

**344-348 West 38th Street Tenants Corporation**

**ALTERATION AGREEMENT**

Date: \_\_\_\_\_

Re: Apartment Number(s) \_\_\_\_\_ (the "Unit")

344-348 West 38th Street, New York, New York (the "Building")

To The Board:

Pursuant to Section 21 of the Proprietary Lease of the 344-348 West 38th Street Tenants Corporation, the undersigned (herein collectively referred to as "Shareholder") hereby requests from you (herein referred to as the "Board") permission to install the equipment and make the alterations described in the accompanying plans and specifications (herein collectively referred to as the "Work") in the Unit, and agrees to the following terms and conditions:

1. Shareholder's Submissions. Shareholder delivers to you herewith:
  - a. detailed plans, specifications and drawings of the Work, including a room-by-room list of all alterations to be undertaken, and if required by the Board, detailed plans and specifications prepared by a licensed architect or engineer (enumerated as Exhibit "A" and attached hereto).
  - b. a check with respect to the security payable in connection with this Agreement in the sum of \$5,000 or 5% of the construction contract amount, which ever is less, but not less than \$250, payable to the 344-348 West 38th Street Tenants Corp. in accordance with paragraph 18 of this Agreement.
  - c. a check in the amount specified by the Board, payable to 344-348 West 38th Street Tenants Corp. for the services of an architect or engineer engaged by the Board to review Shareholder's plans.
  - d. documents showing the 344-348 West 38th Street building owner has granted any permission required under the Tenants Corp.'s Master Lease and its amendments and other agreements.
  - e. all insurance policies or certificates along with proof of payment of premiums contemplated in paragraph 4(c) of this Agreement.

2. Board's Review of Work as Proposed. Shareholder acknowledges that the Board may designate an architect or engineer, who shall, at Shareholder's expense, (a) review plans and specifications for the Work in regard to how the Work may affect the common areas of the Building and the use, security, safety and enjoyment by other unit Shareholders of the Building and (b) from time to time observe the Work to ensure that the Work conforms to the approved plans and specifications and is otherwise in conformity with the requirements of this Agreement.

Shareholder shall provide access to the Unit, from time to time, to permit the Board's architect, engineer, the Managing Agent, the superintendent of the Building, or any other person they may authorize, to observe and inspect the Work. Shareholder agrees to make all corrections specified by the Board as a result of such inspections, provided such corrections are necessary to bring the Work into conformity with the plans and specifications previously approved by the Board.

Such visits must be scheduled by Shareholder on not less than three (3) business days, notice to the Board's architect or engineer:

- a. Prior to any demolition;
- b. Prior to inspections, testing or approvals as required by any public authority having jurisdiction over any portion of the Work; and
- c. Prior to the enclosure or obstruction of any concealed or inaccessible portions of the Work.

The Board's architect or engineer shall make reasonable efforts to observe the Work within seventy-two (72) hours after receiving Shareholder's request for an observation visit.

3. No Changes in Scope of Work Shareholder agrees that no amendments to the approved plans and specifications or any changes of any kind in the scope of the proposed Work shall be made without the written approval of an officer of the Board, the Board's architect or engineer, or a representative of the Managing Agent.

