may change from time to time, in the sole discretion of the Hotel Board or its managing agent.

The Condo Hotel Unit Owner performing, permitting, suffering or causing such Alterations to be performed shall, if required either by the Condominium Board and/or the Hotel Board, pay the cost of: (x) any necessary amendment of the Declaration and the floor plans of the Condominium, if appropriate, to reflect any such Alterations; (y) obtaining all necessary governmental permits, authorizations, certificates and licenses for the commencement and completion of any Alterations (copies of which shall be delivered to the Hotel Board (which shall, as appropriate, also cause copies to be delivered to the Condominium Board) promptly after the issuance thereof and prior to the commencement of any Alterations), and obtaining any amendment to the Certificate of Occupancy for such Condo Hotel Unit, if necessary; and (z) any reasonable architectural, engineering and legal fees incurred by the Condominium Board or the Hotel Board, as appropriate, in connection with such work. Neither the Condominium Board, the Hotel Board nor any Unit Owner (other than the Hotel Unit Owner making, permitting, suffering or causing any Alterations to be made in or to its Unit) shall incur any liability, cost or expense either: (1) in connection with the preparation, execution or submission of the applications referred to above; (2) to any contractor, subcontractor, supplier, architect, engineer or laborer on account of any Alterations made, or permitted or caused to be made, by any Condo Hotel Unit Owner; (3) to any person or entity asserting any claim for personal injury or property damage arising therefrom; or (4) arising out of a Condo Hotel Unit Owner's failure to obtain any

permit, authorization, certificate or license, or to comply with the Declaration, the Condominium By-Laws, these Hotel By-Laws, the General Rules and Regulations, if any, the Hotel Rules and Regulations, and the provisions of any Laws insofar as the same relates to Alterations. A Condo Hotel Unit Owner making, or causing, permitting or suffering any tenant or occupant to make, any Alteration shall be deemed to have agreed to indemnify and hold the Condominium Board, the Hotel Board, the managing agents thereof and all other Unit Owners harmless from and against any liability, loss, cost, or expense arising therefrom, and from and against any and all loss, cost, expense (including, but not limited to, attorneys' fees and disbursements), damage, injury or liability, whether direct, indirect or consequential, resulting from, arising out of, or in any way connected with, any of the foregoing.

6.7.3 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 an Alteration in or to any Hotel Unit shall, if and to the extent required by Law or such department or authority, be executed by the Condominium Board, the Hotel Board and/or any affected Non-Hotel Unit Owner(s), in the case of an Alteration which such party has approved (or for which its approval is not required), provided that the Condominium Board, the Hotel Board and the Non-Condo Hotel Unit Owner(s) shall not incur any liability, cost or expense in connection with or by reason of executing such application.

6.7.4 Notwithstanding anything to the contrary contained in this Section 6.7 (but subject to all Laws), Declarant and Hotel Sponsor shall each have the right pursuant (and subject) to the terms of the Declaration, without the approval of the Hotel Board, the Condominium Board or any Non-Hotel Unit Owner: (i) to make any alterations, additions, improvements and repairs in or to any Unsold Condo Hotel Units, whether structural or non-structural, interior or exterior, ordinary or extraordinary (including, without limitation, those required under any applicable development (or other) agreement affecting the Property, the Hotel Offering Plan, any Purchase Agreement or otherwise); and (ii) to subdivide, combine and change the boundary walls of Unsold Condo Hotel Units. Additionally, an initial purchaser of any Unsold Unit shall have the right, without approval of the Hotel Board, to make any Alterations in or to its Condo Hotel Unit, provided that Hotel Sponsor shall have consented to the same in writing at or prior to the closing of title to such Hotel Unit (which consent may be withheld or conditioned in Hotel Sponsor's sole discretion) and that such purchaser complies with all of the other requirements of this Section 6.7.

6.7.5 In addition to the requirements set forth above in this Section 6.7, until a permanent Certificate of Occupancy is obtained for the Building, no Condo Hotel Unit Owner shall make any Alterations in or to its Condo Hotel Unit without first notifying Declarant and Condo Hotel Sponsor of the same in writing and complying with the requirements of Declarant and Condo Hotel Sponsor with respect to the same. Such requirements may include, but need not be limited to, the following:

(a) such work not include any change that would result in a delay in obtaining a temporary or permanent Certificate of Occupancy for the Hotel Section and/or the Building, or any amendment to, or extension of, the same if theretofore issued;

(b) such Condo Hotel Unit Owner post a bond or other similar security that is reasonably acceptable to Hotel Sponsor in an amount sufficient (in Hotel Sponsor's reasonable judgment) to insure the diligent completion of the work and the filing of any required notices or certificates with respect to such work and the completion of the same with all governmental authorities having jurisdiction;

(c) such work not be commenced until such Condo Hotel Unit Owner causes all required plans, specifications, notices and/or certifications to be filed with all governmental authorities having jurisdiction, procures all required permits and licenses with respect to the same, and delivers copies of all such plans, specifications, notices, certifications, permits and licenses to Hotel Sponsor;

(d) such work be diligently prosecuted to completion in compliance with all plans, specifications, notices and/or certifications and in conformity with all permits and licenses;

(e) Declarant and Hotel Sponsor and their representatives be given reasonable opportunity, from time to time, to inspect such work as it progresses;

(f) promptly after the completion of such work, all necessary inspections and approvals of the same be obtained, all necessary notices and/or certifications be filed with the appropriate governmental authorities and Declarant and Hotel Sponsor each be given a copy of all such inspections, approvals, notices and certifications;

(g) such Condo Hotel Unit Owner indemnify and hold Declarant and Hotel Sponsor harmless from any cost, expense, claim, or liability arising, directly or indirectly, from such work, including, without limitation, any cost, expense, claim or liability incurred or suffered by any of them due to any delay in obtaining a temporary or permanent Certificate of Occupancy for the Building (or any amendment to, or extension of, the same if theretofore issued) as a result of such work or the failure to timely make all appropriate governmental filings in connection with the same; and

(h) all contractors shall be duly licensed to the extent required by applicable Laws and, if required under any contract with any union whose members are performing services at the Building (including, without limitation, services directly or indirectly at the behest, for the benefit, or for the account of Declarant, Hotel Sponsor, any other Unit Owner, the Condominium Board, the Hotel Board or the Residential Board), such work shall be performed solely by union members.

If any Condo Hotel Unit Owner commences any such Alterations in violation of the foregoing terms and conditions of this subsection 6.7.5, or fails to comply with the requirements of Declarant and/or Hotel Sponsor in connection with the same, Declarant and/or Hotel Sponsor shall be entitled to cause such work by such Condo Hotel Unit Owner to be halted, including, without limitation, causing the managing agent to deny access to the Building to such Condo Hotel Unit Owner's workers and suppliers, until such Condo Hotel Unit Owner so complies. During the period until such Hotel Unit Owner is permitted hereunder to resume its work, Declarant and/or Hotel Sponsor shall have the right to cause to be performed (whether by

Declarant, Hotel Sponsor or otherwise) any and all work in and to such Hotel Unit Owner's Unit as shall be necessary, in such party's sole judgment, in order to avoid any delay in obtaining a temporary or permanent Certificate of Occupancy for the Building (or any amendment to, or extension of, the same if theretofore issued), whether or not such work shall be in compliance with the plans and specifications for the work theretofore performed by, or on behalf of, such Hotel Unit Owner. The cost and expense of any such work so performed shall be borne by such Hotel Unit Owner and shall be paid to Declarant and/or Hotel Sponsor, as designated by such parties, within fifteen (15) days following written demand therefor.

6.7.6 In the event that a dispute arises between any Hotel Unit Owner and the Condominium Board, the Hotel Board or any Non-Condo Hotel Unit Owner, as the case may be, regarding any Alteration subject to the approval of either such Board or such Non-Condo Hotel Unit Owner (including, without limitation, the determination of whether any work constitutes an Alteration subject to the approval of only such Board or any Non-Condo Hotel Unit Owner), or if a dispute arises between a Condo Hotel Unit Owner and Declarant and/or Hotel Sponsor in respect of subsection 6.7.5, such dispute shall be submitted to Arbitration, provided that the parties shall cause such Arbitration to proceed in an expedited manner.

6.7.7 References in this Section 6.7 to Alteration shall also include, as the context requires but otherwise subject to the Declaration, Condominium By-Law and these By-Law, any Repairs.

6.7.8 The Transient Hotel Unit Owner may make Alterations in or to its Transient Hotel Unit (including any decorations that are compatible with the first class character and location of the Building and installing equipment on any rooftop area (as described below)) which, in each such case, comply with applicable Legal Requirements, without obtaining the approval of the Hotel Board, except that Alterations which would affect the structural, mechanical, electrical or plumbing elements of the Hotel Section, or the exterior appearance of the Hotel Section, shall be subject to the approval of the Board, which shall not be unreasonably withheld. In the event that a dispute arises between the Transient Hotel Unit Owner and the Hotel Board regarding any Alteration subject to the Hotel Board's approval (or which the Hotel Board asserts is subject to its approval), such dispute shall be submitted to arbitration in accordance with the terms of Article 11 of these Hotel By-Laws, provided that the parties shall cause such arbitration to proceed in an expedited manner. The Transient Hotel Unit Owner will be granted reasonable access to all parts of the Hotel Section (other than the interior of Condo Hotel Units) to which such Transient Hotel Unit Owner reasonably requires access in order to perform any work or alterations desired by the Transient Hotel Unit Owner thereof and permitted or required to be made by Transient Hotel Unit Owner hereunder.

6.8 Alterations to Hotel Limited Common Elements. Except as otherwise provided in the Declaration, the Condominium By-Laws or these Hotel By-Laws, all alterations, additions or improvements in or to any Hotel Limited Common Elements shall be made by the Hotel Manager as agent for the Hotel Board or by the Hotel Unit Owner(s) required to maintain and repair such Hotel Limited Common Element and the cost thereof shall be charged either to all Hotel Unit Owners as a Hotel Common Expense in the proportion that their respective Common Interests bear to the aggregate Common Interests of all Hotel Unit Owners, or to the Hotel Unit Owner(s) responsible therefor, as the case may be. Whenever the cost of any such alterations,

additions or improvements chargeable to the Hotel Board is capital in nature and would, in the judgment of the Hotel Board, exceed $100,000 (subject to increase by the CPI Increase Factor) in any calendar year or $250,000 in the aggregate (subject to increase by the CPI Increase Factor), then such proposed alteration, addition or improvement shall not be made unless first approved by a majority in Common Interest of Hotel Unit Owners, including Hotel Sponsor, required to bear the cost and expense thereof in accordance with the foregoing and by a majority of the Hotel Mortgagee Representatives, if any; provided that if the aforesaid is in the nature of a non-capital repair or is necessary to comply with Laws, or to remedy any violation imposed against the Property, or a proper work order of an insurer of the Property, or for the health or safety (but not the general comfort or welfare) of the residents or occupants of the Property, such consent shall not be required. In any such event, the Hotel Board may, in its direction, assess each Hotel Unit Owner liable therefor for its pro-rata share of the cost of such alterations, additions and improvements, according to its respective Common Interest, as part of the Hotel Common Charges. Any additions, alterations, or improvements costing the amounts set forth above or less, in the aggregate, in any calendar year may be made by the Hotel Board without the approval of the Hotel Unit Owners or the Hotel Mortgage Representatives.

6.9 Use of Condo Hotel Units. Except to the extent otherwise permitted by law and approved by the Hotel Board as set forth in the Hotel By-laws, each Condo Hotel Unit may only be used as Hotel Accessory Quarters and for no other purpose, and in all events subject to all Laws and to the further provisions of this Declaration, the Condominium By-Laws and the Hotel By-Laws. As used in the Condominium Documents, "Hotel Accessory Quarters" means living quarters which are not occupied by the Unit Owner thereof in excess of four months (in the aggregate) in any calendar year, and, when not occupied by such Unit Owner, available for rental as a "Transient Hotel Room", *i.e.*, a room or single suite of rooms used for transient occupancy and which may be rented on a daily basis as part of a transient hotel. Where a Condo Hotel Unit is owned by an entity (*i.e.*, rather than by one or more natural person(s)), such entity shall designate in writing to the Hotel Board and Hotel Manager one individual as the primary occupant of such Unit, and the term "Unit Owner" as used in the preceding sentence and in connection with the conditions relating to the permitted use of such Unit as reflected therein shall mean such designated individual. Without limiting any other provision of the Condominium Documents, Condo Hotel Units may not be used in fact or in effect, as part of or in furtherance of any Occupancy Plan; provided, however, if, as and when, and only for so long as, the Transient Hotel Unit is being used by the Unit Owner thereof or the Hotel Manager in connection with an Occupancy Plan (and, for the avoidance of doubt, the use of Transient Hotel Unit as a transient hotel in the ordinary course shall not be considered "use in connection with an Occupancy Plan"), the Condo Hotel Units may be so used on the same basis.

6.10 Use of Transient Hotel Unit. Subject to compliance with all Laws, the Transient Hotel Unit may be used and operated for any legally permitted purpose. Neither the Condominium Board nor the Hotel Board or any Unit owner other than the owner of the Transient Hotel Unit in question (except as may be expressly provided in the Condominium Documents to the contrary or pursuant to separate written agreement by or among the applicable parties) shall have any right to the income derived from any use of the Transient Hotel Unit.

6.11 Use of Hotel Limited Common Elements.

6.11.1 Except as otherwise provided herein, in the Condominium By-Laws or in the Declaration, Hotel Limited 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.

6.11.2 In no event shall any Hotel Unit Owner impair, restrict or impede the use of the Common Elements by any other Unit Owner(s) (including, without limitation, the Residential Unit Owners) or anyone claiming by, through or under any other Unit Owner(s), including, but not limited to, the tenants and occupants of the Residential Units and their respective licensees or invitees.

6.11.3 Notwithstanding the foregoing subsections of this Section:

(a) the owner or owners of any one or more Hotel Units, which Hotel Unit or Units are the only Hotel Unit or Units serviced or benefited by any Hotel Limited Common Element adjacent or appurtenant thereto (for example, that portion at the end of any hallway which is directly adjacent to any such Hotel Units located on opposite sides of such hallway) and not affecting access or service (including, without limitation, heating, ventilating and air-conditioning) to any other Unit or to any other portion of the Common Elements shall, to the extent permitted by applicable Law and subject to the consent of the Hotel Board (which consent may be granted or withheld in the Hotel Board's sole discretion and shall not be required if such Hotel Unit Owner or Owners shall be Declarant or Hotel Sponsor or such Units shall be Unsold Condo Hotel Units), have the exclusive right to use that portion of the Hotel Limited Common Elements as if it were a part of such Hotel Units (including the right, in the above example of a portion of a hallway, to enclose such portion) and no amendment to the Declaration nor reallocation of Common Interests shall be made by reason thereof; provided, however that, notwithstanding the provisions of Section 6.1 hereof, such Hotel Unit Owner or Owners, at their sole cost and expense: (a) shall be responsible for the operation, maintenance and repair of that portion of the Hotel Limited Common Elements for so long as such Hotel Unit Owner or Owners exercise such exclusive right of use; and (b) shall restore that portion of the Hotel Limited Common Elements to its original condition, reasonable wear and tear excepted, after such Hotel Unit Owner or Owners cease to exercise such exclusive right of use; and

(b) Hotel Sponsor or any owner of Unsold Condo Hotel Units shall have the right, until the tenth anniversary of the First Condo Hotel Closing, to use portions of the Hotel Section, without charge, for exhibitions or other promotional functions with respect to a sales program in respect of such Unsold Condo Hotel Units or otherwise.

6.11.4 Notwithstanding the foregoing, elevator landings which serve fewer than three Hotel Units may be decorated and/or furnished by the adjoining Hotel Unit Owners as they desire, at their expense, provided that each such Hotel Unit Owner consents in writing thereto, and the Hotel Board gives its written consent to such decoration and/or furnishing, which consent of the Hotel Board may granted or withheld in such board's sole discretion. After an elevator landing is decorated and/or furnished by the Hotel Unit Owners serviced by the same, the owners of such Hotel Units, and not the Hotel Board, will be responsible for keeping the

decor and furnishings in a first class condition and state of repair and performing, at their joint expense, all repairs and maintenance necessary or desirable in order to accomplish the same.

6.11.5 A Hotel Unit Owner shall not at any time use or occupy, or suffer or permit anyone to use or occupy its Hotel Unit, or do or permit anything to be done in its Hotel Unit in violation of the certificate of occupancy for its Hotel Unit or for the Building.

6.11.6 If any governmental license or permit, other than a certificate of occupancy, shall at any time be required for the proper and lawful conduct of business in a Hotel Unit then being conducted or to be conducted in that Hotel Unit or any portion thereof, then the subject Hotel Unit Owner, at it's own expense, shall (subject to any applicable provisions of the Unit Management and Operation Agreement then in effect) duly procure and thereafter maintain such license or permit.

6.11.7 Each Hotel Unit Owner shall take all commercially reasonable measures to ensure that no excessive noise emanates from its Hotel Unit.

6.12 General Provisions as to Use.

6.12.1 No nuisance shall be allowed in the Hotel Section nor shall any use or practices be allowed in the Hotel Section which interfere with the peaceful possession or proper use thereof by its occupants. No unlawful use shall be made of the Hotel Section or any portion thereof. All Laws relating to any portion of the Hotel Section shall be complied with at the sole expense of whichever of the Unit Owners or the Hotel Board or the Condominium Board shall have the obligation to maintain or repair such portion. In no event may all or any portion of the Hotel Section be used for any pornographic purpose or as an adult book, video or paraphernalia store, peep show or adult entertainment facility.

6.12.2 The Hotel Board may, in its discretion but only upon an affirmative 66-2/3% vote, grant permission for the use of a Hotel Unit for a use other than its original intended use, provided such use is permitted by Law, does not violate the then existing Certificate of Occupancy for such Unit, the Declaration, these Hotel By-Laws or the Condominium By-Laws, and the Hotel Unit Owner thereof complies with all applicable Laws.

6.12.3 Declarant and/or Hotel Sponsor, without the permission of the Hotel Board, may: (a) use or grant permission for the use of any Unsold Unit for any purpose, provided such use is permitted by Law, does not violate the then existing Certificate of Occupancy for such Hotel Unit and the user of such Hotel Unit complies with all applicable Laws; (b) use any one or more Unsold Condo Hotel Units as sales and/or leasing offices in connection with the sale or rental of the Hotel Units or for any other purpose, subject only to compliance with applicable Laws; and (c) lease Unsold Condo Hotel Units to any party(ies).

6.13 Right of Access.

6.13.1 Each Hotel Unit Owner grants a right of access to its Hotel Unit to the Hotel Board and the Condominium Board, the managing agents, superintendents and/or any other person authorized by any of the foregoing, for the purposes, among others, of: making inspections of, or removing violations noted or issued by any governmental authority against, the

Common Elements or any other part of the Property; curing defaults hereunder or under the Declaration, the Condominium By-Laws, the Hotel Rules and Regulations or the General Rules and Regulations, if any, by such Hotel Unit Owner or correcting any conditions originating in its Hotel Unit and having a reasonable likelihood of causing damage to another Unit or all or any part of the Common Elements; performing maintenance, installations, alterations, repairs or replacements to the mechanical, plumbing or electrical services or other portions of the Common Elements within its Hotel Unit or elsewhere in the Building; reading, maintaining or replacing utility meters relating to the Common Elements, its Hotel Unit or any other Unit in the Building; or correcting any condition which violates the provisions of any Permitted Mortgage covering another Unit; provided that (a) requests for entry to any Hotel Unit are made not less than one (1) day in advance, and (b) any such right shall be exercised in such a manner as will not unreasonably interfere with the use of the Hotel Units for their permitted purposes. In case of an "emergency", as defined in subsection 6.6.4, such right of entry shall be immediate, without advance notice, whether or not the Hotel Unit Owner or tenant or occupant is present.

6.13.2 Each Hotel Unit Owner grants a right of access to its Hotel Unit and any Hotel Limited Common Elements appurtenant thereto, and the Hotel Board grant rights of access to the Hotel Limited Common Elements to Declarant and Hotel Sponsor, and their contractors, subcontractors, agents and employees, for the purpose of complying with and fulfilling each such party's obligations as set forth in the Hotel Offering Plan and other documents relating to the construction, development and operation of the Property, provided that access thereto shall be exercised by such party, with respect to any Hotel Unit or appurtenant Hotel Limited Common Element, in such a manner as will not unreasonably interfere with the use of such Hotel Unit and/or Hotel Limited Common Element for its or their permitted purposes.

6.14 Hotel Rules and Regulations. Annexed hereto as Exhibit A and made a part hereof are rules and regulations (the "Hotel Rules and Regulations") concerning the use of the Hotel Units and the Hotel Limited Common Elements. The Hotel Board may from time to time (by a 66-2/3% vote) modify, amend or add to such Hotel Rules and Regulations, except that: (x) 66-2/3% vote (by Common Interest) of Hotel Unit Owners may overrule the Hotel Board with respect to any such modifications, amendments or additions; and (y) no adoption, modification, amendment or addition affecting Declarant or Hotel Sponsor or the Unsold Condo Hotel Units may be made unless agreed to, in writing, by Declarant and/or Hotel Sponsor, or by all the owners of such Unsold Condo Hotel Units who are affected by such adoption, modification, amendment or addition, as the case may be. Copies of any newly adopted Hotel Rules and Regulations, or any modifications, amendments or additions thereto shall be furnished by the Hotel Board to each Hotel Unit Owner not less than thirty (30) days prior to the effective date thereof.

6.15 Real Estate Taxes, Water Charges and Sewer Rents.

6.15.1 Water and sewer services for the Hotel Section shall be supplied by the City of New York or other utilities servicing the Property. Unless and until water charges and sewer rents are billed directly to Hotel Unit Owners by the proper authority, the Hotel Board shall promptly pay such charges, together with all related sewer rents arising therefrom, either directly to the utility or to the Condominium Board; and the Hotel Board shall allocate as a Hotel Common Expense among the Hotel Unit Owners, as reasonably determined by the Hotel Board,

based on Common Interests, and the Hotel Unit Owners shall be required to reimburse the Hotel Board, as a Hotel Common Charge, for their share of such charges and rents.

