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**BY-LAWS**

**OF**

**853 MACY PLACE OWNERS CORPORATION**

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**TABLE OF CONTENTS**

**ARTICLE I. PURPOSE OF BUSINESS .....1**  
    Section 1. General .....1  
    Section 2. Definitions .....1

**ARTICLE II. MEETINGS.....1**  
    Section 1. Annual Meeting .....1  
    Section 2. Special Meetings .....1  
    Section 3. Waiver of Mailing of Notice .....2  
    Section 4. Quorum.....2  
    Section 5. Voting.....2  
    Section 6. Inspectors of Election.....3  
    Section 7. Order of Business .....3

**ARTICLE III. DIRECTORS .....3**  
    Section 1. Qualifications and Number .....3  
    Section 2. Election.....4  
    Section 3. Quorum.....4  
    Section 4. Vacancies.....4  
    Section 5. Meetings. ....5  
    Section 6. Resignation and Removal.....5  
    Section 7. Annual Cash Requirements .....6  
    Section 8. Duties and Powers .....7  
    Section 9. House Rules.....8  
    Section 10. Executive Committee and Other Committees .....8  
    Section 11. Compensation.....8  
    Section 12. Distributions. ....8

**ARTICLE IV. OFFICERS OF THE CORPORATION .....8**  
    Section 1. Election and Removal .....8  
    Section 2. Duties of President and Vice President .....8  
    Section 3. Duties of Treasurer .....9  
    Section 4. Duties of the Secretary. ....9

**ARTICLE V. PROPRIETARY LEASE .....10**  
    Section 1. Form of Lease.....10  
    Section 2. Assignment.....10  
    Section 3. Allocation of Shares. ....10  
    Section 4. Assignment of Lease and Transfer of Shares.....10  
    Section 5. Fees on Assignment.....11  
    Section 6. Lost Proprietary Leases .....11  
    Section 7. Regrouping of Space. ....11

**ARTICLE VI. CAPITAL SHARES.....12**  
    Section 1. General. ....12

Section 2.	Form and Share Register.....	12
Section 3.	Issuance of Certificates .....	13
Section 4.	Transfers.....	13
Section 5.	Units of Issuance.....	13
Section 6.	Corporation’s Lien .....	13
Section 7.	Lost Certificates .....	14
Section 8.	Legend on Share Certificates.....	14
ARTICLE VII.	INDEMNIFICATION.....	16
ARTICLE VIII.	SEAL.....	16
ARTICLE IX.	NEGOTIABLE INSTRUMENTS.....	16
Section 1.	Director Signatures.....	16
Section 2.	Officer Signatures.....	17
Section 3.	Safe Deposit Boxes .....	17
Section 4.	Securities.....	17
ARTICLE X.	FISCAL YEAR .....	17
ARTICLE XI.	REPORTS .....	17
Section 1.	Annual Reports.....	17
Section 2.	Tax Deduction Statement.....	17
ARTICLE XII.	APPOINTMENT OF BOARD OF DIRECTORS FOR SERVICE OF PROCESS OR NOTICE.....	17
ARTICLE XIII.	MISCELLANEOUS.....	18
Section 1.	Salaries.....	18
Section 2.	References.....	18
ARTICLE XIV.	AMENDMENTS.....	18
Section 1.	General.....	18
Section 2.	Compliance with Certificate of Incorporation.....	18
Section 3.	Consent of The City Agencies Required.....	18
Section 4.	Unsold Shares.....	18
ARTICLE XV.	ADMINISTRATIVE AND REGULATORY REQUIREMENTS AND RIGHTS.....	19
Section 1.	General.....	19
Section 2.	Repayment of HDC First Loan .....	19
Section 3.	Income Limitations on the Transfer and Resale of Shares.....	20
Section 4.	Repayment of HPD Subsidy Loan .....	20
Section 5.	Repayment of HPD Substitute Enforcement Loan.....	22
Section 6.	Conflict.....	23

**BY-LAWS****ARTICLE I. PURPOSE OF BUSINESS**

**Section 1. General.** The primary purpose of 853 Macy Place Owners Corporation (hereinafter the "Corporation") is to provide Apartments for Tenant-Shareholders who shall be entitled, solely by reason of their ownership of Shares, to Proprietary Leases for Apartments in the Building owned by the Corporation, for purposes set forth in such Leases.

**Section 2. Definitions.** Any term not defined herein shall have the meaning ascribed to it in the offering plan for the establishment of cooperative ownership of the Prospect Macy Cooperative Apartments, as the same may be amended from time to time.

**ARTICLE II. MEETINGS**

**Section 1. Annual Meeting.** The first annual meeting of Tenant-Shareholders shall be held within one (1) year of the Closing or within six (6) months of the Sponsor selling 50% of the Shares of the Corporation to Tenant-Shareholders and the transfer of title to the Property to the Corporation, and subsequent annual meetings shall be held in the State of New York at such time and place as may be designated by the Board, but in no event more than thirty (30) days of the initial annual meeting. The notice of the meeting shall be in writing and signed by the President or Vice President or the Secretary or an Assistant Secretary of the Corporation. Such notice shall state the time and place within the state where it is to be held, and the Secretary shall cause a copy thereof to be delivered personally or mailed to each Tenant-Shareholder of record of the Corporation entitled to vote at such meeting not less than ten (10) and no more than forty (40) days before the meeting.

**Section 2. Special Meetings.** Special meetings of Tenant-Shareholders, other than those the calling of which is regulated by statute, 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 to do so by Tenant-Shareholders owning at least twenty-five percent (25%) of the outstanding Shares of the Corporation. The Secretary, or other officer if no Secretary is appointed, shall cause a notice of such special meeting stating the time, place and object thereof and the officer or other person or persons by whom the meeting is called, to be delivered personally or mailed as provided in Section 1 of this Article to each Tenant-Shareholder of record of the Corporation entitled to vote at such meeting not less than ten (10) and no more than forty (40) days before such meeting. The date of the special meeting shall be determined by the Secretary and shall be held no later than sixty (60) days from receipt of any written request pursuant to this Section 2 unless a later date is agreed to in writing by the Tenant-Shareholders or members of the Board of Directors or President or Secretary

requesting said meeting. No business other than that stated in such notice shall be transacted at such special meeting unless the holders of all the outstanding shares of the Corporation are present thereat in person or by proxy.