4. Pre-Conditions to Commencement of work by Shareholder. Shareholder agrees, before the Work is begun:

- a. **Submission of Contracts.** Upon the request of the Board or its architect or engineer, to provide the Board with complete and conformed copies of every agreement made with contractors, subcontractors and suppliers;
- b. **Secure and Submit Proof of Needed Governmental Approvals.** If required by laws, rules, orders or governmental regulations, to file plans, forms or applications (including without limitation any asbestos-related forms filed in support of any applications) with, and procure the approval of all governmental agencies having jurisdiction over the work including, but not limited to, the New York City Buildings Department, the Board of Fire Underwriters and the Landmarks Preservation Commission, if required, and, not more than ten (10) business days after receipt of such approval, to deliver to the Board a copy of every permit or certificate issued. The determination of the Board's architect or engineer as to the need for any such approval shall be conclusive;
- c. **Obtain Amended Certificate of Occupancy, if necessary.** If, under applicable law, the Work requires an amended Certificate of Occupancy for the Building, Shareholder shall (i) indicate on the plans and specifications submitted to the Board that an amended Certificate of Occupancy will be sought and (ii) file an application describing the Work with the New York City Buildings Department within thirty (30) days of the Board's written approval of such plans and specifications. A copy of any such application shall be simultaneously submitted to the Board. If required under applicable law, Shareholder will file an application for an amended Certificate of Occupancy within thirty (30) days after completion of the Work. Shareholder shall diligently pursue obtaining any such amended Certificate of Occupancy and shall keep the Board informed of the status thereof on a regular basis. No appointments for final Buildings Department inspection to "sign-off" on the Work shall be made prior to the Board or the Board's representatives conducting an inspection to confirm compliance with the approved plans and specifications, and the Board shall have a reasonable time to make such inspection. The determination of the Board's architect or engineer as to the need for an amended Certificate of Occupancy shall be conclusive.
- d. **Obtain Required Insurance.** To procure from Shareholder's contractor or contractors:
  - (1) Comprehensive personal liability and property damage insurance policies, each in the amount of \$1,000,000 per person, \$1,000,000 per occurrence, which policies shall name the Board the Board's architect or engineer. the building's Managing Agent and Shareholder, as parties insured. Such policies shall include coverage with respect to asbestos exposure, if the Work involves any asbestos containing material and shall not include a sunset clause without the Board's consent. Such policies shall

provide that they may not be terminated until at least ten (10) days after written notice to the Board (enumerated on Exhibit "B" hereto).

- (2) Worker's compensation and employer liability insurance policies covering all employees of Shareholder's contractor, contractors or subcontractors.
- (3) If the Work involves the removal and transportation of hazardous material as defined under applicable law, Shareholder's contractors shall obtain hazardous material transportation liability insurance policies or arrange for the Board to be named as an additional insured on the policy of the contractors, waste transporter. Such policy shall specifically cover all claims of persons and groups who might bring claims relating to asbestos and shall be in the amount of \$1,000,000 for bodily injury and \$1,000,000 for property damage.

All such policies or certificates evidencing the issuance of the same shall be delivered to the Board before the Work commences.

5. **Shareholder to Give Notice of Actual Commencement of Work.** Prior to commencing the Work, Shareholder shall give at least ten (10) days' written notice to the engineer and to the superintendent of the Building and to the Managing Agent and to the unit owners or residents in the units that are adjacent to, above and below Shareholder's unit (the "Adjacent Premises") of the date the Work shall commence and the estimated duration of the Work.

6. **Indemnification by Shareholder's Contractors.** Shareholder shall, before commencing any Work, obtain from each of Shareholder's contractors) a written indemnification agreement, wherein such contractors agree to defend, indemnify and hold harmless the Board and the Board's agents, partners, servants, employees, unit owners, guests, licensees, invitees and all other occupants of the Building, against any and all liability, including reasonable legal costs and expenses, on account of loss of life or injury to any person or damage to property, happening in or arising out of or in any way relating to the performance of the Work unless such injury or loss of life or loss or damage to property is caused solely by the affirmative negligence of the party indemnified herein.

7. **Indemnification by Shareholder.** Shareholder hereby indemnifies and holds harmless the Board, the Board's architect or engineer, the Managing Agent, and other unit Shareholders and residents of the Building against any damages suffered to persons or property as a result of the Work, whether or not caused by negligence, and for any and all liabilities arising therefrom or incurred in connection therewith, including, without limitation, any liability incurred in connection with the removal, encapsulation, enclosure or abatement of asbestos containing material or the transportation and disposal of the same, and Shareholder shall reimburse the Board, the Board's architect or engineer, Managing Agent, and other unit Shareholders and residents of the Building for any losses, costs, fines, fees and expenses (including, without limitation, reasonable attorneys, fees and disbursements) incurred as a result of the Work, including, without limitation, asbestos abatement, if any.

8. **Work Done at Shareholder's Expense.** Shareholder accepts sole responsibility for the Work and for all costs in connection with the Work.