6.15.2 Until the Units are separately assessed and billed for real estate tax purposes, the Condominium Board will pay all real estate taxes with respect to the Property to the Department of Finance of The City of New York (or directly to Declarant if Declarant has paid such taxes) and allocate the cost thereof among the Hotel Section and the other Units in the Building in the manner provided in the Condominium By-Laws. The Hotel Board shall, no later than the later to occur of (x) 15 days after receipt of notice of such allocated amount from the Condominium Board or (y) 30 days prior to the date such taxes are due to The City of New York, pro-rate the share of the Property's real estate taxes so allocated to the Hotel Section as between the Transient Hotel Unit and the Condo Hotel Units first on the basis of Common Interest; and then among the individual Condo Hotel Units on the basis of the ratio that the initial offering price for each Condo Hotel Unit set forth in Schedule A to the Hotel Offering Plan bears to the total initial offering prices of all Condo Hotel Units set forth in such Schedule A, and give notice to each Hotel Unit Owner of the amount payable by such Unit Owner. Each Hotel Unit Owner will then, no later than the later to occur of (i) 15 days after receipt of notice of such pro-rated amount from the Hotel Board or (ii) 15 days prior to the date such taxes are due to The City of New York, pay to the Hotel Board its pro-rated share, which amount shall for all purposes constitute part of the Hotel Common Charges payable by such Unit Owner, and the Hotel Board will forward all such amounts, plus any additional amount necessary so that the total shall equal the total amount allocated the Hotel Section, to the Condominium Board no later than 5 business days prior to the date such taxes are due to The City of New York. A Hotel Unit Owner will not be responsible for the payment of, and will not be subject to any lien arising from, the non-payment of real estate taxes assessed against any other Units.

6.15.3 The Hotel Board shall commence, pursue, compromise and settle certiorari proceedings to obtain reduced real estate tax assessments with respect to any or all of the Condo Hotel Units on behalf of and as agent for the respective Condo Hotel Unit Owners thereof; but only with respect to such Condo Hotel Units as to which the respective Unit Owners thereof have, in writing requested and authorized the Hotel Board to do so, and indemnified the Hotel Board from and against all claims, costs and expenses (including, without limitation, attorneys' fees) resulting from such proceedings. All Condo Hotel Unit Owners making such request to the Hotel Board will share the costs in connection therewith in proportion to the benefits derived therefrom by such Condo Hotel Unit Owners. In the event any Condo Hotel Unit Owner individually seeks to have the assessed valuation of its Unit reduced by bringing a separate certiorari proceeding, the Hotel Board, if necessary for such proceeding, will execute any documents or other papers required for, and otherwise cooperate with such Condo Hotel Unit Owner in pursuing, such reduction, provided that such Condo Hotel Unit Owner indemnifies the Hotel Board from all claims, costs and expenses (including, without limitation, attorneys' fees and expenses) resulting from such proceedings. The Transient Hotel Unit Owner shall bring and pursue its own tax certiorari proceedings and the Hotel Board shall likewise cooperate in connection therewith.

6.16 Utilities.

6.16.1 Electricity. Electricity for the Hotel Section shall be supplied and measured through one or more master meters; and the charges for such electricity uses will be included as part of the Hotel Common Charges on the basis of percentage of Common Interest.

6.16.2 Gas. The gas for the Hotel Section will be paid by the Hotel Board. The charges for any other gas utilized at the Hotel Section shall be paid by the Hotel Board as a Hotel Common Expense and allocated among the Hotel Units on the basis of percentage of Common Interests.

6.16.3 Steam. The steam for the Hotel Section will be submetered and paid by the Hotel Board to the Condominium Board. The charges for any steam utilized at the Hotel Section shall be paid by the Hotel Board as a Hotel Common Expense and allocated to the Hotel Units on the basis of percentage of Common Interests.

6.16.4 Dispute as to Utilities Charges. In the event that there is a dispute as to the accuracy of assessing the charges for a utility upon the basis of usage, and the disputing Hotel Unit Owners and/or the Hotel Board fail to agree on a manner to accurately allocate such costs, the matter shall be determined by Arbitration.

6.17 Remedies for Violations of By-Laws or Rules and Regulations.

6.17.1 The violation by any Hotel Unit Owner of any of the Hotel Rules and Regulations (or the General Rules and Regulations, if any) or the breach of any of these Hotel By-Laws or the Condominium By-Laws, or the breach of any provision of the Declaration, shall give the Hotel Board, in addition to any other rights set forth in these Hotel By-Laws, the Condominium By-Laws or the Declaration, the right: (i) to enter any Hotel Unit or Common Elements in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Hotel Unit Owner, any structure, thing or condition resulting in such violation or breach, provided that the Hotel Unit Owner is given reasonable notice (which may be by telephone or telecopier) that such violation or breach exists and, as the case may be, that abatement, removal, repairs, replacements or alterations are necessary, and such entry and cure shall not constitute or give rise to any guilt or liable in any matter of trespass, and further provided that with respect to any such entry into the Transient Hotel Unit, the same shall be made by the Hotel Board acting through the Hotel Manager; and/or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach, provided that the Hotel Unit Owner is given reasonable notice (which may be by telephone or telecopier) that such violation exists and that repairs, replacements or alterations are necessary, and/or (iii) to have its costs and expenses by reason of such breach or violation repaid to it, and/or (iv) if the party seeking to remedy a breach is the Hotel Board, to levy such fines and penalties against a Condo Hotel Unit Owner as the Hotel Board may deem appropriate, and the Hotel Board shall have the same remedies for non-payment of such fines and penalties as for non-payment of Hotel Common Charges.

6.17.2 The violation or breach of any of the provisions of these Hotel By-Laws, the Condominium By-Laws, the Hotel Rules and Regulations, the General Rules and

Regulations, if any, or the Declaration with respect to any rights, easements, privileges or licenses granted to Declarant and/or Hotel Sponsor shall give to such parties the right, in addition to any other rights set forth in these Hotel By-Laws, the Condominium By-Laws or the Declaration, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

6.18 Utility Costs Payable as Hotel Common Charges. All amounts payable to the Hotel Board by the Hotel Unit Owners in respect of utilities shall be considered and payable as Hotel Common Charges and subject to, among other things, the Hotel Board's lien for unpaid Hotel Common Charges.

6.19 Estoppel Certificates. The Transient Hotel Unit Owner may request from the Hotel Board for the benefit of a prospective purchaser, lender or Occupant, or otherwise, a statement: showing the amount of unpaid Hotel Common Charges pertaining to such Unit Owner; stating whether there exists any known default under the Declaration or these Hotel By-Laws by the requesting Person, and if there are known defaults, specifying the nature thereof; stating the date and recording information of any amendments to the Declaration and these Hotel By-Laws, and stating whether the Declaration and these Hotel By-Laws are in full force and effect; and the Hotel Board shall provide such statement within ten (10) Business Days after request therefor. The Hotel Board shall be entitled to charge the requesting Person a reasonable fee for preparing and rendering said statement. Any Hotel Permitted Mortgagee may request a similar statement with respect to a Unit upon which it holds a Permitted Mortgage of which the Hotel Board has been duly given notice, with any reasonable charge therefor to be paid by the applicable Unit Owner. From time to time, the Hotel Board may request a statement from each Hotel Unit Owner that, except as may be otherwise specified, the Hotel Board is not in default under any of its obligations under the Declaration or these Hotel By-Laws, and such other reasonable information as may be reasonably requested. The addressee of any such statement shall be entitled to rely thereon; and each statement delivered pursuant to this Section 6.19 shall act as a waiver of any claim between the addressee and the Hotel Board or Person furnishing such statement to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement provided, however, that: (i) the issuance of such statement shall in no event subject the Hotel Board to any liability for the negligent or inadvertent failure of the Hotel Board to disclose correct and/or relevant information; and (ii) such issuance shall not be construed to waive any rights of the issuer with respect to any audit of or adjustments to Hotel Common Charges as provided for in the Declaration, Condominium By-Laws or these Hotel By-Laws, or to challenge acts committed by a Unit Owner for which approval by or consent of the Hotel Board was required but not sought or obtained.

## ARTICLE 7

## MORTGAGES

7.1 Notice to Hotel Board. Subject to any applicable provisions of the Condominium By-Laws with respect to mortgages encumbering the Transient Hotel Unit, each Hotel Unit Owner shall have the right to mortgage its Unit, subject (otherwise) only to the terms and

conditions set forth in this Article 7. A Hotel Unit Owner which mortgages its Unit shall notify the Hotel Board of the name and address of the mortgagee, file a conformed copy of the note and mortgage with the Hotel Board and, prior to making such mortgage, satisfy all unpaid liens against its Unit other than Permitted Mortgages. A Hotel Unit Owner who satisfies a mortgage covering its Unit shall so notify the Hotel Board and shall file a conformed copy of the satisfaction of mortgage with the Hotel Board.

7.2 Notice to Mortgagees of Default and Unpaid Hotel Common Charges. Whenever so requested in writing by a Permitted Mortgagee of a Hotel Unit, the Hotel Board shall promptly report to such Permitted Mortgagee any default in the payment of Hotel Common Charges or any other default by the Hotel Unit Owner of such Unit under any of the provisions of the Declaration, these Hotel By-Laws or the Condominium By-Laws which, to the Hotel Board's knowledge, may then exist and respecting which notice has been given to the Unit Owner by the Hotel Board. The Hotel Board, when giving notice to a Hotel Unit Owner of any such default, shall also send a copy of such notice to any Permitted Mortgagee thereof, if so requested in writing by such Permitted Mortgagee; however, the Hotel Board shall have no liability for any failure, through oversight or negligence, in notifying a Permitted Mortgagee of such default by its mortgagor, provided that the Hotel Board shall advise such Permitted Mortgagee of the default promptly after discovering such failure.

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

7.4 Examination of Books. Each Hotel Unit Owner and Permitted Mortgagee shall be permitted to examine the books of account of the Hotel Section upon reasonable prior notice, at reasonable times on business days, but not more frequently than once a month.

7.5 Representatives of Mortgagees.

7.5.1 The holders of Institutional Mortgages constituting a majority of the outstanding principal amount of all Institutional Mortgages encumbering the Condo Hotel Units may, at their election, designate in writing to the Board one or more (but not more than three) representatives ("Condo Hotel Mortgagee Representatives"), which Condo Hotel Mortgagee Representatives shall be empowered to act on behalf of all holders of Institutional Mortgages encumbering the Condo Hotel Units with respect to any matter requiring their consent or approval under the Declaration of the Condominium By-Law or these Hotel By-Laws. The holders of Institutional Mortgages encumbering the Transient Hotel Unit may, at their election, designate in writing to the Hotel Board the holder of the highest mortgage encumbering the Transient Hotel Unit, or its designee, corporate or otherwise, as their representative (the "Transient Hotel Mortgagee Representative"), which Transient Hotel Mortgagee Representative shall be empowered to act on behalf of all holders of Institutional Mortgages encumbering the Transient Hotel Unit with respect to any matter requiring their consent or approval under the Declaration, the Condominium By-Laws or these By-Laws. If any Condo Hotel Mortgagee

Representatives or the Transient Hotel Mortgagee Representative are so designated and notice thereof is given to the Board, the act of any such Representative (or a majority of such Representatives, if more than one is so designated) shall be deemed binding upon the holders of all Institutional Mortgages encumbering the Condo Hotel Units or the Transient Hotel Unit, respectively. As used herein, the term "Institutional Mortgage" means any first mortgage covering a Unit or Units, (a) which is a Permitted Mortgage or a mortgage encumbering a Unit then owned by Declarant or Hotel Sponsor, the Transient Hotel Unit Owner or their respective designees, and (b) the initial holder of which is (i) Declarant, Hotel Sponsor or their respective designees, (ii) a savings bank, savings and loan association, bank, trust company, insurance company, real estate investment trust or mortgage trust, or (iii) a Federal, state, municipal, teachers', union or corporate employee, welfare, pension or retirement fund or system. The Condo Hotel Mortgagee Representatives and Transient Hotel Mortgagee Representatives are sometimes referred to collectively herein as the "Mortgagee Representatives."

7.5.2 Any designation of a Condo Hotel Mortgagee Representative or Transient Hotel Mortgagee Representative shall remain effective until a subsequent designation is made pursuant to the provisions hereof and notice of such subsequent designation is given to the Board.

7.6 Consent of Mortgagees. Except as otherwise expressly provided for herein or in the Condominium By-Laws or the Declaration, no consent or approval by any Mortgagee or Mortgagee Representative shall be required with respect to any determination or act of the Board or any Unit Owner, provided, however, that nothing contained herein shall be deemed to limit or affect the rights of any mortgagee against its mortgagor.

## ARTICLE 8

## SELLING, LEASING AND MORTGAGING OF HOTEL UNITS

8.1 Sales and Leases of Hotel Units. No Condo Hotel Unit Owner (other than Hotel Sponsor or its designee or the owner of any Unsold Condo Hotel Unit(s)) may sell or lease its Unit except in compliance with the provisions of this Article 8. Subject to the terms of Section 8.7 hereof, each Condo Hotel Unit Owner may sell its Unit, or lease its Unit for any term (or for such other period of time as may be determined by the Hotel Unit Owners pursuant to an amendment of this provision in accordance with Section 13.1). Notwithstanding the foregoing provisions with respect to leasing or otherwise, all Condo Hotel Units may be used and occupied at all times only in accordance with Section 8.2 of the Declaration. The Condo Hotel Unit Owners shall at all times be permitted to rent the Condo Hotel Units on a transient rental basis, provided the same is in accordance with Hotel By-Laws.

8.1.1 (a) Subject to the terms of Section 8.8, any contract to sell a Condo Hotel Unit, together with its appurtenant Common Interest, or any lease of a Condo Hotel Unit (collectively, the "Sale Agreement or Lease") shall contain the following provision: "This Agreement, and the rights and obligations of the parties hereunder, are hereby expressly subject to the right of first refusal of the Hotel Board of The Plaza Condominium in respect of the transaction described herein, pursuant to the terms of Article 8 of the Hotel By-Laws of The Plaza Condominium." (The Condo Hotel Unit Owner who has entered into a Sale Agreement or

Lease is herein referred to as the "Offeree Unit Owner" and the prospective purchaser or tenant is herein referred to as the "Outside Offeror.")

(b) Promptly after a Sale Agreement or Lease has been fully executed, the Offeree Unit Owner shall send written notice thereof to the Hotel Board, by certified or registered mail, return receipt requested, or by reputable courier providing overnight delivery; such notice shall be accompanied by a fully completed application package, which the Offeree Unit Owner shall obtain from the managing agent of the Hotel Section, together with a fully executed duplicate original of the Sale Agreement or Lease and any and all related agreements, containing all of the terms offered in good faith by the Outside Offeror. The giving of such notice to the Hotel Board shall constitute an offer by the Offeree Unit Owner to sell its Hotel Unit, together with its appurtenant Common Interest, or to lease its Hotel Unit, as the case may be, to the Hotel Board, or its designee (corporate or otherwise), on behalf of all Hotel Unit Owners, upon the same terms and conditions as contained in such Sale Agreement or Lease, and shall also constitute a representation and warranty by the Offeree Unit Owner to the Hotel Board, on behalf of all Hotel Owners, that such Sale Agreement or Lease is bona fide in all respects and contains the complete terms of the transaction. The Offeree Unit Owner shall promptly submit in writing such further information with respect thereto as the Hotel Board may reasonably request. The Hotel Board may, by sending written notice, by certified or registered mail, return receipt requested, or by reputable courier providing overnight delivery, to such Offeree Unit Owner not later than twenty (20) days after receipt of such notice, or if further information has been requested, then not later than twenty (20) days after receipt thereof, elect to purchase such Condo Hotel Unit, together with its appurtenant Common Interest, or elect to lease such Condo Hotel Unit, as the case may be (or to cause the same to be purchased or leased by its designee), on behalf of all Hotel Unit Owners, upon the same terms and conditions as contained in the Sale Agreement or Lease, as such terms and conditions may be modified or supplemented by any additional information provided by and as stated in and supplemented or amended by the Offeree Unit Owner's response(s) to requests by the Hotel Board for further information, as provided for above.

8.1.2 If the Hotel Board shall timely elect to purchase such Condo Hotel Unit, together with its appurtenant Common Interest, or to lease such Condo Hotel Unit, as the case may be, or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed at the office of the attorneys for the Hotel Board, in accordance with the terms of the Sale Agreement or Lease, within sixty (60) days after the giving of notice by the Hotel Board of its election to accept such offer. However, if the closing date of the purchase or the commencement date of the term of the lease, as the case may be, set forth in the Sale Agreement or Lease shall be later than sixty (60) days after the giving of notice by the Hotel Board of its election to accept the aforesaid offer, the Hotel Board shall be required to perform or cause to be performed all of the terms of the Sale Agreement or Lease to be performed by the Outside Offeror (except as otherwise expressly set forth in this Article 8), including, but not limited to, payment of a down payment or advance rentals and security deposits, or closing of title or acceptance of occupancy, as the case may be, and such closing of title or the commencement of the term of the Lease shall be on the date set forth in the Sale Agreement or Lease as the intended closing date or commencement date, as the case may be. If, pursuant to such Sale Agreement or Lease, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, in the case of a sale, the Hotel Board may

purchase the Hotel Unit and assume or take title to the Hotel Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner, if such Condo Hotel Unit (together with its appurtenant Common Interest) is to be sold, shall convey the same to the Hotel Board, or its designee, on behalf of all Hotel Unit Owners, by deed in the form required by Section 339-o of the Real Property Law of the State of New York. Real estate taxes (including water charges and sewer rents, if separately assessed), mortgage interest, if applicable, Hotel Common Charges and rent, if applicable, shall be apportioned between the Offeree Unit Owner and the Hotel Board, or its designee, as of the closing date. In the event such Condo Hotel Unit is to be leased, the Offeree Unit Owner shall execute and deliver to the Hotel Board, or its designee, a lease between the Offeree Unit Owner, as landlord, and the Hotel Board, or its designee, as tenant, covering such Condo Hotel Unit, for the rental and term contained in the Lease.

8.1.3 In the event the Hotel Board or its designee shall fail to accept such offer within twenty (20) days after receipt of notice and all other documents and information to be provided under this Article 8 (including any additional information requested by the Hotel Board as provided in Section 8.1.1(b) above), or waives such election in writing within such 20-day period, the Offeree Unit Owner shall have an additional sixty (60) days after the earlier of the expiration of such 20-day period or waiver in writing by the Hotel Board, as the case may be (or such later date for closing or occupancy provided in the Sale Agreement or Lease, as applicable) to consummate the transaction set forth in the Sale Agreement or Lease. In the event the Offeree Unit Owner shall not, within such 60-day period (or such later date for closing or occupancy provided in the Sale Agreement or Lease, as applicable), so consummate the transaction, or should the terms of the Sale Agreement or Lease be amended or modified in any way (whether orally, in writing or by a side agreement) to be on terms less favorable to the Offeree Unit Owner, then the Offeree Unit Owner shall be required to again comply with all the terms and provisions of this Section 8.1.

8.1.4 Any deed to an Outside Offeror shall expressly provide that the acceptance thereof by the grantee shall constitute an assumption of all of the provisions of the Declaration, the Condominium By-Laws, these Hotel By-Laws, the Hotel Rules and Regulations and the General Rules and Regulations, if any, in each case as the same may be amended from time to time, and, in the absence of such express language, the same shall be conclusively deemed to have been included therein.

8.1.5 Any Lease to an Outside Offeror shall be consistent with these Hotel By-Laws and shall provide that it may not be modified, amended, extended or assigned without the prior consent in writing of the Hotel Board, that the tenant shall not assign its interest in such lease or sublet the demised premises or any part thereof without the prior consent in writing of the Hotel Board and that the Hotel Board shall have power to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of: (i) a default by the tenant in the performance of its obligations under such lease or a default by or caused by such tenant under any of the provisions of these Hotel By-Laws or the Condominium By-Laws; or (ii) a foreclosure of the lien granted by Section 339-z of the Real Property Law of the State of New York, the Declaration, these Hotel By-Laws, the Condominium By-Laws or otherwise. Such lease shall also provide that it is and shall be subject and subordinate to the Declaration, these Hotel By-Laws, the Condominium By-Laws, the Hotel

Rules and Regulations and the General Rules and Regulations and all use and occupancy of the Condo Hotel Unit shall be in compliance with Section 8.2 of the Declaration and all applicable Laws at all times.

8.1.6 Except as hereinbefore set forth, the form and substance of any such lease executed by the Hotel Board or an Outside Offeror shall be the then current form of lease approved by the Hotel Board (as the same may be changed from time to time). Any lease executed by the Hotel Board as tenant shall provide that the Hotel Board may enter into a sublease of the demised premises without the consent of the landlord and without paying to the landlord any portion of the rent received from the subtenant.

8.1.7 If a Condo Hotel Unit Owner is a corporation, any sale, assignment, transfer or other disposition of any of its stock, or if a Condo Hotel Unit Owner is a partnership, limited liability company or other entity, any sale, assignment, transfer or other disposition of any interest in such partnership, company or other entity, in each case, other than through any recognized national securities exchange or "over-the-counter" market, which results in a change in the majority beneficial or legal ownership of such entity, shall also subject the Condo Hotel Unit owned by such entity to the requirement that the Hotel Unit first be offered to the Hotel Board, as described in this Section 8.1.

8.1.8 Any purported sale or lease of a Condo Hotel Unit in violation of this Section 8.1 shall be voidable at the election of the Hotel Board and if the Hotel Board shall so elect, the Condo Hotel Unit Owner shall be deemed to have authorized and empowered the Hotel Board to institute legal proceedings to eject or evict the purported purchaser or tenant, as the case may be, in the name of said Condo Hotel Unit Owner as the purported seller or landlord, as the case may be. Said Condo Hotel Unit Owner shall reimburse the Hotel Board for all expenses (including attorneys' fees and expenses) incurred in connection with such proceedings, promptly upon demand therefor. In no event shall any purported sale or lease of a Condo Hotel Unit in violation of this Section 8.1 release the Condo Hotel Unit Owner which is the purported seller or lessor, as the case may be, from any of its obligations under the Declaration, the Condominium By-Laws, these Hotel By-Laws, whether or not such sale or lease is voided by the Hotel Board.

8.2 Consent of Hotel Unit Owners to Purchase or Lease of Units by Hotel Board. Subject to the terms of these Hotel By-Laws, the Hotel Board may exercise or waive any option hereinabove set forth to purchase or lease any Condo Hotel Unit without the prior approval of the Hotel Unit Owners.