**Section 3. Waiver of Mailing of Notice.** The notice provided for in the two foregoing sections is not indispensable, and any Tenant-Shareholders' meeting whatever shall be valid for all purposes if the Tenant-Shareholders of record of all outstanding Shares of the Corporation are present thereat in person or by proxy, or if a quorum is present, as provided in the next succeeding section, and notice of the time, place and purpose of such meeting has been duly waived in writing by all Tenant-Shareholders not so present. The attendance of any Tenant-Shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by the Tenant-Shareholder. Any notice to be served upon a Tenant-Shareholder by mail shall be directed to the Tenant-Shareholder at the Tenant-Shareholder's address as it appears on the stock book unless the Tenant-Shareholder shall have filed with the Secretary of the Corporation, prior to the giving of a notice, a written request that notices intended for the Tenant-Shareholder be mailed to such other address, in which case it shall be mailed to the address designated in such request.

**Section 4. Quorum.** At each meeting of Tenant-Shareholders, except where otherwise provided by law, Tenant-Shareholders representing, in person or by proxy, 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. At such adjourned meeting, Tenant-Shareholders representing in person or by proxy at least thirty-three and one-third (33-1/3%) percent of the Shares then issued and outstanding shall constitute a quorum.

**Section 5. Voting.** At each meeting of Tenant-Shareholders each Tenant-Shareholder present in person or by proxy shall be entitled to one (1) vote for each Share registered in their name at the time of service of notice of such meeting or at such prior date, not less than ten (1) and not more than forty (40) days before such meeting, as may be prescribed by the Board of Directors for the closing of the corporate share transfer books or fixed by the Board of Directors as the date for determining which Tenant-Shareholders of record are entitled to notice of and to vote at such meeting. The proxies shall be in writing duly signed by the Tenant-Shareholder but need not be acknowledged or witnessed, and the person named as proxy by any Tenant-Shareholder need not himself be a Tenant-Shareholder of the Corporation. Voting by Tenant-Shareholders shall be by voice vote unless any Tenant-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, and each ballot shall state the name of the Tenant-Shareholder voting and the number of Shares owned by him, and in addition, the name of the proxy of such ballot if case by a proxy.

In all elections of directors of the Corporation, each Tenant-Shareholder shall be entitled to as many votes as shall equal the number of votes which (except for these provisions) the Tenant-Shareholder would be entitled to cast for the election of directors with respect to the Tenant-Shareholder's Shares, multiplied by the number of directors to be elected, and the Tenant-Shareholder may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two (2) or more of them, as the Tenant-Shareholder may see fit (cumulative voting).

**Section 6. Inspectors of Election.** Inspectors of the election shall not be required to be appointed at any meeting of Tenant-Shareholders unless requested by a Tenant-Shareholder present (in person or by proxy) and entitled to vote at such meeting and upon the making of such request inspectors shall be appointed or elected as provided in Section 610 of the Business Corporation Law.

**Section 7. Order of Business.** So far as consistent with the purpose of the meeting, the order of business of each meeting of Tenant-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; and
10. Adjournment.

### **ARTICLE III. DIRECTORS**

**Section 1. Qualifications and Number.** All directors shall be at least eighteen (18) years of age and must be a Tenant-Shareholder or spouse of a Tenant-Shareholder except however, such restrictions shall not apply to a director designated by the Partnership, Sponsor or a Holder of Unsold Shares. Prior to the first meeting of the Corporation the Board of Directors shall consist of three (3) Sponsor designated members. The number of directors of the Corporation shall be five (5). Thereafter, the number of directors may be changed by resolution of the Tenant-Shareholders from time to time at any annual or special meeting, provided the minimum number of directors shall be at least three (3) and the maximum shall be no greater than seven (7) and provided further that the notice of such meeting shall state that a resolution will be considered to change the number of directors and shall set forth the number to be proposed in such resolution. Any such resolution shall specify the manner in which the selection of directors necessitated by an increase in the number of directors shall be accomplished, or

shall state that a decrease in the number of directors shall not shorten the term of any incumbent director, as the case may be. The number of directors so determined shall be the number of directors of the Corporation until changed by further action of the Tenant-Shareholders in accordance with the foregoing.

Notwithstanding anything to the contrary contained herein, the Sponsor will cause Holders of Unsold Shares to agree not to exercise voting control of the Board of Directors for more than two (2) years after the Closing with the Corporation or whenever the Unsold Shares constitute less than fifty (50%) percent of the Shares, whichever is sooner, even though the number of Shares owned by them would enable them to do so. So long as the Holders of Unsold Shares are entitled to exercise voting control of the Board of Directors, the Holders of the Unsold Shares shall be entitled to designate a majority of the Board of Directors. Thereafter, so long as Holders of Unsold Shares hold Shares allocated to one (1) or more Apartments, they shall have the right to designate one (1) member to the Board of Directors.

In addition to directors designated by Holders of Unsold Shares, Holders of Unsold Shares may vote their Shares for any other director(s) so long as said directors are Tenant-Shareholders and are not on Sponsor's, the Partnership's or a Holder of Unsold Shares' slate of directors, or on Sponsor's, the Partnership's or a Holder of Unsold Shares' payroll or as long as they did not receive other financial backing from the Sponsor, the Partnership or a Holder of Unsold Shares, other than a Share-loan, if applicable.

Any director representing the Holders of Unsold Shares may be removed from office by the Holder of Unsold Shares at any time in their sole and absolute discretion, and a replacement director designated by them to fill the vacancy on the Board of Directors created by such removal.

**Section 2. Election.** The directors shall be elected at the annual meeting of Tenant-Shareholders or at a special meeting called for that purpose as provided by Section 5 of Article II of these By-Laws. Their term of office shall be until the date herein fixed for the next annual meeting and thereafter until their respective successors are elected and qualify.

**Section 3. Quorum.** A majority of the directors then authorized by these By-Laws 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 Tenant-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. Notwithstanding the above, in the event a director who is a designee of the Holder of Unsold Shares vacates the Board for any of the above reasons, a replacement director shall be designated solely by the Holder of Unsold Shares. In the event of the

failure to hold any election of directors at the time designated for the annual election of directors or in the event that the Board of Directors shall not have filled any such vacancy, a special meeting of Tenant-Shareholders to elect a new Board of Directors or to fill such vacancy or vacancies may be called in the manner generally provided for the calling of special meetings of Tenant-Shareholders. Vacancies in the Board of Directors resulting from an increase of Board of Directors by amendment of these By-Laws shall be filled in the manner provided in the resolution adopting such amendment. In case of a reduction of the authorized number of directors by amendment to these By-Laws, the directors, if any, whose term of office shall cease, shall be determined in the manner provided in the resolution adopting such amendment.