9. **Work Done at Shareholder's Risk.** Any damage to the Adjacent Premises or other units or the common elements of the Building, including, but not limited to the common structure, infrastructure, equipment, elevators, doors and finishes of the Building, caused by or resulting from the Work, shall be covered by the insurance coverage required of Shareholder, or Shareholder's contractors) or subcontractors), as the case may be. However, the existence of such insurance shall not relieve Shareholder of liability therefor. If the Managing Agent advises Shareholder of any damage, which in the Managing Agent's opinion, was caused by the Work, Shareholder shall promptly submit such claim to their insurance carrier and to their contractors or subcontractors) for submission to their insurance carrier, as appropriate. Shareholder agrees to use all reasonable efforts, and to cause the contractors) and subcontractors) likewise to use all reasonable efforts, to cause any insurance carrier insuring Shareholder or Shareholder's contractors or subcontractors to expeditiously review and settle damage claims for which they are responsible.

10. **Shareholder's Responsibility for Damage.** The Shareholder of any unit in the Building, which has been damaged by the Work, or the Board, in case of damage to any Common Element, shall have the right to have such damaged unit or Common Element restored to its prior condition at Shareholder's sole cost and expense. Shareholder shall have the opportunity to make such repairs, provided that such repairs shall restore the damaged unit and/or Common Element or installation to its prior condition, and Shareholder shall promptly arrange for such repair.

In the event repairs fail to restore the damaged unit and/or area or installation to its prior condition, or Shareholder fails to promptly repair the damage, then the Shareholder of the damaged unit or the Board, as the case may be, may then have the right to repair any damage, at Shareholder's sole cost and expense.

In the event that there is a dispute as to the reasonableness of the cost of the proposed repairs, the determination of such amount may be made by the Board. If the Board elects to make such determination, Shareholder will pay to such unit Shareholder or to the Board, as the case may be, all bills for such repairs which such unit Shareholder or the Board submits to Shareholder, such payment to be made within fourteen (14) days after such unit Shareholder or the Board submits the same to Shareholder. If Shareholder fails to pay the amount of any bill to such unit Shareholder or to the Board, as the case may be, within fourteen (14) days after its submission to Shareholder, Shareholder will pay interest at the prime rate of Citibank, NA or any successor thereto, as announced from time to time by said bank, from the date of the submission of the bill to Shareholder to the date it is paid. In the event of Shareholder's failure to pay such a bill, the Board may in its discretion pay the amount thereof to the unit Shareholder, with interest, and Shareholder will reimburse the Board upon demand, for all amounts so paid by the Board, with interest, and such amounts shall be deemed part of Shareholder's common charges under the Bylaws of the Cooperative. The Board shall have the same rights in respect to the same as it has in respect to the failure to pay common charges under the By-laws.

11. **Shareholder to Pay for Board's Professional Fees.** If the Board obtains legal, engineering or architectural advice either prior or subsequent to granting permission, Shareholder agrees to reimburse the Board, on demand, for any reasonable fees incurred, and if permission be granted, then, in any event, prior to commencement of the Work. Shareholder understands and agrees that all costs of labor, equipment and materials incurred by the Board, in excess of the normal charges for day-to-day operations, to perform maintenance and supervision, elevator service or rubbish removal in connection with the work, shall be charged to Shareholder. Any such charges shall be billed monthly. To the extent such charges are not paid for by the Board in the ordinary course of day-to-day operations, all unit Shareholders undertaking renovations will be charged their proportionate share of any charges for a service elevator operator necessitated by such renovations.

12. **Shareholder's Contractor to Cooperate with Building Labor.** All of Shareholder's contractors and subcontractors shall employ only such laborers as shall not conflict with any of the local regional trade unions employed in the Work or otherwise cause disharmony with any Building service union.

13. **Shareholder's responsibility for Consequences of Work.** Shareholder assumes all risks of damage to the Building and its mechanical or electrical systems, and to persons and property in the Building which may result from or be attributable to the Work being performed hereunder. Shareholder assumes all responsibility for the maintenance and repair of any alterations and installations in the Unit after completion. This responsibility covers all aspects of the Work, whether or not structural, including without limitation, weather tightness of windows, exterior walls or roofs, waterproofing of every part of the Building directly or indirectly affected by the Work, and maintenance of all heating, plumbing, air-conditioning and other equipment installed or altered pursuant hereto; provided, however, if pursuant to the By-laws of the Condominium the Board is responsible for such maintenance and repair, Shareholder shall be responsible for such maintenance and repair for one year from the completion of the work and the Board shall thereafter resume responsibility for such maintenance and repair. If the operation of the Building, or any of its equipment, is adversely affected by the work, Shareholder shall, when so advised, promptly remove the cause of the problem.