8.3 No Severance of Ownership. No Hotel Unit Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to its Hotel 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 appurtenant Common Interest of any Hotel 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 interests are appurtenant, or as part of a sale, conveyance or other disposition of such part of the appurtenant Common Interests of all Hotel Units. Nothing in this

Section 8.3 shall prohibit the lease of any Hotel Unit without the simultaneous lease of its appurtenant Common Interest.

8.4 Release by Hotel Board of Right of First Refusal. The right of first refusal contained in Section 8.1 may be released or waived by the Hotel Board only in the manner provided in Section 8.5. In the event the Hotel Board shall release or waive its right of first refusal as to any Condo Hotel Unit, such Condo Hotel Unit, together with its appurtenant Common Interest, may be sold, conveyed or leased in accordance with the Sale Agreement or Lease and the other information supplied by the Offeree Unit Owner to the Hotel Board pursuant to Section 8.1 hereof, subject to the provisions of subsection 8.1.3. The Hotel Board may establish reasonable fees for the consideration of any right of first refusal, which fees shall be payable by the selling or leasing Condo Hotel Unit Owner (but not Declarant, or the Hotel Sponsor), as the case may be.

8.5 Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by the Secretary or any other officer of the Hotel Section stating that the provisions of 8.1 have been satisfied by a Condo Hotel Unit Owner or stating that the right of first refusal contained therein has been duly released or waived by the Hotel Board and that, as a result thereof, the rights of the Hotel Board thereunder have terminated, shall be conclusive upon the Hotel Board and the Hotel Unit Owners in favor of all persons who rely on such certificate in good faith.

8.6 Financing of Purchase, or Refinancing, of Condo Hotel Units by Hotel Board. The purchase of any Condo Hotel Unit, together with its appurtenant Common Interest, by the Hotel Board or its designee, on behalf of all Hotel Unit Owners, may, at the option of the Hotel Board, be made from the funds deposited in the capital and/or expense accounts of the Hotel Board by or on behalf of all Hotel Unit Owners. The Hotel Board may (subject to the provisions of Article 6 hereof) levy a special assessment against each Hotel Unit Owner, in proportion to its respective Common Interest, as an additional Hotel Common Charge, and/or the Hotel Board, in its discretion, may finance the acquisition of such Condo Hotel Unit and subsequently refinance such Unit or refinance any loan secured by or relating to any such Condo Hotel Unit (on such terms and in such amount(s) as the Hotel Board determines); provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Hotel Section (except to the extent permitted by Law) other than the Condo Hotel Unit or other property to be purchased or refinanced, as the case may be, together with its appurtenant Common Interest, as applicable.

8.7 Exceptions. In addition to any other exceptions hereinbefore set forth, the provisions of Section 8.1 shall not apply to the sale, lease or conveyance of any Condo Hotel Unit, together with its appurtenant Common Interest, or in the case of a Condo Hotel Unit Owner which is a corporation, partnership, limited liability company or other entity, the sale, lease or conveyance of an interest in such Condo Hotel Unit Owner, in each case: (a) to an affiliate or one or more family members (and for purposes of this Section 8.7, an "affiliate" is defined as a person or entity that owns 50% or more of the legal and beneficial interest of such Condo Hotel Unit Owner or owner of an interest in a Condo Hotel Unit Owner, as the case may be, or an entity with respect to which such Condo Hotel Unit Owner or owner of an interest in a Condo Hotel Unit Owner owns 50% or more of the legal and beneficial interest, and "family member"

is defined as a spouse, domestic partner, adult child, parent or adult sibling, or a trust for the benefit of any one or more of the foregoing and/or one or more minor children of any of the foregoing); (b) Hotel Sponsor or its designee with respect to Unsold Condo Hotel Units; (c) the Hotel Board or the Transient Hotel Unit Owner; (d) any proper officer conducting the sale of a Condo Hotel Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of such foreclosure; or (e) a Permitted Mortgagee or its nominee, who has acquired title to any Condo Hotel Unit at any foreclosure sale of its Permitted Mortgage or by deed in lieu of such foreclosure delivered in a bona fide transaction; provided, however, that each succeeding Condo Hotel Unit Owner thereof shall be bound by, and its Unit shall be subject to, all of the provisions of this Article 8. The provisions of Section 8.1 shall not apply to any lease, sale or conveyance of a Condo Hotel Unit to a Permitted Mortgagee or a purchaser at a foreclosure sale of a Permitted Mortgage in connection with a foreclosure or sale in lieu of same. In addition, the provisions of Section 8.1 shall not apply to any lease for a term of less than four (4) months, or to transient rentals.

8.8 Gifts and Devises, etc. Any Condo Hotel Unit Owner shall be free to convey or transfer his or her Condo Hotel Unit by gift, or may devise his or her Condo Hotel Unit by will, or have his or her Condo Hotel Unit pass by intestacy, without complying with the provisions of 8.1, provided, however, that each succeeding Condo Hotel Unit Owner shall be bound by, and his or her Condo Hotel Unit shall be subject to, the provisions of this Article 8.

8.9 Payment of Assessments. No Hotel Unit Owner shall be permitted to sell, convey, mortgage, pledge, hypothecate or lease its Hotel Unit unless and until it shall have paid in full to the Hotel Board all unpaid Hotel Common Charges and other amounts required by the Hotel Board to be paid and theretofore assessed against such Hotel Unit and until such Hotel Unit Owner shall have satisfied all unpaid liens against their Units, other than Permitted Mortgages. Hotel Unit Owners shall notify the Hotel Section managing agent at least five (5) business days prior to the closing of any of the aforementioned transactions for confirmation of any unpaid amounts. The provisions of this Section 8.9 shall not apply to Hotel Sponsor or its designee or other owner of Unsold Condo Hotel Units.

8.10 Waiver of Right of Partition with Respect to Units Acquired on Behalf of Hotel Unit Owners as Tenants-in-Common. In the event that any Unit shall be acquired by the Hotel Board or its designee, corporate or otherwise, on behalf of all Hotel Unit Owners, as tenants-in-common, all such Unit Owners shall be deemed to have waived all rights of partition with respect to such acquired Unit and the entire Property as herein provided.

8.11 Mortgage of Hotel Units. Subject to Article 7 and Section 8.9, each Hotel Unit Owner shall have the right to mortgage its Unit without restriction.

## ARTICLE 9

## CONDEMNATION

In the event of the taking in condemnation or by eminent domain of all or any part of the Hotel Limited Common Elements, then, subject to the provisions set forth below and any applicable provisions of the Declaration and the Condominium By-Laws, the Hotel Board will

arrange for the prompt repair and restoration of the part of the Hotel Limited Common Elements affected by such taking. The award made for any such taking shall be payable to the Hotel Board; provided, however, that if any such award exceeds $2,500,000, such award shall be payable to the Insurance Trustee (as defined in Section 12.7 hereof) 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 or shared, as the case may be, by the Hotel Unit Owners pro rata in accordance with their respective Common Interests; provided, that the amount of any surplus payable to any Hotel Unit Owner shall be lessened by such amounts as may be necessary to reduce unpaid liens (other than mortgages which are not Permitted Mortgages) on any such Unit in the order of the priority of such liens. Notwithstanding any provisions contained herein to the contrary, if seventy-five (75%) percent or more of the Hotel Limited Common Elements are so taken, subject to any applicable provisions of the Declaration, these By-Laws and the Condominium By-Laws, such repairs or restorations shall not be made unless seventy-five (75%) percent or more of all Hotel Unit Owners (and Hotel Sponsor or their designees, if they shall then own any Hotel Units), both in number and in aggregate Common Interests, shall promptly resolve to proceed with the same. In the event that a sufficient number of Hotel Unit Owners shall so resolve, the repairs and restoration shall be performed as set forth above. Conversely, in the event that a sufficient number of Hotel Unit Owners shall either fail or refuse to so resolve, subject to any applicable provisions of the Declaration, these By-Laws and the Condominium By-Laws, the repairs and restoration shall not be performed and the Hotel Section shall be subject to an action for partition by any Hotel Unit Owner or lienor, as if owned in common, in which event the net proceeds of the sale, and net proceeds of any applicable condemnation awards shall be divided among all Hotel 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 its share of such funds, such amounts as may be necessary to discharge all unpaid liens on its Unit (other than mortgages which are not Permitted Mortgages) in the order of the priority of such liens. As used in this Article 9, the words "promptly resolve" shall mean not more than 60 days after the date notice is given of such taking unless a longer period is provided for under the applicable provisions of the Declaration and Condominium By-Laws. Any dispute between the Hotel Board and a Hotel Unit Owner under this Article 9 shall be settled by Arbitration.

## ARTICLE 10

## RECORDS AND AUDITS

10.1 Records. The Hotel Board, or the managing agent therefor, shall keep detailed records of the actions of the Hotel Board, minutes of the meetings of the Hotel Board, minutes of the meetings of the Hotel Unit Owners, and financial records and books of account with respect to the activities of the Hotel Board, including a listing of all receipts and expenditures. In addition, the Hotel Board shall keep a separate account for each Hotel Unit which, among other things, shall contain the amount of each assessment of Hotel Common Charges and other amounts required by the Hotel Board to be paid in respect of each such Unit, the date when due, the amounts paid thereon and the balance, if any, remaining unpaid.

10.2 Audits. Within four months after the end of each fiscal year, an annual report of receipts and expenditures, prepared and certified by an independent certified public accountant or an independent certified public accounting firm, shall be submitted by the Hotel Board to all Hotel Unit Owners (and to all Permitted Mortgagees of Hotel Units who have requested the same in writing). The cost of such report submitted by the Hotel Board shall be paid by the Hotel Unit Owners as a Hotel Common Expense.

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

## ARTICLE 11

## ARBITRATION

11.1 General Procedure. Except as may otherwise be expressly provided in these Hotel By-Laws, the Condominium By-Laws or the Declaration, any Arbitration provided for in these Hotel By-Laws ("Arbitration") shall be conducted before one arbitrator in New York City by the American Arbitration Association or any successor organization thereto, in accordance with its rules then in effect; the decision rendered in such Arbitration shall be binding upon the parties and may be entered in any court having jurisdiction; provided that, in the case of Arbitration of issues arising under Sections 6.4 and 6.5, any arbitrator shall be a real estate professional, having ten (10) or more years experience in the field of Manhattan hotel and luxury condominiums. Notwithstanding the foregoing, any Arbitration held pursuant to these Hotel By-Laws with respect to a dispute which arose prior to the First Annual Hotel Unit Owners Meeting shall be non-binding. In the event that the American Arbitration Association shall not then be in existence and has no 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 his or her appointment.

11.2 Costs and Expenses. The fees, costs and expenses of the arbitrator shall be borne by the losing party in the Arbitration or, if the position of neither party to a dispute shall be substantially upheld by the arbitrator, such fees, costs and expenses shall be borne equally by the parties to the dispute. Each disputant shall also bear the fees and expenses of its counsel and expert witnesses. Subject to the foregoing, all costs and expenses paid or incurred by the Hotel Board in connection with any Arbitration held hereunder (including, without limitation, the fees and expenses of counsel and expert witnesses) shall constitute Hotel Common Expenses.

11.3 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 11.1 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."

## ARTICLE 12

## MISCELLANEOUS

12.1 Consents. Wherever the consent, approval or satisfaction of Hotel Sponsor or its designee is required under these Hotel By-Laws, such consent, approval or satisfaction shall not be required when there are no remaining Unsold Condo Hotel Units, the Building has been fully completed, a permanent certificate of occupancy therefor has been issued and neither Declarant nor Hotel Sponsor has any remaining obligations under the Hotel Offering Plan or otherwise.

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

12.3 Captions. The index hereof and 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 Hotel By-Laws nor the intent of any provision hereof.

12.4 Conflict. In the event of any conflict between the provisions of these Hotel By-Laws or the Hotel Rules and Regulations, and those of the Condominium By-Laws, the provisions of the Condominium By-Laws shall control. In the event of any conflict between the provisions of these Hotel By-Laws or the Hotel Rules and Regulations, and those of the Declaration, the provisions of the Declaration shall control.

12.5 Certain References.

12.5.1 A reference in these Hotel 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.

12.5.2 The terms "herein," "hereof" or "hereunder" or similar terms used in these Hotel By-Laws refer to these Hotel By-Laws in their entirety and not to the particular provision in which the terms are used.

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

12.5.4 Unless otherwise expressly stated herein to the contrary, all references herein to dollar amounts shall be adjusted from time to time, after the date the Declaration is entered into, to reflect any increase in the cost of living, as reflected by an increase in the CPI Increase Factor. The term "CPI Increase Factor" as used herein shall mean an increase proportionate to any increase in the cost of living from and after January 1, 2006, as reflected by the change in the Consumer Price Index (CPI-U; All Items; 1982-84 = 100 standard reference base period) for New York, New York (or the smallest measured area including New York, New York), as published by the Bureau of Labor Statistics, United States Department of Labor or, if the same ceases to be published, a commonly used substitute therefor reasonably selected by the Condominium Board.

12.6 Severability. Subject to the provisions of the Declaration, if any provision of these Hotel By-Laws is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of these Hotel By-Laws and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of these Hotel By-Laws shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by Law.

12.7 Insurance Trustee. The Insurance Trustee shall be a bank or trust company having an office located in the City of New York, designated by the Hotel Board and having a capital surplus and undivided profits of $500,000,000 or more. In the event the Insurance Trustee resigns or is replaced by the Hotel Board, the Hotel Board shall appoint a new Insurance Trustee which shall be a commercial bank or trust company having an office located in the City of New York and having a capital surplus and undivided profits of $500,000,000 or more, subject to increase by the CPI Increase Factor. The Hotel Board shall pay the fees and disbursements of any Insurance Trustee and such fees and disbursements shall constitute a Hotel 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.

12.8 Successors and Assigns. The rights and obligations of the Hotel Sponsor with respect to the Unsold Condo Hotel Units as set forth herein shall inure to the benefit of, and be binding upon, any successor or assign of the Hotel Sponsor as the Owner of the Unsold Condo Hotel Units or, with the consent of the Hotel Sponsor, any transferee of two or more of the then Unsold Condo Hotel Units. Subject to the foregoing, the Hotel Sponsor (or its designee or other holder of Unsold Condo Hotel Units) shall each have the right, at any time, in its sole discretion, to assign or otherwise transfer its interests in the Condominium (or any portion thereof), whether by merger, consolidation, lease, assignment or otherwise.

12.9 Covenant of Further Assurances.

12.9.1 Any party which is subject to the terms of these Hotel By-Laws, whether such party is a Hotel Unit Owner, a lessee or sublessee of a Hotel Unit Owner, an occupant of a Unit, a member or officer of the Hotel Board, or otherwise, shall, 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 Hotel By-Laws or any transactions contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transactions.

12.9.2 If any Hotel Unit Owner or any other party which is subject to the terms of these Hotel By-Laws fails to execute, acknowledge or deliver any instrument, or fails or refuses, within ten (10) days after request therefor, to take any action which such Hotel Unit Owner or other party is required to perform pursuant to these Hotel By-Laws, then the Hotel Board or other party is hereby authorized, as attorney-in-fact, coupled with an interest, for such Hotel Unit Owner or other party, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Hotel Unit Owner or other party, and such instrument or action shall be binding on such Hotel Unit Owner or other party, as the case may be.

12.9.3 If any Hotel Unit Owner or any other party which is subject to the terms of these Hotel By-Laws fails to execute, acknowledge or deliver any instrument, or fails or refuses, within ten (10) days after request therefor, to take any action which such Hotel Unit Owner or party is required to perform pursuant to these Hotel By-Laws at the request of Hotel Sponsor, then Hotel Sponsor is hereby authorized, as attorney-in-fact, coupled with an interest, for such Hotel Unit Owner or other party, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Hotel Unit Owner or other party, and such document or action shall be binding on such Hotel Unit Owner or other party.

12.9.4 If the Hotel Board fails to execute, acknowledge or deliver any instrument, or fails or refuses, within ten (10) days after request therefor, to take any action which the Hotel Board is required to perform pursuant to these Hotel By-Laws or the Condominium By-Laws at the request of Hotel Sponsor or its designee, then Hotel Sponsor or its designee, as the case may be, is hereby authorized, as attorney-in-fact, coupled with an interest, for the Hotel Board, to execute, acknowledge and deliver such instrument, or to take such action, in the name of the Hotel Board, and such document or action shall be binding on the Hotel Board.

## ARTICLE 13

## AMENDMENTS TO HOTEL BY-LAWS

13.1 Amendments by Hotel Unit Owners. Subject to the provisions contained herein, in the Declaration or in the Condominium By-Laws with respect to amendments, modifications, additions or deletions affecting Hotel Sponsor or its designee, or any Unsold Condo Hotel Units, any provision of these Hotel By-Laws or the Hotel Rules and Regulations may be amended, modified, added to or deleted by the affirmative vote of at least 66-2/3% in Common Interest of all Hotel Unit Owners; provided, however, that the Common Interest appurtenant to each Hotel Unit shall not be altered without the written consent of all Hotel Unit Owners affected thereby. Subject to the provisions contained herein, in the Declaration or in the Condominium By-Laws with respect to amendments, modifications, additions or deletions affecting Hotel Sponsor, or its designee or any Unsold Condo Hotel Units, any such amendment, modification, addition or deletion shall be executed by the Hotel Board, as attorney-in-fact, coupled with an interest, for the Hotel Unit Owners, for the purpose of approving and executing any instrument effecting such amendment, modification, addition or deletion, which the Hotel Board is hereby authorized by such Hotel Unit Owners to do as their attorney-in-fact. Notwithstanding the foregoing and subject to the provisions contained herein, in the Declaration or in the Condominium By-Laws with respect to amendments, modifications, additions or deletions affecting Hotel Sponsor, or its designee or any Unsold Condo Hotel Units: (i) no such amendment, modification, addition or deletion shall be effective without the written consent (which consent shall not be unreasonably withheld or delayed) of a majority of the Condo Hotel Mortgagee Representative(s) if any and the Transient Hotel Mortgagee Representative; and (ii) the provisions of Sections 6.9 and 6.10 may not be amended, modified, added to or deleted unless 80% in Common Interest of all Hotel Unit Owners affected thereby approve such amendment, modification, addition or deletion in the manner set forth above. Each duly adopted amendment, modification, addition or deletion to these Hotel By-Laws shall be effectuated by an instrument recorded in the City Register's Office.

13.2 Amendments Affecting Hotel Sponsor. Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition to or deletion of these Hotel By-Laws or the Hotel Rules and Regulations shall be effective in any way against: (a) Hotel Sponsor, for so long as Hotel Sponsor is the owner of one or more Hotel Units, or any Unsold Condo Hotel Units, unless Hotel Sponsor has given its prior written consent thereto; or (b) the holder of any present or future mortgage, pledge or other lien or security interest encumbering any Unsold Condo Hotel Unit unless such holder has given its prior written consent thereto.

13.3 Amendments Affecting Transient Hotel Unit.

13.3.1 If the number of rooms, the layout or the size of the Transient Hotel Unit is changed and/or the percentage interest in the Common Elements appurtenant to the Transient Hotel Unit(s) is reapportioned (whether as a result of a subdivision or combination of the Transient Hotel Unit(s) or the alteration of boundary walls between such Transient Hotel Units, or otherwise) among any newly created or constituted Transient Hotel Units as a result thereof, then the Unit Owner(s) of such Transient Hotel Unit(s) shall have the right to execute, or (upon its request ) to require any other Hotel Unit Owner or the Hotel Board to execute, and record in the City Register's Office and elsewhere, if required by Law, an amendment to the Declaration (together with such other documents as such Transient Hotel Unit Owner(s) deems appropriate to effectuate the same) reflecting such change in the number of rooms, the layout or the size of such Transient Hotel Unit(s) and/or the subdivision or combination of Transient Hotel Unit(s) and the reapportionment of the percentage interests in the Common Elements among such newly created or constituted Transient Hotel Unit(s), all without the approval of the Hotel Board, the Condominium Board, any other Unit Owner or any Mortgagee Representatives, if any.

13.3.2 Notwithstanding the foregoing, none of these Hotel By-Laws or the Hotel Rules and Regulations may be amended, modified or terminated in any manner which adversely affects the Transient Hotel Unit or the Transient Hotel Unit Owner without the consent of the affected Transient Hotel Unit Owner.

13.4 Amendments Affecting Permitted Mortgagees. Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition to or deletion of Section 6.2.2 or 6.4, Article 7, or clauses (d) and (e) and the second sentence of Section 8.7, shall be effective as against the holder of any Permitted Mortgage theretofore made unless such holder has given its prior written consent thereto.

13.5 Consents of Hotel Sponsor. The provisions of this Article 13 may not be modified, amended, added to or deleted, in whole or in part, without the consent of Hotel Sponsor or its designee.

## ARTICLE 14

## HOTEL STANDARDS AND USE OF HOTEL NAME

14.1 Hotel Flag Standards. The Transient Hotel Unit Owner may from time to time either own rights in certain trademarks, trade names, copyrights and/or other intellectual

property, and/or enter into certain agreements providing it rights therein with respect to the use thereof in connection with the operation of the Transient Hotel Unit in association with a particular hotel brand or chain (such brand or chain, the "Hotel Flag"; such intellectual property, the "Hotel Flag Intellectual Property"; and the owner(s) thereof, the "Hotel Flag Intellectual Property Owner"). For so long as the Transient Hotel Unit is operating or being operated using the Hotel Flag Intellectual Property, the Transient Hotel Unit Owner can require that the Hotel Section be operated, managed and maintained at a minimum according to the standards of quality, service, character, appearance and image required by the Hotel Flag for hotels using the Hotel Flag Intellectual Property, as the same may be amended from time to time (or, if the Transient Hotel Unit is not flagged at such time, then such standards commensurate with those of the hotel being operated in the Transient Hotel Unit at the time in question) (the "Hotel Flag Standards"). Under no circumstances shall the Hotel Flag Intellectual Property be deemed part of the Property or an appurtenance of any Unit. Neither the Condo Hotel Unit Owners nor the Hotel Board shall have any right, title, or interest in any name under which the Transient Hotel Unit is operated or in any other of the Hotel Flag Intellectual Property, or in any licensing arrangement between the Hotel Flag Intellectual Property Owner and any other party. The Hotel Flag Intellectual Property shall at all times remain the sole and exclusive property of the Hotel Flag Intellectual Property Owner.

