

BY-LAWS

OF

WEST GATE HOUSE, INC.

Purpose of Business

Section 1: Purpose: The primary purposes of the Corporation is to provide residences for shareholders who shall be entitled, solely by reason of their ownership of shares, to proprietary leases for units in the building owned by the Corporation.

ARTICLE II

Meetings of Shareholders

Section 1: Annual Meetings: The first annual meeting of the shareholders of the Corporation, for the election of directors and for such other business as may properly come before said meeting, shall be held within 30 days after the closing under the Plan of Cooperative Organization for the Corporation, and subsequent annual meetings shall be held on the 1st day of May in each year, commencing with the year following the year in which the first annual meeting is held. Such meetings shall be in the State of New York, at such time and place as shall be determined by the Board of Directors. Written notice of each meeting shall be given to all shareholders.

Section 2: Special Meetings: Special Meetings of shareholders, may be called at any time by the president or secretary or by a majority of the Board of Directors. It shall also be the duty of the secretary to call such meetings whenever requested in writing so to do by shareholders owning at least twenty-five percent of the outstanding shares of the Corporation. The secretary shall cause a notice of such special meeting stating the time, place and object thereof and the officer or other persons by whom the meeting is called, to be delivered personally or mailed as provided in Section 1 of this Article to each shareholder of record of the Corporation.

Section 3: Waiver of Notices: The notice provided for in the two foregoing sections is not indispensable but any shareholders' meeting shall be valid for all purposes if all the outstanding shares of the Corporation are represented there at in person or by proxy, or if a quorum is present, and waiver of notice of such meeting shall be duly executed in writing by such shareholders as are not so represented and were not given such notice.

Section 4: Quorum: At each meeting of shareholders, shareholders, in person or by proxy, holding a majority of the shares then issued and outstanding shall constitute a quorum. In case a quorum shall not be present at any meeting, the holders of a majority of the shares represented may adjourn the meeting to some future time and place. No notice of the time and place of the adjourned meeting need be given other than by announcement of the meeting.

Section 5: Voting: (a) At each meeting of shareholders each shareholder present in person or by proxy shall be entitled to one vote for each share registered in his name. The proxies shall be in writing duly signed by the shareholder. Voting by shareholders shall be voice vote unless any shareholder present at the meeting, in person or by proxy, demands a vote by written ballot, in which case the voting shall be by ballot.

(b) No proxy shall be valid after eleven (11) months from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided in BCL Section 609.

(c) Without limiting the manner in which a shareholder may authorize another person or persons to act for him as proxy pursuant to subparagraph (a) of this Section, the following shall constitute a valid means by which a shareholder may grant such authority.

(1) A shareholder may execute a writing authorizing another person or persons to act for him as proxy, for corporate, partnership, limited liability company or other non-individual shareholder. Execution may be accomplished by the shareholder's authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing. Where two (2) or more co-shareholders hold individual interest in the shares allocated to a single apartment, the signature of one of the co-shareholders on the proxy shall be sufficient unless, prior to the meeting in which the proxy is utilized, the Corporation receives a written notification from the other co-shareholder(s) that no proxy shall be valid for such shares unless all such co-shareholders execute such proxy, in which event only proxies executed by all co-shareholders shall be valid until such notice is revoked in writing. For all shareholders, execution may be accomplished by causing such signatures affixed by any reasonable means, including, but limited to facsimile signature.

(2) A shareholder may also authorize another person or persons to act for the shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or the managing agent for the Corporation who shall be deemed to be the agent duly authorized by the person and who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be reasonably determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the nature of the information upon which they relied.

Section 6: Inspectors of Election:

Inspectors of election shall not be required to be appointed at any meeting of shareholders unless requested by a shareholder present in person or by proxy who is entitled to vote at such meeting. Upon the making of such request, one or more inspectors shall be appointed or selected as provided in Section 610 of the Business Corporation.

Section 7: Order of Business: So far as consistent with the purpose of the meeting, the order of business of each meeting of shareholders shall be as follows:

1. Call to order.
2. Presentation of proofs of due calling of the meeting.
3. Roll call and presentation and examination of proxies.
4. Reading of minutes of previous meeting or meetings, unless waived.
5. Reports of officers and committees.
6. Appointment or election of inspectors of election, if requested.
7. If the annual meeting or a special meeting called for that purpose, the election of directors.
8. Unfinished business.
9. New business.
10. Adjournment.

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Section 8. Notice to Shareholders: Notwithstanding the provisions of Article II, Sections 1 and 2, all notices sent to the shareholders shall be deemed duly given if in writing and sent by one of the following methods:

- (i) Telefacsimile transmittal to the shareholder at such shareholder's telefacsimile machine in his or her principal place of business or residence with an additional copy sent by regular mail addressed to the address to which maintenance bills are sent; or
- (ii) Personally delivered to the principal place of business or residence of the shareholder and a receipt signed by an adult at such address is receivable or an affidavit is executed by the messenger attesting to such delivery; or
- (iii) Sent by overnight delivery/courier service to the residence of such shareholder or to that shareholder's principal place of business and a receipt signed by an adult at such address is received.

Section 9. Record Date. (a) For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of any other action, the Secretary of the Corporation may fix, in advance, a date as the record date for any such determination of shareholder. Such date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action; and not more than ten (10) days nor less than one (1) day prior to the date on which the notice of meeting is set to the shareholders of the Corporation;

(b) if no record date is fixed:

- (i) The record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the date next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held;
- (ii) The record date for determining shareholders for any purpose other than that specified in subparagraph (i) shall be at the close of business on the day on which the resolution of the board relating thereto is adopted.

(c) All shareholders of record on the record date, shall be entitled to notice of each meeting of shareholders. Notice of any meeting need not be given to any shareholder who attends such meeting in person or by proxy, without protecting lack of notice prior to the commencement of such meeting, nor to any personal who may become a shareholder of record after the shareholder record date.

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(d) When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the board fixes a new record date under this section for the adjourned meeting.;

(e) Notice of the date of any adjournment meeting of shareholders of any adjourned meeting of shareholders need not be given to shareholders unless otherwise required by statute.

Section 10. Cumulative Voting for Directors; Restriction on Voting:

(a) In all elections of directors to the Corporation, each shareholder shall be entitled to as many votes as shall equal the number of votes which (except for these provisions) he would be entitled to cast for the election of directors with respect to his shares, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or distribute them among the number to be voted for, or any two or more of them, as he may see fit.

(b) Holders of Unsold Shares shall be entitled to appoint directors to the Board as follows:

- (i) If the Holders of Unsold Shares in the aggregate hold shares allocated to 33 or more Apartments – 3 directors;
- (ii) If the Holders of Unsold Shares in the aggregate hold shares allocated to less than 33 Apartments, but more than 23 Apartments – 2 directors;
- (iii) If the Holders of Unsold Shares in the aggregate hold shares allocated to less than 24 – Apartments, but more than 6 Apartments - 1 director; and
- (iv) If the Holders of Unsold Shares in the aggregate hold shares allocated to less than 7 Apartments – no directors.