14. **Shareholder's Work Not to Change Building Temperature Control System.** Shareholder recognizes that there will be no change in the operation of the Building's heating system (or air-conditioning system, if any) to facilitate the functioning of any heating or air-conditioning units Shareholder may be installing.

15. **Quality of Shareholder's Work.** The alterations and materials used shall be of the quality and style in keeping with the general character of the Building.

16. **Deadline for Shareholder's Work and Consequences of Failing to Meet It.** Shareholder shall use its best efforts to ensure that the proposed Work is completed expeditiously, but in any event all Work (except solely decorative projects such as installation of carpeting, painting and wall papering) shall be completed within one hundred eighty (180) calendar days from the date of commencement of the Work, or such other period as the Board, in writing, shall designate (the "Completion Date").

Upon Shareholder's written request (which request shall be submitted to the Board at least thirty (30) calendar days prior to the Completion Date), the Completion Date shall be subject to not more than two extensions of thirty (30) calendar days upon the Board's written approval, which approval shall not be unreasonably withheld or delayed. Shareholder shall, before any continuation period begins, provide the Board with the written reaffirmation of Shareholder and Shareholder's contractors of their continued agreement with all terms and Conditions of this Agreement.

If the Work shall not have been completed within two hundred and forty (240) calendar days after the commencement of the Work (the "Liquidated Damages Date"), the Board shall be entitled to apply from the finds provided pursuant to paragraph 18 of this Agreement the following amounts as liquidated damages and not as a penalty to compensate the Board and unit Shareholders for the costs and inconvenience of the continuation of the Work:

- a. \$100 per day for each additional calendar day the Work remains uncompleted up to and including thirty (30) such days beyond the Liquidated Damages Date;
- b. beyond thirty (30) days, \$200 per day for each additional calendar day the Work remains uncompleted up to and including the sixtieth (60th) day beyond the Liquidated Damages Date;
- c. beyond sixty (60) days, \$500 per day for each additional calendar day that the Work remains uncompleted up to and including the day the Work is completed.

If consent to an extension is not granted, but the Work nonetheless continues, the Board shall be entitled to apply from the finds provided pursuant to paragraph 18 of this Agreement the amounts set forth in the preceding sentence without prejudice and in addition to all other remedies.

If the finds provided pursuant to paragraph 18 are fully applied, Shareholder agrees to pay all amounts due under this paragraph to the Board in weekly installments, and Shareholder agrees that any consent granted by the Board under this paragraph 16 may be revoked by the Board immediately if Shareholder fails to comply with the payment requirements of this paragraph or any other requirements of this Agreement.

All time limitations set forth in this paragraph 16 shall be extended for delays caused by (a) failure of the Managing Agent and the Building staff to inspect the Work within the time periods set forth in this Agreement or resulting from the Board's failure to provide services necessary for the completion of the Work, such as elevator service, and (b) delays caused by or attributable to acts of God, unusual weather conditions or strikes not attributable to Shareholder's or Shareholder's contractors, or other agents, bad faith, but in no event shall such permitted extensions exceed forty-five (45) days.

17. **Work Hours.** The Work shall not be performed, except between the hours of 8:30 a.m. and 5:30 p.m. Monday through Friday. The Work shall not be performed on Saturdays, Sundays and holidays. Activities which produce noise or which are disturbing to Building occupants may not be done before 9:00 a.m. The Board shall be the sole arbiter should there be any doubt as to noise levels, which may be disturbing. Tenant must inform his/her neighbors of such work and how long it may take.

18. **Shareholder's Security Deposit.** As security for the faithful performance and observation by Shareholder of the terms and conditions of this Agreement, Shareholder has deposited the sum of \$5,000 or 5% of

the projected construction, which ever is less, but not less than \$500, with the Board. The amount of such security deposit may be increased or decreased by the Board as a condition for the Board's approval depending upon the scope of the Work. In the event that Shareholder or persons engaged by Shareholder to perform the Work cause loss, cost or expense to the Board or the common elements, including without limitation any loss, cost or expense arising from or relating to:

- a. the fees of the Board's architect or engineer to review the plans and specifications or to review from time to time the progress of the Work;
  - b. the fees of the Board's attorneys engaged in the event of Shareholder's breach or alleged breach of the provisions of this Agreement, or otherwise in connection with the Work;
  - c. damage to the carpeting or wallpaper in the Building's hallways or to any common element (including without limitation, the cost of cleaning, shampooing, painting or repairing the same if soiled or otherwise damaged),
  - d. delays in completion of the Work, as more specifically referred to in Paragraph 16 of this Agreement, or
- C. any other expenses incurred by the Board in connection with any complaints or breach of this Agreement.