14.2 Standard for Hotel Units. At all times, the Transient Hotel Unit, all Condo Hotel Units and the Hotel Limited Common Elements shall be kept in the condition and otherwise in accordance with a standard of facilities, equipment, quality, service and appearance as is consistent with the standard of the hotel being operated in the Transient Hotel Unit, as the same may change from time to time, which, to the extent required by the Hotel Flag Intellectual Property Owner, shall in all events be no less than a standard commonly associated with a AAA five-diamond luxury hotel (such standard at the time in question, the "Transient Hotel Unit Standard").

14.3 Use of Name. So long as the Hotel Section is being operated as a hotel, each Hotel Unit Owner covenants that it shall not permit its Unit (or interest in a Unit) to be advertised or promoted through, or otherwise affiliated with, any reservation system or network by whatever means (*e.g.*, Internet, electronic or otherwise), that identifies or otherwise represents the Unit (or interest) as being a part of an integrated hotel operation (as distinct from a transient rental of a privately owned Condo Hotel Unit (or interest)), unless such advertisement, promotion or reservation system or network is operated by the Transient Hotel Unit Owner or its designee; and no Hotel Unit Owner (other than the Transient Hotel Unit Owner) may use any of the Hotel Flag Intellectual Property or trademarks, trade names, copyrights, or other intellectual property of the Transient Hotel Unit Owner (or its affiliates) in connection with any advertisement or other promotion or rental of any such Unit (or interest) or in any other commercial manner, without the express permission, as applicable, of the Hotel Flag Intellectual Property Owner or the Transient Hotel Unit Owner, respectively, in each instance. Without limiting any other right or remedy available at law or in equity, the foregoing may be enforced by an action for specific performance and/or injunctive relief.

## ARTICLE 15

## UNIT MANAGEMENT AND OPERATION AGREEMENT

15.1 Execution Required. Each Condo Hotel Unit Owner shall, upon taking title to its Unit, execute, acknowledge and deliver to the Hotel Manager, the Unit Management and Operation Agreement (and memorandum of Unit Management and Operation Agreement) applicable to the Condo Hotel Units, the initial form of which is annexed to these Hotel By-Laws as Exhibit B and made a part hereof (such agreement, as the same may be amended from time to time in accordance with the terms hereof, the "UMA"). If any Condo Hotel Unit Owner fails or refuses to execute, acknowledge or deliver the UMA (or memorandum of UMA referenced in Section 15.3 below) within ten (10) days after receipt of a written request therefor, at the request of the Transient Hotel Unit Owner (or its designee), then any officer of the Hotel Board (or its designee) is hereby authorized as attorney-in-fact for such Condo Hotel Unit Owner, coupled with an interest, to execute, acknowledge and deliver the UMA (and memorandum of UMA) with respect to such Condo Hotel Unit in the name of such Unit Owner and such documents shall be binding on such Condo Hotel Unit Owner. Furthermore, each successor Condo Hotel Unit Owner shall be bound by the terms of the UMA in respect of such Condo Hotel Unit Owner's Unit automatically as a successor in title; provided, however, that the Hotel Manager, at its option, may require the successor Condo Hotel Unit Owner to execute a replacement UMA (and memorandum of UMA) or an acknowledgment and assumption of the existing UMA with respect to the Condo Hotel Unit in question.

15.2 Changes to Form. Changes to the then applicable form of UMA may be made, from time to time, only upon the request of the Transient Hotel Unit Owner after a proposal with respect thereto having been made by the Hotel Manager, and such proposed changes shall then require the approval of the Hotel Board, such approval not to be unreasonably withheld, conditioned or delayed. Any disputes arising out of any proposed change to the form UMA shall be resolved in Arbitration in accordance with Article 11 hereof. Any amendment to the UMA approved by the Hotel Board shall be effective automatically; provided, however, that the Hotel Manager, at its option, may require Condo Hotel Unit Owners to execute such amendment to the UMA or an acknowledgment of such amendment.

15.3 Memorandum of UMA. Together with the execution, acknowledgement and delivery of the UMA upon taking title to a Condo Hotel Unit, each Condo Hotel Unit Owner shall also execute, acknowledge and deliver to the Transient Hotel Unit Owner a memorandum of UMA in recordable form as set forth in an exhibit to the UMA.

15.4 No Changes. The provisions of this Article 15 may not be amended without the consent of the Transient Hotel Unit Owner (which consent may withheld or granted in such Unit Owner's sole discretion).

15.5 Termination of Hotel Manager. Notwithstanding anything herein or in the Declaration or Condominium By-Laws to the contrary, the Hotel Manager may only be terminated by the Hotel Board upon a 66-2/3% vote of the members thereof and only to the extent the Hotel Board has a right to vote to terminate pursuant to the Hotel Board Management Agreement between the Hotel Board and the Hotel Manager (the "HBMA"); and any

replacement Hotel Manager under the HBMA shall be retained only after being proposed by the Transient Hotel Unit Owner and approved by a 66-2/3% vote of the Hotel Board. Upon any termination of the Hotel Manager, the UMA will inure to the benefit of the replacement Hotel Manager.

**EXHIBIT A**
**to Hotel By-Laws**

# HOTEL RULES AND REGULATIONS
# THE PLAZA CONDOMINIUM

**To be adopted at discretion of the Hotel Board as set forth in the Hotel By-Laws**

# EXHIBIT B
to Hotel By-Laws

## UNIT MANAGEMENT AND OPERATION AGREEMENT

**See Exhibit 15 in Part II of the Plan**

**EXHIBIT 9**

FORM OF APPLICATION TO ATTORNEY GENERAL FOR A DETERMINATION ON THE DISPOSITION OF DEPOSITS

# APPLICATION TO THE ATTORNEY GENERAL FOR A DETERMINATION ON THE DISPOSITION OF DEPOSITS

(Send this application to the reviewing attorney assigned to the subject plan.)

Re: Plaza Condominium
Address of Building or
Name of Project

File Number:_____

Application is made to the Attorney General to consider and determine the disposition of deposits held pursuant to GBL Sections 352-e(2-b) and 352-h. The following information is submitted in support of this application:

1. Name of Applicant_____

2. Address of Applicant_____

3. Name, Address, and Telephone Number of Applicant's Attorney (if any)_____

This is an application for

return of deposit.
forfeiture of deposit.
other:_____

5. The project is [ ] a conversion of occupied premises.
[ ] newly constructed or rehabilitated.
[ ] vacant (as is).

6. The project is structured as
[ ] a cooperative.
[X] a condominium.
[ ] a homeowners association.
[ ] a time share.
[ ]other:_____

7. Name and Address
of Sponsor:

8. Name and Address
of Escrow Agent: Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036

9. If deposits are maintained in an escrow account:

(a) Name of account_____

(b) Name and address
of bank_____

(c) Account number (if known)_____

(d) Initial interest rate (if known)_____

10. If deposits have been secured by bonds:

(a) Name and address of
bond issuer or surety:_____
_____

(b) Copy of bond included in this application.
(DO NOT SEND ORIGINAL BOND.) If not included, explain:

_____
_____
_____
_____

11. If deposits have been secured by a letter of credit:

(a) Name and address of bank which issued the letter of credit:

_____
_____
_____
_____

(b) Date of expiration of the letter of credit, if known:

_____

12. Plan information:

(a) Date of filing of plan:_____

(b) Plan

[ ] has been declared effective. Approximate date:
_____

[ ] has not been declared effective.

(c) If effective, the plan

[ ] has closed or the first unit has closed. Approximate date:
_____

[ ] has not closed.

[ ] don't know.

(d) Deposits are secured by

[ ] escrow account.

[ ] bonds.

[ ] letter of credit.

13. Contract information:

(a) Copy of contract and of all riders or modification letters are attached. (DO NOT SEND ORIGINALS.)

(b) Date on which subscription or Agreement was signed:_____

(c) Date(s) of deposit(s):_____

(d) Total amount of deposit(s):_____

(e) Names and addresses of subscribers or purchasers affected by this application:

_____
_____
_____
_____

14. State the basis for your claim. Please be as specific as possible. You may add additional sheets. Attach copies of any relevant documents.

15. I am contemporaneously sending a copy of this application to the following persons:

Note: You are required to mail a copy of this Application to all other affected parties.

In filing this application, I understand that the Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from unlawful business practices. I also understand that if I have any questions concerning my legal rights or responsibilities I may contact a private attorney. The above application is true and accurate to the best of my knowledge. False statements made herein are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.

Signature:_____ Date_____

Name (Printed):_____

Telephone: (Home):_____ (Business)_____

Mailing Address: _____

_____

_____

**EXHIBIT 10**

ESCROW AGREEMENT WITH RESPECT TO DEPOSITS

# ESCROW AGREEMENT

AGREEMENT made this 31st day of May, 2006, between CPS 1 Realty LP ("SPONSOR"), as sponsor, and Kramer Levin Naftalis & Frankel LLP ("ESCROW AGENT"), as escrow agent.

WHEREAS, SPONSOR is the sponsor under an offering plan (the "Offering Plan") for The Plaza Hotel - Condominiums, located at 768 Fifth Avenue, New York, New York 10019; and

WHEREAS, Kramer Levin Naftalis & Frankel LLP is authorized to act as an escrow agent hereunder in accordance with General Business Law ("GBL") Section 352-e(2-b) and the Attorney General's regulations promulgated thereunder (the "Regulations"); and

WHEREAS, SPONSOR desires that ESCROW AGENT act as escrow agent for deposits and payments by purchasers of units from SPONSOR under the Offering Plan, pursuant to the terms of this agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereby agree as follows:

1. ESTABLISHMENT OF THE ESCROW ACCOUNT.

1.1 SPONSOR and ESCROW AGENT hereby establish an escrow account with ESCROW AGENT for the purpose of holding deposits or payments made by purchasers from and after the date hereof. The escrow account has been opened with HSBC Bank USA, 452 Fifth Avenue, New York, New York 10018. The account number is _____.

1.2 The name of the account is "The Plaza Hotel - Condominiums Attorney Escrow Account".

1.3 The following partners in ESCROW AGENT are the sole signatories on the account: Jay A. Neveloff, Jonathan H. Canter, Paul S. Pearlman, Neil R. Tucker, James Godman, Robert Heller and Howard J. Rothman.

1.4 The escrow account shall be an interest-bearing account as disclosed in the Offering Plan.

1.5 The escrow account is not an IOLA established pursuant to Judiciary Law Section 497.

2. DEPOSITS INTO THE ESCROW ACCOUNT

2.1 All funds hereafter received from prospective purchasers prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be deposited into the escrow account. All instruments to be deposited into the escrow account shall be made payable to, or endorsed by the purchaser to the order of "Kramer Levin Naftalis & Frankel LLP as Escrow Agent." for the Offering

Plan for The Plaza Hotel – Condominiums. Any instrument payable or endorsed other than as required hereby, and which cannot be deposited into such escrow account, shall be returned to the prospective purchaser promptly, but in no event more than five (5) business days following receipt of such instrument by ESCROW AGENT. In the event of such return of funds, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this Agreement.

2.2 Within ten (10) business days after tender of the deposit submitted with the subscription or purchase agreement, ESCROW AGENT shall notify the purchaser of the deposit of such funds in the bank indicated in the Offering Plan, provide the account number, and disclose the initial interest rate. If the purchaser does not receive notification of such deposit within fifteen (15) business days after tender of the deposit, the purchaser may cancel the purchase and rescind within ninety (90) days after tender of the deposit, or may apply to the Attorney General for relief. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the purchaser.

3. RELEASE OF FUNDS.

3.1 ESCROW AGENT shall not release the escrowed funds of a defaulting purchaser until after consummation of the Offering Plan as defined in the Attorney General's regulations. Consummation of the Offering Plan shall not relieve SPONSOR of its fiduciary obligations pursuant to GBL Section 352-h.

3.2 ESCROW AGENT shall continue to hold the funds in escrow until otherwise directed in: (a) a writing signed by both SPONSOR and the purchaser; or (b) a determination of the Attorney General; or (c) a judgment or order of a court of competent jurisdiction, or until released pursuant to the regulations of the Attorney General pertaining to release of escrowed funds.

3.3 SPONSOR shall not object to the release of the escrowed funds to: (a) a purchaser who timely rescinds in accordance with an offer of rescission contained in the Offering Plan or an amendment to the Offering Plan; or (b) all purchasers after an amendment abandoning the Offering Plan is accepted for filing by the Department of Law.

3.4 If there is no written agreement between the parties to release the escrowed funds, ESCROW AGENT shall not pay the funds to SPONSOR until ESCROW AGENT has given the purchaser written notice of not fewer than ten (10) business days. Thereafter, the funds may be paid to SPONSOR unless the purchaser has made application to the Department of Law pursuant to the dispute resolution provisions contained in the Attorney General's regulations and has so notified ESCROW AGENT in accordance with such provisions.

4. RECORDKEEPING.

4.1 ESCROW AGENT shall maintain all records concerning the escrow account for seven years after release of the funds.

4.2 Upon the dissolution of ESCROW AGENT, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the Department of Law of such transfer.

4.3 ESCROW AGENT shall make available to the Attorney General, upon his request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

5. GENERAL OBLIGATIONS OF ESCROW AGENT.

5.1 ESCROW AGENT shall maintain the accounts called for in this Agreement under the direct supervision and control of ESCROW AGENT.

5.2 A fiduciary relationship shall exist between ESCROW AGENT and purchasers, and ESCROW AGENT acknowledges its fiduciary obligations.

6. RESPONSIBILITIES OF SPONSOR.

6.1 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall immediately deliver all deposits and payments received by them prior to closing of an individual transaction to ESCROW AGENT.

6.2 SPONSOR agrees that it shall not interfere with ESCROW AGENT's performance of its fiduciary duties and compliance with the Attorney General's regulations.

7. TERMINATION OF AGREEMENT.

7.1 This Agreement shall remain in effect unless and until it is cancelled, by either:

(a) Written notice given by SPONSOR to ESCROW AGENT of cancellation of designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of an amendment with the Department of Law providing for a successor ESCROW AGENT; or

(b) The resignation of ESCROW AGENT upon giving notice to SPONSOR of its desire to so resign, which resignation shall take effect only upon the filing of an amendment with the Department of Law providing for a successor ESCROW AGENT; or

(c) All unsold units offered by SPONSOR pursuant to the Offering Plan have been sold and all sales transactions have been consummated.

7.2 Upon termination of the duties of ESCROW AGENT as described in paragraph 7.1 (a) or (b) above, ESCROW AGENT shall deliver any and all funds held by it in escrow and any and all contracts or documents maintained by ESCROW AGENT to the new escrow agent.

8. SUCCESSORS AND ASSIGNS.

8.1 This Agreement shall be binding upon SPONSOR and ESCROW AGENT and their successors and assigns.

9. GOVERNING LAW.

9.1 This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

10. ESCROW AGENT'S COMPENSATION.

10.1 SPONSOR agrees that ESCROW AGENT's compensation shall not be paid from escrowed principal nor from any interest accruing thereon and that compensation to ESCROW AGENT, if any, shall not be deducted from escrowed funds by any financial institution under any circumstance.

11. ESCROW AGENT'S RIGHTS.

11.1 ESCROW AGENT shall not be responsible to SPONSOR for any act or failure to act on its part except for its own willful misconduct or gross negligence. ESCROW AGENT shall be automatically released by SPONSOR from all responsibility and liability under this Agreement upon ESCROW AGENT's distribution of deposits and payments in accordance with the provisions of this Agreement, GBL Section 352-e(2-b) and the Regulations.

11.2 SPONSOR hereby indemnifies and holds ESCROW AGENT harmless from any and all losses, damages, claims, liabilities, judgments and other costs and expenses of every kind and nature which may be claimed against or incurred by ESCROW AGENT by reason of its acceptance of, and/or its performance under, this Agreement (other than those ultimately determined to have arisen out of the willful misconduct or gross negligence of ESCROW AGENT), including, without limitation, attorneys' fees either paid to retained attorneys or amounts representing the fair value of legal services rendered to itself. The foregoing indemnification shall survive the termination of this Agreement.

11.3 As to SPONSOR, ESCROW AGENT shall be entitled to consult with and retain counsel selected by it (including any member of its firm) with respect to its duties as ESCROW AGENT and be reimbursed by SPONSOR for all reasonable fees and expenses of such consultation and retention. As to SPONSOR, ESCROW AGENT may act or refrain from acting in respect of any matter referred to herein by and with, and in full reliance upon, the advice of such counsel and, except in the case of its own willful misconduct or gross negligence, ESCROW AGENT shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

11.4 ESCROW AGENT or any member of its firm may act as counsel to SPONSOR in any dispute or question as to the disposition of the deposits or payments or in any dispute between SPONSOR or any purchaser with respect to any matter whatsoever, whether or

not ESCROW AGENT is then holding any deposits or payments of such purchaser and is continuing to act as ESCROW AGENT hereunder.

12. SEVERABILITY.

12.1 If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

13. ENTIRE AGREEMENT.

13.1 This Agreement, read together with GBL Section 352-e(2-b) and the Attorney General's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

ESCROW AGENT:

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: _____
Name: JONATHAN CANTER
Title: A PARTNER

SPONSOR:

CPS 1 REALTY LP

By: CPS 1 Realty GP LLC, its general partner

By: _____
Miki Naftali
President

# EXHIBIT 11

CERTIFICATIONS

| | |
|---|---|
| **11A** | Sponsor and Principals |
| **11B** | Sponsor's Architect |
| **11C** | Sponsor's Expert Concerning Adequacy of Condominium Budget |
| **11D** | Sponsor's Expert Concerning Adequacy of Hotel Section Budget |
| **11E** | Sponsor's Expert Concerning Adequacy of Common Charges Payable by the Residential Unit Owners, Accessory Unit Owner and Club Unit Owner |
| **11F** | Sponsor's Expert Concerning Adequacy of Common Charges Payable by the Transient Hotel Unit Owner |

**EXHIBIT 11A**

Sponsor and Principals

EXHIBIT A-1

**CPS 1 REALTY LP**
**C/O EL-AD PROPERTIES NY LLC**
**575 MADISON AVENUE**
**NEW YORK, NEW YORK 10022**

CERTIFICATION BY SPONSOR AND SPONSOR'S PRINCIPALS
PURSUANT TO SECTION 20.4(b) OF THE REGULATIONS ISSUED
PURSUANT TO GENERAL BUSINESS LAW, ARTICLE 23-A, AS AMENDED

January 19, 2006

New York State Department of Law
120 Broadway
New York, New York 10271
Att.: Investment Protection Bureau

Re: The Plaza Hotel – Condominiums
768 Fifth Avenue
New York, New York 10019

The undersigned certify as follows:

We are the sponsor and the principals of the sponsor of the hotel condominium offering plan for the captioned property.

We understand that we have primary responsibility for complying with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Department of Law in Part 20 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us which amend or supplement the offering plan will:

1. set forth the detailed terms of the transaction and be complete, current and accurate;

2. afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

3. not omit any material fact;

4. not contain any untrue statement of a material fact;

5. not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

6. not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and

7. not contain any representation or statement which is false, where we:

(a) knew the truth;

(b) with reasonable effort could have known the truth;

(c) made no reasonable effort to ascertain the truth; or

(d) did not have knowledge concerning the representation or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

CPS 1 REALTY LP

By: CPS 1 Realty GP LLC

By: _____
Miki Naftali
President

Sworn to before me this
19 day of January, 2006

Victoria Robles
Notary Public

VICTORIA ROBLES
Notary Public, State of New York
No. 02RO5056433
Qualified in Suffolk County
Commission Expires March 4, 2006

Miki Naftali

Sworn to before me this
19 day of January, 2006

Victoria Robles
Notary Public

VICTORIA ROBLES
Notary Public, State of New York
No. 02RO5056433
Qualified in Suffolk County
Commission Expires March 4, 2006

Orly Hackmon

Sworn to before me this
19 day of January, 2006

Victoria Robles
Notary Public

VICTORIA ROBLES
Notary Public, State of New York
No. 02RO5056433
Qualified in Suffolk County
Commission Expires March 4, 2006

**EXHIBIT 11B**

Sponsor's Architect

# CERTIFICATION OF SPONSOR'S ARCHITECT PURSUANT TO SECTION 23.4(c) OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW, ARTICLE 23-A, AS AMENDED

May 11, 2006

Bureau of Real Estate Financing
New York State Department of Law
120 Broadway, 23rd. Floor
New York, New York 10271

RE: The Plaza
768 Fifth Avenue
New York, New York 10019

The Sponsor of the Offering Plan to establish the captioned property (the **"Property"**) as a condominium (the **"Offering Plan"**) retained our firm to prepare a report describing construction of the project when completed. We inspected the Property. We also were retained to prepare plans and specifications for the project. We accordingly prepared the plans, dated December 29, 2005, and the specifications, dated December 29, 2005 (collectively, the **"Plans and Specifications"**), and prepared the report dated May 11, 2006 (the **"Report"**), a copy of which Report is intended to be incorporated into the Offering Plan so prospective purchasers may rely on it.

We are registered architects in the State of New York.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 20 insofar as they are applicable to the Report.

We have read the entire Report and together with the consulting engineers (Cantor Seinuk Group Structural Engineers and Flack & Kurtz Mechanical Engineers) investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

We certify that the Report:

(i) sets forth in narrative form the physical condition of the Property as it will exist upon completion of construction, provided that construction is in accordance with the Plans and Specifications that we examined;

(ii) in our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the Property as it will exist upon

completion of construction, provided that construction is in accordance with the Plans and Specifications that we examined;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectations or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where we (a) knew the truth, (b) with reasonable effort could have known the truth, (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statement made.

(viii) It is to be understood that all aspects of the physical condition of the property cannot be determined by a visual inspection and that all statements contained in this certification are premised on and limited to such visual inspection.

We further certify that we are not owned or controlled by and have no beneficial interest in the Sponsor and that our compensation for preparing the Report is not contingent on the conversion of the Property to a condominium or on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the Property.

