



CITY PLANNING COMMISSION

August 9, 2006 | Calendar No. 17

C 060431(A) ZSM

IN THE MATTER OF an application submitted by Plaza Accessory Owner LP and Plaza Club Owner LP pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the use regulations of Section 22-10 within an R10-H District to allow Use Group 6 uses (retail/restaurant uses) and Use Group 9 uses (banquet and health club uses) on portions of the sub cellar, cellar floor, ground floor, ground floor mezzanine, 2nd floor and 3rd floor; and
2. the sign regulations of Section 22-30 to allow signs in connection with Use Group 6 uses (retail/restaurant uses) and Use Group 9 uses (banquet and health club uses) within the R10-H District;

in an existing 21-story mixed use building (Plaza Hotel), on property located at 768 Fifth Avenue (Block 1274, Lot 25), within R10-H and C5-2.5 Districts, partially within the Special Midtown District, Community District 5, Borough of Manhattan.

The original application (C 060431 ZSM) was filed by Plaza Accessory Owner LP and Plaza Club Owner LP on April 11, 2006, for a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use provisions of Section 22-10 to allow retail, restaurant, banquet and health club uses in an R10-H district at the Plaza Hotel. A modified application for the special permit (C 060431(A) ZSM), including a request to modify the signage regulations of Section 22-30 to allow signs in connection with commercial uses in an R10-H district, was filed by the applicants on June 1, 2006, pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure.

BACKGROUND

The 18-story Plaza Hotel is located on the west side of Fifth Avenue/Grand Army Plaza between West 58th Street and Central Park South (West 59th Street). Most of the site lies in an R10-H (10.0

FAR) district which allows only residential use as-of-right. The southwest corner of the site (approximately one quarter of the zoning lot) is zoned C5-2.5 (12.0 FAR) which allows commercial and residential uses. The structure was designated a New York City Landmark in 1969. On July 12, 2005, the Landmarks Preservation Commission (LPC) designated the Palm Court, the Fifth Avenue Lobby, the 59th Street Lobby, the Edwardian Room, the Oak Room and the Oak Bar on the ground floor; the Terrace Room and its anteroom on the mezzanine level; the Grand Ballroom and its anteroom on the second floor; and other associated vestibules, foyers, corridors and staircases connected to those rooms, as Interior Landmarks. Many of these landmark interior spaces historically held restaurant and banquet facilities that were permitted as accessory uses to the hotel.

The surrounding area contains a mixture of office, residential, retail and hotel uses in addition to park spaces. Office use prevails to the south and east of the Plaza, and the Fifth Avenue retail shopping corridor lies to the south of the site. To the west, Central Park South holds a mixture of hotel and residential structures. West 58th Street is largely commercial in nature. Central Park lies to the north of the site, and Grand Army Plaza is directly adjacent to the Plaza to the east.

The applicant purchased the Plaza Hotel in October 2004, and plans to reduce the size of the hotel from 805 to 284 rooms and convert the remainder of the hotel rooms to approximately 181 residential condominium units. The residential conversion is not subject to this application since the site's two zoning districts (C5-2.5 and R10-H) permit residential use as a matter of right.

The applicant seeks to locate commercial uses on the subcellar, cellar, ground, mezzanine, second and third stories of the structure. Many of the proposed commercial uses would continue

commercial uses that were considered accessory to the former 805-room hotel. Due to the planned reduction in the number of hotel rooms, it is likely that they will not be used primarily by hotel guests or condominium owners under the new program, thus they would no longer qualify as accessory uses. Only the southwest portion of the Plaza's lot area is located in a commercial district (C5-2.5) that permits these uses as-of-right. The rest of the property is located in an R10-H district. Aside from hotels, which are allowed by special permit, R10-H districts do not permit commercial uses. To allow these commercial uses to be located in an R10-H district, the applicant filed an application for a special permit (C 060431 ZSM) pursuant to Section 74-711 of the Zoning Resolution, which allows modifications of use regulations at landmark properties, on April 11, 2006.

The applicant plans to add a large new retail component in the cellar, ground and mezzanine levels of the Plaza that would be accessed from West 58th Street. The largest portion of this retail space would be located in the cellar. The mezzanine level retail space would include the Terrace Room and its anteroom. The applicant plans to continue using the Edwardian Room as a restaurant space, as it historically functioned, or a retail space. Other than the 59th Street lobby, which will become the residential lobby, the other landmark interior rooms would continue to function in their historic restaurant or banquet capacities. The applicant also seeks to replace the cellar health club with a smaller new health club to be located on the third floor in what was mechanical space.

Pursuant to Section 2-06(c)(1) of the ULURP rules and subsequent to the certification of the original application, a modified application (C 060431(A) ZSM) was submitted on June 1, 2006. In addition to the proposal for retail, restaurant, banquet and health club facilities in an R10-H district which remained unchanged, the modified application proposes commercial signage within the R10-

H district in connection with the proposed commercial uses. Commercial signage within the C5-2.5 portion of the building will comply with C5 signage regulations. The applicant proposes a set of dimensioned blocks of space for commercial signage at numerous ground floor locations on the building's three facades within the R10-H portion of the building. The proposal includes blocks for stenciled window decals, metal plaques located at building entrances and existing bronze lettering on an awning above the entrance adjacent to the Oak Bar along Central Park South. Any signage ultimately proposed within these designated areas would require a Certificate of Appropriateness from LPC. These blocks of space would represent the maximum area within which LPC could approve a sign associated with the building's commercial uses.

In connection with the proposal to modify use regulations, the applicant will restore all walls, ceilings, floors and decorative features in each of the designated interior spaces. The renovation will include recreating the luminous leaded glass ceiling in the Palm Court. The applicant will also undertake significant roof repair work and restore the building facades and historic storefronts and marquees along West 58th and 59th streets. The applicant must also enter into a continuing maintenance program for the property with LPC.

In order to grant the requested use modifications, the Commission must find that they will have minimal adverse effects on the conforming uses within the Plaza and in the surrounding area.

ENVIRONMENTAL REVIEW

The certified application (C 060431 ZSM) and the modified application (C 060431(A) ZSM) were reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the

SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 06DCP094M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a revised Negative Declaration was issued on July 10, 2006.

UNIFORM LAND USE REVIEW

The original application (C 060431 ZSM) was certified as complete by the Department of City Planning on April 24, 2006, and was duly referred to Community Board 5 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules. On June 13, 2006, the modified application (C 060431(A) ZSM) was referred pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure to Community Board 5 and the Borough President.

Community Board Public Hearing

Community Board 5 held a public hearing on the original application (C 060431 ZSM) on May 11, 2006, and on that day, by a vote of 31 to seven with one abstention, adopted a resolution recommending approval of the application.

Borough President Recommendation

The original application (C 060431 ZSM) was considered by the Borough President, who issued a

recommendation approving the application on June 15, 2006.

City Planning Commission Public Hearing

On June 21, 2006 (Calendar Nos. 4 and 5), the City Planning Commission scheduled July 12, 2006, for a public hearing on the original application (C 060431 ZSM) and the modified application (C 060431(A) ZSM). The hearing was duly held on July 12, 2006 (Calendar Nos. 28 and 29). There were four speakers in favor of the application and no speakers in opposition.

The Borough President's Director of Land Use reiterated the Borough President's support for the proposal. The Plaza's owner described the building's condition and the program approved by LPC for its restoration. The applicant's attorney described the need for the special permit and the commercial program proposed for the building's interior. The project architect also appeared in favor of the proposal.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes the modified application for a special permit (C 060431(A) ZSM) is appropriate.

The Commission notes the existence of a wide range of commercial uses surrounding the Plaza. The Commission believes commercial uses are appropriate for this part of Midtown, and that the introduction of new retail space at the Plaza fits well with the destination retail character of Fifth Avenue in this part of Midtown. The Commission notes that the introduction of a greater retail

presence at the Plaza will serve to extend the Fifth Avenue shopping corridor to Central Park South. The Commission notes that approving the special permit will facilitate the continuation of the uses within portions of the Plaza designated an Interior Landmark. The Oak Bar, Oak Room and Palm Court will continue to operate as restaurants. The Fifth Avenue Lobby will continue to function as the main public entrance to the structure, providing access to publicly-accessible halls. The Grand Ballroom and its anteroom will continue to be used as function/banquet facilities.