Shareholder agrees that the Board may use, apply or retain the whole or any part of the security so deposited and the interest earned thereon, if any, to the extent required for the payment thereof. If the deposit is diminished by one-half of the original amount, Shareholder shall replenish it to the full amount within (3) days after written demand. Shareholder's failure to so replenish the security deposit shall be a material breach of this Agreement and shall entitle the Board to stop all work hereunder, and/or exercise any remedies it has hereunder.

If Shareholder shall comply with all of the terms and conditions of this Agreement, the security deposit or remaining balance thereof, if any, shall be returned to Shareholder.

19. **Certain Precautions To Be Taken By Shareholder.** Shareholder will take or cause their contractors to take all precautions necessary to prevent injury to the carpeting and wallpaper in the Building's hallways, elevators (including the doors and appurtenances) and to other common areas during the progress of the Work.

20. **Prohibited Construction Methods.** The use of jackhammers is prohibited. The use of power tools, such as nail guns, electric hammers or portable electric saws which may disturb other occupants of the Building will not be permitted without written permission from the Board or the Managing Agent, which permission shall not be unreasonably withheld or delayed. Shareholder will not interfere or permit interference with the Building's intercom system, gas, electric or any other service.

21. **Board's Access to the Work.** If the Work involves the enclosure of any heat or water pipes not presently enclosed, or in any other way impedes access to such pipes and if in the future, the Board is required to remove these impediments to repair such pipes or for any other purpose, Shareholder shall reimburse the Board for all expenses incurred and shall pay all costs to restore the same.

22. **New Plumbing To Remain Accessible.** Shareholder agrees that where new plumbing fixtures are installed, all new roughing and shut-off valves will be conveniently located and accessible.

23. **New Valves to Remain Accessible.** Shareholder agrees that all water, steam, and gas valves will be reasonably accessible.

24. **Building Systems to Remain Intact.** Shareholder agrees that the Work will not alter or relocate the main plumbing, heating and intercom lines.

25. **Changes in Electrical Service.** Shareholder agrees that no additional electric service will be brought in without the Board's approval, which approval shall be at the Board's sole discretion. If such approval is granted, Shareholder shall pay such fees as Board shall determine. Shareholder further agrees to bear all professional fees associated with any review, correction or amendment to the proposed electrical plan done by an architect and/or consulting engineer of the Board's choice. Any electrical modifications or rewiring must be accompanied by a separate electrical riser and separate meeting approved by the Board. Any part of the Work that requires a temporary shutdown of the water, gas or electrical system affecting areas in the Building outside the Unit must be scheduled with the Building's superintendent after Board approval. A minimum of three (3) working days notice is to be given; shutdowns may not exceed three (3) hours in duration. No part of the Work that requires shutdown of the heating system will be permitted during the heating season, as determined by the Board.

26. **Exterior Walls to Remain Intact.** Shareholder agrees that exterior masonry walls shall not be penetrated.

27. **Certain flooring Prohibited.** Shareholder agrees that no granite, ceramic tile, marble or similar hard-surfaced flooring will be installed except in the kitchen, bath and entry foyer.

28. **No Change in Use Configuration of Unit.** Shareholder agrees that no part of the Work shall change the layout of Shareholder's unit in its relation to Adjacent Premises, i.e., no noisy' room such as kitchen may be relocated above a "quiet" room such as a bedroom.

29. **Use of Public and Common Areas During Work.** Shareholder will not allow the sidewalks, courtyards and other public areas to be used for the storage of building materials or debris and agrees that the floor of the back halls to be used in connection with the Work will be covered with construction paper during the Work. If the Work mars or damages the back hall, stairs, or elevators, the Board may repair them at Shareholder's expense upon the completion of the Work if Shareholder shall fail to promptly to do so and Shareholder shall promptly pay all reasonable bills for such repairs.