(c) The Holders of Unsold Shares shall not vote for any nominee for the Board of Directors other than the appointees permitted by subparagraph (b) above.

Section 1. Number: The number of Directors of the Corporation shall be fixed at nine (9), each to serve a one (1)-year term and that this provision cannot be further amended without the consent of the Holder(s) of Unsold Shares unless and until the Holder(s) of Unsold shares own, in the aggregate, the Shares of the Corporation allocated to less than seven (7) apartments.

Section 2: Election: The Directors shall be elected at the annual meeting of shareholders or at a special meeting called for that purpose by a plurality of votes cast at such meeting, and thereafter until their respective successors are elected and qualify. It shall not be necessary for a director of this Corporation to be a shareholder.

Section 3: Quorum: A majority of the Directors shall constitute a quorum.

Section 4: Vacancies: Vacancies in the Board of Directors resulting from death, resignation or otherwise may be filled without notice to any of the shareholders by a vote of a majority of the remaining directors present at the meeting at which such election is held even though no quorum is present, which may be at any regular meeting of the Board of Directors or any special meeting thereof called for such purpose.

Section 5: Regular Board Meetings: The Board of Directors shall meet no less often than six (6) times each calendar year. If the Board has not convened a meeting within the past sixty (60) days any Board member may call for a meeting on not less than five (5) business days notice to all other members. No Board meeting shall be scheduled or called for a Friday after 3:00 p.m. or for Saturday, Sunday or a legal or religious holiday without the consent of all other Board members.

Section 6. Resignation and Removal :

(a) Any director may resign at any time by written notice to the president or secretary of the Corporation. Such resignation shall take effect at the time specified therein.

(b) Any director who ceases to be as shareholder or a member of a shareholder's Immediate Family or roommate pursuant to Real Property Law Section 331(F) or the officer of a corporate shareholder or a member of a limited liability shareholder or a trustee of a shareholder which is a trust or a partner of a shareholder which is a partnership shall be deemed to tender his or her resignation as of the date that such shareholder transferred the remaining shares of the Corporation which were standing in the shareholders name. Such resignation shall take effect immediately.

(c) Any director may be removed from office with or without cause by the shareholders of the Corporation at a meeting duly called for that purpose, provided that no director may be removed when the votes cast against his or her removal would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes cast and the entire Board were then being elected.

Section 7: Annual Cash Requirements: The Board of Directors shall, from time to time, determine the cash requirements as defined in the Corporation's proprietary lease. The Board of Directors shall have discretionary power to prescribe the manner of maintaining and operating the property of the Corporation. Every such determination by the Board of Directors shall be final and conclusive as to all shareholder-tenants.

Section 8: House Rules: The Board of Directors may from time to time, adopt and amend such house rules as it may deem necessary in respect to the building of the Corporation for the health, safety and convenience of the shareholder-tenants. Copies thereof and of changes therein shall be furnished to each shareholder-tenant.

Section 9: Executive Committee and Other Committees: The Board of Directors may by resolution appoint an Executive Committee, and such other committees as it may deem appropriate, each to consist of one or more directors of the Corporation. Such committees shall have such of the powers of the Board in the management of the business and affairs of the Corporation as may be established by resolution of the Board of Directors, except that no committee shall have power to determine the cash requirements defined in the proprietary lease, or to fix the rent to be paid under the proprietary leases, or to vary the terms of payment thereof as fixed by the Board.

(b) Prohibited Action: No Committee of the Board of Directors shall have the power to undertake any of the following action:

- i. Raise the maintenance;
- ii. Declare a special assessment;
- iii. Amend these Bylaws;
- iv. Vote to liquidate the Corporation;
- v. Approve the borrowing of funds in excess of \$100,000 in any one (1) year;
- vi. Approve the mortgaging or remortgaging of any real property owned by the Corporation; or
- vii. Approve the sale, lease for more than three (3) years or any option to sell or lease any interest in any real property owned by the Corporation.

Section 10: Distributions: The shareholder-tenants shall not be entitled to receive any distribution not out of earnings and profits of the Corporation, except upon partial or complete liquidation.

Section 11. Meetings of the Board of Directors:

(a) Each member of the Board of Directors is expected to attend the regularly scheduled meetings of the Board. Promptly after the Annual Shareholders' Meeting, the Board shall establish a calendar of the next twelve (12) regular monthly meetings on dates and at times reasonably convenient to all Board members. The regularly scheduled Board meetings shall take place on Monday to Thursday evenings and shall commence not earlier than 6:30 p.m. All regularly scheduled Board meetings shall be held in the Building either in the basement of 870 West 181<sup>st</sup> Street, New York, New York or in an apartment of a Board member as specified in the calendar of meetings. No further notice of the date, location and time of each regularly scheduled meeting need be given the Directors, unless the time, date or location of the meeting is changed.

(b) Much of the business of the Board of Directors involves confidential information about the Corporation or its shareholders. The Board shall adopt and from time-to-time revise a privacy policy concerning personal and financial information of shareholders and distribute it to all shareholders.

(c) At the discretion of the President of the Corporation, other shareholders, the managing agent, counsel for the Corporation, the independent accountant for the Corporation, engineers, architects, vendors and representatives of shareholders and Directors may be permitted to attend all or portions of Board of Directors' meetings. However, any and all such persons may be excluded from all or portions of Board of Directors meetings as the President shall determine to facilitate a free and frank discussion of issues among all Directors and to protect the confidentiality of information provided to the Board.

Section 12. Action by the Board without a Meeting:

(a) An action required or permitted to be taken by the Board of Directors or an any committee thereof may be taken without a meeting if all members of the Board or of the committee consent in writing to the adoption of a resolution authorizing the action.

(b) The resolutions and the written consents thereto by the members of the Board or of the committee, as the case may be, shall be filed with the minutes of the proceedings of the Board or of the committee.

Section 13. Meeting by Telephone Conference. One or more of the members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or committee by means of a conference telephone or similar communications equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.



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Section 14. Directors Compensation: No Director, by virtue of his office as such, at any time, shall receive any salary or compensation for his services as such Director, unless and until the same shall have been duly authorized in writing, or by affirmative vote taken at a duly held shareholder's meeting by the record holders of at least eighty (80%) percent of the then issued and outstanding shares of the Corporation.