The Commission believes that the introduction of retail use in the Terrace Room is in keeping with the historic commercial nature of the Plaza Hotel, and the retail character of Fifth Avenue in upper Midtown. The Commission also believes that retail or restaurant uses are appropriate for the Edwardian Room which historically functioned as a restaurant space.

The Commission believes the proposed signage plan is of an appropriate scale and proposes proper materials for signs that will be designed in the future. The Commission notes that the Landmarks Preservation Commission will be required to issue a Certificate of Appropriateness for any signage ultimately proposed within the blocks of space that were considered by the Commission.

As required by the special permit, the property owner will undertake a significant renovation program for the Landmark Interior spaces as well as the building's façade and roof, to restore the Plaza to its former grandeur. The owner will be required to maintain the building in such state in perpetuity.

FINDINGS

The City Planning Commission hereby makes the required findings pursuant to Section 74-711 of the Zoning Resolution:

- 1) Not applicable.
- 2) such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Plaza Accessory Owner LP and Plaza Club Owner LP pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the use regulations of Section 22-10 within an R10-H District to allow Use Group 6 uses (retail/restaurant uses) and Use Group 9 uses (banquet and health club uses) on portions of the sub cellar, cellar floor, ground floor, ground floor mezzanine, 2nd floor and 3rd floor;
and

2. the sign regulations of Section 22-30 to allow signs in connection with Use Group 6 uses (retail/restaurant uses) and Use Group 9 uses (banquet and health club uses) within the R10-H District;

in an existing 21-story mixed use building (Plaza Hotel), on property located at 768 Fifth Avenue (Block 1274, Lot 25), within R10-H and C5-2.5 Districts, partially within the Special Midtown District, Community District 5, Borough of Manhattan, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 060431(A) ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Costas Kondylis & Partners LLP Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
1A	Siteplan	6/14/2006
1B	Calculations	6/14/2006
2	Sub-Cellar	4/10/2006
3	Cellar	4/10/2006
4	Ground Floor	6/14/2006
5	Ground Floor Mezz.	6/14/2006
6	2 nd Floor	6/14/2006
7	3 rd Floor	6/14/2006
10	Signage Master Plan	6/6/2006
11	Signage Master Plan	6/6/2006
12	Signage Master Plan	6/6/2006

- 2) Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans

listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

- 3) Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- 4) Development pursuant to this resolution shall be allowed only after the attached Restrictive Declaration marked as Exhibit A hereto, as modified with changes to Sections 2.6, 2.7(b) and 4.10(a) as requested by and acceptable to counsel to the Landmarks Preservation Commission, together with any necessary administrative and technical changes, is executed by Plaza Accessory Owner LP, Plaza Club Owner LP, Plaza Residential Owner LP, CPS 1 Realty LP and the Board of Managers of the Plaza Condominium or their successors, and such declaration shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.
- 5) All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
- 6) Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution and the attached restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without

the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted or of the attached restrictive declaration.

- 7) Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 060431(A) ZSM), duly adopted by the City Planning Commission on August 9, 2006 (Calendar No. 17), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, AICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chair
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,
ALFRED C. CERULLO, III, RICHARD W. EADDY, LISA A. GOMEZ,
CHRISTOPHER KUI, JOHN MEROLO, DOLLY WILLIAMS, Commissioners

PLAZA ACCESSORY OWNER LP
PLAZA CLUB OWNER LP
PLAZA RESIDENTIAL OWNER LP
CPS 1 REALTY LP
BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM

DECLARATION

Dated: August __, 2006
Location: 768 Fifth Avenue
New York County, New York

Block 1274
Lots 1301-1636 (former lot 25)

Record & Return to:

Jay A. Segal, Esq.
Greenberg Traurig LLP
200 Park Avenue
New York, New York 10166

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DECLARATION

DECLARATION made as of the ____ day of August, 2006 by PLAZA ACCESSORY OWNER LP (“Accessory”), PLAZA CLUB OWNER LP (“Club”), PLAZA RESIDENTIAL OWNER LP (“Residential”), CPS 1 REALTY LP (“CPS1”) and the BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM (the “Board”), all with an address c/o El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10022 (Accessory, Club, Residential, CPS1 and the Board collectively, the "Declarant" and each, individually a “Declarant Party”):

W I T N E S S E T H:

WHEREAS, as further described below, each of Accessory, Club, Residential and CPS 1 is the owner in fee simple of a condominium section or unit in certain real property located in the Borough of Manhattan, City, County and State of New York, which property is collectively designated as Block 1274, Lots 1301-1636 f/k/a Lot 25 (the “Zoning Lot”) on the Tax Map of the City of New York and by the street address of 768 Fifth Avenue, as more particularly described on Exhibit A attached hereto ; and

WHEREAS, the Zoning Lot is improved with an eighteen-story plus cellar and subcellar building (the "Designated Structure")(the Zoning Lot and the Designated Structure, collectively, the “Subject Premises”);

WHEREAS, prior to the date hereof, the Subject Premises has been subdivided into four principal condominium sections, which sections or units, together with their respective interests in the common elements appurtenant to each such section, as defined and described by that certain Amended and Restated Declaration of Condominium, dated as of March 13, 2006, and recorded in the Office of the Register of the City of New York on April 12, 2006 at CRFN 2006000201624 (the “Condominium Offering Plan”), are owned as follows: Accessory is fee owner of Lot 1301 in Tax Block 1274 (the “Accessory Unit”); Club is fee owner of Lot 1302 in Tax Block 1274 (the “Club Unit”); Residential is fee owner of Lots 1456-1636 in Tax Block 1274 (the “Residential Section”); and CPS1 Realty LP is fee owner of Lots 1303-1455 in Tax Block 1274 (the “Hotel Units”); and

WHEREAS, Declarant proposes to renovate the Designated Structure;

WHEREAS, the Subject Property together with the Designated Structure constitutes the Subject Premises (the "Subject Premises"), more particularly described in Exhibit A attached hereto; and

WHEREAS, Fidelity National Title Insurance Company (the “Title Company”), a title company, has certified as of April 5, 2006 that Declarant and Column Financial, Inc. (the “Mortgagee”) are the sole parties in interest ("Parties in Interest"), as that term is defined in the zoning lot definition in Section 12-10 of the Zoning Resolution of the City of New York

(the "Zoning Resolution"), to the Subject Property, a copy of which is annexed hereto as Exhibit B and made a part hereof; and

WHEREAS, all Parties-in-Interest interest to the Subject Property have either executed this Declaration or waived their rights to execute this Declaration by written instrument annexed hereto as Exhibit "B-1" and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

WHEREAS, as of the date hereof, the Title Company has determined there has been no change in the certification attached as Exhibit B and Declarant represents and warrants that the Parties in Interest listed in Exhibit B are the only known Parties in Interest in the Zoning Lot as of the date hereof; and

WHEREAS, pursuant to the provisions of Section 3020 of the New York City Charter and Title 25, Chapter 3 of the Administrative Code of the City of New York (the "Landmark Preservation Law"), the Landmarks Preservation Commission (the "LPC") has designated the Designated Structure as an individual landmark known as the Plaza Hotel and has designated certain interior portions of the Designated Structure as interior landmarks (the "Designated Interiors") as defined in the attached Interior Designation Report (Exhibit C); and

WHEREAS, Declarant at the public hearing on June 28, 2005 requested the LPC issue a report (the "Report") to the City Planning Commission of the City of New York (the "CPC") for an application under Section 74-711 of the Zoning Resolution for a special permit (the "Special Permit") to allow the conversion of certain portions of the Designated Structure contained within a R10-H zoning district to retail, restaurant, banquet, and health club uses (collectively, the "Special Permit Uses"); and

WHEREAS, at the public meeting on July 12, 2005, following said public hearing, the LPC voted to issue the Report to the CPC as requested for the special permit application (the "Application"); and

WHEREAS, the Report was issued April 11, 2006 and is annexed hereto as Exhibit D; and

WHEREAS, pursuant to Application No. 060431ZSM, dated April 11, 2006, Declarant applied to CPC for the Special Permit.

WHEREAS, pursuant to Application No. 060431AZSM, dated June 12, 2006, Declarant amended the Special Permit application to allow commercial signage in a residential district (the "Amended Application").