**Section 5. Meetings.** The Board of Directors shall meet immediately after the annual meeting of Tenant-Shareholders without notice and also whenever called together by any officer of the Corporation or upon the written request of any three (3) directors then holding office, upon notice given to each director, by delivering personally, mailing or telegraphing the same to the director at least two (2) days prior to such meeting at the last address furnished by the director to the Corporation. Regular meetings may be held without notice at such times and places as the Board of Directors may determine. Any meeting of the Board of Directors at which all the members shall be present, or of which notice shall be duly waived by all absentees, either before or after the holding of such meeting, shall be valid for all purposes provided a quorum be present. Meetings of directors may be held either at the principal office of the Corporation or elsewhere within the State of New York as provided in the notice calling the meeting, unless the Board of Directors by resolution adopt some further limitation in regard thereto. At all meetings of the Board of Directors, each director shall be entitled to one vote. Any one (1) or more members of the Board of Directors may participate in a meeting of the Board of Directors by means of a conference telephone or similar communications equipment. Participation by such means shall constitute presence in person at a meeting. The vote of a majority of the Board of Directors present at the time of a vote of a duly constituted meeting shall be the act of the Board of Directors.

**Section 6. Resignation and Removal.** Any director may resign at any time by written notice delivered in person or sent by certified registered mail to the President or Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless specifically requested, acceptance of such resignation shall not be necessary to make it effective.

Any director, other than a designee of the Holder of Unsold Shares, may be removed from office without cause by the Tenant-Shareholders of the Corporation at a meeting duly called for that purpose by a vote of Tenant-Shareholders owning two-thirds (2/3rds) of the amount of the outstanding shares, represented in person or by proxy. Designees of the Holders of Unsold Shares may only be removed without cause by the Holder of Unsold Shares and any replacement Director thereof shall be designated solely by the Holder of Unsold Shares.



Any director may be removed for cause by the Tenant-Shareholders of the Corporation at a meeting duly called for that purpose by a vote of Tenant-Shareholders owning two-thirds (2/3rds) of the outstanding Shares of the Corporation, represented in person or by proxy. In the event a Holder of Unsold Shares' designated director is removed for cause, the Holder of Unsold Shares shall have the sole right to appoint a replacement in said director's place and stead.

**Section 7. Annual Cash Requirements.** The Board of Directors shall, except as may be otherwise restricted by the Proprietary Leases of the Corporation, from time to time, determine the cash requirements as defined in the Corporation's Proprietary Leases, and fix the terms and manner of payment of rent under the Corporation's Proprietary Leases. The Board of Directors shall have discretionary power to prescribe the manner of maintaining and operating the property of the Corporation and to determine the cash requirements of the Corporation to be paid as aforesaid by the Tenant-Shareholders under their respective Proprietary Leases. Every such determination by the Board of Directors shall be final and conclusive as to all Tenant-Shareholders and any expenditure made by the Corporation's officers or its agent under the direction or with the approval of the Board of Directors of the Corporation shall, as against the Tenant-Shareholders, be deemed necessarily and properly made for such purpose.

For a period of two (2) years after the Closing of title to the Corporation or whenever fifty (50%) percent of the Shares have been sold to Tenant-Shareholders, whichever is sooner, the Board of Directors may not take any of the following actions without the consent of the Holders of Unsold Shares:

- (i) increase the number or change the type of employees from that described in the footnotes to the First Year's Budget of the Plan;
- (ii) provide for new or additional services from those indicated in the footnotes to the First Year's Budget of the Plan, unless the annual cost of such new or additional services being provided, is no greater than the total cost of those provided in said footnotes;
- (iii) undertake any capital or major improvement or addition, unless required by law (this restriction shall expressly not be applicable to ordinary and necessary repairs);
- (iv) increase the amount of reserve for contingencies over the amount set forth in the First Year's Budget of the Plan, provided that any unused portion of such reserve for any year may be added to the reserve for the following years;
- (v) borrow any money on behalf of the Corporation;
- (vi) accumulate reserves in any calendar year in excess of three (3%) percent of the actual operating expenses of the Corporation for its preceding

calendar year and, for any period less than a full calendar year, the amount of reserves that may be accumulated shall be proportionately reduced; or

- (vii) make any additions, alterations or improvements to the Property or to any Unit costing cumulatively more than \$5,000, the foregoing not to include necessary repairs and maintenance work;
- (viii) enter into any contract not in existence on the date of the Closing;
- (ix) charge any special assessment for a non-budgeted item unless required by law, municipal agency, emergency or for the health and safety of the Cooperative;
- (x) increase the Maintenance Charges of the Cooperative more than ten (10%) percent from the prior year's budget, unless documentation is provided to the Sponsor in the nature of a financial statement, bids from contractors or verified increases in utility rates evidencing the need for an increase greater than (10%) percent; or
- (xi) utilize funds of the Corporation or assess the Sponsor, Partnership or Holder of Unsold Shares, in order to commence a lawsuit against the Sponsor, any of its principals or the Holder of Unsold Shares or any of its principals.

The Holder of Unsold Shares may not exercise veto powers over expenses in the budget of the Corporation or over expenses necessary for capital repairs.

The Corporation may undertake any of the actions enumerated in clauses (i) through (x) above, if necessary, to comply with applicable laws or regulations.

**Section 8. Duties and Powers.** The affairs and business of the Corporation shall be managed by its Board of Directors except with respect to the powers which are delegated to its officers. The directors shall at all times act as a Board, regularly convene, and they may adopt such rules and regulations for the conduct of their meetings, the execution of their resolutions and the management of the affairs of the Corporation as they may deem proper, provided same are not inconsistent with the laws of the State of New York, the Certificate of Incorporation for the Corporation or these By-Laws.

The Board of Directors shall be responsible for carrying out the duties imposed upon it under these By-Laws and the Proprietary Leases, regardless of whether the Apartment in the Building is vacant or occupied by a Tenant-Shareholder or a permitted lessee or other occupant. This provision shall not be deemed to impose any greater obligation or responsibility on the Board of Directors than provided for in the Business Corporation Law of the State of New York.

**Section 9. 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 Tenant-Shareholders. Copies thereof and of changes therein shall be furnished to each Tenant-Shareholder.

**Section 10. 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 three (3) or more directors of the Corporation. Such committees shall have and may exercise such of the powers of the Board in the management of the business and affairs of the Corporation during the intervals between the meetings of the Board as may be determined by the authorizing resolution of the Board of Directors and so far as may be permitted by law, except that no committee shall have power to determine the cash requirements defined in the Proprietary Lease, or to vary the terms of payment thereof as fixed by the Board.