Section 15. Contracts and Transactions of the Corporation: No contract or other transaction between the Corporation and any one or more of its Directors or any other corporation, firm, association or other entity in which one or more of its Directors are Directors or officers, or are financially interested, shall be void or voidable for this reason alone or by reason alone that such Director or Directors are present at the meeting of the Board, or of a Committee thereof, which approves such contract or transaction, or that his or their votes are counted for such purpose, provided that the provisions of Section 713 of the Business Corporation Law are complied with.

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## Officers

Section 1: Election and Removal: The officers of the Corporation shall be a president, one or more vice presidents, a secretary and a treasurer. Such officers shall be elected by the Board of Directors and shall serve until removed or until their successors shall have been elected. The Board of Directors may from time to time appoint one or more assistant secretaries and one or more assistant treasurers to hold office at the pleasure of the Board. Any officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the directors.

Section 2: Duties of the President and Vice President: The president shall preside at all meetings of the stockholders and of the Board of Directors. The president or any vice president shall sign in the name of the Corporation all contracts, leases and other instruments which are authorized from time to time by the Board of Directors. The president shall perform all the duties incidental to the office. In the absence or inability of the president to act, any vice president shall have the powers and perform the duties of the president.

Section 3: Duties of the Treasurer: The treasurer shall have the care and custody of all funds and securities of the Corporation, and shall deposit such funds in the name of the Corporation in such bank or trust companies as the directors may determine, and he shall perform all other duties incidental to his office.

Within three months after the end of each fiscal year, the treasurer shall cause to be transmitted to each shareholder-tenant an annual report of operations and balance sheet of the Corporation which shall be certified by an independent Certified Public Accountant.

In the absence or inability of the treasurer, the assistant treasurer if any, shall have all the powers and perform all the duties of the treasurer.

Section 4: Duties of Secretary: The secretary shall keep the minutes of the meetings of the Board of Directors and of the meetings of shareholders; he shall attend to the giving and serving of all notices of the Corporation and shall be empowered to affix the corporate seal to all written instruments authorized by the Board of Directors or these By-Laws. He shall also perform all other duties incidental to his office.

Section 5. Assistant Secretary and Assistant Treasurer: The assistant secretaries and the assistant treasurers may sign with the president or vice-president, certificates representing shares of the Corporation and shall have signatory powers with regard to bonds, notes, checks and other monetary instruments as the Board by resolution may authorize. The assistant secretaries and the assistant treasurers shall have such other powers and shall perform such other duties as may be assigned to them by the Board of Directors, the president or by the secretary or treasurer, respectively. In the absence or disability of the secretary or the treasurer, the assistant secretary or the assistant treasurer, respectively, shall perform all their duties and exercise all their powers.

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Section 6. Officer's Compensation: No salary or other compensation shall be paid to any officer of the Corporation for services rendered as such officer unless and until, the same shall have been authorized in writing, or by affirmative vote taken at a meeting of shareholders called for that purpose, by the shareholders of record of at least eighty (80%) percent of the then issued and outstanding shares of the Corporation.

Section 7. Right of First Refusal:

(a) No Shareholder may sell any shares of the Corporation held by such Shareholder, or any interest therein, or any interest in the appurtenant Proprietary Lease except by complying with the following provisions:

- (i) Any Shareholder who receives a bona fide offer (hereinafter called an "Outside Offer") for the sale of any interest in his or her Shares and Proprietary Lease, which he intends to accept, shall give notice to the Board of Directors of such offer and of such intention, together with a fully executed duplicate original of the contract of sale of such interest in the Shares and Proprietary Lease, a description of the terms of the proposed transaction and such other information as the Board of Directors may reasonably require, and shall offer to sell such interest in the Shares and Proprietary Lease to the Corporation or its designees, on the same terms and conditions as contained in such Outside Offer. The giving of such notice shall constitute a warranty and representation by the Shareholder who has received such offer, to the Board of Directors, (i) that such Shareholder believes the Outside Offer to be bona fide in all respects; (ii) the contract of sale submitted to the Board of Directors is a true and complete counterpart and that there are no other understandings or agreements between the selling shareholder and such Outside Offeree; and (iii) that all information supplied to the Board of Directors is true and correct as of the date of submission and the date the Shares and Proprietary Lease, or an interest therein, conveyed to the Outside Offeror.
- (ii) Within twenty (20) days after receipt of such notice and all requested reference material, the Board of Directors may elect, by notice to such Shareholder, (x) to purchase Shares and Proprietary Lease, or an interest therein, (or to cause the same to be purchased by its designee, corporate or otherwise), on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the offering; (y) to produce a purchaser who will purchase such Shares and Proprietary Lease, or an interest therein, on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the offering Shareholder; or (z) to

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waive such right of first refusal;

- (iii) In the event the Board of Directors shall elect to purchase such Shares and Proprietary Lease, or an interest therein, or to cause the same to be purchased by its designee, corporate or otherwise, title shall close at the office of the transfer agent for the Corporation in accordance with the terms of the offer, but not less than seventy (70) days after the giving of notice by the Board of Directors of its election to accept such offer. At the closing, the Shareholder shall convey the Shares and Proprietary Lease, or the offered interest therein, to the Corporation or its designee, by surrendering the Certificate for the Shares, the Shareholder's duplicate counterpart of the Proprietary Lease and all transfer documents routinely required by such transfer agent and all tax returns, each duly executed with certified or bank checks for the payment of all taxes and/or all transfer stamps affixed, and shall pay all New York City Real Property Transfer taxes and all other taxes arising out of such sale and all fees due the Corporation, its transfer agent and the managing agent pursuant to the Corporation's Bylaws, the Certificate of Incorporation and/or the Proprietary Lease. The shareholder shall convey the Shares and Proprietary Lease (or offered interest therein) free of all liens, encumbrances, or rights of others, except as expressly set forth in the contract of sale submitted to the Board of Directors;
- (iv) In the event the Board of Directors or its designee shall fail to accept such Outside Offer or to produce a purchaser within twenty (20) days as aforesaid or shall fail to act within said twenty (20) day period, the offering Shareholder shall be free to sell such interest in the Shares and Proprietary Lease, within ninety (90) days after the expiration of the period in which the Board of Directors or its designee might have accepted such offer, to the Outside Offeror, on the terms and conditions set forth in the notice from the offering Shareholder to the Board of Directors of such Outside Offer; provided, however, nothing contained in this Paragraph iv shall diminish, modify or eliminate the obligation of the offering Shareholder to obtain the consent of the Board of Directors to the transfer to such prospective purchaser pursuant to Paragraph 16 of the Proprietary Lease and the failure to exercise this right of first refusal shall not be deemed a consent to such transfer or a waiver of rights of the Corporation to approve same pursuant to such Paragraph 16 of the Proprietary Lease;
- (v) In the event the offering Shareholder shall not, within such ninety

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(90) day period, sell the Shares and Proprietary Lease, to the Outside Offeror on the terms and conditions contained in the Outside Offer, then should such offering Shareholder thereafter elect to sell the Shares and Proprietary Lease to the same or another Outside Offeror on the same or other terms and conditions, the offering Shareholder shall be required to again comply with all of the terms and provisions of this Section 7.