WHEREAS, the Report was amended on June 19, 2006 (the "Amended Report") to reflect the Amended Application, and the Amended Report is annexed hereto as Exhibit D-1; and

WHEREAS, Section 74-711 requires, *inter alia*, that a program has been established for continuing maintenance (the "Continuing Maintenance Program") that will result in preservation of the Designated Structure by Declarant; and

WHEREAS, Declarant has agreed to certain obligations and restrictions contained in this Declaration for the protection, preservation, repair and maintenance of the Designated Structure (the "Restoration Program"); and

WHEREAS, LPC issued a Certificate of No Effect on April 11, 2006 which allows the Restoration Program, and is attached hereto as Exhibit E; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Premises may be developed, restored, and operated in order to assure the protection, preservation, repair and maintenance of the Designated Structure and Designated Interiors; and

WHEREAS, Declarant represents and warrants that there are no restrictions, liens, obligations, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration;

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Premises shall be held, sold, transferred, conveyed and occupied subject to the following restrictions, covenants, obligations, easements, and agreements, all of which are for the purpose of protecting the Subject Premises, which shall inure to the benefit of the City of New York, and which shall run with the Subject Premises and bind Declarant and its heirs, successors and assigns so long as they have a right, title or interest in the Subject Premises or any part thereof.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

1.1 "Accessory Unit" shall mean Lot 1301 in Tax Block 1274 on the Tax Map of the City of New York.

1.2 "Application" and "Amended Application" shall mean the applications to the City Planning Commission for the Special Permit.

1.3 "Board of Managers of Residential" shall mean the Board of Managers of the Residential Section.

1.4 "Buildings Department" shall mean the New York City Department of Buildings, or any successor to the jurisdiction thereof.

1.5 "Chair of the CPC" shall mean the Chair of the City Planning Commission of the City of New York or any successor to the jurisdiction thereof.

1.6 "Chair of the LPC" shall mean the Chair of the Landmarks Preservation Commission of the City of New York or any successor to the jurisdiction thereof.

1.7 "Club Unit" shall mean Lot 1302 in Tax Block 1274 on the Tax Map of the City of New York.

1.8 "City" shall mean the City of New York.

1.9 "City Council" shall mean the New York City Council or any successor to the jurisdiction thereof.

1.10 "Condo Hotel Units" shall mean Lots 1304-1455 in Tax Block 1274 on the Tax Map of the City of New York.

1.11 "Condo Hotel Offering Plan" shall mean that certain offering plan, initially accepted for filing by the Office of the Attorney General of the State of New York as of June 20, 2006, in connection with the offering of the Condo Hotel Units, together with all amendments to such plan made from time to time.

1.12 "Condominium" shall mean the Plaza Hotel Condominium.

1.13 "Condominium Offering Plans" shall mean, collectively, the Condo Hotel Offering Plan and the Residential Offering Plan.

1.14 "CPC" shall mean the New York City Planning Commission, or any successor to the jurisdiction thereof.

1.15 "Declarant" shall mean the named Declarants and the heirs, successors and assigns of the named Declarants including, without limitation, any owner of a condominium unit within the Designated Structure, except that Declarant shall not be deemed to include (i) a mortgagee of all or any portion of the Subject Property until it succeeds to the interest or obligation of Declarant by purchase, assignment, foreclosure or otherwise, or (ii) a tenant of the Subject Premises, unless such tenant holds a lease to all or substantially all of the Subject Premises.

1.16 "DCP" shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

1.17 "Designated Structure" shall mean the 18 story structure located on Tax Block 1274, Lots 1301-1636 in Manhattan, which is an individual Landmark.

1.18 “Designated Interiors” shall mean the interior spaces designated as New York City Interior Landmarks by LPC and described in the attached Interior Designation Report (Exhibit C).

1.19 “Exterior Restoration Work” shall mean that restoration work described in Section 2.1(a)(1) hereof.

1.20 "Force Majeure" shall mean: strike, lockout or labor dispute(s); inability to obtain materials or reasonable substitutes therefore unless due to any act or failure to act by Declarant; acts of God; unforeseen governmental restrictions, regulations, omissions or controls; enemy or hostile government actions; civil commotion, insurrection, revolution or sabotage; fire or other casualty; inclement weather of such a nature as to make performance or completion of the Landmark Work not feasible unless due to any act or failure to act by Declarant; any damage to the Subject Premises of such a nature as to make completion of the Landmark Work not feasible; a taking of the Subject Premises, or a portion thereof, by condemnation or eminent domain; failure of a public utility to provide power, heat or light; unusual delay in transportation; material delays by the City, State or United States Government, or any agency or instrumentality thereof, in the performance of any work or processing or approval of any applications required in order to permit Declarant to carry out its obligations pursuant to this Declaration unless due to any act or failure to act by Declarant; denial to Declarant by any owner of an enforceable interest in adjoining real property, including any private fee owner or ground lessee of adjoining real property, or any agency of the City or State having an enforceable interest in adjoining real property, including sidewalk or streets, of a right to access to such adjoining real property, if such access is required to accomplish the obligations of the Declarant pursuant to this Declaration; the pendency of a litigation not initiated by Declarant or similar proceeding which suspends or materially and adversely affects the ability of the Declarant to accomplish the obligations of the Declarant pursuant to this Declaration; or other conditions similar in character to the foregoing which are beyond the control of Declarant. No event shall constitute a Force Majeure unless Declarant complies with the procedures set forth in Sections 2.1 and 6.2 hereof.

1.21 “Hotel Unit” shall mean Lots 1303-1455 in Tax Block 1274 on the Tax Map of the City of New York.

1.22 “Interior Restoration Work” shall mean the restoration work described in Section 2.1(a)(2) hereof.

1.23 "Landmark Work" shall refer to the restoration work on the Designated Structure as described in the Certificate of No Effect issued by LPC, which is attached hereto as Exhibit E and shall include the Exterior Restoration Work and Interior Restoration Work as described in Section 2.1(a) hereof.

1.24 "LPC" shall mean the Landmarks Preservation Commission of New York City or any successor to the jurisdiction thereof.

1.25 "Mortgagee" shall mean Column Financial, Inc., the institutional first mortgagee of all or substantially all of the Subject Premises listed in Exhibit B.

1.26 "Party(ies) in Interest" shall mean any party-in-interest listed in Exhibit B and any other party-in-interest to the Subject Premises who has given written notice of its name and address to the CPC and the LPC, provided that CPC and LPC, after giving Declarant an opportunity to comment, conclude that such other alleged party-in-interest meets the requirements for same in Section 12-10 of the Zoning Resolution.

1.27 "Repair" shall mean repair pursuant to, and in accordance with, all specifications, requirements, approvals, permits or certificates from LPC.

1.28 "Residential Unit" shall mean Lots 1456-1636 in Tax Block 1274 on the Tax Map of the City of New York.

1.29 "Residential Offering Plan" shall mean that certain offering plan, initially accepted for filing by the Office of the Attorney General of the State of New York as of December 7, 2005, in connection with the offering of the Residential Units, together with all amendments to such plan made from time to time.

1.29 "Special Permit" shall mean the special permit described on page 2 hereof.

1.30 "Special Permit Use" shall mean retail, restaurant, banquet, and health club uses in that portion of the Designated Structure located in an R10-H zoning district. Notwithstanding the foregoing, no use shall be deemed a Special Permit Use if it is permitted as-of-right within the Subject Premises by the terms of the Zoning Resolution then in effect.

1.31 "Zoning Resolution" shall mean the Zoning Resolution of the City of New York.