Very truly yours,

Costas Kondylis & Partners LLP

By: _____

Name: L. Stephen Hill
Title: Partner

[ Seal ]

REGISTERED ARCHITECT
LEO STEPHEN HILL
No. 028264
STATE OF NEW YORK

Sworn to before me this
11 day of May, 2006

_____
Notary Public

ANDREW E KAMINSKI
Notary Public, State of New York
No. 01KA6056541
Qualified in Kings County
Commission Expires March 26, 2007

**EXHIBIT 11C**

Sponsor's Expert Concerning Adequacy of Budget

EXHIBIT A-3

# GUMLEY-HAFT

REAL ESTATE

415 Madison Avenue New York, NY 10017 (212) 371-2525 FAX: (212) 371-2896

## CERTIFICATION OF SPONSOR'S EXPERT ON ADEQUACY OF BUDGET PURSUANT TO SECTION 20.4(d) OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW, ARTICLE 23-A, AS AMENDED

January 18, 2006

New York State Department of Law
120 Broadway
New York, New York 10271
Att.: Investment Protection Bureau

Re: The Plaza Condominium
768 Fifth Avenue
New York, New York

The undersigned, Gumley Haft Realty, is a licensed real estate brokerage firm in the State of New York. Gumley Haft Realty has been engaged in the management of over one hundred condominiums, cooperatives and residential rental properties over the course of the past fifteen years.

The sponsor of the condominium offering plan for the captioned property retained us to review Schedule B-2 containing projections of income and expenses for the first year of condominium operation.

Our relevant experience in the field includes:

- Preparation of annual budgets for Condominium and Cooperative Associations under our management

- Preparation of annual budgets for Condominium Sponsors

We understand we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to Schedule B-2.

We have reviewed Schedule B-2 and investigated the facts set forth in Schedule B-2 and the facts underlying them with due diligence in order to form a basis for this certification. We also have relied on our experience in managing mixed use and residential buildings in Manhattan.

We certify that the projections in Schedule B-2 appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses of the Condominium and the Residential Section for the projected first year of operation.

We certify that Schedule B-2:

(i) sets forth in detail the projection of income and expenses for the projected first year of operation;

(ii) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the projected first year of operation;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by the sponsor. We understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the income and expenses for the projected first year of operation.

This Certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

GUMLEY HAFT REALTY

By: _____
Name: Sanford Abelson
Title: Chief Executive Officer

Sworn to before me this
10 day of January 2006

_____
Notary Public

JAMES STASIO
Notary Public State of New York
No. 24-4833663
Qualified in Kings County
Commission Expires Feb. 28, 2006

**EXHIBIT 11D**

Sponsor's Expert Concerning Adequacy of Hotel Section Budget

730 Fifth Avenue · 9th Floor
New York, NY 10019

(212) 564-6654 Direct Dial
(917) 591-4978 Facsimile
cboyer@lodgingadvisors.com

# CERTIFICATION OF SPONSOR'S EXPERT ON ADEQUACY OF BUDGET PURSUANT TO SECTION 20.4(d) OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW, ARTICLE 23-A, AS AMENDED

March 17, 2006

New York State Department of Law
120 Broadway
New York, New York 10271
Att.: Investment Protection Bureau

Re: The Plaza Hotel - Condominiums
768 Fifth Avenue
New York, New York 10019

The undersigned, Lodging Investment Advisors, LLC, is a hotel consulting firm established as a limited liability company in the State of New Jersey. The principals of Lodging Investment Advisors have been engaged in providing third party hotel consulting services over the course of the past 20 years.

The sponsor of the condominium offering plan for the captioned property retained us to review Schedule B-1 containing projections of income and expenses for the first year of Condominium operation.

We understand we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the Schedules.

We have reviewed Schedule B-1 and investigated the facts set forth in Schedule B-1 and the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in analyzing hotels.

We certify that the projections in Schedule B-1 appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses of the Hotel Section for the projected first year of operation.

We certify that the Schedule B-1:

(i) sets forth in detail the projection of income and expenses for the projected first year of operation;

(ii) affords potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the projected first year of operation;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by the sponsor. We understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the income and expenses for the projected first year of operation.

This Certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

**Lodging Investment Advisors**

By: Cheryl Boyer
Name: Cheryl Boyer
Title: President

Sworn to before me this
17th day of March 2006

Notary Public

KATRINA D. SCOTT
NOTARY PUBLIC, State of New York
No. 01SC5062063
Qualified in New York County
Commission Expires June 17, 2006

# EXHIBIT 11E

Sponsor's Expert Concerning Adequacy of Common Charges Payable by the Residential Unit Owners, Accessory Unit Owner and Club Unit Owner

GUMLEY-HAFT
REAL ESTATE
415 Madison Avenue New York, NY 10017 (212) 371-2525 FAX: (212) 371-2896

# CERTIFICATION OF SPONSOR'S EXPERT ON ADEQUACY OF COMMON CHARGES PAYABLE BY THE RESIDENTIAL UNIT OWNERS, ACCESSORY UNIT OWNER AND THE CLUB UNIT OWNER PURSUANT TO SECTION 20.4(e) OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW, ARTICLE 23-A, AS AMENDED

January 18, 2006

New York State Department of Law
120 Broadway
New York, New York 10271
Att.: Real Estate Financing Bureau

Re: The Plaza Hotel - Condominiums
768 Fifth Avenue
New York, New York 10019

The undersigned, Gumley Haft Realty, is a licensed real estate management firm in the State of New York. Gumley Haft Realty has been has been engaged in the management of over one hundred condominiums, cooperatives and residential rental properties over the course of the past fifteen years.

The sponsor of the condominium offering plan for the above captioned property retained our firm to review Schedule B-2 to the offering plan which includes projections of common charges payable by the owners of the residential units, club unit and accessory unit for the first year of Condominium Operation.

We understand we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the residential units, accessory unit and club unit listed in Schedule B-2.

We have reviewed Schedule B-2 as it impacts upon the residential units, accessory unit and club unit and investigated the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in managing mixed use and commercial buildings in Manhattan.

We certify that the projections in Schedule B-2 for common charges payable by the owners of residential units, accessory unit and club unit appear reasonable and adequate under existing circumstances to meet the anticipated operating expenses fairly attributable to such residential units, accessory unit and club unit for the projected first year of condominium operation, and that the allocation of common charges attributable to the residential units, accessory unit and club

unit also reflect special or exclusive use or availability or exclusive control of particular common areas.

We certify that the estimates in Schedule B-2 for the common charges payable by the owners of the residential units, accessory unit and club unit:

(i) set forth in detail the projected common charges for the residential units, accessory unit and club unit for the projected first year of condominium operation;

(ii) afford potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the common charges payable by the owners of the residential units, accessory unit and club unit;

(iii) do not omit any material fact;

(iv) do not contain any untrue statement of a material fact;

(v) do not contain any fraud, deception, concealment, or suppression;

(vi) do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) do not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by the sponsor. We understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the common charges fairly attributable to the residential units, accessory unit and club unit for the projected first year of operation.

This Certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

**GUMLEY HAFT REALTY**

By: _____
Name: Sanford Abelson
Title: Chief Executive Officer

Sworn to before me this
17th day of January 2006

_____
Notary Public

JAMES CASIO
Notary Public State of New York
No. 24-4833663
Qualified in Kings County
Commission Expires Feb. 28, 2011

# EXHIBIT 11F

Sponsor's Expert Concerning Adequacy of Common Charges Payable by the Transient Hotel Unit Owner

730 Fifth Avenue - 9th Floor
New York, NY 10019

(212) 564-6654 Direct Dial
(917) 591-4978 Facsimile
cboyer@lodgingadvisors.com

# CERTIFICATION OF SPONSOR'S EXPERT ON ADEQUACY OF COMMON CHARGES PAYABLE BY THE TRANSIENT HOTEL UNIT OWNER PURSUANT TO SECTION 20.4(e) OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW, ARTICLE 23-A, AS AMENDED

March 17, 2006

New York State Department of Law
120 Broadway
New York, New York 10271
Att.: Real Estate Financing Bureau

Re: The Plaza Hotel - Condominiums
768 Fifth Avenue
New York, New York 10019

The undersigned, Lodging Investment Advisors, LLC, is a hotel consulting firm established as a limited liability company in the State of New Jersey. The principals of Lodging Investment Advisors have been engaged in providing third party hotel consulting services over the course of the past 20 years.

The sponsor of the condominium offering plan for the above captioned property retained us to review Schedule B-1 to the offering plan which includes projections of common charges payable by the owner of the transient hotel unit for the first year of Condominium Operation.

We understand we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the transient hotel unit listed in Schedule B-1.

We have reviewed Schedule B-1 as it impacts upon the transient hotel unit and investigated the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in evaluating hotel operations.

We certify that the projections in Schedule B-1 for common charges payable by the owner of the transient hotel unit appear reasonable and adequate under existing circumstances to meet the anticipated operating expenses fairly attributable to such transient hotel unit for the projected first year of condominium operation, and that the

allocation of common charges attributable to the transient hotel unit also reflect special or exclusive use or availability or exclusive control of particular common areas.

We certify that the estimates in Schedule B-1 for the common charges payable by the owner of the transient hotel unit:

(i) set forth in detail the projected common charges for the transient hotel unit for the projected first year of condominium operation;

(ii) afford potential investors, purchasers, and participants an adequate basis upon which to found their judgment concerning the common charges payable by the owners of the transient hotel unit;

(iii) do not omit any material fact;

(iv) do not contain any untrue statement of a material fact;

(v) do not contain any fraud, deception, concealment, or suppression;

(vi) do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) do not contain any representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representation or statement made.

We further certify that we are not owned or controlled by the sponsor. We understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the common charges fairly attributable to the transient hotel unit for the projected first year of operation.

This Certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

**Lodging Investment Advisors, LLC**

By: Cheryl Boyer
Name: Cheryl Boyer
Title: President

Sworn to before me this
7th day of March 2006

Notary Public

KATRINA D. SCOTT
NOTARY PUBLIC, State of New York
No. 01SC5062063
Qualified in New York County
Commission Expires June 17, 2006

**EXHIBIT 12**

REAL PROPERTY LAW SECTION 339-kk

§ *339-kk Real Prop.* Rents.

(a) For the purposes of this section, "non-occupying owner" shall mean a unit owner in a condominium association who does not occupy the dwelling unit.

(b) If a non-occupying owner rents any dwelling unit to a rental tenant and then fails to make payments due for common charges, assessments or late fees for such unit within sixty days of the expiration of any grace period after they are due, upon notice in accordance with subdivision (c) of this section, all rental payments from the tenant shall be directly payable to the condominium association.

(c) If the common charges, assessments or late fees due for any unit have not been paid in full, within sixty days after the expiration of any grace period of the earliest due date, the board of managers shall provide written notice to the tenant and the non-occupying owner providing that, commencing immediately and until such time as all payments for common charges, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the condominium association at the address listed on the notice. Where a majority of the board of managers has been elected by and from among the unit owners who are in occupancy, the board may elect not to require that rental payments be made payable to the condominium association. At such time as payments for common charges, assessments and late fees from the non-occupying owner are once again current, notice of such fact shall be given within three business days to the rental tenant and non-occupying owner. Thereafter all rental payments shall be made payable to the non-occupying owner or a designated agent. A non-occupying owner who disputes the association's claim to rental payments pursuant to this section shall be entitled to present facts supporting such owner's position at the next scheduled meeting of the board of managers, which must be held within thirty days of the date that such board receives notice that such owner seeks to dispute such claim.

(d) Nothing in this section shall limit any rights of unit owners or of the board of managers existing under any other law or agreement.

(e) Payment by a rental tenant to the condominium association made in connection with this section shall relieve that rental tenant from the obligation to pay such rent to the non-occupying owner and shall be an absolute defense in any non-payment proceeding commenced by such non-occupying owner against such tenant for such rent.

**EXHIBIT 13**

NEW YORK CITY DEPARTMENT OF BUILDINGS LETTERS REGARDING PERMITTED USES OF THE UNITS

Greenberg
Traurig

ey A. Segal
·212) 801-9265
·egalj@gtlaw.com

May 24, 2005
REVISED TO INCORPORATE COMMISSIONER'S HANDWRITTEN CHANGES]

VIA FACSIMILE

Ms. Fatma Amer
Acting First Deputy Commissioner
New York City Department of Buildings
280 Broadway
New York, New York 10007

Re: The Plaza Hotel (the "Plaza")
768 Fifth Avenue, Manhattan

Dear Commissioner Amer:

This letter seeks your confirmation that, in the circumstances described below, the owner (the "Owner") of the Plaza may carry out a project (the "Project") described below because the Project will comply with the Zoning Resolution as the Plaza's current 805 transient hotel units will be converted to 452 units as follows: approximately 186 of the units (41% of the total) would be converted as of right to long term occupancy UG2 as per Sec. 15-00 Z.R; approximately 131 of the units (29% of the total) would remain transient at all times, Hotel rooms UG5 as per the current CO; and approximately 135 of the units would be Condo Hotel units (30% of the total), as defined below, that would be available for transient use for a minimum of 8 months per year, and could be occupied by individual owners for up to 4 months per year, in compliance with Section 12-10 (definition of Hotel).

The Project would include converting the 805 existing transient hotel units in the Plaza to approximately 186 residential condominiums and a new hotel (the "New Hotel") consisting of approximately 131 transient hotel units and approximately 135 Condo Hotel units (the "Condo Hotel").[1] The Condo Hotel: (i) could be occupied by unit owners for stays greater than 30 days, provided that they would not be occupied by unit owners for more than four months in a calendar year (the "Four Month Limitation"), and (ii) when they were not so occupied, they would be rented on a transient basis.

[1] The Project would also include a retail component.

The reason 580 of the Plaza's 805 transient hotel units are nonconforming is that approximately three quarters of the Plaza is located in an R10-H zoning district in which transient hotel use requires a special permit, which the Plaza does not have. The rest of the Plaza is located in a C5-2.5 district in which transient hotel use is permitted as of right. As a result of the proposed change, the only remaining nonconforming uses in the Plaza will be: approximately 40 transient units; and approximately 49 Condo Hotel units in the R10-H district in lieu of the current 580 Hotel units, thereby reducing the degree of nonconformity.

**The Plaza Hotel**

The Plaza is an 18-story structure that was originally opened in 1907 and was enlarged in 1921. It is located at the southwest corner of Fifth Avenue and Central Park South, at Grand Army Plaza. As mentioned above, the majority of the Plaza (40,167 SF) is located in an R10-H zoning district, while its southwest corner (13,556 SF) is located in a C5-2.5 district, which is also within the Special Midtown District. In the R10-H district, residential use (Use Group 2) is permitted as-of-right, and transient hotels (Use Group 5) are only permitted by special permit. The Plaza does not have a special permit and is a legal nonconforming use in the R10-H district. In the C5-2.5 district both transient hotels and residential use are permitted as-of-right. However, the Plaza's transient hotel use in the R10-H district is considered a legal nonconforming use since the enactment of the 1961 Zoning Resolution.

The Plaza currently has 805 units, all of which are used exclusively for transient occupancy. The Plaza's first floor contains the famous Oak Bar and the renowned Palm Court restaurant, and the Mezzanine contains the famous Grand Ballroom. Stores, offices, meeting rooms and banquet rooms are also located in other areas of the Plaza.

**The Project**

In 2004, CPS 1 Realty LP, an affiliate of The El-Ad Group, Ltd. (the "Owner"), purchased the Plaza. In anticipation of renovating the Plaza and converting a major part of it to residential use, the Owner closed the Plaza on April 30, 2005. The Owner's initial plan was to maintain approximately 131 transient hotel units and to convert the rest of the hotel units to residential use, with a substantial retail component that would be located in the Ballroom and many other hotel function rooms. However, the Owner negotiated with the New York Hotel & Motel Trades Council, AFL-CIO, under the guidance of the Mayor's Office of the City of New York, which resulted in the Project, which would: increase the size of the New Hotel; convert less of the Plaza to residential use; and reduce the size of the retail area, in part by continuing to use the Ballroom and many of the hotel function rooms as they have been historically used. More specifically, the Owner agreed to include approximately 135 Condo Hotel units in addition to the approximately 131 transient hotel units. The owners of the Condo Hotel units would be entitled to occupy their units for stays greater than 30 days, subject to the Four Month Limitation, and when not in occupancy could include their units in the New Hotel's transient rental program.

**Discussion**

We submit that the Project should be permitted for either of the following reasons discussed below:

1) The Project Would be As-of-Right

As the result of the Project, the Plaza's current 805 transient hotel units would be converted to approximately 452 units, all of which will be as-of-right. Approximately 186 of the units (41% of the total) would be residential, which is as-of-right in both the commercial and residential districts. Approximately 131 of the units (29% of the total) would be transient at all times, which is as-of-right in the commercial district and a legal non-conforming use in the residential district. The approximately 135 Condo Hotel units (30% of the total units) would be as-of-right because they would primarily be used as transient units as defined by 12-10 (Hotels).

The primary use in each Condo Unit would be transient because each Condo Hotel unit would be available for transient use for at least 8 months per year, i.e., at least 67% of the time. Therefore, the approximately 266 units in the New Hotel comprised of approximately 131 transient units, occupied transiently 100% of the time, and approximately 135 Condo Hotel units, occupied transiently 67% of the time, will be occupied transiently for 83.25% of the time and for longer terms by 16.75%.

The Zoning Resolution defines transient hotels as "a building or a part of a building in which living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis . . . ." By requiring that a transient hotel be used only primarily, and not exclusively, for transient use, the Zoning Resolution recognizes that a transient hotel may be used for accessory occupancies that are not transient. Thus, for all of the reasons above, the residential accessory use of the Condo Hotel units will be as-of-right.

2) Reduction of Non-Conforming Use

As described above, currently 580 of the 805 transient hotel units in the Plaza are located in the R10-H district and are therefore a legal nonconforming use. However, the Project would reduce the amount of New Hotel units in the residential district that would be used solely for nonconforming transient use to only approximately 40 units. (Another approximately 91 hotel units used only for transient use would be located in the commercial district, where they would be a conforming use.) The Project would also replace some of the 580 nonconforming transient hotel units with approximately 49 Condo Hotel units in the R10-H district and approximately 86 Condo Hotel units in the commercial district.

Ms. Fatma Amer
May 24, 2005
Page 4

Reducing the existing 580 nonconforming transient hotel units to 175 nonconforming units will be a 70% reduction of the existing nonconforming use;[2] and the 49 new R10-H Condo Hotel units, although nonconforming because they have primarily transient use, would be occupied residentially for up to 4 months per year. Therefore, the Project also would substantially reduce the nonconforming use in these 49 Condo Hotel units.

The Zoning Resolution encourages this type of reduction in non-conformity. As stated in Section 51-00 of the Zoning Resolution: "The regulations governing nonconforming uses . . . are designed to restrict further investment in such uses, which would make them permanent establishments in inappropriate locations." Thus, the Project would promote the goals of the Zoning Resolution by reducing the non-conforming use in the Plaza.

For the foregoing reasons, we request your confirmation that, in the circumstances described above, the New Hotel would be permitted.

Very truly yours,

Jay Segal MIF

Jay A. Segal

cc: Miki Naftali, Elad Properties
Suri Kasirer

[Commissioner's Note:] "OK to accept as stated provided the condo offering plan for the 135 Condo Hotel units shall be submitted to DOB legal division for review before execution."

7/11/05

---

$\frac{\text{175 nonconforming New Hotel units}}{\text{580 former nonconforming transient units}}$ = 30% of former nonconforming units, a 70% reduction

Greenberg Traurig

Jay A. Segal
(212) 801-9265
segalj@gtlaw.com

March 9, 2006

VIA FACSIMILE

Ms. Fatma Amer
Acting First Deputy Commissioner
New York City Department of Buildings
280 Broadway
New York, New York 10007

Re: The Plaza Hotel (the "Plaza")
768 Fifth Avenue, Manhattan

Dear Commissioner Amer:

On May 24, 2005, I wrote the attached letter (the "Letter") to you, requesting approval of the 135 Condo Hotel Units that were part of a project proposed for the Plaza (the "Project") that would include 186 residential units, 131 transient hotel units, and the 135 Condo Hotel units. The Letter states that the Condo Hotel units would be subject to the following requirements: "(i) [they] could be occupied by unit owners for stays greater than 30 days, provided that they would not be occupied by unit owners for more than four months in a calendar year, and (ii) when they were not so occupied, they would be rented on a transient basis."

Your acceptance of the Project, which was hand-written on the Letter, stated:

> "Ok to accept as stated provided the condo offering plan for the 135 Condo Hotel units shall be submitted to DOB legal division for review before execution."

The Project has been modified to include 181 residential units, 130 transient hotel units, and 152 Condo Hotel Units. Although these numbers of units are different from those set forth in the Letter, the attached letter from the Project's architect states that the amounts of floor area devoted to each use are visually identical to the amounts set forth in the plans that the owner of the Plaza (the "Owner") informs us were the basis of the unit breakdown in the letter, except for approximately 4,000 SF on the 19th Floor. The 4,000 SF is on the Plaza's 58th Street frontage and is directly above the Condo Hotel Units located on floors 9 through 18. At the time of the Letter, the Owner contemplated that this space would be used for residential use and would connect to the other residential units that front on 59th Street and 5th Avenue. Subsequently, the Owner determined that it was to difficult to connect this space to the other residential units and it was instead decided to use

this space for the Condo Hotel units. However, the 4,000 SF did not increase the number of Condo Hotel units as it was used to duplex Condo Hotel units below on the 18th floor. Therefore, the change in the number of Condo Hotel units results from an adjustment in the size of the units, rather than a change in the amounts of floor area devoted to the use.

We respectfully request confirmation that your acceptance of the Project as noted on the Letter remains valid for the modified Project as described above.

Very truly yours,

Jay A. Segal

ny-srv01\FlugM\1164497v01\3/9/06\47055.011700

NYC BUILDINGS

NYC Department of Buildings
280 Broadway, New York, NY 10007

Patricia J. Lancaster, FAIA, Commissioner

Janine A. Gaylard, Esq.
Assistant General Counsel
Office of the General Counsel
212.566.3358
212.566.3843 fax
janineg@buildings.nyc.gov

April 25, 2006

Jay Segal, Esq.
Greenberg Traurig, LLP
200 Park Avenue
New York, N.Y. 10166

Re: The Plaza Hotel (the "Plaza")
768 Fifth Avenue, Manhattan
Condominium Offering Plan

Dear Mr. Segal:

I am in receipt of your March 30, 2006 letter that attached an offering plan for the above referenced premises (the "Plan") for General Counsel review and approval. I have reviewed the Plan and find that it is acceptable and complies with the occupancy and use restrictions (the "Requirements") for the Condo Hotel Units set forth in your letter to Acting Deputy Commissioner Amer dated May 24, 2005 (the "Initial Letter").