- (vi) Any purported sale of any interest in any Shares or Proprietary Lease in violation of this Section 7 shall be voidable at the election of the Board of Directors;
- (vii) This Right of First Refusal shall also be binding upon the holder of any lien upon the Shares and Proprietary Lease of any Shareholder and shall be in addition to any rights of the parties under Paragraph 16 and/or 17 of the Proprietary Lease or under any recognition or other agreement between the Corporation and/or the Shareholder and such lienholder. This Right of First Refusal shall apply to any foreclosure sale or transfer as well as to any subsequent sale or transfer of any interest in the Shares and Proprietary Lease by the holder of any lien.

(b) Certificates representing shares of the Corporation issued after *[the date of the passage of this provision]* shall bear the following legend, in addition to the legend required by Article VI Section 6 above:

(c) The foregoing right of first refusal shall not apply to sales by 860/870 Realty Corp. to "Bona Fide Purchasers" as such term is defined in Attorney General Regulation Section 18.3.

*"The Shares represented by this Certificate are subject to a right of first refusal held by the Corporation pursuant to the provisions of Article (VI), Section 7 of the Bylaws of the Corporation. These Shares may not be transferred unless any consent required by Article V, Section 2 of the Bylaws has been obtained. These shares may not be sold to a third party unless the right of first refusal set forth in Article VI, Section 7 of the Bylaws has been waived or the time period in which it may be exercised has expired."*

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Section 1: Form of Lease: The Board of Directors shall adopt a form of proprietary lease to be used by the Corporation for the leasing of all units and other space in the building of the Corporation to be leased to shareholder-tenants.

After a proprietary lease in the form so adopted by the Board of Directors shall have been executed and delivered by the Corporation, all proprietary leases (as distinct from the house rules) subsequently executed and delivered shall be in the same form, except with respect to the statement as to the number of shares owned by the lessee, the use of the premises and the date of the commencement of the term, unless any change or alteration is approved by tenant-shareholders owning at least two-thirds of the shares of the Corporation then issued and outstanding.

Section 2: Assignment: Proprietary leases shall be assigned or transferred only in compliance with the terms, conditions or provisions of such proprietary leases. A duplicate original of each proprietary lease shall be kept on file in the principal office of the Corporation or with the managing agent. Following any assignment of shares and the proprietary lease allocated thereto for an apartment occupied by a non-purchasing tenant in occupancy prior to the date of presentation of the offering plan to convert the building to cooperative ownership, the Secretary of the Apartment Corporation shall serve the non-purchasing tenant with notice advising such tenant of the assignment of the shares and proprietary lease for his or her apartment including the identity of the purchaser of the shares.

Section 3: Allocation of Shares: The Board of Directors shall allocate to each unit or other space in the building of the Corporation the number of shares of the Corporation which must be owned by the proprietary lessee of such unit or other space.

Section 4: Assignment of Lease and Transfer of Shares: No assignment of any lease or transfer of the shares of the Corporation shall take effect until a proper assignment has been delivered to the Corporation; the assignee has assumed and agreed to perform and comply with all the covenants and conditions of the assigned lease or has entered into a new lease for the remainder of the term; all shares of the Corporation appurtenant to the lease have been transferred to the assignee; all sums due have been paid to the Corporation; and all necessary consents, which shall not be unreasonably withheld, have been properly obtained. The action of the Board of Directors with respect to the written application for consent of a proposed assignment or subletting must be made within 30 days after receipt of said written application.

Where the Sponsor named in the Plan of Cooperative Organization or a nominee of the Sponsor or a Holder of Unsold Shares or a purchaser for investment or resale is a lessee, then consent to an assignment or transfer of his lease and the shares appurtenant thereto will not be required.

Section 5: Fees on Assignment: The Board of Directors shall have authority before an assignment or sublet of a proprietary lease or reallocation of shares takes effect as lessor, to fix a reasonable fee to cover actual expenses and attorneys' fees of the Corporation, a service fee of the Corporation and such other conditions as it may determine, in connection with each such proposed assignment or sublet. This provision shall not apply to the Sponsor or a nominee of the Sponsor or a Holder of Unsold Shares.

Section 6: Lost Proprietary Leases: In the event that any proprietary lease is lost, stolen, destroyed or mutilated, the Board of Directors may authorize the issuance of a new proprietary lease in lieu thereof, in the same form and with the same terms. The Board may, in its discretion, require the owner thereof to make an affidavit setting forth such facts as to the loss, destruction or mutilation as it deems necessary, and to give the Corporation a bond in such reasonable sum as it directs, to indemnify the Corporation.

Section 7: Regrouping of Space: The Board of Directors, upon the written request of the owner of one or more proprietary leases covering

one or more units in the building and of the shares issued to accompany the same, may in its discretion, permit such owner at his expense A: (1) to subdivide any unit; (2) to combine any such units into one unit; and (3) to reallocate the shares issued to accompany the proprietary lease, but the total number of shares so reallocated shall not be less than the number of shares previously allocated to the unit or units involved; and, in connection with any such regrouping, the Board of Directors may require that the number of shares allocated to the resulting unit or units be greater than the number of shares allocated to the original unit or units, and may authorize the issuance of shares from its treasury for such purpose; or B: to incorporate one or more rooms, or other spaces in the building not covered by any proprietary lease, into one or more units covered by a proprietary lease, and in allocating shares to any such resulting unit, shall determine the number of shares from its treasury to be issued and allocated in connection with the appropriation of such additional space.

In respect of units for which the proprietary lease and shares issued are owned by the Sponsor named in the Plan of Cooperative Organization or the Sponsor's Nominee or the Sponsor's Assignee (who while entitled to occupy any such units for his personal use does not do so), such Sponsor, Nominee, or Assignee may change the number of such units by increasing or decreasing their size, or change the size, layout or location of any such unit; and such Sponsor, Nominee, or Assignee shall have the right to reallocate the shares allocated to any of the units offered for sale under said Plan provided that such reallocation does not cause any increase or decrease in the total number of shares attributable to the unit or units, or the total number of shares attributable to all of the units as reflected in said Plan.

Upon any regrouping of space in the building, the proprietary leases so affected and the accompanying share certificates shall be surrendered, and there shall be executed and delivered in place thereof, respectively, a new proprietary lease for each separate unit involved, and a new certificate for the number of shares so reallocated to each new proprietary lease.