ARTICLE II

PRESERVATION, REPAIR AND MAINTENANCE OF THE SUBJECT PROPERTY

2.1 Certificate of Occupancy.

(a) The issuance of the Special Permit is premised on, inter alia, the performance of the following restoration work on the Designated Structure in conformity with the C of A and staff level permits or certificates and the requirements thereof (which restoration work shall be referred to as the "Landmark Work"):

- (1) Exterior Restoration Work

(i) Replace in-kind all copper elements affected by the roof top renovations, which lower the cheneau;

(ii) Repair, clean and coat or replace the copper cresting and cladding, in-kind;

(iii) Replicate missing copper finials and repair and paint existing flagpoles noted in the drawings that accompany the Certificate of Appropriateness dated October 26, 2005 with alternative materials to match the missing originals based on documentary research;

(iv) Replace in-kind copperridge flashing, concealed flashings, gutters and decorative copper;

(v) Replace the copper dormers in-kind to match the originals;

(vi) Replace in-kind the green-glazed terra-cotta tiles of all of the mansard roofs;

(vii) Install new roofing and waterproofing system on all roof surfaces;

(viii) Evaluate the feasibility of repairing the original drainage system on the 59th Street elevation and repair as required by LPC, and remove the non-original copper downspouts as required by LPC;

(ix) Evaluate vertical and horizontal cracks on the west elevation for structural efficacy and repair based on assessment;

(x) Evaluate the following cracks for structural efficacy and repair as required by LPC:

(A) A horizontal crack in the lintel over the door of Bay 5 of the Fifth Avenue façade;

(B) Two vertical cracks in the spandrel beams of the granite water table, at Bay 13 of the Fifth Avenue elevation and Bay 14 of the 58th Street elevation;

(C) A step crack at the corner of the West 58th Street elevation below the terrace on the ninth floor where the masonry is displaced laterally;

(D) The two vertical cracks on the north and south facing returns of the pavilions of the Fifth Avenue façade at the fourteenth floor;

(E) Repair limited number of cracks, located at the base of the marble columns at the Fifth Avenue elevation, that are catching water with restoration patching mortar to match the existing;

(xi) Repair spalls with restoration patching mortar including the corner terra cotta of Bay 8 of the twelfth floor on the 58th Street elevation, selective coping and decorative stones on the 59th Street fourteenth floor balcony, and selective locations of the granite and marble base;

(xii) Remove the vegetation growing from masonry of the terra-cotta dormer of Bay 12 of the sixteenth floor of the 58th Street elevation;

(xiii) Remove air condition grilles in 58th Street, 3rd floor cornice and provide limestone “Dutchman” to match profile of adjacent stone;

(xiv) Remove air condition grilles below 58th Street, 5th floor window sills and remove sills. Provide new sills and in-fill brick to match original;

(xv) Repair cracks in the 58th Street, third floor limestone cornice with restoration patching mortar;

(xvi) Complete the restoration of the marquee on 58th Street. Evaluate stored castings for integrity. Repair, scrape, prime and repaint elements suitable for reinstallation and replace others in kind.

(xvii) Restore the two medium sized marquees flanking the central marquee of 59th Street and the one small marquee at the same location to first class condition. Scrape, prime and repaint all cast iron; remove the tar from the exterior roof surface and restore the existing material if possible; based on evaluation, replace severely deteriorated cast iron in kind.

(xviii) Remove obtrusive, surface-mounted conduit from the marquees and the masonry surrounding them; remove all associated metal embeds and patch resulting voids in the masonry with restoration patching mortar to match the existing;

(xix) Remove the bird guano from the top surface of the 59th Street marquee and install additional bird-proofing;

(xx) Repair the vertical crack with restoration patching mortar at Bay 2. Remove failing non-matching patches and metal embeds; repair the stone with restoration patching mortar to match the existing.

(xxii) Repair holes made in exterior facades where scaffolding is attached to facades with bricks and mortar as approved by LPC staff.

(2) Interior Restoration Work

(i) An existing conditions survey of all designated interior spaces shall be prepared by a preservation architect, engineer or other qualified person knowledgeable about the preservation of historic structures (the "Preservation Architect") approved by LPC staff. The existing conditions survey shall be reviewed and approved by the LPC staff and a final version shall be provided to the LPC on or before September 1, 2006. Accessory will be solely responsible for delivery of the final existing conditions survey. The LPC staff shall then determine the scope of the Interior Restoration Work based on the approved existing conditions survey. The Interior Restoration Work is expected to include, at a minimum, the following work:

(ii) The East Lobby

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(iii) The Main (North) Corridor

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(iv) The Main (South) Corridor

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(v) Palm Court

(A) Clean and restore finishes and materials including all walls, ceilings and floors as well as all decorative features, e.g. columns. Remove existing retrofit furnishings and carpeting. Restore original flooring.

(B) Restore the laylight based on a design substantially similar to the historic laylight in location, shape, and composition of materials. The design will be developed by the Preservation Architect or other qualified professional and will be approved by LPC staff.

(vi) Edwardian Room

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(vii) The North Lobby

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(viii) The Oak Room

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(B) Provide sprinklers (if required by NYC buildings regulations) with work which avoids altering or visually detracting from the ornate wall and ceiling finishes.

(ix) The Oak Bar

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(B) Refinish floor.

(x) The Terrace Room

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns, and re-creation of original figure panels where necessary.

(B) Repaint the flat painted surfaces at arched openings and doorways based on historical paint analysis.

(C) Remove non-original painted wood balusters.

(D) Provide new replica metal spindle balusters at platform edges at removed wood balusters based on photo documentation.

(E) Provide planters (to replace original removed planters) in arched openings to South ancillary passage based on photo documentation.

(F) Provide chandeliers (to replace original removed chandeliers) at each arch based on photo documentation.

(xi) The Ballroom and Ballroom Ante Space

(A) Clean and restore finishes including all walls, ceilings and floors as well as all decorative features, e.g. columns.

(b) Written notice that a Declarant Party is seeking a temporary certificate of occupancy ("TCO") or permanent certificate of occupancy ("PCO") shall be provided to the LPC seven days prior to the Declarant Party applying for a TCO or PCO.

(i) Non-retail Special Permit Use. No TCO which permits a Special Permit Use, other than a retail use which is controlled by the provisions of Paragraph 2.1(b)(ii) of this Declaration, shall be applied for by Declarant, granted by the Buildings Department or accepted by Declarant until the Chair of the LPC shall have given written notice to the Buildings Department that substantial progress has been made on the Interior Restoration Work, and that the Exterior Restoration Work is substantially complete. No PCO which permits a Non-Retail Special Permit Use in any individual rooms shall be granted by the Buildings Department or accepted by Declarant until the Chair of the LPC shall have given written notice to the Buildings Department that the Interior Restoration Work is complete for that individual room. All PCOs and TCOs shall include all connecting corridors as necessary to access each individual room.

(ii) Retail Special Permit Use. No TCO which permits a retail Special Permit Use shall be granted by the Buildings Department or accepted by Declarant until the Chair of the LPC shall have given written notice to the Buildings Department that the Landmark Work, including both the Exterior Restoration Work and the Interior Restoration Work, is substantially complete. No PCO which permits a Special Permit Use shall be granted by the Buildings Department or accepted by Declarant until the Chair of the LPC shall have given written notice to the Buildings Department that the Landmark Work, including both the Exterior Restoration Work and the Interior Restoration Work, is complete.

(iii) As an alternative to the procedures described in paragraphs (i) and (ii) of this Section, the Chair of the LPC may certify in writing, as provided in Section 2.1(d) hereof, that (a) a Force Majeure has occurred and (b) the Chair of the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Subject Property.

(iv) The Chair of the LPC shall issue said notices referenced in subparagraphs (i), (ii), and (iii) above reasonably promptly after Declarant has made written request to the Chair of the LPC and has provided documentation to support such request, and the Chair of the LPC shall in all events endeavor to issue such written notice to the Buildings Department, or inform Declarant in writing of the reason for not issuing said notice, within twenty-one (21) calendar days after Declarant has requested such written notice. Upon receipt of the written notice from the Chair of the LPC that (i) the required level of Landmark Work has been satisfactorily completed or (ii) the Chair of the LPC has certified that a Force Majeure has occurred and that the Chair of the LPC has no objection to the issuance of a TCO or PCO, the Buildings Department may grant, and Declarant may accept, a TCO or PCO for the Designated Structure.

(c) Declarant shall permit inspection of the Designated Structure by the Chair of the LPC and representatives designated by the Chair of the LPC in connection with the notice described in Section 2.1(b) hereof.

(d) (i) Upon application by Declarant, notwithstanding anything contained in any other provision of this Declaration, the Chair of the LPC, in the exercise of his or her reasonable judgment, may certify that the performance or completion of the Landmark Work is delayed due to a Force Majeure as provided in paragraph (ii) below.