**Section 11. Compensation.** No director, by virtue of his or her office as such, nor for any other reason, at any time, shall receive any salary or compensation for his or her services as such director, or otherwise.

**Section 12. Distributions.** No Tenant-Shareholder shall be entitled, either conditionally or unconditionally, except upon a complete or partial liquidation of the Corporation, to receive any distribution not out of earnings and profits of the Corporation.

#### **ARTICLE IV. OFFICERS OF THE CORPORATION**

**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 at the first meeting of the Board of Directors after these By-Laws become effective, and thereafter at the regular meeting in each year following the annual meeting of Tenant-Shareholders, and shall serve until removed or until their successors shall have been elected. The Board of Directors may at any time or 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 and may accord to such officers such power as the Board deems proper. Any officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the then authorized total number of directors. All officers, other than designees of a Holder of Unsold Shares, must be Tenant-Shareholders or spouses thereof but need not be members of the Board of Directors, except for the President who shall also be a member of the Board of Directors. One person may hold up to two offices at the same time, except that the President and the Secretary may not be the same person and the President may not hold another office. Vacancies occurring in the office of any officer may be filled by the Board of Directors at any time.

**Section 2. Duties of President and Vice President.** The President shall preside at all meetings of the Tenant-Shareholders- 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, subject to the control of the Board of Directors, shall have general management of the affairs of the Corporation and perform all duties incidental to the office. In the absence from the State of New York 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 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 the Treasurer shall perform all other duties incidental to the Treasurer's office. If so required by the Board of Directors, the Treasurer shall, before receiving any such funds, furnish to the Corporation a bond with a surety company as surety, in such form and amount as said Board from time to time shall determine. The premium upon such bond shall be paid by the Corporation. Within two and one-half (2 ½) months after the close of each calendar year, the Treasurer shall cause to be furnished to each Tenant-Shareholder whose Proprietary Lease is then in effect, a statement from the certified public accountant of the Corporation of any deductions available for income tax purposes on a per Share basis and indicating thereon on a per Share basis any such other information as may be necessary or useful to permit him to compute his income tax returns in respect thereof. Such statement shall not relate to independent business operations, but only cooperative ownership.

Within two and one half (2 ½) months after the end of each fiscal year, the Treasurer shall cause to be transmitted to each Tenant-Shareholder whose Proprietary Lease is then in effect, an annual report of operations and balance sheet of the Corporation which shall be certified by an independent certified public accountant.

In the absence of 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 the Secretary.** The Secretary shall keep the minutes of the meetings of the Board of Directors and of the meetings of Tenant-Shareholders. The Secretary 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. The Secretary shall also perform all other duties incidental to the Secretary's office. The Secretary shall cause to be kept a book containing the names, alphabetically arranged, of all persons who are Tenant-Shareholders of the Corporation, showing their place(s) of residence, the number of Shares held by them, respectively, the time when they respectively became the owners thereof, and the amount paid thereon, and the denomination and the amount of all Shares issued or transfer stamps affixed thereto, and such book shall be open for inspection as provided by law. In the absence or inability of the Secretary, the Assistant Secretary, if any, shall have all the powers and perform all the duties of the Secretary.

**ARTICLE V. PROPRIETARY LEASE**

**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 Apartments and other space in the Property of the Corporation. Such Proprietary Lease shall be for such terms, with or without provisions for renewals, and shall contain such restrictions, limitations and provisions in respect to the assignment thereof, the subletting of the premises demised thereby and the sale and/or transfer of the Shares of the Corporation appurtenant thereto, and such other terms, provisions, conditions and covenants as the Board of Directors may determine.

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, unless any change or alteration is approved by lessees in accordance with the voting requirements set forth in Article II, Section 5 above.

**Section 2. Assignment.** Proprietary Leases shall be assigned or transferred only in compliance with, and shall never be assigned or transferred in violation of the terms, conditions or provisions of such Proprietary Leases. A duplicate original of each Proprietary Lease shall always be kept on file in the principal office of the Corporation or with the managing agent of the property of the Corporation.

**Section 3. Allocation of Shares.** The Board of Directors shall allocate to each Apartment or other space in the property of the Corporation to be leased to Tenant-Shareholders under Proprietary Leases the number of Shares of the Corporation which must be owned by the proprietary lessee of such Apartment 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 as against the Corporation for any purpose 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, the City Agencies and/or AHC, and all necessary consents, including consents required by the City Agencies, have been properly obtained. The action of the Board of Directors with respect to the written application for the consent of a proposed assignment or subletting, if permitted, must be made within thirty (30) days after receipt of said written application.

**Section 4.(a)** Where the Sponsor, the Partnership or a person supplied by them is a lessee or Holder of Unsold Shares of the Corporation then consent to an assignment or transfer of a Lease and the Shares appurtenant thereto will not be required from the managing agent and/or the Corporation.

**Section 4.(b)** No person to whom the interest of a lessee or Tenant-Shareholder shall pass by law, shall be entitled to assign any Lease, transfer any Shares, or to sublet or occupy any Apartment, other than upon compliance with the requirements of the Proprietary Lease and these By-Laws.

**Section 5. Fees on Assignment.** The Board of Directors shall have authority before an assignment or sublet, if permitted, of a Proprietary Lease or reallocation of Shares takes effect as against the Corporation, 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.

No fees provided herein shall be payable or required in any transaction involving an assignment or sale of Shares held by the Sponsor, the Partnership or a Holder of Unsold Shares. This exclusion for transactions involving an assignment or sale of Unsold Shares may not be modified or amended, without the consent of the Sponsor, the Partnership or Holders of Unsold Shares.

**Section 6. Lost Proprietary Leases.** In the event that any Proprietary Lease in full force and effect is lost, stolen, destroyed or mutilated, the Board of Directors may authorize the issuance of a new Lease in lieu thereof, in the same form and with the same terms, provisions, conditions and limitations. The Board may, in its discretion, before the issuance of any such new Proprietary Lease, require the Tenant-Shareholder, or the legal representative of the Tenant-Shareholder, 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.