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Section 8: Fees on Subletting:

(a) Paragraph 15 of the Proprietary Lease grants to the Board of Directors (and, in specific instances, the Shareholders) the power to approve, in writing, request(s) for subletting apartments. Such Paragraph 15 specifically empowers the Board of Directors, in its sole discretion, to establish limits and conditions on any sublet permitted by the Board of Directors.

(b) The Board of Directors shall, pursuant to Paragraph 15 of the proprietary lease, have the authority before a sublet shall take effect against the Corporation, as lessor, to fix (i) a reasonable fee to cover actual expenses and attorney's fees of the Corporation; and (ii) a service fee of the Corporation; and (iii) a fee for the granting of the privilege to sublet in such amount, and to be calculated in such manner, as the Board of Directors, in its sole discretion, determines, and the Board of Directors may establish such other conditions as it, in its sole discretion, may determine, in connection with each such proposed sublease.

(c) No fee shall be charged any shareholder for any sublease in existence on August 1, 2005 or for any leasehold or occupancy rights for a subtenant who is subject to Rent Control or Rent Stabilization as of August 1, 2005.

Section 9. New Space for which shares are allocated:

(a) The Board of Directors may, in its discretion, authorize the conversion of space in the Building not covered by a Proprietary Lease into space suitable for the primary purposes of the Corporation as set forth in the Certificate of Incorporation, allocate theretofore unissued shares to such space, and authorize the execution of a Proprietary Lease or leases covering such space. The number of such new shares allocated to such additional space shall bear a reasonable relationship to the fair market value of the Building attributable to such new space, as reasonably determined by the Board of Directors.

(b) In addition, as set forth in Paragraph 7(c) of the Proprietary Lease, additional shares may be allocated to certain terrace, balcony, roof and rear yard areas if additional "permanent enclosures" are constructed in such Exclusive Area(s).



ARTICLE VI  
Capital Shares

Section 1: Shares: No shares shall be issued except with the delivery by the Corporation of a proprietary lease of a unit in the building owned by the Corporation. The ownership of shares shall entitle the holder thereof to occupy the unit, subject to the provisions contained in the proprietary lease appurtenant thereto. Amended 11-205

Section 2: Form and Share Register: Certificates of the shares of the Corporation shall be in the form adopted by the Board of Directors, and shall be signed by the president or a vice president and the secretary or an assistant secretary or the treasurer or an assistant treasurer, and sealed with the seal of the Corporation, and shall be numbered in the order in which issued. Certificates shall be issued in consecutive order and there shall be recorded the name of the person holding the shares, the number of shares and the date of issue. Each certificate exchanged or returned to the corporation shall be cancelled, and the date of cancellation shall be indicated thereon and such certificates shall be retained in the Corporate records.

Section 3: Issuance of Certificates: Shares shall be issued in the amount allocated by the Board of Directors to the unit or other space described in such proprietary lease and shall be represented by a single certificate.

Section 4: Transfers: Transfers of shares shall be made upon the books of the Corporation only by the holder in person or by power of attorney, and on the surrender of the certificate for such shares, except that shares sold by the Corporation to satisfy any lien which it or any secured party holds thereon may be transferred without the surrender of the certificate representing such shares.

Section 5: Units of Issuance: Except as otherwise provided in Article V, Section 7, the shares appurtenant to each proprietary lease shall not be sold or assigned except as an entirety.

Section 6. Corporation Lien: The Corporation shall at all times have a first lien upon the shares owned by each shareholder for all indebtedness and obligations owing and to be owing by such shareholder to the Corporation, either arising under the provisions of any Proprietary Lease issued by the Corporation and at any time held by such shareholder, as lessee, or otherwise arising to the Corporation. Unless and until such shareholder, as lessee, shall be in default in the payment of any of the rental or in the performance of any of the covenants or conditions of such Proprietary Lease, and/or unless and until such shareholder shall default in the payment of any indebtedness or obligation owing by such shareholder in the Corporation otherwise arising, such shares shall continue to stand in the name of the shareholder upon the books of the Corporation, and the shareholder shall be entitled to exercise the right to vote thereon as though said lien did not exist. The Corporation shall have the right to issue to any purchaser of such shares upon the enforcement by the Corporation of such lien, or to the nominee of such purchaser, a certificate of the shares so purchased substantially of the tenor of the certificate issued to such defaulting shareholder, and thereupon the certificate for such shares theretofore issued to such defaulting shareholder shall become void and such defaulting shareholder agrees to surrender such last mentioned certificate to the Corporation upon the latter's demand, but the failure of such defaulting shareholder to so surrender such certificate shall not affect the validity of the certificate issued in replacement thereof. The Corporation may refuse to consent to the transfer of shares of any shareholder indebted to the Corporation unless and until such indebtedness is paid.

Section 7. Fees on Transfer: Subject to the provisions of the Proprietary Lease, the Board of Directors shall have authority to fix by resolution and to collect, before the transfer of any shares, or assignment of any rights to acquire the shares or the refinancing of any loan which is a lien on any shares or the creation of any new lien on the shares, reasonable fees to cover the Corporation's expenses and attorneys' fees in connection with such proposed transfer.

Section 8. Flip Fee:

(a) The Corporation shall collect a transfer fee (the "Transfer Fee") in connection with any assignment of Proprietary Leases and transfer of Shares of the Corporation (such transfer or assignment being hereinafter referred to as a "Resale")

(b) The Transfer Fee shall be equal to three (3%) percent of the "gross consideration" received by the seller or assignor, or paid on account of, or at the direction of, the seller or assignor, in connection with the Resale. The term "gross consideration" shall mean the value of all consideration (whether cash, promissory note, bond, letter of credit, tangible or intangible personal property or otherwise) received by the seller or assignor or transferred or paid at the seller's or assignor's direction or for his benefit. Any consideration received for personal property or fixtures located in the apartment of the seller or assignor or owned by the seller or assignor and transferred either simultaneously with the Proprietary Lease and Shares or in connection therewith, shall automatically be deemed to be a portion of the "gross consideration".

(c) Any dispute or question concerning the amount or calculation of the gross consideration received or paid on a Resale or the amount of the Transfer Fee due the Corporation shall be determined by the majority vote of the members of the Board of Directors of the Corporation, whose decision shall be conclusive and binding on the Corporation, its managing agent and transfer agents, the shareholders of the Corporation, and seller or assignor and his purchaser or assignee.

(d) The Transfer Fee be paid to the Corporation in addition to any fees fixed by the Corporation in addition to any fees fixed by the Corporation to cover actual managing agent and legal fees charged in accordance with Article V, Section 7 of these Bylaws.