(ii) In the event that Declarant reasonably believes that full performance of its obligations to complete the Landmark Work has been delayed as a result of a Force Majeure, Declarant shall so notify the Chair of the LPC as soon as Declarant learns of such circumstances. Declarant's written notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in Declarant's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the Landmark Work. The Chair of the LPC shall, within twenty-one (21) calendar days of its receipt of Declarant's written notice, (A) certify in writing that a Force Majeure has occurred, including a determination of the expected duration of such delay (the "Delay Notice"), and grant Declarant appropriate relief for such delay, including certifying in writing to the Buildings Department that the Chair of the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Subject Property, or (B) notify Declarant that it does not reasonably believe a Force Majeure has occurred. With respect to any claim that a Force Majeure has delayed the Declarant's performance or completion of the Landmark Work, the LPC may require that Declarant post a bond or other security in a form and amount acceptable to the Chair of the LPC in order to ensure that the Landmark Work is completed. Such alternative security could include, without limitation, alternative or additional conditions on the issuance of any PCO or TCO. Any delay caused as the result of a Force Majeure shall be deemed to continue only as long as the Declarant shall be using reasonable efforts to minimize the effects thereof. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the Landmark Work.

(e) Notwithstanding anything else to the contrary contained herein, this Declaration shall not be deemed to prohibit or restrict Declarant from (i) applying for or receiving a TCO or a PCO for any floor area in the Designated Structure which is not to be used for a Special Permit Use; or (ii) obtaining permits or building notices from the Buildings Department to perform work, including tenant work, in the Designated Structure prior to the completion of the Landmark Work; or entering into agreements affecting all or any portions of the space in the Designated Structure prior to completion of the Landmark Work.

2.2 Preservation, Repair and Maintenance.

Declarant hereby covenants and agrees to preserve, repair and maintain the Designated Structure in sound first-class condition, at its own cost and expense, in accordance with this Declaration, the C of A and the Landmarks Preservation Law (see § 3.2 hereof for each Declarant Party's respective responsibilities under this section). It is understood that certain

obligations and duties set forth in this Declaration are above and beyond the requirements of the Landmarks Preservation Law and do not in any way diminish Declarant's obligation and responsibility to comply with all provisions of the Landmarks Preservation Law.

2.3 Continuing Maintenance Program.

Declarant shall comply with the obligations and restrictions of the continuing maintenance program (the "Continuing Maintenance Program") as set forth below (see § 3.2 hereof for each Declarant Party's respective responsibilities under this section):

(a) At Declarant's expense, an inspection (the "Periodic Inspection") shall be made every five years, on or within two weeks of the anniversary of the issuance by the LPC of the Notice of Compliance pursuant to the C of A, and thereafter, shall be made on or within every five years from the date of such initial inspection. In the event that Declarant has accepted a TCO or a PCO that permits a Special Permit Use without having first received the Notice of Compliance, the first periodic inspection shall be made on or within the fifth anniversary date of the issuance of such TCO or PCO and every five years thereafter. The Periodic Inspection shall be done by the Preservation Architect or other qualified person knowledgeable about the preservation of historic structures selected by Declarant from a list prepared by Declarant and approved by the Chair of the LPC as to their credentials, which approval shall not be unreasonably withheld or delayed. Declarant shall update such listing upon the request of the Chair of the LPC. In addition, Declarant may periodically supplement the list of Preservation Architects, subject to the approval of the Chair of the LPC as to their credentials. The Preservation Architect shall make a thorough inspection of the exterior of the Designated Structure and those portions of the interior, as well as those portions of the mechanical systems that are accessible to and under the control of building management, which, if not properly maintained, could affect the condition of the exterior. The Periodic Inspection shall include (but not be limited to) the following portions of the Designated Structure: all brick and stone masonry; all windows including marble and limestone bases and copper frames; cladding of all wood surfaces; Fifth Avenue doors and transoms; bronze railing at the fifteenth floor; mosaic tile floors at the 59th Street entrance; and all interior finishes in the Designated Interiors and designated interior fixtures.

(b) The Preservation Architect shall, at the expense of Declarant, submit a report on each Periodic Inspection (the "Periodic Report") to Declarant and the LPC within 45 days after each Periodic Inspection. The Periodic Report shall outline the existing conditions of the Designated Structure and detail the work which should be performed in order to maintain the Designated Structure, including all architectural features and elements, in a sound first-class condition, including but not limited to caulking, painting, cleaning, repair of architectural features and elements, checking for rust and repointing of masonry. The Board shall be responsible for the delivery of a single Periodic Report to LPC which shall include all designated portions of the building, both interior and exterior, and which report shall identify each Declarant Party responsible for any work outlined therein (the "Responsible Declarant Party").

(c) Submission of Local Law 10 & 11 Facade Inspection Report. If the Designated Structure is subject to the Facade Inspection Report requirements of Title 1 RCNY §32-03 et seq., a copy of any such Facade Inspection Report which is submitted to the New York City Department of Buildings, shall also be provided at the same time to the Landmarks Preservation Commission. The Board shall be responsible for the delivery of the Façade Inspection Report to LPC and Accessory will be responsible for any work identified therein. In the event that the building is found to be unsafe pursuant to such inspection, the Board shall notify the Landmarks Preservation Commission simultaneously with the Department of Buildings, pursuant to Title 1 RCNY §32-03(b)(2)(vii).

(d) Except as set forth below, the Responsible Declarant Party shall perform all work which a Periodic Report or Emergency Incident Report (as defined below), and Accessory shall have the primary responsibility to perform (but may cause the Board to perform) all work which a Facade Inspection Report (as defined below) identifies as necessary to maintain the Designated Structure, including architectural features and elements, in sound first-class condition. No work shall be performed except pursuant to a permit from the LPC if a permit is required under the Landmarks Preservation Law. If the LPC determines that a specific item of work or method of work as set forth in a Periodic Report, Facade Inspection Report or Emergency Incident Report would be inappropriate or inadequate, the determination of the LPC shall control and the Responsible Declarant Party need not and shall not have such specific item performed. The Responsible Declarant Party shall have the right to contest in a hearing before the LPC any work called for in a Periodic Report or Emergency Incident Report. The Responsible Declarant Party's obligation to perform such contested work or to perform it by a method acceptable to the LPC shall be stayed pending a decision in any such proceeding at the LPC. The Responsible Declarant Party shall proceed with all work which is uncontested during the stay pursuant to a permit.

(e) Unless the Responsible Declarant Party has notified the LPC in writing that it contests any work as set forth in the preceding paragraph, the Responsible Declarant Party shall apply for all necessary permits or certificates from the LPC within 45 days of receiving the completed report from the Preservation Architect. The Responsible Declarant Party shall use its best efforts to assure that all repairs, rehabilitation, repainting and restoration work detailed in the Periodic Report or Emergency Incident Report shall be completed at the earliest possible date, but no later than within nine months of the date of issue of the certificate or permit from the LPC, or, if no such certificate or permit is required, within nine months of the date of the Periodic Report or Emergency Incident Report. If for reasons beyond Declarant's control, as determined by the Chair of the LPC, such work cannot be completed within nine months, Declarant shall apply to the LPC for an extension of time within which to complete such work. Such extensions shall be for a stated additional period of time to be related to the period of delay and shall not be unreasonably withheld.

(f) Without limiting or modifying any obligation of Accessory hereunder, Accessory shall not be prohibited from causing the Board, on Accessory's behalf, to discharge

any responsibility or obligation of Accessory hereunder consistent with the Condominium's Declaration and By-Laws, or otherwise.

2.4 Emergency Protection Program. Declarant shall establish and be prepared to carry out an emergency protection program for the Designated Structure which shall include at the minimum, the following:

(a) If a fire, the elements or any other cause whatsoever damages or destroys the Designated Structure or any part thereof (the "Emergency Incident"), each Declarant Party shall, with respect to the elements of the Condominium allocated to its care and maintenance, use all reasonable means to save, protect and preserve the Designated Structure at the time of and following the Emergency Incident, including, but not limited to, acting with an approval from the Chair of the LPC or his or her designated representatives to stabilize and prevent further damage to or deterioration of the structure, and to secure the Subject Premises from unauthorized access. No Declarant shall remove from the Subject Premises any debris consisting of exterior features of the Designated Structure or designated feature of the Designated Interior area without an approval from the Chair of the LPC or his or her designated representative, unless necessitated as a safety precaution as ordered by the Departments of Buildings, Health, Fire or Police, or as an action taken in response to a life-threatening situation.