Only the Service Elevator (at the 344 W38th Street freight entrance) may be used to transport personnel and materials related in any way to the alteration. Keys for the front doors (the 348 W38th Street entrance) and Passenger Elevator (348 W38th Street entrance elevator) must not be given to anyone for use related to an alteration. No construction personnel may use the Passenger Elevator or 348 W38th Street lobby.

30. **Shareholder to Maintain Certain Safety Precautions.** Shareholder agrees that functioning fire extinguishers and smoke alarms will be maintained in the Unit during the work Shareholder understands and agrees that window guards must be installed as required by law if a child or children ten (10) years old or under resides in the Unit.

31. **Fire Exits to Remain Accessible.** Shareholder agrees that the Work shall not block access to any fire exits in the Building.

32. **Shareholder to Control Refuse, Dirt, Dust, etc.** All precautions will be taken by Shareholder to prevent dirt and dust from permeating other parts of the Building during the progress of the Work. Materials and rubbish will be placed in barrels or bags before being taken out of the Unit. All such barrels or bags, rubbish, rubble, discarded equipment, empty packing cartons and other materials will be taken out of the Building and removed from the Unit at Shareholder's expense. Shareholder recognizes that only the service elevator may be used for such removal and only at such times as the superintendent of the Building may direct. Shareholder shall not permit any dumpster or garbage container to be left overnight in front of the Building and shall not permit any dumpster or garbage container to be left for more than five (5) consecutive days at the sides of the Building. Notwithstanding the foregoing, the placement of any dumpsters must comply with all governmental regulations, including without limitation, obtaining any necessary permits. Shareholder acknowledges that the service elevator may be used only between the hours of 8:00 a.m. and 5:30p.m. during the days permitted in paragraph 17 of this Agreement. If the convenience of other unit owners or residents requires that the service elevators be operated on an "overtime" basis, Shareholder shall reimburse the Board for any wages or related expenses incurred in connection therewith.

33. **Shareholder to Reopen Enclosed Areas.** If any portion of the Work should be enclosed contrary to the provisions of this Agreement, if requested in writing by the architect or engineer, such portion shall be uncovered at Shareholder's expense for observation. Such enclosure shall be opened and replaced at Shareholder's expense.

34. **Shareholder to Promptly Pay For Work.** Shareholder shall bear the entire cost of the Work and pay all uncontested bills incurred in connection therewith, no later than the date the same are due.

35. **Shareholder to Deliver Certificates.** Promptly after the completion of the Work, Shareholder shall deliver to the Board: (a) an amended Certificate of occupancy and a certificate of the Board of Fire Underwriters, if either be required, (b) such other proof as the Board may reasonably require to establish that the Work has been done in accordance with all applicable laws, ordinances and government regulations, and (c) a statement from the architect or engineer who signed Shareholder's original plans that the Work has been executed in conformance with those plans.

36. **Shareholder to Comply with Laws, etc.** Shareholder shall not do or permit any act or thing to be done contrary to law, or which will invalidate or be in conflict with any provision of any liability, multi-peril casualty or other insurance policies carried by Shareholder or for Shareholder's benefit.

37. **Shareholder to Correct Work Rejected by the Board.** Shareholder shall promptly correct all parts of the Work (whether or not such work is fabricated, installed or completed) rejected by the Board because of its failure to conform to the plans and specifications previously approved by the Board or with the requirements of this Agreement or the laws, rules, orders or regulations of any governmental authority having jurisdiction over the Building or which violates any policy of insurance maintained by the Board. Shareholder shall bear all costs of correcting such rejected parts of the Work, including the compensation for additional services of any architect or engineer made necessary thereby.

38. **Responsibility of Shareholder and Shareholder's Successor in Interest.** Shareholder agrees that the responsibility for maintaining and repairing the Work remains with Shareholder and Shareholder's successor-in-interest in residence in Shareholder's unit, including, but not limited to, the cost of removing or reinstalling all or any part of the Work. Shareholder agrees that Shareholder and Shareholder's successor-in-interest are fully responsible for the future repair and maintenance of the plumbing lines located in Shareholder's unit and any equipment installed as part of the Work, including without limitation, any and all costs relating to leakage and/or seepage in Shareholder's unit and/or the Adjacent Premises. In the event that there is a complaint concerning noise, vibration or exhaust heat from any equipment installed by Shareholder, Shareholder shall, after notice, make immediate repairs or adjustments to eliminate the cause of the complaint and if this is not possible, to remove any such equipment promptly upon order of the Board.