(e) The application of the Transfer Fee shall be subject to deferral, waiver, reduction or payment in any other manner and at such other times as the Board of Directors shall so direct upon a vote of the majority of the members of the Board of Directors of the Corporation if, and only if, the Board of Directors receives a written opinion from counsel to the Corporation or from the accountants who regularly service the books of the Corporation, that the receipt of payment of the Transfer Fee, in any instance or generally, upon closing of any Resale may adversely affect the status of the Corporation as a qualified cooperative housing corporation under Section 216 of the Internal Revenue code or may adversely affect the Corporation and its shareholders under any other applicable statute or regulation of the United States government, the State of New York, or the City of New York, now or hereinafter in effect, governing or affecting the tax deductibility of any portion of the maintenance (rent and charges paid by shareholders to

the Corporation).

(f) The Transfer Fee collected by the Corporation shall be maintained in a separate, segregated account of the Corporation and not commingled with any operating or other funds of the Corporation.

(g) The Transfer Fees and any income generated by the Transfer Fees such as interest or dividends shall only be used by Lessor to perform Building-wide capital improvements. It may not be used to pay operating expenses of Lessor nor for ordinary repairs nor to amortize or pay down any mortgage indebtedness on the Property nor for any other purpose except for Building-wide capital improvements.

(h) The Transfer Fee shall not apply to sales by 860/870 Realty to Bona Fide Purchasers (as such term is defined in Attorney General Regulation §18.3).

(i) If a third party subscribes for the Shares and Lease for an Apartment and, before the Shares and Lease are issued (whether or not the Lessor consented to such transfer) shall assign the rights to acquire the Shares and Lease to another party, such assignment shall be deemed a "Resale" pursuant to this Paragraph 16(F) and shall be subject to a Transfer Fee payable by the new proposed transferee/assignee equal three (3%) of the consideration paid by the proposed transferee/assignee to both the Lessee (or Lessee's designee(s) ) and the assignor (or such assignor's designee(s)). Such Transfer Fee shall be in addition to any Transfer Fee payable by the Lessee on the Transfer of the Shares and Lease and shall be paid prior to the Shares and Lease being issued to such transferee/assignee.

Section 9. Lost Certificates: In the event that any share certificate is lost, stolen, destroyed or mutilated, the Board of Directors may authorize the issuance of a new certificate of the same tenor and for the same number of shares in lieu thereof. The Board may, in its own discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make an affidavit or affirmation setting forth such facts as to the loss, destruction or mutilation as it deems necessary, and to give the Corporation a bond in such reasonable sum as it directs to indemnify the Corporation. The Corporation may charge a reasonable fee for reviewing any lost instrument bond, affidavit or undertaking received in connection with the reinsurance of each lost instrument.

Section 10. Legend on Share Certificates: All certificates hereafter issued by the Corporation representing shares of the Corporation shall bear a legend reading as follows:

*"The rights of any holder hereof are subject to the Bylaws of West Gate House, Inc. and to all the terms, covenants, conditions and provisions of a certain Proprietary Lease made between the person in whose name this certificate is issued, as Lessee, and Cathedral Parkway Apartments, as Lessor, for an Apartment in the premises known as 860 and 870 West 181<sup>st</sup> Street, New York, New York, which lease limits and restricts the*

*title and rights of any transferee hereof. The shares represented by this certificate are transferable only as an entirety and, except for transfer of Unsold Shares, only to an approved assignee of such Proprietary Lease."*

*"The Directors of this Corporation may refuse to consent to the transfer of the shares represented by this certificate until any indebtedness of the shareholder to the Corporation is paid. The Corporation, by the terms of said Bylaws and Proprietary Lease, has a first lien on the shares represented by this certificate for all sums due and to become due to the Corporation from the holder of this certificate."*

*"Copies of the Certificate of Incorporation, Proprietary Lease and By-laws are on file and available for inspection at the office of the managing agent of the Building."*

*"Pursuant to Article VI, Section 6, of the By-laws, the Corporation shall at all times have a first lien upon the shares of each shareholder to secure the payment by such shareholder under the provisions of any Proprietary Lease issued by the Corporation and at any time held by such shareholder and for all other indebtedness from such shareholder to the Corporation and to secure the performance by the shareholder of all the covenants and conditions of said Proprietary Lease to be performed or complied with by the shareholder. The Corporation shall have the right to issue to any purchaser of such shares upon the enforcement by the Corporation of such lien, or to the nominee of such purchaser, a certificate for the shares so purchased substantially of the tenor of the certificate issued to such defaulting shareholder, and thereupon the certificate for such shares issued to such defaulting shareholder shall become void and such defaulting shareholder shall surrender the same to the Corporation on demand. The failure of such defaulting shareholder to so surrender such certificate shall not affect the validity of the certificate issued in replacement thereof."*

*"The Corporation has imposed a transfer fee of three (3%) percent of the consideration received by all shareholders (except the Holders of Unsold Shares) upon a transfer of shares of the Corporation. Pursuant to the provisions of the Proprietary lease and Certificate of Incorporation, the Corporation has a right of first refusal to acquire the shares and appurtenant proprietary lease from a shareholder on the same terms and conditions as offered by a proposed purchaser of the shares."*

*"Pursuant to the Certificate of Incorporation, certain actions of the Board of Directors and of the shareholders require a greater quorum and/or a greater vote than would otherwise be required by law."*

*"The Shares represented by this Certificate are subject to a right of first refusal held by the Corporation pursuant to the provisions of Article VI, Section 12 of the Bylaws of the Corporation. These Shares may not be transferred unless any consent required by Article VI, Section 12 of the*

*Bylaws has been obtained. These shares may not be sold to a third party unless the right of first refusal set forth in Article VI, Section 11 of the Bylaws has been waived or the time period in which it may be exercised has expired.*

Section 11. No Preemptive Right: Ownership of shares of the Corporation shall not entitle the holders thereof to any preemptive right under Section 622 of the Business Corporation Law, or otherwise, it being the purpose and intent hereof that the Board of Directors, as in its discretion it may deem advisable, shall have the full right, power and authority to offer for subscription or sale, or to make any other disposition of any or all unissued shares of the Corporation, or of any or all shares issued and thereafter acquired by the Corporation.