(b) Each Responsible Declarant Party shall, with respect to the elements of the Condominium allocated to its care and maintenance, give immediate written notice of such Emergency Incident to the LPC. Each Declarant Party shall also give timely notice to the LPC of the time or times when the New York City Departments of Buildings, Health and Fire will inspect the Subject Premises following the Emergency Incident, in order that the LPC may have a representative present during such inspections.

(c) Within sixty days of such Emergency Incident, a Preservation Architect shall, at the expense of Declarant, make a thorough inspection of the Designated Structure and submit a report (an "Emergency Incident Report") to Declarant and to the LPC outlining the condition of the structure, assessing the extent of damage, and recommending (A) work, if any, which must be undertaken immediately, upon receipt of proper permits, in order to stabilize and prevent further damage to the Designated Structure, and (B) work that should be performed to repair and restore the Designated Structure to a sound, first-class condition or, alternatively to (A) and (B), that Declarant make an application to the LPC for permission to demolish the remaining portions of the Designated Structure. The Board shall be responsible for the delivery of a single Emergency Incident Report to LPC which shall include all designated portions of the building, both interior and exterior, and shall identify each Responsible Declarant Party.

(d) With regard to the work to be performed pursuant to subparagraph 2.4(a), the Responsible Declarant Party shall immediately upon receipt of the Emergency Incident Report request and vigorously pursue all necessary permits and upon their issuance,

shall undertake all such work with alacrity. If no permits are required, work shall be undertaken as soon as possible after receipt of the Emergency Incident Report.

2.5 Permits. With regard to the work to be performed pursuant to subparagraph 2.4(c), within ninety days of receiving the report of the Preservation Architect, the Responsible Declarant Party shall apply for all necessary permits and certificates from the LPC to repair and restore or to demolish. No work on the exterior of the Designated Structure, and no work on the interior of the Designated Structure which would affect the exterior or which would require the issuance of a permit from the Department of Buildings shall be performed except pursuant to a permit from the LPC. If the LPC determines that a recommendation to demolish or to perform a specific item of work or method of work set forth in the report would be inappropriate, using the criteria set forth in the Landmarks Preservation Law, the determination of the LPC shall control and the Responsible Declarant Party shall not have such specific work performed or be entitled to have the Designated Structure demolished unless the Responsible Declarant Party is obligated to perform such work or demolish the structure in accordance with an "Unsafe Building Notice" issued by the Department of Buildings. All repair, restoration, rehabilitation, repainting, and other work provided for in a certificate or permit shall be completed within nine months of the date of issue of such certificate or permit by the LPC. If such work cannot be completed within nine months for reasons beyond Declarant's control, as determined by the Chair of the LPC, the Responsible Declarant Party shall apply in writing to the LPC for an extension of time within which to complete such work. Such extensions shall be for a stated additional period of time which is related to the period of the delay and shall not be unreasonably withheld.

2.6 Access to Designated Structure.

(a) Each Declarant Party agrees, with respect to the elements of the Condominium allocated to its care and maintenance, to provide access to the Designated Structure to the LPC and its designated representatives at reasonable times and upon reasonable written notice, except in cases of emergency, in which event the LPC or its representatives shall have access, if feasible, immediately and without notice, in order to insure that the preservation, repair and maintenance of the Designated Structure is carried out in accordance with this Declaration. **[Declarant agrees that the Designated Interiors shall remain open and accessible to the public, except that if any of the Oak Bar, Oak Room, Ballroom, Terrace Room, North Lobby, East Lobby or Palm Court (each a "Designated Interior Room"), together with its associated connecting hallway or hallways, is not used or shall cease to be used for a Special Permit Use, then such room shall be required to remain open and accessible to the public only as provided in Section 2.6(b) and shall otherwise be released from the obligations of this Declaration as provided in Section 5.4 hereof.**

(b) (i) **As used in this Section 2.6, "open and accessible to the public" in the case of any Designated Interior Room and its associated connecting hallway or hallways that is used for a Special Permit Use shall not be deemed to prevent closure of**

any of the Designated Interiors or Designated Interior Room outside of ordinary business hours, or temporary closure during ordinary business hours for private events or functions or if necessitated by change of tenancy, rehabilitation, tenant build-out, or other similar circumstances or events.

(ii) With respect to any Designated Interior Room that is not used or ceases to be used for a Special Permit Use, “open and accessible to the public” shall mean that members of a recognized preservation group identified by the LPC and mutually agreed upon by the Board may enter such Designated Interior Room, accompanied by a representative of the Board for a period no longer than 30 minutes, two times per calendar year, at a time mutually agreed upon by the Board and said preservation group.]

2.7 Failure to Perform.

(a) Notice. If the preservation, repair, or maintenance of the Designated Structure is not performed in accordance with the provisions of this Article, the LPC shall give written notice of such failure to perform (each such notice a “Performance Notice”) to the Board which shall perform the required work, or cause performance of the required work by the Declarant Party to whom care and maintenance of those elements of the Condominium are allocated pursuant to Section 3.1 of this Declaration. Within ten (10) days after receipt of such Performance Notice, the Board shall give notice to LPC of the identity of the Responsible Declarant Party to which is assigned the Operating Obligation (hereafter defined) for the preservation, repair or maintenance in question (each such notice, a “DP Identity Notice”) with a copy of such notice sent simultaneously to the Responsible Declarant Party. A Declarant Party receiving a DP Identity Notice may, by notice to each of the Board and LPC given within ten days of issuance of the original DP Identity Notice, dispute the Board’s attribution of responsibility, stating in detail the reasons why such Declarant Party believes the Board has erred (each such notice, a “Dispute Notice”). Thereafter, within ten (10) days after receipt of a Dispute Notice, the Board shall either issue a corrected DP Identity Notice to LPC, a new Responsible Declarant Party and the original Responsible Declarant Party, or shall issue a notice affirming its reason for the original attribution of responsibility to the original Responsible Declarant Party. Each new Responsible Declarant Party shall have the right to challenge the DP Identity Notice in the same manner and within the same time periods as hereinabove provided for the original Responsible Declarant Party, provided, however, that nothing contained herein shall relieve the Board of its obligations to perform or cause to be performed the preservation, repair or maintenance work LPC has demanded in its Performance Notice within the time herein prescribed.

Any Declarant Party that is determined to have issued a Dispute Notice to the LPC and the Board in error shall be liable to the LPC and the Board for all costs incurred by them, including the costs of any work performed by either of them, and the costs of imposing or removing any lien on a condominium section or unit as herein provided, together with legal fees and disbursements. Such costs shall include all payments by either of them to any

lawyers, consultants, contractors, painters, engineers, architects and skilled artisans required to be hired to perform or supervise such work.

(b) LPC Right to Self-help.

(i) Liens. If either the Board or the Responsible Declarant Party, its successors or assigns, in each case, as applicable, fails to perform or fails diligently to prosecute to completion, its obligation(s) in respect of any such repair and/or maintenance (a “Failure to Perform”), or any other obligations of Declarant set forth in this Declaration, within sixty (60) days after the Board’s receipt of the Performance Notice (the “Correction Period”), the City of New York may perform all of the necessary work [**at the sole cost and expense of the Responsible Declarant Party designated in the DP Identity Notice last issued by the Board with respect to the work**] and shall have the right to enter onto the Subject Property and to charge the Responsible Declarant Party for all the actual cost of such work, together with actual administrative and legal fees incurred in the collection thereof. Such actual costs shall include, but not be limited to, payments by the City of New York to any lawyers, consultants, contractors, painters, engineers, architects and skilled artisans required to be hired to perform or supervise such work. To the extent such actual costs are expended by the City of New York, the LPC shall have a lien on any Condominium unit or section of the Condominium in which the work that is the subject of the lien was performed as if a lien had been filed, perfected and enforced for materials and labor under Article 2 of the Lien Law of the State of New York, [but only within the limitation of liability established pursuant to Section 4.10 hereof.]

(ii) Preservation Account. Notwithstanding the provisions of Section 2.7(b)(i), for any work for which a residential unit, the entire residential section of the Condominium, the Board of Managers of the Residential Section, or a Condo Hotel Unit of the Condominium (collectively, the “Lien Exempt Units” and each, individually, a “Lien Exempt Unit”) is the Responsible Declarant Party, or with respect to any work affecting the façade, LPC shall have the alternate remedy provided in this paragraph 2.7(b)(ii).