39. **Liability of Shareholder and Shareholder's Successor-in-Interest.** Shareholder further agrees that Shareholder and Shareholder's successor in-interest in residence in Shareholder's Unit shall bear any and all costs for any plumbing leaks or other conditions which cause damage to the Adjacent Premises or other units in the Building, if such leakage or damage results from alterations made or equipment installed as part of the Work.

40. **Asbestos Containing Material.** If the Work involves the demolition, removal, relocation or alteration of any walls, ceilings, floors, or electrical, plumbing, heating, ventilation, or air conditioning systems, Shareholder shall, prior to the commencement of the work:

- a. At Shareholder's expense, retain a duly licensed asbestos investigator, approved by the Board, to either
  - (1) review the building's construction and renovation records as well as any prior inspection reports to determine the existence and possible disturbance of asbestos-containing material ("ACM"); or
  - (2) inspect the areas to be renovated to determine the existence and possible disturbance of any ACM.



- b. If the results of the review or investigation reveal the presence of ACM in a friable condition, but said friable ACM is less than ten (10) square feet or twenty-five (25) linear feet, Shareholder shall present to the Board proof of the investigator's filing of FORM ACP5 ("Not an Asbestos Project" form). If the results of the review or investigation determines that more than ten (10) square feet or twenty-five (25) linear feet of ACM is in a friable condition, Shareholder shall present to the Board proof of the investigator's filing of FORM ACP7 ("Asbestos Inspection Report" form).
- c. If; in the opinion of the asbestos investigator hired pursuant to the foregoing paragraph 40(a), no abatement-work is required, Shareholder shall be entitled to commence the Work, subject to the requirements of this Agreement.
- d. If, in the opinion of such investigator, abatement-work is required, then it shall be performed as follows:
  - (1) if the ACM is located in or connected with the common elements of the Building, the Board shall, at Shareholder's sole cost and expense, take all necessary steps to remove, encapsulate, enclose, treat or otherwise abate such ACM. Said steps may include, without limitation, retaining an asbestos consultant and an asbestos contractor, and causing the reinsulation of any areas where insulation containing ACM is removed.
  - (2) if the ACM is located entirely in Shareholder's Unit and does not, in the opinion of the asbestos investigator hired pursuant to paragraph 40(a), affect any common elements, Shareholder shall proceed as follows:
    - (A) Prior to the performance of any asbestos abatement-work, Shareholder shall submit to the Board the name(s) and qualifications (including any licenses, liability insurance policies, and resume) of any asbestos consultants and contractors) Shareholder intends to use for asbestos abatement-work, along with the name and qualifications (including licenses and certificates evidencing insurance policies of the contractor's hauler(s) and the licenses of all asbestos supervisors and handlers who are to perform the abatement-work.
    - (B) Upon receipt of the Board's approval of the consultants) and contractors), which shall not be unreasonably withheld or delayed, Shareholder shall retain such consultants and contractors to encapsulate, enclose, treat, or otherwise abate, as appropriate, all friable ACM. Said abatement, as well as the removal, hauling and disposal of the ACM shall be performed in conformance with all federal, state, and local laws and regulations.
    - (C) In connection with such abatement work, Shareholder shall furnish the Board with copies of all reports and tests that are required by applicable laws and regulations and with a copy of the final report, which is to be provided by Shareholder's asbestos consultant.
    - (D) In connection with asbestos removal and disposal, Shareholder shall cause the asbestos hauler to furnish the Board with lists of all dump locations to be used and a certification that the dump sites are EPA approved; and thereafter Shareholder shall furnish the Board with all dump tickets and disposal manifests.

Shareholder shall comply with all federal, state and local laws, rules and regulations pertaining to asbestos

control, as the same have been or may be promulgated, supplemented or amended from time to time prior to and during the abatement-work. In addition, Shareholder agrees to indemnify the Board for any and all loss, costs, expenses (including without limitation reasonable attorney's fees and disbursements), damages, liabilities or fines: (i) arising from failure by Shareholder or any consultant or contractor retained by Shareholder to fully conform to all of the foregoing, or (ii) incurred by the Board in the defense of any suit, action, claim or violation in connection with the abatement-work.