Section 12. Right of First Refusal:

(a) No Shareholder may sell any shares of the Corporation held by such Shareholder, or any interest therein, or any interest in the appurtenant Proprietary Lease except by complying with the following provisions:

- (i) Any Shareholder who receives a bona fide offer (hereinafter called an "Outside Offer") for the sale of any interest in his or her Shares and Proprietary Lease, which he intends to accept, shall give notice to the Board of Directors of such offer and of such intention, together with a fully executed duplicate original of the contract of sale of such interest in the Shares and Proprietary Lease, a description of the terms of the proposed transaction and such other information as the Board of Directors may reasonably require, and shall offer to sell such interest in the Shares and Proprietary Lease to the Corporation or its designees, on the same terms and conditions as contained in such Outside Offer. The giving of such notice shall constitute a warranty and representation by the Shareholder who has received such offer, to the Board of Directors, (i) that such Shareholder believes the Outside Offer to be bona fide in all respects; (ii) the contract of sale submitted to the Board of Directors is a true and complete counterpart and that there are no other understandings or agreements between the selling shareholder and such Outside Offeree; and (iii) that all information supplied to the Board of Directors is true and correct as of the date of submission and the date the Shares and Proprietary Lease, or an interest therein, conveyed to the Outside Offeror.
- (ii) Within twenty (20) days after receipt of such notice and all requested reference material, the Board of Directors may elect, by notice to such Shareholder, (x) to purchase Shares and Proprietary Lease, or an interest therein, (or to cause the same to be purchased

by its designee, corporate or otherwise), on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the offering; (y) to produce a purchaser who will purchase such Shares and Proprietary Lease, or an interest therein, on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the offering Shareholder; or (z) to waive such right of first refusal;

- (iii) In the event the Board of Directors shall elect to purchase such Shares and Proprietary Lease, or an interest therein, or to cause the same to be purchased by its designee, corporate or otherwise, title shall close at the office of the transfer agent for the Corporation in accordance with the terms of the offer, but not less than seventy (70) days after the giving of notice by the Board of Directors of its election to accept such offer. At the closing, the Shareholder shall convey the Shares and Proprietary Lease, or the offered interest therein, to the Corporation or its designee, by surrendering the Certificate for the Shares, the Shareholder's duplicate counterpart of the Proprietary Lease and all transfer documents routinely required by such transfer agent and all tax returns, each duly executed with certified or bank checks for the payment of all taxes and/or all transfer stamps affixed, and shall pay all New York City Real Property Transfer taxes and all other taxes arising out of such sale and all fees due the Corporation, its transfer agent and the managing agent pursuant to the Corporation's Bylaws, the Certificate of Incorporation and/or the Proprietary Lease. The shareholder shall convey the Shares and Proprietary Lease (or offered interest therein) free of all liens, encumbrances, or rights of others, except as expressly set forth in the contract of sale submitted to the Board of Directors;
- (iv) In the event the Board of Directors or its designee shall fail to accept such Outside Offer or to produce a purchaser within twenty (20) days as aforesaid or shall fail to act within said twenty (20) day period, the offering Shareholder shall be free to sell such interest in the Shares and Proprietary Lease, within ninety (90) days after the expiration of the period in which the Board of Directors or its designee might have accepted such offer, to the Outside Offeror, on the terms and conditions set forth in the notice from the offering Shareholder to the Board of Directors of such Outside Offer; provided, however, nothing contained in this Paragraph iv shall diminish, modify or eliminate the obligation of the offering Shareholder to obtain the consent of the Board of Directors to the transfer to such prospective purchaser pursuant to

Paragraph 16 of the Proprietary Lease and the failure to exercise this right of first refusal shall not be deemed a consent to such transfer or a waiver of rights of the Corporation to approve same pursuant to such Paragraph 16 of the Proprietary Lease;

- (v) In the event the offering Shareholder shall not, within such ninety (90) day period, sell the Shares and Proprietary Lease, to the Outside Offeror on the terms and conditions contained in the Outside Offer, then should such offering Shareholder thereafter elect to sell the Shares and Proprietary Lease to the same or another Outside Offeror on the same or other terms and conditions, the offering Shareholder shall be required to again comply with all of the terms and provisions of this Section 7.
- (vi) Any purported sale of any interest in any Shares or Proprietary Lease in violation of this Section 7 shall be voidable at the election of the Board of Directors;
- (vii) This Right of First Refusal shall also be binding upon the holder of any lien upon the Shares and Proprietary Lease of any Shareholder and shall be in addition to any rights of the parties under Paragraph 16 and/or 17 of the Proprietary Lease or under any recognition or other agreement between the Corporation and/or the Shareholder and such lienholder. This Right of First Refusal shall apply to any foreclosure sale or transfer as well as to any subsequent sale or transfer of any interest in the Shares and Proprietary Lease by the holder of any lien.

(d) Certificates representing shares of the Corporation issued after *[the date of the passage of this provision]* shall bear the following legend, in addition to the legend required by Article VI Section 6 above:

(e) The foregoing right of first refusal shall not apply to sales by 860/870 Realty Corp. to "Bona Fide Purchasers" as such term is defined in Attorney General Regulation Section 18.3.

*"The Shares represented by this Certificate are subject to a right of first refusal held by the Corporation pursuant to the provisions of Article (VI), Section 7 of the Bylaws of the Corporation. These Shares may not be transferred unless any consent required by Article V, Section 2 of the Bylaws has been obtained. These shares may not be sold to a third party unless the right of first refusal set forth in Article VI, Section 7 of the Bylaws has been waived or the time period in which it may be exercised has expired."*

Section 13. Notices to Occupants: Upon the transfer of the Shares of the Corporation allocated to any Apartment occupied by a subtenant as of the date of transfer, the transferring and new shareholder shall both execute and deliver to such subtenant a notice of such transfer promptly after such transfer is completed. Such notice shall included the name, address and telephone number of the new shareholder.

(Intentionally left blank)



ARTICLE VII

Section 1. Indemnification of Directors and Officers:

(a) Any person made, or threatened to be made, a party to an action or proceeding (other than one by or in the right of the Corporation to procure a judgment in its favor), whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan, or other enterprise, which any director or officer of the Corporation served in any capacity at the request of the Corporation, by reason of the fact that he, his testator or intestate, was a director or officer of the Corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, shall be indemnified by this Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred by him in defense of such action or as a result of such action or proceeding, or any appeal therein, except that no indemnification shall be made upon a final adjudication adverse to the director or officer which establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(b) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such director or officer acted in bad faith or that his action was the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

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

(d) Payment of any amount due an officer or director, former officer or director or the beneficiaries of a deceased former officer or director pursuant to the indemnification created by paragraph (a), (b), or (c) above shall be authorized by:

- (i) Court order; or
- (ii) By the Board acting by a quorum consisting of directors who are not parties to such action or proceeding upon a finding that the director or officer has met the standard of conduct established pursuant to paragraph (a), (b) or (c); or
- (iii) If a quorum under subparagraph (ii) is not obtainable or, even if obtainable, a quorum of disinterested directors so directs; or
- (iv) Where a person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in Section 722 of the Business Corporation Law ("BCL") as authorized in such Section:
  - 1) By the Board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in Paragraph (a), (b), or (c) above has been met by such director or officer; or
  - 2) By the shareholders of the Corporation upon a finding that the director or officer has met the applicable standard of conduct set forth in Paragraph (a), (b), or (c) above.

(e) Expenses incurred in defending a civil or criminal action or proceeding shall be paid by the Corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this Section, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the Corporation or allowed by the court exceed the indemnification to which he is entitled.