As stated in the Initial Letter, the Requirements for the Condo Hotel Units were that the units:

"(i) could be occupied by unit owners for stays greater than 30 days provided that they would not be occupied by unit owners for more than four months in a calendar year (the "Four Month Limitation"), and (ii) when they were not so occupied, they would be rented on a transient basis."

You submitted the Plan to the New York City Department of Buildings (the "Department"/ "DOB") for review pursuant to Commissioner Amer's March 27, 2006 approval of 152 Condo Hotel Units as part of a project proposed for the Plaza (the "Project") that would also include residential hotels and transient units. The March 27, 2006 approval accepted a March 9, 2006 modification (the "Update Letter") of a prior approval of the Initial Letter dated July 11, 2005. The Update Letter advised the Department that the number of Condo Hotel Units at the Project had been changed from 135 to 152.

Commissioner Amer's March 27, 2006 approval was handwritten on the Update Letter and stated:

"Ok to accept as described above and as per the terms and conditions of previous acceptance letter dated July 11, 2005."

In the July 11, 2005 acceptance letter referenced, Commissioner Amer had specified regarding the Initial Letter:

"Ok to accept as stated provided the condo offering plan for the 135 Condo Hotel units shall be submitted to DOB legal division for review before execution."

Consistent with Commissioner Amer's instructions, on March 30, 2006, you submitted a draft of the Condominium Offering Plan for General Counsel's review and approval. You stated that the Plan was being revised in response to comments made by the Office of the Attorney General, but assured the Department that any revisions made in response to those comments would not alter the unit mix or the Requirements for the Condo Hotel Units.

I have reviewed the draft Condominium Offering Plan. The key elements of the Project as approved by Commissioner Amer appear in the Plan. Reference is made throughout the plan to the Requirements, especially as regards the Condo Hotel Unit Owners' obligations to comply with the Requirements. Therefore, I find that the Plan is acceptable.

Sincerely,

Janine A. Gaylard
Assistant General Counsel

cc: Fatma Amer, P.E., Acting Deputy Commissioner, Technical Affairs
Phyllis Arnold, General Counsel
Felicia R. Miller, Deputy General Counsel

**EXHIBIT 14**

BILL OF SALE FOR FF&E

## BILL OF SALE FOR CONDO HOTEL UNIT FF&E

**THIS BILL OF SALE** is made as of the ____ day of _____, 200_, from CPS 1 Realty LP, a Delaware limited partnership, having offices c/o El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10022 ("Seller"), to _____, having an address at _____ ("Purchaser").

## RECITAL:

**WHEREAS**, contemporaneously with the execution and delivery of this Bill of Sale, Seller has sold and conveyed to Purchaser Condo Hotel Unit ____ of The Plaza Hotel -- Condominiums, located at 768 Fifth Avenue, New York, New York by deed of even date herewith (hereinafter referred to as the "Unit"); and

**WHEREAS**, as part of the consideration for the conveyance of the Unit, Seller has agreed to convey to Purchaser the items of personal property referred to as the FF&E in the Offering Plan;

**NOW, THEREFORE**, in consideration of the sum of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller does hereby sell, assign, and convey to Purchaser (without any representation or warranty whatsoever, except as expressly set forth in the Offering Plan, Seller's right, title and interest in and to the FF&E as the same are present in the Condo Hotel Unit on the date hereof.

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

This Bill of Sale shall be binding upon and shall inure to the benefit of Seller, Purchaser and their respective successors and assigns.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York.

**IN WITNESS WHEREOF**, Seller has caused this Bill of Sale to be duly signed as of the day and year first written above.

**CPS 1 REALTY LP**
By: CPS 1 Realty GP LLC, its general partner

By:_____
Name:
Title:

**EXHIBIT 15**

FORM OF UNIT MANAGEMENT AND OPERATION AGREEMENT

**FINAL**

# THE PLAZA CONDOMINIUM
# UNIT MANAGEMENT AND OPERATION AGREEMENT

by and between

FHR (NYC), LLC, as Hotel Manager

and

_____, as Owner

covering Condominium Hotel Unit _____

Dated: _____

# THE PLAZA CONDOMINIUM
# UNIT MANAGEMENT AND OPERATION AGREEMENT

This Unit Management and Operation Agreement ("**Agreement**") is executed this ____ day of _____, 200__ by and between FHR (NYC), LLC, a Delaware limited liability company ("**Hotel Manager**"), as agent for Transient Hotel Unit Owner and Hotel Board, and _____ ("**Owner**"). Any capitalized terms not defined herein shall be as defined in that certain Declaration pursuant to Article 9-B of the Real Property Law of the State of New York establishing condominium ownership of the property located at 768 Fifth Avenue (also including One Central Park South), New York, New York 10019, made by CPS 1 Realty LP, as declarant, dated as of March 13, 2006 and recorded in the Office of the Register of the City of New York, New York County (the "**City Register's Office**") on March 23, 2006 as CRFN 2006000164230 (the "**Original Declaration**"), as amended and restated by Amended and Restated Declaration dated as of March 13, 2006 and submitted to the Office of the City Register for recording as Document Number 2006040600067 (the Original Declaration, as so amended, and as the same may have been or may hereafter be further amended from time to time, the "**Declaration**") covering, among other things, the Hotel Section, as described in the Declaration (the "**Project**").

## RECITALS

In order to provide Owner and Guests (as hereinafter defined) at the Project with the level of services associated with a luxury hotel and to provide the Mandatory Services herein provided, each Condo Hotel Unit Owner other than Declarant is required to enter into this Agreement.

## I. GENERAL TERMS

1. Owner Representations, Warranties and Acknowledgements. Owner represents, warrants and acknowledges as follows:

   (a) Owner is the owner of that certain hotel condominium unit ("**Condominium Hotel Unit**"), described as Hotel Unit No. _____ ("**Unit**") at the Project and Owner has full right, title, and authority to enter into this Agreement.

   (b) Owner and the Unit are and shall be subject to all of the terms and conditions of the Declaration.

   (c) Owner hereby acknowledges that the Unit is subject to certain use and occupancy restrictions all as more particularly set forth in the Declaration (as may be amended or modified after the date hereof, the "**Use Restrictions**"). Owner shall not engage in any conduct that would avoid, defeat or violate the Use Restrictions. If either Hotel Manager, Transient Hotel Unit Owner or Hotel Board determines in its reasonable discretion that Owner is or has engaged in such conduct, Hotel Manager may, upon Transient Hotel Unit Owner's prior consent, at its option declare an Owner's Default pursuant to Article V hereof and Hotel Manager shall be entitled to all remedies under this Agreement, at law or in equity. Owner hereby acknowledges that the Use Restrictions may be modified or amended from time to time in accordance with the terms of the Declaration.

2. Term of Agreement. The term of this Agreement shall commence on the date hereof ("**Commencement Date**") and shall continue in perpetuity subject to modifications in accordance with the terms hereof by the parties hereto (or their successors and assigns as hereinafter provided). This Agreement shall be appurtenant with the land and "run with Owner's Unit", and shall burden the Unit, and benefit the Transient Hotel Unit, during the Term.

3. Hotel Manager Duties. Hotel Manager will have the exclusive authority to perform the following services ("**Mandatory Services**") for the Unit, all of which shall be binding on Owner, all as more fully set forth herein: (i) managing occupancy pursuant to reservations for use of the Unit arranged by or on behalf of Owner, by telephone, fax and the internet, (ii) enforcing check-in and check-out procedures as established by Hotel Manager from time to time, (iii) managing access to the Unit including issuing room keys, including to Owner, (iv) collecting Unit payments and service charges, (v) providing accounting services and maintaining financial records with respect to the rental of the Unit, (vi) collecting and paying hotel occupancy taxes (commonly known as "**HOT**") on behalf of Owner for any rental of the Unit, (vii) procuring and complying with all necessary licenses and permits in connection with the operation of the Unit as part of a transient hotel, (viii) procuring and maintaining insurance coverage as provided in Article VI(6) herein, the Condominium By-Laws and the Hotel By-Laws, (ix) providing daily maid and linen services during periods of occupancy by Owner and Guests, (x) performing deep cleaning and repair work in the Unit, (xi) providing concierge service, telephone service/maintenance, guest services as determined by Hotel Manager to be available to all Hotel Section Owners, bell services, use of health club facilities if made available to all Hotel guests, mail service, security, Unit trash removal, Unit light bulb replacement, front desk service, lock and keys, and (xii) such additional Mandatory Services as set forth in Exhibit "A" attached hereto. Neither Owner nor any other person except Hotel Manager shall have any right to manage the Unit as contemplated herein or perform any of the Mandatory Services. Owner shall at all times be entitled to all Mandatory Services made available by Hotel Manager to all Condominium Hotel Units. Owner hereby acknowledges and agrees that Hotel Manager may modify (from time to time and in its sole discretion) certain of the Mandatory Services as well as the prices for any of the Mandatory Services provided Hotel Manager provides Owner written notice of the same.

Owner shall pay all costs of Mandatory Services charged directly to Owner by Hotel Manager, allocable to Owner's Unit, under this Agreement ("**Direct Unit Costs**") and, to the extent not charged directly to Owner, a proportionate share (the "**Proportionate Unit Costs**") of Hotel Manager's cost of providing the Mandatory Services not otherwise allocated to a specific Condominium Hotel Unit calculated as the proportion of the Unit's interior square footage to the total of the interior square footage of all Condominium Hotel Units receiving the Mandatory Services multiplied by the total cost of providing the Mandatory Services to all such Condominium Hotel Units not otherwise allocated to a specific Condominium Hotel Unit. Notwithstanding the above, any Direct Unit Costs or Proportionate Unit Costs payable hereunder that are paid by the Hotel Board to Hotel Manager on behalf of Owner (including any management fees imposed for such services

or related thereto) through assessments imposed by the Hotel Board, shall be credited by Hotel Manager against such Costs.

4. Optional Services. Subject to the terms of this Agreement, Hotel Manager, in its discretion and from time to time, may elect to offer to Owner and Guests some or all of the optional services, which are more particularly described in Exhibit "B" attached hereto ("**Optional Services**"). Owner shall pay the costs of said Optional Services pursuant to a price list distributed from time to time by Hotel Manager. Owner hereby acknowledges and agrees that Hotel Manager may change or discontinue (from time to time and in its sole discretion) certain of the Optional Services as well as the prices for any of the Optional Services offered to Owner. In the event that Owner and/or Owner's Guests use any Optional Services, Owner shall pay to Hotel Manager a separate charge independent of any amounts payable by Owner under this Agreement ("**Personal Charges**"). Personal Charges shall be Owner's Costs under and subject to Article IV(8) herein. Hotel Manager shall establish and maintain an account for Personal Charges on behalf of Owner provided Owner provides security in the form of a credit card acceptable to Hotel Manager in its sole discretion. Notwithstanding anything herein to the contrary, Hotel Manager shall not charge any Owner prices or costs with respect to any Optional Services which are less favorable than such charges made to or with respect to services provided to all other occupants of the Hotel.

5. No Rental Services. Nothing in this Agreement is intended to authorize Hotel Manager to solicit, advertise, promote or rent the Unit and Owner has the exclusive authority to arrange for such use or any other use of the Unit (in compliance with the Use Restrictions) subject to the management duties of Hotel Manager and other obligations of the parties herein.

6. Rental of Unit by the Public. As required by the Use Restrictions as in effect on the date hereof, the Unit must be available for rental as a transient hotel room when it is not occupied by Owner. The Unit shall be deemed to be made available for rental as a transient hotel room if the Unit is listed or advertised for rent to the general public at competitive rates in or through a rental program, a rental agent, an established listing service or a publication with regular circulation or publication in the City of New York. For the purposes of this Section, "Approved Rental Agent" shall mean any licensed rental agent who appears on Hotel Manager's list of qualified agents that possess the objective minimum quality standards as reasonably set forth by Hotel Manager from time to time. At any time, Owner may request from Hotel Manager in writing the list of Approved Rental Agents and/or minimum quality standards. Owner may choose one (1) of the Approved Rental Agents on such list, or may submit his or her choice of rental agent to Hotel Manager for consideration based on the minimum quality standards. If such rental agent meets the minimum quality standards, as determined by Hotel Manager in its reasonable discretion, such rental agent's name shall be added to the list of Approved Rental Agents, and upon notice by Hotel Manager to Owner thereof, such agent may contact Hotel Manager with respect to access to the Unit for rental purposes pursuant to the terms of this Agreement. The foregoing shall not apply to rental by Transient Hotel Unit Owner or the owner of any Unsold Condo Hotel Units.

## II. ACCESS AND OCCUPANCY

1. Right to Enter Unit. Hotel Manager shall have the exclusive right to grant access to the Unit to Owner and all Guests (defined below) and to enter the Unit for all purposes set forth in this Agreement or as may otherwise be necessary or desirable to carry out the purposes and the intent of this Agreement provided, however, Hotel Manager shall not deny access to Owner or Owner's Guests if a reservation confirmed by Hotel Manager has been made by Owner or Owner's Guest or otherwise deny access to Owner or Owner's Guests unless for good cause. In no event shall Hotel Manager be obligated to show the Unit to guests of Owner other than Owner's Guests (defined below) (each, an "**Other Guest**" and, collectively, "**Other Guests**"). "Owner's Guests" shall mean Owner, Owner's spouse or designated companion and Owner's children, or, if Owner is a corporation or partnership, Owner's partners or owners and their respective spouses or designated companions and children all as identified to Hotel Manager on its prescribed form as of the date of this Agreement and thereafter; provided, however that the maximum number of Owner's Guests occupying the Unit at any given time may not exceed the maximum occupancy restrictions set forth in Article II(4) below. Owner's Guests and Other Guests are collectively referred to herein as "**Guests**".

2. Exclusive Occupancy by Guests. Owner understands that during the time the Unit is rented to, or otherwise occupied by, a Guest registered with the front desk as an occupant of the Unit (a "**Registered Guest**"), such Registered Guest is entitled to the exclusive right of occupancy of the Unit. Therefore, during any such occupancy period (or otherwise unless Owner is staying in the Unit as a Registered Guest), Owner shall not enter any portion of the Unit including, without limitation, any secure closets located within the Unit designated for Owner's exclusive use, or disturb the Registered Guest and the Registered Guest's invitees.

3. Transfer of Unit by Owner. Owner agrees that the Unit may not be shown to prospective buyers, transferees, prospective lenders or their respective agents, employees or representatives ("**Prospective Buyers**") at any time that the Unit is being occupied by or rented to a Guest. Notwithstanding the foregoing, however, Hotel Manager shall exercise reasonable efforts to accommodate Owner's request to show the Unit to Prospective Buyers provided that such entry does not inconvenience any Guests. Owner further agrees to honor, or cause any transferee to honor, all rental commitments for the Unit in the event of a transfer of the Unit ("**Transfer**"). Without implying any obligation on the part of Hotel Manager, Owner shall be liable for any and all damages incurred in relocating Guests to facilitate a Transfer of the Unit. This Agreement shall not terminate in the event of a Transfer (whether voluntarily or involuntarily) and any purchaser/successor to or assignee of Owner shall assume the same by taking title to the Unit subject to this Agreement and shall execute such written confirmation of such assumption as Hotel Manager may reasonably request.

4. Maximum Occupancy. At no time may more individuals occupy and be present and in the Unit at the same time than the number designated by Hotel Manager as the maximum

occupancy for the Unit. As of the date of this Agreement, the maximum occupancy for each Unit type is as follows:

Studio.....2
One Bedroom.....4
Two Bedroom.....6

## III. ADMINISTRATIVE FEE

Hotel Manager shall receive from Owner, as an administrative fee for its services under this Agreement, the amount of US $25.00 per night of occupancy by Other Guests to be charged to the Unit account and paid by Owner when and as billed to Owner together with Direct Unit Costs under this Agreement (the "**Administrative Fee**"). The Administrative Fee shall be adjusted as of January 1st of each calendar year by multiplying such initial figure by a fraction, the denominator of which shall be the Consumer Price Index for All Urban Consumers (Base 1982-1984=100) published by the U.S. Bureau of Labor Statistics for the entire United States ("CPI") published immediately prior to the date of this Agreement, and the numerator of which shall be the CPI published immediately prior to the date of calculation. In the event that the CPI ceases to use the 1982-84 base of 100, or the CPI shall be discontinued for any reason, the Bureau of Labor Statistics shall be requested to furnish a new index comparable to the CPI together with information which will make possible the conversion to the new index in computing the adjusted amount in accordance with this paragraph. If for any reason the Bureau of Labor Statistics does not furnish such an index and such information for the United States area, the parties hereto shall thereafter accept and use such other index, or comparable statistics on the cost of living for the consumer in the United States area, as shall be computed and published by an agency of the United States, or by a responsible financial periodical or recognized authority, then to be selected by the Parties.

## V. USE AND MAINTENANCE OF UNIT

1. Services Provided by Hotel Manager; Employment.

(a) Hotel Manager shall provide or arrange through the Hotel, at its expense, such personnel as are necessary to accomplish the Mandatory Services. Hotel Manager shall retain, hire, supervise and discharge all labor and employees required for performance of the Mandatory Services required under this Agreement. All such labor and employees shall be those of Transient Hotel Unit Owner, its designee or its agents, and not Owner. In the exercise of its rights or the performance of its duties hereunder, Hotel Manager may utilize the services of the Hotel, Hotel Manager's affiliates and subsidiaries and their respective employees, agents, contractors or subcontractors provided that the cost to Owner shall not be in excess of the costs that a Third Party would charge on a competitive basis for comparable services. As used herein, "Third Party" means an individual or entity unaffiliated with Hotel Manager.

(b) In the event Owner intends to use the Unit, or permit an Owner's Guest to use the Unit (in accordance with the provisions of Article IV(1)(c) below), then Owner shall, not less than twenty-four (24) hours prior thereto, deliver to Hotel Manager any and all credit card information for Owner or Owner's Guest, as the case may be, as Hotel Manager may require so as to establish a credit account with respect to such use of the Unit, all in accordance with the policies as may be established by Hotel Manager from time to time. Upon request of Owner or Owner's Guests, Hotel Manager shall maintain Owner's and/or Owner's Guests' credit card and other information on file to facilitate check-in. All charges incurred by Owner or Owner's Guest, as the case may be, at the Hotel shall be charged against such credit account, and Owner hereby authorizes Hotel Manager to process such charges against such credit account in accordance with Hotel Manager's policies.

(c) In connection with any rental of the Unit by Owner to an Other Guest, Owner shall, not less than two (2) days prior to the proposed date of rental, provide Hotel Manager with all rental information with respect to such Other Guest, including, without limitation, the name, address, telephone number, occupancy dates, rental rate, credit card information and the like as Hotel Manager may request. Hotel Manager shall be solely authorized (to the exclusion of Owner) to collect all room rental and other revenue derived from rental or use of the Unit from such Other Guest, and is hereby authorized to establish such credit account for such Other Guest based upon the information provided by Owner. Owner shall be solely liable, and shall indemnify Hotel Manager and the Transient Hotel Unit Owner from and against all charges not paid by any such Other Guest, and shall, promptly on demand, either pay such unpaid amounts to Hotel Manager or Hotel Manager shall offset such charges against any funds held by Hotel Manager on behalf of Owner. In the event that any information provided to Hotel Manager by Owner or such Other Guest is inaccurate, then Hotel Manager shall be authorized, in its sole and absolute discretion, to deny access to and occupancy of the Unit to such Other Guest. From the rental revenues received, Hotel Manager shall pay all charges and expenses, including, without limitation, HOT, sales tax and other governmental impositions, and any other sums payable to or by Hotel Manager hereunder less HOT and any other governmental charges, and shall, within thirty (30) days after the expiration of each calendar month, deliver the net revenues from such prior month to Owner.

2. Owner's Responsibilities. In addition to the obligations of Owner set forth elsewhere in this Agreement:

(a) Owner shall not, at any time, remove from the Unit any of the furniture, furnishings and fixtures that were purchased by Owner and installed in the Unit pursuant to the Purchase Agreement.

(b) Owner agrees to pay, before the same becomes delinquent, all charges and expenses applicable to the Unit, including without limitation, to the extent not already payable (and paid) by Owner as part of Hotel Common Charges, unpaid charges incurred by Owner or a Guest, charges and expenses for electricity,

telephone (except for the basic monthly service fee paid by Hotel Manager as provided in Article IV(7) below), and cable (collectively, "**Utilities**"), Hotel Common Charges, and all other similar public or private services (including all installation, connection and disconnection charges). Owner further agrees to pay, before the same become delinquent, all real estate or other taxes and assessments of whatever kind or nature which may be imposed upon the Unit or any improvement, facilities or personal property located thereon, and every other charge, lien or expense accruing or payable in connection with the Unit. Hotel Manager may pay the foregoing charges and expenses on behalf of Owner and Owner hereby authorizes Hotel Manager to deduct such amounts from any monies owing to Owner hereunder to pay for such charges and expenses. Owner authorizes Hotel Manager to pay to the Hotel Board upon written demand from the Hotel Board, the amount of any charges for Utilities paid by the Hotel Board covering the Unit for which the Hotel Board has not been reimbursed by Owner as part of Hotel Common Charges.

(c) Owner acknowledges that Hotel Manager utilizes an electronic locking device system on all Condo Hotel Units. All "keys" to the electronic locking device system shall be maintained by Hotel Manager, and Hotel Manager shall copy, retain or distribute any copies thereof. Owner shall not alter, modify or remove any electronic locking devices or other types of locking devices. Owner agrees that issuance of any keys to the Unit except to Owner or Owner's Guests during their registered occupancy shall be at the Hotel Manager's sole discretion. Hotel Manager shall have the right to change locks and locking devices at Owner's expense if, in Hotel Manager's opinion, it is necessary to do so for security purposes or to conform to the Hotel Manager's master key system.

(d) Access by Owner and/or any other person to the Unit shall be through Hotel Manager only. Owner agrees to always check-in and register with Hotel Manager upon arrival and prior to entering the Unit and to check-out with Hotel Manager upon departure. Owner shall abide by the check-in and check-out times and policies established by Hotel Manager. Owner shall require all Guests who are using the Unit to do the same. Owner shall not permit any person or persons to enter the Unit without prior written notification to and coordination through, Hotel Manager (and approval if otherwise required hereunder).