**Section 7. Regrouping of Space.** The Board of Directors, upon the written request of a Tenant-Shareholder, may in its discretion, at any time, but subject to all applicable laws, codes, zoning requirements and provisions of any mortgage encumbering the Property and/or the provisions of the HDC Regulatory Agreement (to the extent applicable during the term thereof), permit Tenant-Shareholders at the Tenant-Shareholder's own expense: (a): (i) to subdivide any Apartment into any desired number of Apartments; (ii) to combine all or any portions of any such Apartments into one or any desired number of Apartments; and (iii) to reallocate the Shares issued to accompany the Proprietary Lease, but the total number of the Shares so reallocated shall not be less, or more, than the number of Shares previously allocated to the Apartment or Apartments involved, and, in connection with any such regrouping, the Board of Directors may require that the number of Shares allocated to the resulting Apartment or Apartments be greater than the number of Shares allocated to the original Apartment or Apartments, and may authorize the issuance of Shares from its treasury for such purpose; or (b): to incorporate one or more servant's rooms, or other space in the Building not covered by a Proprietary Lease, into one or more Apartments covered by a Proprietary Lease, whether in connection with any regrouping of space pursuant to this Section 7 or otherwise, and in allocating Shares to any such resulting Apartment or Apartments, shall determine the

number of Shares from its treasury to be issued and allocated in connection with the appropriation of such additional space.

With respect to unsold Apartments or Apartments for which the Proprietary Lease and Shares issued to accompany the same are owned by the Sponsor, the Partnership or a Holder of Unsold Shares who while entitled to occupy any such Apartments for his or her personal use does not do so, such Sponsor, the Partnership, or person Holding the Unsold Shares may change the number of such Apartments by increasing or decreasing their size, or change the size, layout or location of any such Apartment or subdivide same, but such Sponsor, the Partnership, or person holding Unsold Shares shall not have the right to reallocate the Shares allocated to any of the Apartments offered for sale under said Plan, unless such reallocation is designed to reflect a change in the value of the equity in the property attributable to the Apartment or Apartments to which the block of Shares is being reallocated, provided such changes comply with law and do not permanently encroach on any pre-existing public or common area of the Corporation.

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 Apartment involved, and a new certificate for the number of Shares so reallocated to each new Proprietary Lease.

## **ARTICLE VI. CAPITAL SHARES**

**Section 1. General.** No Shares hereafter issued or acquired by the Corporation shall be issued or reissued except in connection with the execution by the purchaser and delivery by the Corporation of a Proprietary Lease of an Apartment in the Property owned by the Corporation. The ownership of Shares shall entitle the holder thereof to occupy the Apartment for the purposes specified in the Proprietary Lease to which the Shares are appurtenant, subject to the provisions, covenants and agreements contained in such Proprietary Lease.

**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. Such signatures and seal may be facsimiles when and to the extent permitted by applicable statutory provisions. 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 canceled, and the date of cancellation shall be indicated thereon and such certificate shall be retained in the Corporate records. Each certificate shall contain such other information as required by HDC and/or HPD.

**Section 3. Issuance of Certificates.** Shares appurtenant to each Proprietary Lease shall be issued in the amount allocated by the Board of Directors to the Apartment 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, duly executed and filed with the Secretary of the Corporation and on the surrender of the certificate for such Shares, except that Shares sold by the Corporation to satisfy any lien which it holds thereon may be transferred without the surrender of the certificate representing such Shares. No transfer of Shares shall be valid as against the Corporation, its Tenant-Shareholders and creditors for any purpose except to render the transferee liable for the debts of the Corporation to the extent provided for in the Business Corporation Law of the State of New York or any other applicable provision of law, until it shall have been entered in the Shares transfer ledger, or as required by any then existing applicable provision of law, by an entry stating from whom and to whom transferred. No transfer of Shares shall be valid or binding upon the Corporation and no such transfer shall be entered in the Shares transfer ledger or stock books of the Corporation unless said Shares shall have been sold in accordance with applicable law. Subject to the provisions of the form of Proprietary Lease adopted by the Board of Directors, the Board of Directors shall have authority before an assignment of Shares takes effect as against the Corporation, to fix a reasonable fee to cover actual expenses and attorneys' fees of the Corporation in connection with each such proposed assignment, and may direct that such attorneys' fees be paid directly to the attorneys.

**Section 5. Units of Issuance.** Except as otherwise provided in Article V, Section 7, unless and until all Proprietary Leases which shall have been executed by the Corporation shall have been terminated, the Shares appurtenant to each Proprietary Lease shall not be sold or assigned except as an entirety to the Corporation or an assignee of such Proprietary Lease, after complying with and satisfying the requirements of such Proprietary Lease, in respect to the assignment thereof.

**Section 6. Corporation's Lien.** The Corporation shall at all times have a first lien upon the Shares owned by each Tenant-Shareholder for all indebtedness and obligations owing and to be owing by such Tenant-Shareholder to the Corporation, arising under the provisions of any Proprietary Lease issued by the Corporation and at any time held by such Tenant-Shareholder or otherwise arising. Unless and until such Tenant-Shareholder, as lessee, shall default in the payment of Maintenance Charges, additional rent or of any other payment of any indebtedness to the Corporation or its managing agent, or in the performance of any of the covenants or conditions of such Proprietary Lease, such Shares shall continue to stand in the name of the Tenant-Shareholder upon the books of the Corporation, and the Tenant-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 Tenant-Shareholder, and thereupon the certificate for such Shares theretofore issued to such defaulting Tenant-Shareholder shall become void and such defaulting Tenant-Shareholder agrees to surrender such last mentioned certificate to the Corporation upon the latter's demand, but the failure of such defaulting Tenant-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 Tenant-Shareholder indebted to the Corporation unless and until such indebtedness is paid.

**Section 7. 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 discretion, before the issuance of such new certificate, require the Tenant-Shareholder of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the Tenant-Shareholder, 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 not exceeding double the appraised value of the Shares, to indemnify the Corporation.

**Section 8. Legend on Share Certificates.** Certificates representing Shares of the Corporation shall bear a legend reading as follows:

The rights of any holder hereof are subject to the provisions of the By-Laws of 853 Macy Place Owners Corporation 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 853 Macy Place Owners Corporation, as Lessor, for an apartment in the premises known as the "Prospect Macy Cooperative Apartments," 853 Macy Place, Bronx, New York (the "Property"), which Proprietary 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 only to an approved assignee of such Proprietary Lease. Copies of the Proprietary Lease and the By-Laws are on file and available for inspection at the office of the managing agent of this Corporation.

The directors of this Corporation may refuse to consent to the transfer of the shares represented by this certificate until any indebtedness of the Tenant-Shareholder to the Corporation is paid. The Corporation, by the terms of said By-Laws and Proprietary Lease, has a first lien on the shares represented by this certificate for all sums due and to become due under said Proprietary Lease.