41. **Shareholder to Identify All Fixtures and Appliances.** Shareholder agrees that all fixtures and appliances proposed to be installed in the Unit will be labeled on the plans, specifications and drawings submitted.

42. **Certain Prohibited Installations and Techniques.** Notwithstanding anything to the contrary contained in the plans or specifications submitted to the Board herewith, Shareholder acknowledges that the Board has not granted and will not permit, without the Board's prior written permission (a) the installation of a whirlpool, Jacuzzi, sauna, steam room, electric stove or kiln or similar oven not for cooking purposes, (b) the installation of clothes washing or drying appliances or (c) any alterations which would entail entering into the floor or ceiling slab of Shareholder's unit for electrical or plumbing installations or for any other purposes and Shareholder expressly agrees not to cause or permit any such installation or alterations without the Board's prior written permission. Shareholder further expressly agrees not to cause or permit the installation of any other major appliance or fixture whatsoever unless the same shall have been labeled on the plans, specifications and drawings submitted to the Board and approved by the Board in writing.

43. **Access of Shareholder's Workmen.** No workmen shall be permitted in the Building without the express authorization of the Board or the Board's authorized representative provided however, that such authorization shall not be unreasonably withheld or delayed. Prior to entering the Building each day, Shareholder's workmen will be required to sign the daily log maintained by the Building's maintenance staff (provided the same shall be available) and, in connection therewith, to identify generally the nature of the tasks to be performed by them on that day.

44. **Work is of Shareholder's Sole Design.** Shareholder recognizes that by granting consent to the Work, the Board does not express any opinion as to the design, feasibility or efficiency of the Work.

45. **Miscellaneous.** This agreement may not be changed orally. This agreement shall be binding on legal representatives, successors and authorized assigns. Captions are for the purposes of convenience of reference only and are not to be considered in interpreting this Agreement.

46. **Shareholder's Breach and Board's Remedies.** OWNER'S FAILURE TO COMPLY WITH ANY OF THE PROVISIONS HEREOF SHALL BE DEEMED A BREACH OF THE PROVISIONS OF THE BY-LAWS, PURSUANT TO WHICH THE BOARD'S CONSENT HAS BEEN GRANTED, AND, IN ADDITION TO ALL OTHER RIGHTS, THE BOARD MAY ALSO SUSPEND ALL WORK AND PREVENT WORKMEN FROM ENTERING OWNER'S UNIT FOR ANY PURPOSE OTHER THAN TO REMOVE THEIR EQUIPMENT. IN SUCH EVENT, THE BOARD MAY ALSO REVOKE PERMISSION FOR OWNER TO UNDERTAKE THE WORK. ANY DEVIATION FROM THE WORK APPROVED IN THIS ALTERATION AGREEMENT SHALL VOID IN ITS ENTIRETY THE PERMISSION GRANTED HEREIN.

47. To the extent permitted by applicable law, no member of the Board (the "Board") shall have any personal liability with respect to this agreement or the work to be performed hereunder, or any act or omission of the Board or of any managing agent or manager in connection with this agreement or the Work as contemplated herein, except as hereinafter set forth in their capacities as individual unit Shareholders. The parties hereto recognize and agree that this agreement is made by the Board only as agent for all unit Shareholders. The parties hereto further recognize and agree that the liability of any unit Shareholder with respect to this agreement, the Work contemplated hereunder, or any act or omission of the Board or of any managing agent or manager is limited to such proportionate share of the total liability as the interest of such unit Shareholder bears to the aggregate interest of all such unit Shareholders in the Building, and in any event, is limited to such unit Shareholder's interest in his/her unit and his/her appurtenant interest in the Building. No Shareholder shall have any personal liability with respect to this agreement, the Work contemplated hereunder, or any act or omission of the Board or of any managing agent or manager. This exculpation of liability covers the assets, if any, of the Board on whose behalf this agreement is made.

Very truly yours,

\_\_\_\_\_

Unit Shareholder  
Social Security No. \_\_\_\_\_

Unit Shareholder  
Social Security No. \_\_\_\_\_

PERMISSION GRANTED and

*Receipt of \$\_\_\_\_\_ acknowledged:*

Date: \_\_\_\_\_

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