(e) Owner shall, and shall cause Guests who are using the Unit to, comply with all rules and regulations of the transient hotel located at the Transient Hotel Unit (the "**Hotel**") and the Hotel Board.

(f) Section 8.1 of the Condominium By-Laws is hereby incorporated herein by reference and made a part hereof.

(g) Owner shall not alter the Unit in any way without the prior written consent of Hotel Manager.

3. Repair/Maintenance of Unit.

(a) Owner will be solely responsible for payment of any and all costs incurred by Hotel Manager in the deep-cleaning, repair and maintenance, including replacement, of the Unit including, but not limited to floor coverings, furniture, fixtures, case goods, soft goods and equipment. Except as otherwise specified in this Agreement, the cost of services provided by Hotel Manager or any outside vendor shall be charged to Owner in accordance with the schedule of rates set forth on Exhibit "C" attached hereto which schedule is subject to change from time to time upon written notice to Owner. In addition, Owner agrees and authorizes Hotel Manager to retain the services of the Hotel to be exclusively responsible for providing maintenance and/or engineering services for routine maintenance of the Unit. All materials costs incurred by the Hotel in performing such maintenance engineering services will be performed at Owner's sole expense. Owner authorizes Hotel Manager to deduct such labor and materials costs from any monies owing to Owner hereunder and to remit such costs to the Hotel. Documentation evidencing such expenditures shall be provided to Owner upon Owner's written request.

(b) Owner agrees that the Unit, including balconies, if any, and all furniture and furnishings, shall be kept and maintained in a "first-class condition", and in compliance with the Standard (as hereinafter defined). Hotel Manager will, from time to time, require Owner, at Owner's expense, to replace furniture, fixtures, equipment, carpeting, case goods, soft goods, Linens and/or decorations (collectively, "**FF&E**") in the Unit in order to maintain same in a manner and condition suitable and as required by the Standard and which comply in kind, quantity and quality with the minimum requirements set forth by Hotel Manager for all Condominium Hotel Units. Hotel Manager shall have the option, exercisable at its sole discretion upon Notice to Owner, to take such steps to maintain the interior of the Unit, including FF&E, in a first class condition acceptable to Hotel Manager, and to undertake Owner's obligations under this paragraph, but at the sole cost of Owner. As used herein, "Standard" means (a) the physical and operational standards generally applicable to those full service luxury hotels as understood in the international hotel industry having development, construction, operating, service and maintenance standards at least equal to the Hotel and in all events consistent with the applicable provisions of the Declaration, Condominium By-Laws and Hotel By-Laws.

(c) Hotel Manager will schedule, at Owner's expense, all Owner's and Guest's departure cleaning, after Owner's or Guest's occupancy of the Unit.

4. Damage to the Unit. Except as otherwise provided herein or in the Condominium Documents, Owner shall be liable for all damage to the Unit and all costs thereof, and all FF&E and other items of personal property within the Unit. Owner shall report to Hotel Manager any damage to the Unit or missing items immediately. Hotel Manager shall inspect the Unit, at Owner's cost, after each occupancy and make a reasonable attempt to locate damage to the Unit or missing items, if any. Owner agrees that Hotel Manager shall not be responsible or liable for any damages to or missing items from the Unit, excluding damages arising from the willful misconduct of Hotel Manager.

5. Cleaning, Maintenance and Repair Services and Replacement. The following cleaning, maintenance, repair, replacement and housekeeping services will be provided by or through the Hotel or Hotel Manager, the cost of which shall be at Owner's expense unless otherwise expressly provided in this Section 5:

(a) Linens. Owner acknowledges and agrees that Hotel Manager will from time to time, at Owner's sole expense, be replacing the pillows, blankets, bedspreads, comforters and other linen items (including but not limited to, replacement of sheets, pillow cases and towels) (collectively, "**Linens**") within the Unit and that the cost therefor shall be charged to, and payable by, Owner in accordance with Section 5(d) below.

(b) Periodic Deep Cleaning. Hotel Manager will provide or cause to be provided (by either the Hotel or such other third party provider as Hotel Manager may designate in its sole discretion), as needed but at least once per calendar year, a comprehensive cleaning of the Unit, at Owner's expense. By way of example such cleaning may include, but may not necessarily be limited to: flipping mattresses; dusting ceilings; screen cleaning; wiping down of walls, cupboards, drawers and ceiling lights; cleaning marble polish in the bathrooms; touch up painting of walls, doors, cabinets and ceilings; cleaning of carpets; and polishing of wood surfaces. If in Hotel Manager's sole judgment outside contractors are necessary to provide services such as painting or cleaning of upholstery, draperies or carpet, Hotel Manager will obtain or cause to be obtained such services and all costs and fees, incurred will be charged to and payable by Owner. The Unit shall not be available for rental during the time any of the foregoing services are performed with respect to the Unit.

(c) Annual Maintenance Inspection. At least once per calendar year, Hotel Manager will conduct or cause to be conducted (by either the Hotel or such other third party provider as Hotel Manager may designate in its sole discretion), at Owner's expense, a preventative mechanical maintenance inspection. HVAC systems shall be inspected periodically by a certified mechanical contractor to ensure proper operation prior to winter season. The fee(s) for such inspections, as well as any expenses for the replacement or repair of any mechanical and other systems, FF&E and other items shall be at Owner's expense. Hotel Manager shall not be responsible or liable to Owner for any defects, injuries or damages caused by any defects in the Unit (whether structural in nature or otherwise) or for any failure to discover or to disclose to Owner any construction, design and maintenance defects which could have been or were discovered from any inspection(s) of the Unit pursuant to this Section 5 or otherwise.

(d) Periodic Maintenance and Repair Inspection. In addition to the annual mechanical maintenance inspection under Subsection (c) above, and Hotel Manager's rights under Article IV (3) above, Hotel Manager may, at Owner's expense, also inspect or cause the inspection (by either the Hotel or such other third party provider as Hotel Manager may designate in its sole discretion) of the Unit from time to time for normal wear and tear, general maintenance needs, and

repair or replacement of FF&E. Such inspection will be limited to matters easily ascertainable, and are not to be construed as a guaranty or warranty that maintenance, repair or replacement needs may not unexpectedly occur. If such inspections reveal that repair, replacement or refurbishing is necessary to properly maintain the Unit or the FF&E to acceptable standards, as determined by Hotel Manager in its sole discretion, Hotel Manager shall cause to be undertaken the repair and replacement thereof, at Owner's cost.

(e) Furniture, Fixtures, and Equipment Repair and Replacement. At Owner's expense, Hotel Manager will repair or replace, or cause to be repaired or replaced (by either the Hotel or such other third party provider as Hotel Manager may designate in its sole discretion) FF&E as needed from time to time, subject to Article IV (4) above. All fees, costs and expenses arising out of such services will be charged to Owner. Each Owner shall be required to contribute each year towards a reserve fund (the "**FF&E Reserve Fund**") in connection with the above-referenced repairs and maintenance of FF&E of the Unit. The amount of the annual contribution shall be fixed during each five (5) year period and shall be equal to twenty percent (20.0%) of the replacement value of the FF&E as of the commencement of such period, provided that (A) the annual amount so calculated and payable during the initial five (5) year period shall be $13.00 per square foot of the Unit, (B) such initial five (5) year period shall be deemed to end as of December 31, 2011 and the replacement value of the FF&E and the calculation of the annual amount due shall be determined by Hotel Manager prior to the beginning of each subsequent five (5) year period. Notwithstanding the foregoing, in any event, Owner shall be responsible for such replacement cost notwithstanding the amount contributed to the FF&E Reserve Fund.

6. Non-Routine/Housekeeping Services-Owner and Owner's Guests. All housekeeping services for Owner and Owner's Guests other than those provided for in Article IV(1)(a) herein will be provided at an additional charge to Owner, as set forth in Exhibit "B" attached hereto, as may be amended from time to time by Hotel Manager. The services will be charged directly to Owner or Owner's Guest and billed to Owner. The parties acknowledge the importance of having the Unit clean and ready for the next occupancy. Hotel Manager shall have the sole discretion as to the determination of the condition of the Unit and the extent of cleaning required following each occupancy by Owner or Owner's Guests.

7. Telephone, Cable and Technical Device Charges. If available, Owner shall arrange at its cost to activate at least one direct telephone line to the Unit and shall pay any service fees to the activating utility in connection therewith. Owner authorizes Hotel Manager to arrange to connect, at no cost to Owner, Owner's telephone lines to the Hotel's telephone switchboard. When Owner or Owner's Guests desire to make a local, collect, person to person, third party billing, or other telephone calls, he/she will either dial the local number direct or dial the designated number for operator assisted service or contact the Hotel operator. The Hotel operator will bill the call to Owner's account or Guests' credit cards or telephone cards. Hotel Manager will arrange, or cause to be arranged, at no

charge to Owner or Guests, one activated broadband internet connection outlet to the Unit.

Hotel Manager will arrange, or cause to be arranged, basic cable television service to the Unit utilizing the Hotel's cable system and such additional cable services as Hotel Manager may from time to time determine in its discretion. Pay per view, expanded service and other subscription movies and services shall be billed separately to Owner or the Guest requesting such service and shall be considered Optional Services.

8. Owner Costs. All charges to or costs and expenses incurred on behalf of Owner pursuant to this Agreement, including but not limited to charges incurred in connection with Owner's or Owner's Guests use of the Unit, will be automatically deducted from any sums owed Owner by Hotel Manager. To the extent not so deducted, Owner agrees to pay such sums within fifteen (15) days of receipt of a statement. Interest of one and one-half percent (1.5%) per month (an interest rate of eighteen percent (18%) per annum) or the maximum lawful rate, whichever is lower, shall accrue on the balance owing over thirty (30) days after statement date. Owner understands that if Hotel Manager commences any court action to collect past due accounts owing from Owner, Owner will be liable for any costs and expenses incurred by Hotel Manager in pursuing the collection thereof, including without limitation Hotel Manager's attorney's fees and court costs.

9. Non-Discrimination. Notwithstanding anything herein to the contrary, Hotel Manager shall not charge Owner prices or costs with respect to any cleaning, maintenance and repair services which are less favorable than the prices or costs for the same services under the same circumstances provided to the Hotel.

## V. DEFAULT AND WAIVER OF TERMINATION

1. Default by Owner. Upon the occurrence of any Owner's Default (as defined below) by Owner, notwithstanding any other provisions to the contrary in this Agreement, Hotel Manager shall have the right to pursue any and all legal and equity claims against Owner otherwise permitted by applicable law and subject, as applicable, to the Condominium Documents. The terms of this Agreement shall not be deemed to impair the right of Hotel Manager to exercise any right or remedy, whether for damages, injunctive relief, specific performance or otherwise, upon any breach, nor shall any breach hereof affect the rights of Hotel Manger with respect to any liability or claims accrued or arising out of events occurring prior to the date of such breach. As used herein, "Owner's Default" shall mean failure of Owner to: (a) pay or provide funds to Hotel Manager or third parties as required under the terms of this Agreement when due; or (b) perform any promise or undertaking of this Agreement other than the payment of money, within twenty (20) days after Notice of such failure, provided that if such failure cannot reasonably be cured within twenty (20) days but within such time Owner commences action to cure and diligently continues to and does cure such default, then no Owner's Default shall occur.

2. Default by Hotel Manager. Upon the occurrence of any Hotel Manager's Default (as defined below) by Hotel Manager, notwithstanding any other provisions to the contrary in this Agreement, Owner shall have the right to pursue any and all legal and equity

claims against Hotel Manager otherwise permitted by applicable law and subject to, as applicable, to the Condominium Documents. Notwithstanding anything to the contrary herein, Owner hereby waives any and all rights to terminate this Agreement as a result of any Hotel Manager's Default or otherwise. The terms of this Agreement shall not be deemed to impair the right of Owner to exercise any right or remedy, whether for damages, injunctive relief, specific performance or otherwise, upon any breach, nor shall any breach hereof affect the rights of Owner with respect to any liability or claims accrued or arising out of events occurring prior to the date of such breach. "Hotel Manager's Default" shall mean the material failure of Hotel Manager to perform all of its obligations under this Agreement repeatedly for a period of no less than sixty (60) days as determined by the final, non-appealable judgment of a court of law with jurisdiction. In the event of a Hotel Manager's Default, unless otherwise provided in any non-appealable judgment of a court of law, Owner shall give Hotel Manager written notice thereof, and Hotel Manager shall have a period of thirty (30) days thereafter (or such additional period as may reasonably be required to cure such Default if such cure cannot be reasonably completed within thirty (30) days).

## VI. MISCELLANEOUS

1. Notice. Except as otherwise expressly provided in this Agreement, all notices, requests, demands and other communications hereunder ("**Notice**") shall be in writing and shall be deemed delivered by (i) hand delivery upon receipt, (ii) registered mail or certified mail, return receipt requested, postage prepaid, upon delivery to the address indicated in the Notice, and (iii) overnight courier (next business day delivery) on the next business day at 12:00 noon, whichever shall occur first, as follows:

_ To Owner: _____

_____

_____

To Hotel Manager: FHR (NYC), LLC
100 Wellington Street West
Suite 1600
Toronto, Ontario M5K 1B7
Facsimile No.: (416) 874-2853
Attn.: Executive Vice President
Law & Administration and
Corporate Secretary

Any correctly addressed Notice that is refused, unclaimed or undelivered because of an act or omission of the party to be notified shall be considered to be effective as of the first day that the Notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger or overnight delivery service. The parties hereto shall have the right from time to time, and at any time, to change their respective addresses and each shall have the right to specify as its address any other address within the United States of

America, by giving to the other party at least thirty (30) days prior Notice thereof, in the manner prescribed herein; provided, however, that to be effective, any such change of address must be actually received (as evidenced by a return receipt). Telephone numbers and email addresses, if listed, are listed for convenience purposes only and not for the purposes of giving Notice pursuant to this Agreement.

2. Governing Law. This Agreement and its application shall be governed by the laws of the State of New York without regard to principles of conflicts of law. New York shall have personal jurisdiction over the parties hereto and the judicial system for the County of New York shall be the exclusive forum for any legal action brought in relation to this Agreement.

3. Assignment/Binding Effect. Hotel Manager shall have the right, without Owner's consent, to assign this Agreement to a successor manager of the Hotel, and any or all of Hotel Manager's rights and obligations hereunder, without further liability for acts or omissions occurring after such assignment. As provided in the Declaration recorded against and binding upon the Unit, this Agreement and all provisions hereof shall be binding upon, and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and/or assigns. Hotel Manager and Owner acknowledge and agree that the provisions hereof (including Hotel Manager's rights and benefits) shall be appurtenant with the land and "run with Owner's Unit", and shall burden the Unit, and benefit the Hotel Unit, during the Term. In consideration of receiving and by acceptance of any deed to, grant or devise of the Unit, all grantees or devisees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions of this Agreement.

4. Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and there are no further or other representations, statements, warranties, agreements, understandings or terms, whether written or oral, with respect to the subject matter hereof, unless expressly referred to herein. This Agreement may be amended or modified only by an instrument in writing, signed by the parties or their duly authorized agents.

5. Hold Harmless; Indemnity. Owner hereby agrees to the fullest extent permitted by law, to defend, indemnify and hold Hotel Manager, Transient Hotel Unit Owner, Hotel Board, Condo Hotel Sponsor and CPS 1 Realty LP and all of their owners, affiliates and subsidiaries, and their respective employees, officers, directors, owners, representatives and agents (collectively, "**Hotel Manager Parties**"), free and harmless from and against any and all acts, omissions, investigations, inquiries, liabilities, losses, damages, fines, penalties, demands, taxes, injuries, claims, causes of action, judgments, allegations, costs and expenses, including reasonable attorney's fees and costs (collectively, "**Claims**") arising and/or relating directly or indirectly from injury to person or property, or both sustained by anyone in and about the Unit (including, but not limited to, a slip and fall), Owner's and Owner's Guests' and invitees' use of the Unit or the Project, from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, and arising from any acts, omissions, gross negligence or willful misconduct of Owner or any of Owner's Guests, agents, contractors, employees, invitees,

patrons, customers or members in or about the Project. Owner hereby assumes all risk of damage to property or injury to persons in, upon or about the Unit from any cause (including, without limitation, any injury resulting from a slip and fall in, upon or about the Unit), and Owner hereby waives all claims in respect thereof against Hotel Manager and the Hotel Manager Parties, excepting where the damage is caused solely by the gross negligence or willful misconduct of Hotel Manager. With respect to the previous sentence, Hotel Manager (i) bears responsibility for the conduct of Hotel employees (other than the general manager, comptroller/chief financial officer and the director of sales and marketing) or consultants performing obligations under this Agreement only in the event that Hotel Manager has performed with gross negligence or willful misconduct in the hiring, engaging, supervision, or training of such employees or consultants, and (ii) otherwise bears no responsibility for the acts or omissions of any Hotel Manager Parties other than Hotel Manager itself.

6. Insurance. Unless otherwise provided by the Hotel Board or the Condo Board under the Declaration, Hotel Manager, on behalf of Owner, shall, at Owner's sole expense, procure and maintain (a) property insurance coverage for all FF&E, improvements and betterments, in form and coverage commercially reasonable and available for luxury hotels comparable to the Project, and (b) comprehensive public liability insurance on an occurrence basis against claims for personal injury, death or property damage arising out of or connected with the operations of Owner, Hotel Manager or other occupants of the Unit, indemnifying and protecting Owner and Hotel Manager in such amounts and to such extent as may from time to time be usual and prudent for companies operating or owning similar properties in equivalent locations.

7. Attorneys Fees. If any action or proceeding is commenced by either party to enforce their rights under this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court.

8. Waiver of Trial by Jury. HOTEL MANAGER AND OWNER, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE EXTENT THEY MAY LEGALLY DO SO, HOTEL MANAGER AND OWNER HEREBY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS

WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.

9. Severability. If any provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement (including the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

10. Counterparts, Headings, and Defined Terms. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement. The headings to sections of this Agreement are for convenient reference only and shall not be used in interpreting this Agreement.

11. Time of the Essence. Time is of the essence of this Agreement. Notwithstanding the foregoing, except for the payment of money, Hotel Manager shall be excused from its performance hereunder if arising from acts or events beyond its reasonable control only for so long as Hotel Manager is so prevented thereby from being able to perform its obligations hereunder.

12. Waiver. No waiver by Hotel Manager or Owner of any of the terms or conditions of this Agreement or any of their respective rights under this Agreement shall be effective unless such waiver is in writing and signed by the party charged with the waiver.

13. Unit Owner(s) of Record. If there is more than one record owner of the Unit, or if the Unit is owned by a partnership or corporation, the person or persons signing this Agreement as Owner or on behalf of Owner represent and warrant to Hotel Manager that they are authorized to enter into this Agreement and that this Agreement is and will be binding on all record owners of the Unit. The person to receive any amounts due to Owner hereunder is as follows:

_____ _____

Name (Please Print) Social Security or Tax I.D. Number

_____

Address

_____

City State Zip Code

14. Rules and Regulations. Hotel Manager may, from time to time, prepare rules and regulations relating to the maximum number of occupants of the Unit and activities which may be carried on in the Unit with respect to noise, and such other reasonable rules and regulations as Hotel Manager may feel proper with respect to the Unit.

17. Memorandum of Agreement. This Agreement shall not be recorded by either party to this Agreement; provided, however, Hotel Manager and Owner shall execute a

memorandum of this Agreement in the form attached hereto as Exhibit "D" which memorandum may be recorded by Hotel Manager in the City Register's Office.

18. Brokers. Notwithstanding anything to the contrary herein, Owner shall not engage the services of any broker or other person in connection with the sale, rental or use of the Unit unless he or she is a duly registered real estate broker in the State of New York as confirmed by Hotel Manager.

[CONTINUED ON NEXT PAGE]

This Agreement is signed with Owner's understanding and knowledge of the information contained herein. Owner agrees to comply with the policies and procedures set forth within this Agreement. If this Agreement is altered in any way including additions, deletions or changes made by Owner following execution by Hotel Manager, this Agreement will at Hotel Manager's sole election, become automatically void and of no force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

_____ Day _____ Month _____ Year.

_____
Owner Signature

_____
Owner Signature

_____
Witness Signature

OR

I HEREBY REPRESENT AND WARRANT THAT I AM THE DESIGNATED REPRESENTATIVE FOR ALL OF THE OWNERS OF THE PROPERTY NAMED IN THIS AGREEMENT.

_____
Owners' Designated Representative

Hotel Manager:

FHR (NYC), LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Mandatory Services

EXHIBIT "B"

Optional Services

1) Airport Transportation
2) Car Rental
3) Children's Care Center
4) Rental of China Glass, Silverware and Utensils
5) Golf Club Storage
6) Interior Appliance Maintenance
7) Owner Occupancy/Storage Logistics
8) Parking
9) Room and Banquet Services
10) Domestic Help (Cooks, House Servants and Maid Services)
11) Shopping Services
12) Spa/Treatment Services
13) Telephone Private Line
14) Restaurant Services
15) Room Service
16) Purchasing Services
17) Refurbishing Services
18) Laundry/Dry Cleaning (Non-Linens)
19) Major Maintenance
20) Emergency Repairs
21) Bodyguard/Personal Security Services
22) Such Other Services as Determined by Hotel Manager in Its Discretion

EXHIBIT "C"

Schedule of Rates for Repair and Maintenance of Unit

# EXHIBIT "D"

## FORM OF MEMORANDUM OF UNIT MANAGEMENT AND OPERATION AGREEMENT

(Attached hereto)

Recording Requested by and
When Recorded Mail to:

_____
_____
_____
Attention: _____

---

MEMORANDUM OF UNIT MANAGEMENT AND OPERATION AGREEMENT

This Memorandum of Unit Management and Operation Agreement ("**Memorandum**"), is executed as of the _____ day of _____, by and between FHR (NYC), LLC, a Delaware limited liability company ("**Hotel Manager**"), as agent for Transient Hotel Unit Owner and Hotel Board, and _____ ("**Owner**"). Any capitalized terms not defined herein shall be as defined in that certain Declaration pursuant to Article 9-B of the Real Property Law of the State of New York establishing condominium ownership of the property located at 768 Fifth Avenue (also including One Central Park South), New York, New York 10019, made by CPS 1 Realty LP, as declarant, dated as of March 13, 2006 and recorded in the Office of the Register of the City of New York, New York County (the "**City Register's Office**") on March 23, 2006 as CRFN 2006000164230 (the "**Original Declaration**"), as amended and restated by Amended and Restated Declaration dated as of March 13, 2006 and submitted to the Office of the City Register for recording as Document Number 2006040600067 (the Original Declaration, as so amended, and as the same may have been or may hereafter be further amended from time to time, the "**Declaration**") covering, among other things, the Hotel Section, as described in the Declaration (the "**Project**"), and is as follows:

1. Agreement. Hotel Manager and Owner have entered into that certain Unit Management and Operation Agreement dated as of the date hereof (the "**Agreement**"), in connection with the real property described on Exhibit "A" attached hereto and made a part hereof (the "**Unit**"). All terms and conditions of the Agreement are hereby incorporated herein by reference as if fully set forth herein. Any capitalized terms not defined herein shall be as defined in the Agreement.