Notice is hereby given pursuant to Sections 616 and 709 of the Business Corporation Law that the Certificate of Incorporation for the Corporation contains provisions authorized by Sections 616 and 709 of said Law prescribing special provisions for quorum, vote or consent of shareholders and Directors and the

holder of this Certificate is charged with knowledge thereof and holds the same subject to said provisions.

#### HDC Restrictions and Consent

The shareholder acknowledges that, for so long as any portion of the HDC First Loan (as defined in the Offering Plan of the Corporation) for the Property remains outstanding, upon the transfer of the shares evidenced by this stock certificate, Resale Profits shall be due and owing to the New York City Housing Development Corporation ("HDC"), as more fully described in the Proprietary Lease and By-Laws of the Corporation. The shareholder shall, at the closing of such share transfer, pay all Resale Profits to the Corporation and the Corporation shall turn over such Resale Profits to HDC.

For so long as any portion of the HDC First Loan (as defined in the Offering Plan of the Corporation) for the Property remains outstanding, no transfer of shares for this apartment may be made or shall be effective and no pledge of shares hereunder or delivery of this stock certificate may be made or shall be effective unless the transfer or pledge and delivery, as the case may be, is consented to by HDC. HDC will provide such consent only upon (i) HDC's receipt of the amount of Resale Profits or Refinancing Profits, as the case may be, which is due HDC, and (2) in the case of a resale of the shares, determination by HDC that the subsequent purchaser meets the same area median income limitations imposed by HDC on the initial shareholder in connection with the apartment.

#### HPD Restrictions and Consent

The shareholder acknowledges that upon (i) the transfer of the shares evidenced by this stock certificate or (ii) the pledge of shares hereunder and delivery of this stock certificate pursuant to a security agreement entered into by the shareholder with a lender (a "refinancing"), the Corporation shall be required to pay to the City of New York, acting by and through its Department of Housing Preservation and Development ("HPD"), all or a portion of "Resale Profits" or "Refinancing Profits" (as the case may be) realized from such transfer, as more fully described in the Proprietary Lease and By-Laws of the Corporation. The shareholder shall, therefore, immediately upon transfer or refinancing, pay such Resale Profits or Refinancing Profits to HPD directly or pay the Corporation the amount of Resale Profits or Refinancing Profits which the Corporation must in turn pay HPD.

For so long as any portion of the "Apartment Debt" or "HOME Apartment Debt", if applicable (as said terms are defined in the By-Laws of the Corporation), for the apartment remains outstanding, no transfer of shares for this apartment may be made or shall be effective and no pledge of shares hereunder or delivery of this stock certificate may be made or shall be effective unless the transfer or pledge and delivery, as the case may be, is consented to by HPD. HPD will provide such consent only upon HPD's receipt of the amount of Resale Profits or Refinancing

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Profits, as the case may be, which is due HPD. HPD's consent will be indicated by HPD's authorized signature on the line below.

\_\_\_ The transfer of shares hereunder is consented to this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_ The pledge of shares hereunder and delivery of this stock certificate pursuant to a security agreement entered into by the shareholder is consented to this \_\_\_ day of \_\_\_\_\_, 20\_\_.

THE CITY OF NEW YORK

By: Department of Housing  
Preservation and Development

By: \_\_\_\_\_  
Name:  
Title:

ARTICLE VII. INDEMNIFICATION

The Corporation shall indemnify every director and officer and their heirs, executors and administrators, against all loss, cost and expense, including counsel fees reasonably incurred by or imposed upon him, in connection with any investigation and any threatened or actual administrative, civil or criminal action or proceeding, and any appeal thereof, to which he may be made a party by reason of his being or having been an officer or director of the Corporation, except as to matters in which he is adjudged to have violated the provisions of Section 717 of the Business Corporation Law or been guilty of gross negligence or willful misconduct. With respect to counsel fees reasonably incurred, the provisions for indemnification shall apply only upon the prior approval of counsel by the Board of Directors, which approval shall not be unreasonably withheld. In the event of a settlement the provisions for indemnification shall only apply if the Board of Directors approves such settlement.

ARTICLE VIII. 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 the words "Corporate Seal" and "New York".

ARTICLE IX. NEGOTIABLE INSTRUMENTS

Section 1. Director Signatures. 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 2. Officer Signatures.** Endorsements or transfers of Shares, bonds, or other securities shall be signed by the President or any Vice President and by the Treasurer or any Assistant Treasurer or the Secretary or an Assistant Secretary unless the Board of Directors, by special resolution in one or more instances, prescribes otherwise.

**Section 3. 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 4. 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.

#### **ARTICLE X. FISCAL YEAR**

The fiscal year of the Corporation shall be the calendar year unless otherwise determined by the resolution of the Board of Directors.

#### **ARTICLE XI. REPORTS**

**Section 1. Annual Reports.** The Corporation shall within three (3) months following close of a fiscal year, send to each Tenant-Shareholder then listed on the books of the Corporation, a financial statement including a balance sheet (as of the end of said prior fiscal year) and a profit and loss statement (for the entire prior fiscal year) prepared and certified by an independent certified public accountant. On the written request of any former Tenant-Shareholder who owned Shares of the Corporation during any portion of the fiscal year covered by the financial statement, such financial statement shall be sent to such former Tenant-Shareholder.

**Section 2. Tax Deduction Statement.** The Corporation shall, on or before March 15<sup>th</sup> following the close of a fiscal year, send to each Tenant-Shareholder listed on the books of the Corporation for the prior fiscal year, a statement setting forth the amount per share of that portion of the rent paid by such Tenant-Shareholder under his Proprietary Lease during such year which has been used by the Corporation for payment of real estate taxes and interest on mortgage or other indebtedness paid by the Corporation with respect to property owned by it.

#### **ARTICLE XII. APPOINTMENT OF BOARD OF DIRECTORS FOR SERVICE OF PROCESS OR NOTICE**

Whenever an Apartment in a Building is occupied by other than the owner thereof (i.e., the Tenant-Shareholder) as permitted in these By-Laws and the Proprietary Lease covering such Apartment, the owner of such Apartment shall be deemed to have designated the Board of Directors as such owner's agent for the service of process or notice upon said owner by such occupant as to matters relating solely to the occupancy of such Apartment.

The Board of Directors hereby consents to such designation and, upon receipt of process or notice from such permitted occupant of the Apartment, shall, with reasonable diligence, forward such process or notice (as the case may be) to the owner, at the last known address of such owner.