From and after the date of the first closing of title (as defined in the Condominium Offering Plans) to any Lien Exempt Unit, the Board shall deposit annually in a segregated account, under its sole and exclusive control, the sum of One-hundred Thousand Dollars (\$100,000.00) annually (the “Preservation Account”). At the date of each Periodic Inspection, the Preservation Account shall have a minimum balance of Five-hundred Thousand Dollars (\$500,000.00) and at all times shall have a minimum balance of Two-hundred Thousand Dollars (\$200,000.00), but at no time shall be required to exceed One Million Dollars (\$1,000,000.00). Funds in the Preservation Account may be used by the Board for periodic performance of any maintenance and restoration obligations intended to satisfy the preservation purpose of this Declaration, subject to the foregoing obligations with respect to maintenance of a minimum balance.

In the event of a Failure to Perform by any of the Lien Exempt Units or with respect to any required maintenance or repair of the façade, which results in performance of the work by LPC as outlined in paragraph 2.7(b)(i) then, in lieu of the lien described in Section 2.7(b)(i) of the Declaration, LPC shall have a lien against and shall be required in the first instance to levy and execute against the Preservation Account. If and only if the amount expended by the City in connection with work authorized by section 2.7(b)(i) exceeds the funds in the Preservation Account, the City may place a lien for such additional amount on the Lien Exempt Unit where the work was performed (up to the pro rata share of such Lien Exempt Unit as provided in Section 4.10 hereof) or, in the case of work affecting the façade, against any unit in the Condominium, as if a lien had been filed, perfected and enforced for materials and labor under Article 2 of the Lien Law of the State of New York.

The Board shall provide to LPC annually, on or within two weeks of each annual anniversary of the issuance by the LPC of the Notice of Compliance pursuant to the C of A, a copy of the account statement for the Preservation Account and shall give prompt written notice to LPC of any change in the identity or location of the institution holding the Preservation Account. If, but only if, the Board fails to maintain the Preservation Account as required, LPC may nonetheless place a lien **[(in an amount up to the pro rata share of such Responsible Declarant Party as among all Responsible Declarant Parties for the same obligation as provided in Section 4.10 hereof)]** on a Lien Exempt Unit that is the Responsible Declarant Party (notwithstanding its status as a Lien Exempt Unit) with respect to a Failure to Perform as if a lien had been filed, perfected and enforced for materials and labor under Article 2 of the Lien Law of the State of New York.

ARTICLE III

CONDOMINIUM OWNERSHIP AND RESPONSIBILITY

3.1 Attribution of Obligations. Because the Designated Structure has been converted to a condominium in accordance with Article 9B of the New York State Real Property Law ("RPL"), each of the Declarant Parties shall have, and hereby covenants and agrees to undertake and assume, the obligations of Declarant set forth in Section 2.1 (the "Restoration Obligations") and Sections 2.2 through 2.6 (the "Operating Obligations") (the Restoration Obligations and the Operating Obligations hereafter, collectively, the "Obligations") with respect to the elements of the Designated Structure as hereafter described:

(a) Restoration Obligations.

Accessory shall be responsible for completion of the Exterior Restoration Work and all Interior Restoration Work described in Section 2.1(a)(2) hereof other than as specified in the paragraph below.

Residential shall be responsible for all Interior Restoration Work in the North Lobby described in Section 2.1(a)(2)(vii) hereof.

(b) Operating Obligations.

Accessory and the Board shall be jointly responsible for all Operating Obligations as they relate to the façade, including the mansard portion of the roof, and all other exterior maintenance work, with the exception of roof work.

The Board shall be responsible for all Operating Obligations as they relate to the roof .

Accessory shall be responsible for all Operating Obligations as they relate to the Interior Designated Spaces, other than as specified in the paragraph below.

The Board of Managers of Residential shall be responsible for all Operating Obligations as they relate to the interior of the North Lobby.

3.2 Board.

Notwithstanding anything to the contrary hereinabove provided, as between the City of New York (and any agencies, departments, divisions, committees, officers or employees thereof entitled to enforcement of this Declaration) and Declarant, the Board shall be responsible for performing or causing the Declarant, and its heirs, successors and assigns, to perform the Obligations. Nothing in this section 3.2 shall limit the City's right and ability to seek enforcement of the obligations set forth in this Declaration against any heir, successor or assign of Declarant, or any other owner of all or part of the Subject Premises, to such owner's extent of ownership of the Subject Premises.

Each of Accessory and CPS1 has appointed the Board as its Attorney-in-Fact with respect to modification, amendment, or cancellation of the Declaration. The Board of Managers of each of Residential and each residential unit owner (each, a "Unit Owner") shall appoint the Board as his or its Attorney-in-Fact with respect to modification, amendment, or cancellation of the Declaration.

3.3 Condominium Declaration.

Every deed conveying title to, or a partial interest in, the Subject Premises and every lease of all or substantially all of the Subject Premises shall contain a recital that the grantee is bound by the terms of the Condominium Declaration and By-laws which shall incorporate an obligation by Declarant and the Board to comply with the provisions of Article 3 of this Declaration.

ARTICLE IV

EFFECT AND ENFORCEMENT

4.1 Effective Date.

(a) This Declaration shall have no force and effect unless and until the occurrence of one of the following, to be referred to as the "Effective Date": (a) the expiration of 21 days after the Special Permit has been approved if no review is undertaken by the City Council pursuant to Section 197-d of the New York City Charter or (b) final approval of the Special Permit pursuant to Section 197-d of the New York City Charter. The Declaration shall become immediately effective upon the Effective Date. If, before the Effective Date, Declarant requests or causes the application for the Special Permit to be withdrawn or abandoned, or if final action has been taken having the effect of denying the Special Permit, then, upon notice to CPC and LPC, this Declaration shall not become effective, shall be automatically canceled and shall be of no force and effect.

(b) If a challenge is made to a court of competent jurisdiction to declare the Special Permit as invalid then, during the time such appeal is pending, Declarant may elect not to proceed with development of the Special Permit Uses and its restoration and maintenance obligations under this Declaration until the appeal has been resolved.

(c) If the Special Permit is at any time declared invalid or is otherwise voided by final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such entry, as the case may be, this Declaration shall be automatically canceled without further action by Declarant and shall be of no further force or effect and the CPC shall, if requested by Declarant, provide Declarant with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect. In the event that Declarant has obtained a certificate of occupancy allowing any Special Permit Use in the Designated Structure, Declarant shall promptly, after receipt of such letter, obtain a revised certificate of occupancy from the Buildings Department reflecting the cessation of any such Special Permit Use in the Designated Structure.

4.2 Filing and Recording. Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against the Subject Property, immediately upon the Effective Date. Declarant shall promptly deliver or cause to be delivered to the CPC and the LPC duplicate executed originals, promptly following the Effective Date and, following recordation, a true copy of this Declaration as recorded, as certified by the Register. If Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarant, who shall promptly pay to the City

such costs together with fees for purchase of a reasonable number of certified copies of the recorded Declaration.

4.3 Additional Remedies. Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration.

4.4 Notice and Cure.

(a) Before any agency, department, commission or other subdivision of the City of New York institutes any proceeding or proceedings to enforce the terms or conditions of this Declaration because of any violation hereof, it shall give Declarant forty-five (45) days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure of such alleged violation. If Declarant commences to effect a cure during such forty-five (45) day period and proceeds diligently towards the effectuation of such cure, the aforesaid forty-five (45) day period shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. In the event that title to the Subject Premises, or any part thereof, shall become vested in more than one party, the right to notice and cure provided in this subsection shall apply equally to all parties with a fee interest in the Subject Property, or any part thereof, including ground lessees; provided the LPC has received notice by said parties in accordance with Section 6.2. Notwithstanding the foregoing, in the event that the Designated Structure is converted to a condominium, the right to notice and cure provided in this subsection shall apply only to the condominium board and to any owner of space occupied by Special Permit Uses in the Designated Structure; provided that the LPC has received notice by said parties in accordance with Section 6.2.