2. Term of Agreement. The term of the Agreement shall commence on the date hereof ("**Commencement Date**") and shall continue in perpetuity subject to modifications in accordance with the terms of the Agreement by the parties hereto (or their successors and assigns as provided in the Agreement) (the "**Term**").

3. Binding Effect. Hotel Manager and Owner acknowledge and agree that the provisions of the Agreement (including Hotel Manager's rights and benefits) shall be appurtenant with the land and "run with the Unit", and shall burden the Unit, and benefit the Transient Hotel Unit, during the Term.

4. Purpose. This Memorandum of Unit Management and Operation Agreement is solely for notice and recording purposes and shall not be construed to alter modify, expand, diminish or supplement the provisions of the Agreement. In the event any provision of this Memorandum is inconsistent with any term or condition of the Agreement, the terms or conditions of the Agreement shall prevail.

5. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

6. Successors. The covenants, conditions and agreements made and entered into by the parties hereto shall be binding upon and inure to the benefits of their respective heirs, administrators, executors, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first written above

HOTEL MANAGER:

_____,
a _____

By: _____
Name: _____
Title: _____

OWNER:

_____

## NOTARY ACKNOWLEDGMENT

STATE OF _____ )
)ss.
COUNTY OF _____ )

On _____, before me, _____, Notary Public in and for said County and State, personally appeared _____

_____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature of Notary [Notary Seal]

STATE OF _____ )
)ss.
COUNTY OF _____ )

On _____, before me, _____, Notary Public in and for said County and State, personally appeared _____

_____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature of Notary [Notary Seal]

Exhibit A

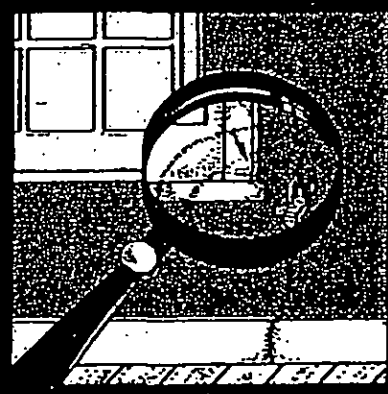
Legal Description

The Condominium Hotel Unit (the "**Unit**") designated and described as Condominium Hotel Unit _____ in the Declaration of the Plaza Condominium (the "**Condominium**") pursuant to Article 9-B of the Real Property Law of the State of New York establishing condominium ownership of the property located at 768 Fifth Avenue (also including One Central Park South), New York, New York 10019, made by CPS 1 Realty LP, as declarant, dated as of March 13, 2006 and recorded in the Office of the Register of the City of New York, New York County (the "**City Register's Office**") on March 23, 2006 as CRFN 2006000164230 (the "**Original Declaration**"), as amended and restated by Amended and Restated Declaration dated as of March 13, 2006 and submitted to the Office of the City Register for recording as Document Number 2006040600067 (the Original Declaration, as so amended, and as the same may have been or may hereafter be further amended from time to time, the "**Declaration**"); and also designated as Tax Lot _____ in Block 1274 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Bureau Department of the City of New York; together with the Unit's _____% undivided percentage interest in the Common Elements of the Condominium.

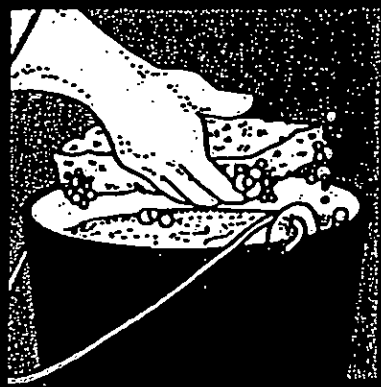
The premises on which the Condominium (and Unit) is located is more particularly described as follows: [Insert legal description of the land.]

**EXHIBIT 16**

LEAD PAINT BOOKLET



# Protect Your Family From Lead In Your Home



EPA United States Environmental Protection Agency

United States Consumer Product Safety Commission

United States Department of Housing and Urban Development

U.S. EPA Washington DC 20460
U.S. CPSC Washington DC 20207
U.S. HUD Washington DC 20410

EPA747-K-99-001
September 2001

## Are You Planning To Buy, Rent, or Renovate a Home Built Before 1978?

Many houses and apartments built before 1978 have paint that contains high levels of lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly.

Federal law requires that individuals receive certain information before renting, buying, or renovating pre-1978 housing:

**LANDLORDS** have to disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure form about lead-based paint.

**SELLERS** have to disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure form about lead-based paint. Buyers have up to 10 days to check for lead.

**RENOVATORS** have to give you this pamphlet before starting work.

**IF YOU WANT MORE INFORMATION** on these requirements, call the National Lead Information Center at **1-800-424-LEAD (424-5323)**.

This document is in the public domain. It may be reproduced by an individual or organization without permission. Information provided in this booklet is based upon current scientific and technical understanding of the issues presented and is reflective of the jurisdictional boundaries established by the statutes governing the co-authoring agencies. Following the advice given will not necessarily provide complete protection in all situations or against all health hazards that can be caused by lead exposure.

# IMPORTANT!

## Lead From Paint, Dust, and Soil Can Be Dangerous If Not Managed Properly

**FACT:** Lead exposure can harm young children and babies even before they are born.

**FACT:** Even children who seem healthy can have high levels of lead in their bodies.

**FACT:** People can get lead in their bodies by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.

**FACT:** People have many options for reducing lead hazards. In most cases, lead-based paint that is in good condition is not a hazard.

**FACT:** Removing lead-based paint improperly can increase the danger to your family.

If you think your home might have lead hazards, read this pamphlet to learn some simple steps to protect your family.

## Lead Gets in the Body in Many Ways

**Childhood lead poisoning remains a major environmental health problem in the U.S.**

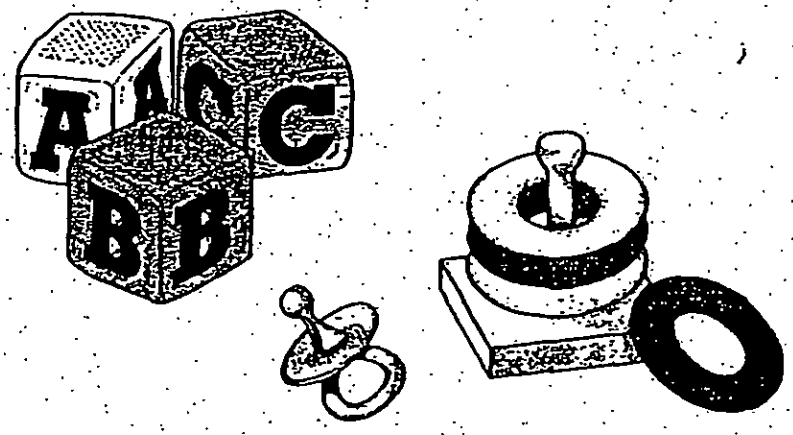
***Even children who appear healthy can have dangerous levels of lead in their bodies.***

**People can get lead in their body if they:**

- Breathe in lead dust (especially during renovations that disturb painted surfaces).
- Put their hands or other objects covered with lead dust in their mouths.
- Eat paint chips or soil that contains lead.

**Lead is even more dangerous to children than adults because:**

- Children's brains and nervous systems are more sensitive to the damaging effects of lead.
- Children's growing bodies absorb more lead.
- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.



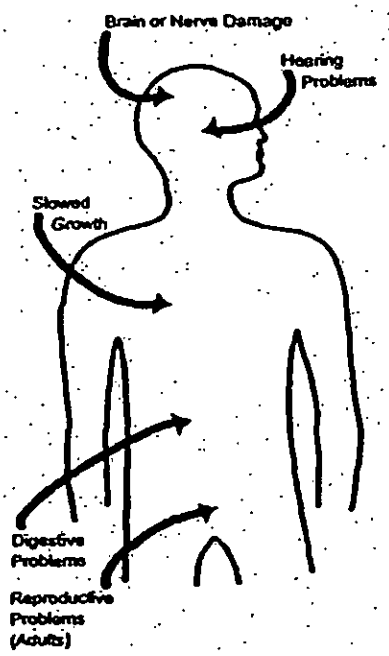
**Lead's Effects**

If not detected early, children with high levels of lead in their bodies can suffer from:

- Damage to the brain and nervous system
- Behavior and learning problems (such as hyperactivity)
- Slowed growth
- Hearing problems
- Headaches

**Lead is also harmful to adults. Adults can suffer from:**

- Difficulties during pregnancy
- Other reproductive problems (in both men and women)
- High blood pressure
- Digestive problems
- Nerve disorders
- Memory and concentration problems
- Muscle and joint pain




***Lead affects the body in many ways.***

## Where Lead-Based Paint Is Found

**In general, the older your home, the more likely it has lead-based paint.**

**Many homes built before 1978 have lead-based paint.** The federal government banned lead-based paint from housing in 1978. Some states stopped its use even earlier. Lead can be found:

- In homes in the city, country, or suburbs.
- In apartments, single-family homes, and both private and public housing.
- Inside *and* outside of the house.
- In soil around a home. (Soil can pick up lead from exterior paint or other sources such as past use of leaded gas in cars.)

## Checking Your Family for Lead

**Get your children and home tested if you think your home has high levels of lead.**

**To reduce your child's exposure to lead, get your child checked, have your home tested (especially if your home has paint in poor condition and was built before 1978), and fix any hazards you may have.** Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect high levels of lead. Blood tests are usually recommended for:

- Children at ages 1 and 2.
- Children or other family members who have been exposed to high levels of lead.
- Children who should be tested under your state or local health screening plan.

Your doctor can explain what the test results mean and if more testing will be needed.

## Identifying Lead Hazards

**Lead from paint chips, which you can see, and lead dust, which you can't always see, can both be serious hazards.**

**Lead-based paint** is usually not a hazard if it is in good condition, and it is not on an impact or friction surface, like a window. It is defined by the federal government as paint with lead levels greater than or equal to 1.0 milligram per square centimeter, or more than 0.5% by weight.

**Deteriorating lead-based paint (peeling, chipping, chalking, cracking or damaged)** is a hazard and needs immediate attention. It may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear, such as:

- Windows and window sills.
- Doors and door frames.
- Stairs, railings, banisters, and porches.

**Lead dust** can form when lead-based paint is dry scraped, dry sanded, or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep, or walk through it. The following two federal standards have been set for lead hazards in dust:

- 40 micrograms per square foot ($\mu g/ft^2$) and higher for floors, including carpeted floors.
- 250 $\mu g/ft^2$ and higher for interior window sills.

**Lead in soil** can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. The following two federal standards have been set for lead hazards in residential soil:

- 400 parts per million (ppm) and higher in play areas of bare soil.
- 1,200 ppm (average) and higher in bare soil in the remainder of the yard.

The only way to find out if paint, dust and soil lead hazards exist is to test for them. The next page describes the most common methods used.

## Checking Your Home for Lead

**Just knowing that a home has lead-based paint may not tell you if there is a hazard.**

You can get your home checked for lead in one of two ways, or both:

- A paint **inspection** tells you the lead content of every different type of painted surface in your home. It won't tell you whether the paint is a hazard or how you should deal with it.
- A **risk assessment** tells you if there are any sources of serious lead exposure (such as peeling paint and lead dust). It also tells you what actions to take to address these hazards.

Hire a trained, certified professional who will use a range of reliable methods when checking your home, such as:

- Visual inspection of paint condition and location.
- A portable x-ray fluorescence (XRF) machine.
- Lab tests of paint, dust, and soil samples.

There are standards in place to ensure the work is done safely, reliably, and effectively. Contact your local lead poisoning prevention program for more information, or call **1-800-424-LEAD** for a list of contacts in your area.

**Home test kits for lead are available, but may not always be accurate.** Consumers should not rely on these tests before doing renovations or to assure safety.

## What You Can Do Now To Protect Your Family

**If you suspect that your house has lead hazards, you can take some immediate steps to reduce your family's risk:**

- **If you rent, notify your landlord of peeling or chipping paint.**
- **Clean up paint chips immediately.**
- **Clean floors, window frames, window sills, and other surfaces weekly.** Use a mop or sponge with warm water and a general all-purpose cleaner or a cleaner made specifically for lead. REMEMBER: NEVER MIX AMMONIA AND BLEACH PRODUCTS TOGETHER SINCE THEY CAN FORM A DANGEROUS GAS.

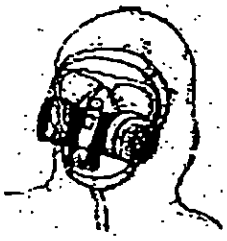
- **Thoroughly rinse sponges and mop heads after cleaning dirty or dusty areas.**
- **Wash children's hands often, especially before they eat and before nap time and bed time.**
- **Keep play areas clean.** Wash bottles, pacifiers, toys, and stuffed animals regularly.
- **Keep children from chewing window sills or other painted surfaces.**
- **Clean or remove shoes before entering your home to avoid tracking in lead from soil.**

- **Make sure children eat nutritious, low-fat meals high in iron and calcium,** such as spinach and dairy products. Children with good diets absorb less lead.

## Reducing Lead Hazards In The Home

**Removing lead improperly can increase the hazard to your family by spreading even more lead dust around the house.**

***Always use a professional who is trained to remove lead hazards safely.***



In addition to day-to-day cleaning and good nutrition:

- You can **temporarily** reduce lead hazards by taking actions such as repairing damaged painted surfaces and planting grass to cover soil with high lead levels. These actions (called "interim controls") are not permanent solutions and will need ongoing attention.
- To **permanently** remove lead hazards, you should hire a certified lead "abatement" contractor. Abatement (or permanent hazard elimination) methods include removing, sealing, or enclosing lead-based paint with special materials. Just painting over the hazard with regular paint is not permanent removal.

Always hire a person with special training for correcting lead problems—someone who knows how to do this work safely and has the proper equipment to clean up thoroughly. Certified contractors will employ qualified workers and follow strict safety rules as set by their state or by the federal government.

Once the work is completed, dust cleanup activities must be repeated until testing indicates that lead dust levels are below the following:

- 40 micrograms per square foot ($\mu g/ft^2$) for floors, including carpeted floors;
- 250 $\mu g/ft^2$ for interior windows sills; and
- 400 $\mu g/ft^2$ for window troughs.

Call your local agency (see page 11) for help with locating certified contractors in your area and to see if financial assistance is available.

## Remodeling or Renovating a Home With Lead-Based Paint

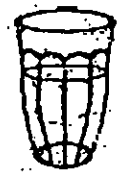
Take precautions before your contractor or you begin remodeling or renovating anything that disturbs painted surfaces (such as scraping off paint or tearing out walls):

- **Have the area tested for lead-based paint.**
- **Do not use a belt-sander, propane torch, heat gun, dry scraper, or dry sandpaper** to remove lead-based paint. These actions create large amounts of lead dust and fumes. Lead dust can remain in your home long after the work is done.
- **Temporarily move your family** (especially children and pregnant women) out of the apartment or house until the work is done and the area is properly cleaned. If you can't move your family, at least completely seal off the work area.
- **Follow other safety measures to reduce lead hazards.** You can find out about other safety measures by calling 1-800-424-LEAD. Ask for the brochure "Reducing Lead Hazards When Remodeling Your Home." This brochure explains what to do before, during, and after renovations.

If you have already completed renovations or remodeling that could have released lead-based paint or dust, get your young children tested and follow the steps outlined on page 7 of this brochure.

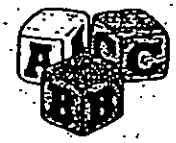
**If not conducted properly, certain types of renovations can release lead from paint and dust into the air.**

## Other Sources of Lead



*While paint, dust, and soil are the most common lead hazards, other lead sources also exist.*

- **Drinking water.** Your home might have plumbing with lead or lead solder. Call your local health department or water supplier to find out about testing your water. You cannot see, smell, or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might have lead in it:
  - Use only cold water for drinking and cooking.
  - Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.
- **The job.** If you work with lead, you could bring it home on your hands or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.



- Old painted **toys** and **furniture.**
- Food and liquids stored in **lead crystal** or **lead-glazed pottery or porcelain.**
- **Lead smelters** or other industries that release lead into the air.

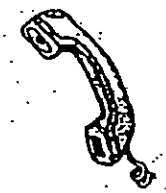
- **Hobbies** that use lead, such as making pottery or stained glass, or refinishing furniture.
- **Folk remedies** that contain lead, such as "greta" and "azarcon" used to treat an upset stomach.

## For More Information

**The National Lead Information Center**

Call **1-800-424-LEAD (424-5323)** to learn how to protect children from lead poisoning and for other information on lead hazards. To access lead information via the web, visit **www.epa.gov/lead** and **www.hud.gov/offices/lead/.**

For the hearing impaired, call the Federal Information Relay Service at **1-800-877-8339** and ask for the National Lead Information Center at **1-800-424-LEAD.**

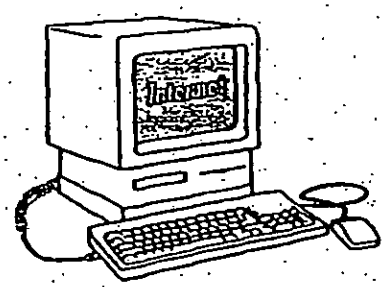


**EPA's Safe Drinking Water Hotline**

Call **1-800-426-4791** for information about lead in drinking water.

**Consumer Product Safety Commission (CPSC) Hotline**

To request information on lead in consumer products, or to report an unsafe consumer product or a product-related injury call **1-800-638-2772**, or visit CPSC's website at: **www.cpsc.gov.**




**Health and Environmental Agencies**

Some cities, states, and tribes have their own rules for lead-based paint activities. Check with your local agency to see which laws apply to you. Most agencies can also provide information on finding a lead abatement firm in your area, and on possible sources of financial aid for reducing lead hazards. Receive up-to-date address and phone information for your local contacts on the Internet at **www.epa.gov/lead** or contact the National Lead Information Center at **1-800-424-LEAD.**

## EPA Regional Offices

Your Regional EPA Office can provide further information regarding regulations and lead protection programs.

**EPA Regional Offices**

**Region 1** (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Regional Lead Contact
U.S. EPA Region 1
Suite 1100 (CPT)
One Congress Street
Boston, MA 02114-2023
1 (888) 372-7341

**Region 2** (New Jersey, New York, Puerto Rico, Virgin Islands)

Regional Lead Contact
U.S. EPA Region 2
2890 Woodbridge Avenue
Building 209, Mail Stop 225
Edison, NJ 08837-3679
(732) 321-6671

**Region 3** (Delaware, Maryland, Pennsylvania, Virginia, Washington DC, West Virginia)

Regional Lead Contact
U.S. EPA Region 3 (3WC33)
1650 Arch Street
Philadelphia, PA 19103
(215) 814-5000

**Region 4** (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Regional Lead Contact
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-8998

**Region 5** (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Regional Lead Contact
U.S. EPA Region 5 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604-3666
(312) 886-6003

**Region 6** (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Regional Lead Contact
U.S. EPA Region 6
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733
(214) 665-7577

**Region 7** (Iowa, Kansas, Missouri, Nebraska)

Regional Lead Contact
U.S. EPA Region 7
(ARTD-RALI)
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7020

**Region 8** (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Regional Lead Contact
U.S. EPA Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466
(303) 312-6021

**Region 9** (Arizona, California, Hawaii, Nevada)

Regional Lead Contact
U.S. Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-4164

**Region 10** (Alaska, Idaho, Oregon, Washington)

Regional Lead Contact
U.S. EPA Region 10
Toxics Section WCM-128
1200 Sixth Avenue
Seattle, WA 98101-1128
(206) 553-1985

## CPSC Regional Offices

Your Regional CPSC Office can provide further information regarding regulations and consumer product safety.

**Eastern Regional Center**
Consumer Product Safety Commission
201 Varick Street, Room 903
New York, NY 10014
(212) 620-4120

**Western Regional Center**
Consumer Product Safety Commission
1301 Clay Street, Suite 610-N
Oakland, CA 94612
(510) 637-4050

**Central Regional Center**
Consumer Product Safety Commission
230 South Dearborn Street, Room 2944
Chicago, IL 60604
(312) 353-8260

## HUD Lead Office

Please contact HUD's Office of Healthy Homes and Lead Hazard Control for information on lead regulations, outreach efforts, and lead hazard control and research grant programs.

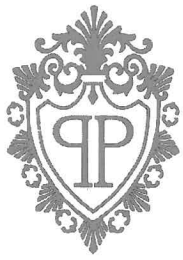
**U.S. Department of Housing and Urban Development**
Office of Healthy Homes and Lead Hazard Control
451 Seventh Street, SW, P-3206
Washington, DC 20410
(202) 755-1785

# Simple Steps To Protect Your Family From Lead Hazards

## If you think your home has high levels of lead:

- Get your young children tested for lead, even if they seem healthy.
- Wash children's hands, bottles, pacifiers, and toys often.
- Make sure children eat healthy, low-fat foods.
- Get your home checked for lead hazards.
- Regularly clean floors, window sills, and other surfaces.
- Wipe soil off shoes before entering house.
- Talk to your landlord about fixing surfaces with peeling or chipping paint.
- Take precautions to avoid exposure to lead dust when remodeling or renovating (call 1-800-424-LEAD for guidelines).
- Don't use a belt-sander, propane torch, heat gun, dry scraper, or dry sandpaper on painted surfaces that may contain lead.
- Don't try to remove lead-based paint yourself.

Recycled/Recyclable
Printed with vegetable oil based inks on recycled paper (minimum 50% postconsumer) process chlorine free.



The Plaza

HOTEL RESIDENCES

ELAD

PROPERTIES