#### ARTICLE XIII. 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 as such officer unless and until the same shall have been authorized in writing or by affirmative vote, taken at a duly held meeting of shareholders, by shareholders owning at least a majority of the then outstanding Shares of the Corporation.

**Section 2. References.** 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. The term "spouse" shall mean spouse as the same is defined in the Proprietary Lease.

#### ARTICLE XIV. AMENDMENTS

**Section 1. General.** (a) These By-Laws may be amended, enlarged or diminished at any Tenant-Shareholders' meeting by vote of Tenant-Shareholders owning sixty-six and two-thirds (66 2/3rds) of the amount of the outstanding Shares, represented in person or by proxy, provided that the proposed amendment or the substance thereof shall have been inserted in the notice of meeting or that all of the Tenant-Shareholders be present in person or by proxy and (b) by the Board of Directors at any meeting of the Board of Directors, by vote of two-thirds (2/3rds) of the total number of the Board of Directors provided that the proposed amendment or the substance thereof shall have been inserted in the notice of meeting or that all of the members of the Board of Directors are present in person. However, the Board of Directors may not repeal a By-Law amendment adopted by the Tenant-Shareholders as provided above.

**Section 2. Compliance with Certificate of Incorporation.** Any Amendment to these By-Laws shall be in conformity with the Certificate of Incorporation of the Corporation.

**Section 3. Consent of The City Agencies Required.** During the period of time the HDC Regulatory Agreement is in effect and/or the Share Loans or Subsidies remain outstanding, an amendment to these By-Laws enacted pursuant to the foregoing shall also require the written consent of the City Agencies to become effective.

**Section 4. Unsold Shares.** Anything herein contained to the contrary notwithstanding, these By-Laws and any provision hereof may not be altered, amended or repealed in such a manner as would adversely affect the rights or interests of the Sponsor or the Holders of Unsold Shares (or their successors and assigns) in any Shares and accompanying Proprietary Leases that may have been pledged by the Sponsor or Holder of

Unsold Shares in connection with financing the purchase of Apartments in the Building. Anything herein contained to the contrary notwithstanding, so long as any Unsold Shares are issued and outstanding, these By-Laws may not be altered, amended, repealed or added without the unanimous consent of all of the Holders of Unsold Shares if such alteration, amendment, repeal or addition would adversely affect their rights or interests or increase their obligations.

**ARTICLE XV. ADMINISTRATIVE AND REGULATORY REQUIREMENTS AND RIGHTS**

**Section 1. General.**

These By-Laws are subject to the HDC Regulatory Agreement and the HPD Regulatory Agreement, copies of which are contained as exhibits to the Plan and incorporated herein be reference.

**Section 2. Repayment of HDC First Loan.**

Upon resale of any Shares by a Tenant-Shareholder, Resale Profits (as defined below) shall be paid by the Tenant-Shareholder to HDC to be applied by HDC to the repayment of the HDC First Loan until all the indebtedness evidenced by the HDC Subordinate Note or HDC First Loan Note is paid in full. The Cooperative Corporation will collect such Resale Profits and transmit them to HDC not later than two (2) business days from the resale of the Apartment.

The following definitions shall apply in connection with the HDC First Loan:

“Resale Profits” shall mean 100% of the Net Appreciation (defined below), for the first three (3) years from the date of the HDC First Loan and 50% of the Net Appreciation for years four (4) through fifteen (15), if any, received by a Tenant-Shareholder upon the sale of the Shares owned by that Tenant-Shareholder.

“Net Appreciation” shall mean the amount by which Net Sales Proceeds (defined below) received by a Tenant-Shareholder upon the sale of Tenant-Shareholder’s Shares exceeds the Tenant-Shareholder’s Acquisition Cost for the Shares.

“Net Sales Proceeds” shall mean the total amount of cash and non-cash consideration received by a Tenant-Shareholder from a purchaser in exchange for the sale and conveyance of the Shares, less Permitted Expenses (defined below) incurred by the Tenant-Shareholder in connection with such sale.

“Acquisition Cost” shall mean the total amount of cash and non-cash consideration paid by a Tenant-Shareholder to a seller to acquire the

Shares, plus Permitted Expenses (defined below) incurred by Tenant-Shareholder in acquiring the Shares, plus the cost of Tenant-Shareholder's properly documented capital improvements in the Apartment to which such Shares are attributable up to a maximum of Five Thousand Dollars (\$5,000) plus in the case of a Tenant-Shareholder who acquired the Shares pursuant to this offering, the sum of One Thousand Dollars (\$1,000).

"Permitted Expenses" means the following costs in connection with the sale or purchase of Shares: reasonable attorneys' fees and disbursements, reasonable brokerage fees, title insurance fees, reasonable processing fees of the Corporation and fees of the Corporation's agents and attorneys related to such sale or purchase, recording fees, New York State and local transfer taxes, stamp taxes, and usual and reasonable fees and expenses in connection with financing or satisfaction of cooperative share loans, including without limitation, credit report fees, legal fees, appraisal fees and loan origination fees.

**Section 3. Income Limitations on the Transfer and Resale of Shares**

(a) HDC Restrictions. For so long as the HDC First Loan remains outstanding, upon the resale of any shares by a Tenant-Shareholder, the subsequent purchaser shall meet the same area median income (AMI) limitations imposed by HDC on the initial Tenant-Shareholder.

(b) HPD Restrictions for HOME Apartments. For a period of thirty (30) years after Closing, each subsequent sale of a HOME Apartment shall:

- (i) be to a family which will use the HOME Apartment as its principal residence, and which is a low-income family, as such term is defined in 24 CFR 92.2;
- (ii) be at a price which provides the owner with a fair return of investment, including the homeowner's investment and any capital improvements; and
- (iii) ensure that the HOME Apartment will remain "affordable" to a reasonable range of low-income homebuyers, affordable being defined as below the "Single Family Mortgage Limits" described in Section 203 (b) of the National Housing Act in accordance with 24 CFR 92.254(a)(2)(iii).

**Section 4. Repayment of HPD Subsidy Loan**

The principal balance of the HPD Subsidy Loan shall become due and payable upon the occurrence of one of the following: (i) a Prohibited Transfer (defined

below), or (ii) to the extent of the Applicable Percentage (defined below) of any Resale Profits (defined below) or Refinancing Profits (defined below) from the resale or refinancing of the Shares allocated to a HOME Apartment by any Tenant-Shareholder, up to the unpaid portion of the HOME Apartment Debt (defined below) for such HOME Apartment.