(b) If Declarant fails to observe any of the terms or conditions of this Declaration, and the Declarant fails to cure such violation within the applicable grace period provided in subparagraph 4.4(a) of this Declaration, then prior to the institution by any agency or department of the City of any action, proceeding, or proceedings against Declarant in connection with such failure, a Mortgagee who has given written notice of its name and address to the CPC and the LPC shall be given thirty (30) days written notice of such alleged violation, during which period such Mortgagee shall have the opportunity to effect a cure of such alleged violation. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with the effectuation of such cure.

(c) If after due notice as set forth in this Section 4.4, Declarant and the Mortgagee fail to cure such alleged violations, the City may exercise any and all of its rights,

including those delineated in this Section and may disapprove any amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of any material obligation under this Declaration.

4.5 Acknowledgement of Covenants. Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration, which are an integral part of the Special Permit, will protect the value and desirability of the Subject Premises as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Premises. Those restrictions, covenants, easements, obligations and agreements shall be covenants running with the land, and shall bind Declarant and its successors, legal representatives, and assigns.

4.6 No Other Enforceable Restrictions. Declarant represents and warrants that there are no enforceable restrictions of record on the use of the Subject Property or the Designated Structure, nor any present or presently existing future estate or interests in the Subject Property or the Designated Structure, nor any lien, obligation, enforceable covenant, limitation or encumbrance of any kind which precludes, directly or indirectly, imposition on the Subject Premises of the restrictions, covenants, easements and obligations of this Declaration.

4.7 Governance. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

4.8 Severability. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

4.9 Applicability to other City Agencies. Declarant covenants to include a copy of this Declaration as part of any application submitted to the LPC, CPC, Buildings Department, Board of Standards and Appeals ("BSA"), New York State Attorney General (in the event of a proposed conversion of the Designated Structure to condominium ownership) or any agency succeeding to their respective jurisdictions. The restrictions and obligations contained herein are a condition of any permit or Certificate of Occupancy to be issued by the Building Department and Declarant will take all reasonable steps to ensure that they are so listed. Failure to carry out such obligation beyond any applicable grace period shall constitute sufficient cause for the Commissioner of the Buildings Department to revoke any building permit issued pursuant to the Special Permit or to apply to the BSA or to a court of competent jurisdiction for revocation of the Certificate of Occupancy or any permit issued by the Buildings Department.

4.10 1)Limitation of Liability. a) Declarant shall be liable in the performance of any term, provision or covenant in this Declaration, subject to the following sentences and

subject to Section 4.12 below. Notwithstanding anything to the contrary contained in this Declaration, the City and any other party or person relying on the Declaration will look solely to the fee estate and interest of each Declarant Party in the Subject Property, on an *in rem* basis only, for the collection of any money judgment recovered against Declarant, and no other property of Declarant shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarant shall have no personal liability under this Declaration. **[The liability of any Unit Owner under this Declaration shall be limited to the amount of such Unit Owner's prorated share, based on such Unit Owner's interest in the common elements of the Condominium, of the costs of compliance with this Declaration. For the purposes of this Section 4.10, "Declarant" shall mean "Declarant" as defined in Article I hereof, as well as any principals, disclosed or undisclosed, affiliates, officers, employees, shareholders or directors of Declarant.]**

(b) The restrictions, covenants and agreements set forth in this Declaration shall be binding upon the Declarant and any successor-in-interest only for the period during which Declarant and any successor-in-interest is the holder of a fee interest in or is a party-in-interest of the Subject Premises and only to the extent of such fee interest or the interest rendering Declarant a party-in-interest. At such time as the named Declarant has no further fee interest in the Subject Premises and is no longer a party-in-interest of the Subject Premises, Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Premises by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in-interest's interest.

4.11 Subordination. Declarant shall cause every individual, business organization or other entity that between the date hereof and the date of recordation of this Declaration becomes a Party-in-Interest to the Subject Property, to execute this Declaration or to subordinate such interest to the Declaration and waive its right to execution. Any mortgage or other lien encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto.

4.12 Right to Convey. Nothing contained herein shall be construed as requiring the consent of the CPC, the LPC, the City, any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, lease or assignment of any interest in the Subject Property or the Designated Structure.

ARTICLE V

AMENDMENTS, MODIFICATIONS AND CANCELLATIONS

5.1 Amendment or Cancellation. Except as provided in paragraph 4.1 above, this Declaration may be amended or canceled only upon application by LPC on behalf of

Declarant and only with the express written approval of the CPC and of the City Council, but only in the event that the City Council reviewed the Special Permit pursuant to Section 197-d, and no other approval or consent shall be required from any public body, private person or legal entity of any kind; provided, however, that no such approval shall be required in the case of any cancellation pursuant to paragraph 5.4.

5.2 Minor Modification. The Chair of the LPC and the Chair of the CPC may, by express written consent, administratively approve modifications to the Declaration that the CPC has determined to be minor. Such minor modifications shall not be deemed amendments requiring the approval of the CPC, the LPC, the City Council or any other agency or department of the City of New York.

5.3 Recording and Filing. Any modification, amendment or cancellation of this Declaration, except pursuant to paragraph 5.4, shall be executed and recorded in the same manner as this Declaration. Following any modification, amendment or cancellation, Declarant shall immediately record it and provide one executed and certified true copy thereof to each of the CPC and the LPC and upon failure to so record, permit its recording by the CPC or the LPC at the cost and expense of Declarant.

5.4 Surrender or Nullification. In the event that Declarant does not use the Special Permit Restricted Space pursuant to the Special Permit, Declarant may surrender the Special Permit to the CPC and proceed with any use permitted by the Zoning Resolution and in accordance with the Landmarks Preservation Law as if such Special Permit had not been granted. This Declaration shall be rendered null and void upon recordation of an instrument filed by Declarant discharging it of record, with copies to LPC and CPC, the recordation of which instrument shall constitute a waiver of the right to use the Subject Property pursuant to the Special Permit.

ARTICLE VI

MISCELLANEOUS

6.1 Exhibits. Any and all exhibits, appendices, or attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

6.2 Notices. All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent if intended for PLAZA ACCESSORY OWNER LP, PLAZA CLUB OWNER LP, PLAZA RESIDENTIAL OWNER LP, CPS 1 REALTY LP or BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM to El-Ad Properties NY LLC, 575 Madison Avenue, New York, New York 10010, if intended for the CPC, to the CPC at 22 Reade Street, New York, New York 10007 (or then-official address), Att: Chair, if intended for the LPC, to the LPC at 1 Centre Street, 9th floor, New York, New York 10007 (or then-official address), Att: Chair and

(d) if intended for the City Council, to the City Council at the Office of the Speaker, City Council, City Hall, New York, New York 10007. Declarant, or its representatives, by notice given as provided in this paragraph 6.2, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

6.3 Indemnification. Provided that Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration after having received written notice of such default and opportunity to cure as provided above, and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the City's enforcement of Declarant's obligations under this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

**PLAZA ACCESSORY OWNER LP
a Delaware Limited Partnership**

By: _____
Name: Miki Naftali
Title: President

**PLAZA CLUB OWNER LP
a Delaware Limited Partnership**

By: _____
Name: Miki Naftali
Title: President

**PLAZA RESIDENTIAL OWNER LP
a Delaware Limited Partnership**

By: _____
Name: Miki Naftali

Title: President

CPS 1 REALTY LP
a Delaware Limited Partnership

By: _____
Name: Miki Naftali
Title: President

BOARD OF MANAGERS OF THE
PLAZA CONDOMINIUM, an
unincorporated association

By: _____
Name: Miki Naftali
Title: President

SCHEDULE OF EXHIBITS

- Exhibit A - Metes and Bounds of Subject Property
- Exhibit B - Certification of Parties in Interest
- Exhibit B-1 - Waiver and Subordination by Column Financial, Inc.
- Exhibit C - Interior Designation Report
- Exhibit D - Landmarks Report
- Exhibit D-1 - Amended Report
- Exhibit E - Certificate of No Effect

EXHIBIT A

Metes and Bounds of Subject Premises

(Please see following pages attached.)

EXHIBIT B

Certification of Parties in Interest

(Please see following pages attached.)

EXHIBIT B-1

Waiver and Subordination by Column Financial, Inc.

(Please see following pages attached.)

EXHIBIT C

Interior Designation Report

(Please see following pages attached.)

EXHIBIT D

Landmarks Report

(Please see following pages attached.)

EXHIBIT D-1
Amended Report

EXHIBIT E

Certificate of No Effect

(Please see following pages attached.)