(f) No indemnification, advancement, or allowance shall be made under this Section in any circumstances where it appears that if there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

(g) If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the shareholders, the Corporation shall, not later than

the next annual meeting of shareholders unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months from the date of such payment, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the person(s) paid, the amount(s) paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

(h) The indemnification and other rights set forth in this Section 1 shall not be exclusive of any provisions with respect thereto set forth in the BCL or in any contract or agreement between the Corporation and any officer, director, employee or agent of the Corporation.

- (i) Neither the amendment nor repeal of this Section 1, nor the adoption of any provision of these By-Laws inconsistent with Section 1, shall eliminate or reduce the effect of this Section 1 in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Section 1 if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

Section 2. Insurance for Indemnification of Directors and Officers:

(a) Subject to Paragraph (b) below, the Board shall have power to purchase and maintain insurance:

- (i) To indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this Article VII, Section 1, and
- (ii) To indemnify directors and officers in instances in which they may be indemnified by the Corporation under the provisions of this Article VII, Section 1; and
- (iii) To indemnify directors and officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article X, Section 1, provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the superintendent of insurance, for a retention amount and for co-insurance.

(b) No insurance under Paragraph (a) above may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

- (i) If a judgment or other final adjudication adverse to the insured director or officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled, or
- (ii) In relation to any risk the insurance of which is prohibited under the Insurance Law of the State of New York.

(c) Insurance under any and all subparagraphs of Paragraph (a) may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

Section 3. Notices to Shareholders:

(a) The Secretary of the Corporation shall cause a copy of the foregoing two sections to be delivered to all shareholders of the Corporation of record on April 22, 1996.

(b) The Secretary of the Corporation shall also mail a statement in respect of any insurance the Corporation has purchased or renewed pursuant to Section 2, specifying the insurance carrier, date of the contract, cost of the insurance, corporation positions insured and a statement explaining all sums, not previously reported in a statement to the shareholders of the Corporation, paid under any indemnification insurance contract.

ARTICLE VIII

Section 1: Seal: The Seal of the Corporation shall be circular in form and have inscribed thereon the name of the Corporation, the year of its organization and words "Corporate Seal" and "New York."

ARTICLE IX

Section 1: Fiscal Year: The fiscal year of the Corporation shall be the Calendar year unless otherwise determined by resolution of the Board of Directors.

ARTICLE X

Miscellaneous

Section 1: Salaries: No salary or other compensation for services shall be paid to any director or officer of the Corporation for services rendered by him, unless authorized in writing or by affirmative vote, taken at a duly held meeting of shareholders, by shareholder owning at least a majority of the then outstanding shares of the Corporation.

Section 2. Signatures on Checks: All checks, drafts, orders for payment of money and negotiable instruments shall be signed by such officer or officers or employee or employees as the Board of Directors may from time to time, by standing resolution or special order, prescribe.

Section 3. Signatures on Shares or Bonds: Endorsements or transfers of shares, bonds, or other securities shall be signed by such officer or officers or employee or employees as the Board of Directors may from time to time, by standing resolution or special order, prescribe.

Section 4. Safe Deposit Boxes: Such officer or officers as from time to time shall be designated by the Board of Directors shall have access to any safe of the Corporation in the vault of any safe deposit company.

Section 5. Securities: Such officer or officers as from time to time shall be designated by the Board of Directors shall have power to control and direct the disposition of any bonds or other securities or property of the Corporation deposited in the custody of any trust company, bank or other custodian.

Section 6. Notice to Shareholders: Except for notices given pursuant to Article II, Section 1 and Article II, Section 2, which may be sent by regular mail in addition to the methods set forth below, all notices sent to the shareholders shall be deemed duly given if in writing and sent by one of the following methods:

- (i) Telefacsimile transmittal to the shareholder at such shareholder's telefacsimile machine in his or her principal place of business or residence with an additional copy sent by regular mail addressed to the address to which notices would otherwise be sent; or
- (ii) Personally delivered to the principal place of business or residence of the shareholder and a receipt signed by an adult at such address is received or an affidavit is executed by the messenger attesting to such delivery; or
- (iii) Sent by overnight air express service and a receipt signed by an adult at such address is received.

Section 7. Sale, Lease, Demolition or Disposition of Property: No decision to demolish or reconstruct any building standing on the land owned or leased by the Corporation, or to sell or exchange the Corporation's fee simple interest therein, or to lease any such building in its entirety or substantially in its entirety, shall be made except upon the affirmative vote of the holders of eighty (80%) percent of the issued and outstanding shares of the Corporation. Notwithstanding the foregoing, the sale, exchange, lease or other disposition of the property owned by the Corporation after the termination of all the Proprietary Leases which are made by the Corporation shall be determined by the affirmative vote of the holders of a majority of the shares of the Corporation then issued and outstanding.

## ARTICLE XI

Section 1. Amendments By the Shareholders: These By-laws may be amended, altered, repealed or added to at any shareholders' meetings by vote of shareholders of record, present in person or by proxy, of at least two-thirds of the then outstanding capital shares, provided that the proposed amendment or the substance thereof has been inserted in the notice of the meeting or that all of the shareholders are present in person or by proxy.

Section 2. Amendments By the Directors: The Board of Directors may, by a majority vote of the then authorized total number of Directors at any meeting (regular or special) of the board, make, alter, amend or repeal these by-laws, provided, however, that the proposed amendment or the substance thereof shall have been contained in the notice of said meeting or that all directors shall be present in person and, provided further, that the board may not repeal or modify an amendment to these By-laws adopted by the shareholders pursuant to Section 1 of this Article XII and provided further the Board of Directors may not amend, repeal or modify Article II, Section (Voting), Article II, Section 9 (Consent), Article III, Section 2 (Election and Term), Article III, Section 4 (Vacancies), Article III, Section 9 (Resignation and Removal), Article III, Section 15 (Compensation), Article III, Section 14 (Distributions), Article IV, Section 6 (Compensation), Article V, Section 1 (Form of Lease), Article V, Section 3 (Assignment), Article VI, Section 1 (Capital Shares), Article VI, Section 4 (Transfer), Article VI, Section 5 (Units of Issuance), Article VI, Section 8 (Flip Fee), Article VI, Section 11 (No Pre-emptive Rights), Article VI, Section 12 (Right of First Refusal), Article XI, Section 3 (Sale, Lease, etc.), Article XII (Amendments).

Section 3. Limitation: Notwithstanding the foregoing Sections, these By-laws may not be amended, altered or repealed, or added to in any way which would have a disproportionately adverse effect on the rights or interests of the Sponsor or holder(s) of Unsold Shares unless the written consent or vote of the Sponsor and all other holders of Unsold Shares so affected is (are) obtained.