The following definitions shall apply in connection with the HPD Subsidy Loan:

**“Prohibited Transfer”** shall mean any total or partial sale, disposition, transfer, assignment, conveyance, mortgage, lease, trust, power, or transfer in any other mode or form of or with respect to the Property without the prior written consent of HPD.

The principal balance of the HPD Subsidy Loan shall become due and payable to the extent of the Applicable Percentage of any Resale Profits from the resale or refinancing of the Shares allocated to a HOME Apartment by any Tenant-Shareholder, up to the unpaid portion of the HOME Apartment Debt (defined below) for such HOME Apartment.

**“Applicable Percentage”** shall mean (i) 100% for any resale or refinancing of a HOME Apartment which occurs prior to the fifth (5<sup>th</sup>) anniversary of the Closing, and (ii) 50% for any resale or refinancing of a HOME Apartment which occurs during the period from the fifth (5<sup>th</sup>) anniversary of the date of the Closing until the fifteenth (15<sup>th</sup>) anniversary of the Closing.

**“Resale Profits”** shall mean the amount by which the Total Consideration (as defined below) that the Tenant-Shareholder receives on the transfer of the HOME Apartment exceeds the original cash purchase price the Tenant-Shareholder paid when acquiring the HOME Apartment (i.e., excluding the proportionate share of the underlying mortgages on the Property allocable to the HOME Apartment), minus the following: the reasonable costs incurred by the Tenant-Shareholder in purchasing the HOME Apartment and the reasonable costs incurred by the Tenant-Shareholder in selling the HOME Apartment to a purchaser, in each case, including reasonable attorney’s fees and disbursements, reasonable brokerage fees, title search and title policy fees, reasonable processing fees, transfer and stamp taxes, usual and reasonable fees and expenses in connection with financing or satisfying a coop share loan.

**“Refinancing Profits”** shall mean the amount by which the increased debt resulting from a new loan obtained by the Tenant-Shareholder, for which the Tenant-Shareholder has pledged the Shares and



delivered the stock certificates for such HOME Apartment pursuant to a security agreement, exceeds the amount paid by the Tenant-Shareholder shareholder in purchasing the HOME Apartment.

“Total Consideration” shall mean the cash and non-cash consideration which a Tenant-Shareholder receives for the HOME Apartment, including cash, real property and personal property, but not including the proportionate share of any underlying mortgages on the Property.

“HOME Apartment Debt” shall mean, for each Apartment, initially the amounts set forth in Schedule B to the HPD Subsidy Mortgage. The HOME Apartment Debt for each HOME Apartment shall be reduced by (i) one-fifteenth (1/15<sup>th</sup>) of the initial amount of the HOME Apartment debt for each full year during which the Tenant-Shareholder for the HOME Apartment continuously occupies the HOME Apartment as a primary residence, and (ii) payments of Resale Profits and Refinancing Profits in connection with such HOME Apartment.

Notwithstanding the foregoing, HPD shall not be entitled to collect Resale Profits during any time period during which HDC is entitled to receive Resale Profits (as defined in Section 2 above) pursuant to the HDC Regulatory Agreement.

**Section 5. Repayment of HPD Substitute Enforcement Loan.**

The principal balance of the HPD Substitute Enforcement Loan shall become due and payable upon the occurrence of one of the following: (i) a default of any mortgage against the Property which is superior in lien to the HPD Substitute Enforcement Mortgage after the expiration of the applicable grace period, (ii) a Prohibited Transfer, or (iii) to the extent of the Applicable Percentage of any Resale Profits or Refinancing Profits from the resale or refinancing of the Shares allocated to an Apartment by any Tenant-Shareholder, up to the unpaid portion of the Apartment Debt for such Apartment.

The following definitions shall apply in connection with the HPD Substitute Enforcement Loan:

“Applicable Percentage” shall mean (i) 100% for any resale or refinancing of the Apartment which occurs prior to the fifth (5<sup>th</sup>) anniversary of the Closing, and (ii) 50% for any resale or refinancing of the Apartment which occurs during the period from the fifth (5<sup>th</sup>) anniversary of the date of the Closing until the fifteenth (15<sup>th</sup>) anniversary of the Closing.

“Resale Profits” shall mean the amount by which the Total Consideration (as defined below) that the Tenant-Shareholder receives on the transfer of the Apartment exceeds the original cash

purchase price the Tenant-Shareholder paid when acquiring the Apartment (i.e., excluding the proportionate share of the underlying mortgages on the Property allocable to the Apartment), minus the following: the reasonable costs incurred by the Tenant-Shareholder in purchasing the Apartment and the reasonable costs incurred by the Tenant-Shareholder in selling the Apartment to a purchaser, in each case, including reasonable attorney's fees and disbursements, reasonable brokerage fees, title search and title policy fees, reasonable processing fees, transfer and stamp taxes, usual and reasonable fees and expenses in connection with financing or satisfying a Share Loan.

"Refinancing Profits" shall mean the amount by which the increased debt resulting from a new loan obtained by the Tenant-Shareholder, for which the Tenant-Shareholder has pledged the Shares and delivered the stock certificates for such Apartment pursuant to a security agreement, exceeds the amount paid by the Tenant-Shareholder shareholder in purchasing the Apartment.

"Total Consideration" shall mean the cash and noncash consideration which a Tenant-Shareholder receives for the Apartment, including cash, real property and personal property, but not including the proportionate share of any underlying mortgages on the Property.

"Apartment Debt" shall mean, for each Apartment, initially the amounts set forth in Schedule B to the HPD Substitute Enforcement Mortgage. The Apartment Debt for each Apartment shall be reduced by (i) one-fifteenth (1/15<sup>th</sup>) of the initial amount of the Apartment debt for each full year during which the Tenant-Shareholder for the Apartment continuously occupies the Apartment as a primary residence, and (ii) payments of Resale Profits and Refinancing Profits in connection with such Apartment.

Notwithstanding the foregoing, HPD shall not be entitled to collect Resale Profits during any time period during which either: (i) HDC is entitled to receive Resale Profits (as defined in Section 2 above) pursuant to the HDC Regulatory Agreement, or (iii) with respect to a HOME Apartment only, HPD is entitled to receive Resale Profits (as defined in Section 4 above) pursuant to the HPD Subsidy Loan.

#### **Section 6. Conflict.**

In the event of any conflict of inconsistency between the By-Laws and the HDC Regulatory Agreement the terms and provisions of the HDC Regulatory Agreement shall prevail.