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BEC CONTINUUM OWNER LLC v. FABIAN FOSTER, ET AL

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART

-----X

BEC CONTINUUM OWNER LLC,

Index No. 310995/22

Petitioner,

DECISION/ORDER

-against-

Mot. seq. no. 4

FABIAN FOSTER, ET AL.,

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document numbers 43; 50-51 (motion no. 4), were read on this motion pursuant to CPLR 4404(b).

It is ORDERED that the motion is denied.

Contrary to Petitioner’s claims, the applicable provision in the lease between the parties does not contain a condition a limitation. Comparison to the lease provision at issue in *Fourth Hous. Co., Inc. v Bowers* (53 Misc 3d 43 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2016]), which the court has obtained and appended hereto (the provision is found on page 9, in the paragraph just above “Standards of Conduct...”), defeats Petitioner’s claim. The provision discussed in *Bowers* is as follows:

“In the event that the Board of Directors determines to terminate the tenancy, then the Board shall serve a 30-day Notice of Termination on the cooperator stating that the Board duly voted to terminate his/her lease because of the conduct found by the Board at the hearing and shall include or attach thereto the written findings of the Board.”

There is no appreciable difference between this provision and the provision in the lease here, that “owner may terminate the tenancy and lease upon ten days’ written notice to Renter.” Thus, as the provision in *Bowers* did not contain a conditional limitation, the provision here does not do so, either.

As to Petitioner’s argument that the Rent Stabilization Code “provides grounds for commencing summary proceedings for rent-stabilized tenants without a conditional limitation, that argument is misplaced. First, the Rent Stabilization Code is properly read as restricting the grounds for eviction, not creating grounds for eviction. The Code precludes eviction “except on

one or more of the grounds specified in the Code” (RSC 2524.1[a]). Second, even if the Code did create grounds for eviction, contrary to Petitioner’s claim, it says nothing about summary proceedings. Summary proceedings are created by RPAPL Article 7, which requires a conditional limitation without except. Petitioner is not prevented from seeking Respondent’s eviction in an ejectment action, which does not require a conditional limitation.

As to the argument that Respondent’s prior motion to dismiss was denied, “the denial of summary judgment establishes nothing more than that summary judgment is not warranted at that time (*see Moser v Devine Real Estate, Inc. [Florida]*, 42 AD3d 731, 733-734 [2007]), and ‘is not necessarily res judicata” (*COD, LLC v Ljulldjuraj*, 81 Misc 3d 132[A], 2023 NY Slip Op 51305[U] [App Term, 1st Dept 2023]).

The court has considered Petitioner’s remaining arguments and found them unavailing.

This is the court’s decision and order.

Dated: January 22, 2024



Michael L. Weisberg, JHC

Bldg. No. 1
Apt. No. 2K

PENALTY 800-851-7835
Petitioner
in evidence
3/17/14-ND

AGREEMENT made the 21st day of July, 2010, between Fourth Housing Company, Inc., with its principal office at 65-94 162nd St., Flushing, NY 11365, hereinafter referred to as the "Company", Fourth Housing Company Inc., a Limited Dividend Housing Company organized pursuant to Article 4 of the Private Housing Finance Law of the State of New York, hereinafter referred to as the "Law", and Milford a/o Elizette Bowers, hereinafter referred to as the "COOPERATOR"), residing at the leased apartment at 65-53 160th St. Flushing, NY 11365.

WHEREAS, the Company is the owner of the land and the buildings erected thereon known as FOURTH HOUSING COMPANY, INC. hereinafter called "Building"; and

WHEREAS, the Company has leased the apartments in the Building to the several owners of its capital stock; and

WHEREAS, the Cooperator is the owner of 35.36464 Class B Occupant Shares of the capital stock of the Company, which have been allocated to the apartment hereinafter described;

NOW, THEREFORE in consideration of the mutual promises, covenants, terms, conditions and agreements herein provided, the parties hereto agree as follows:

1. APARTMENT AND TERM

The Company hereby leases to the Cooperator the apartment known as apartment No. 2K designated as 41/2 rooms, in the Building known as Bldg. # 1, located at 65-53 160th St. Flushing, NY 11365, herein referred to as the "Apartment", in the Borough of Queens, City and State of New York, to be occupied by the Cooperator and his family as a private dwelling, commencing on the 1st day of September, 2010, and terminating three (3) years thereafter, (unless such term shall sooner cease and expire or be terminated as hereinafter provided).

This lease shall be renewed automatically at the end of the term or any renewal thereof for successive terms of three years upon the same terms and conditions unless the Cooperator notifies the Company, in writing, by certified mail, at least one calendar month prior to the expiration of the term hereof or any renewal thereof, of Cooperator's intention not to renew. The Company shall give notice to the Cooperator not less than forty five days and not more than sixty days prior to the expiration of the lease or any extensions thereof, of the Cooperator's right to elect not to renew the lease. In the event that the Company does not give such notice the option of the automatic renewal shall belong to the Cooperator and in the event that the Cooperator shall remain in the premises without exercising the option, the lease shall be deemed to be extended and the Cooperator shall not be considered a month to month tenant. Cooperator may, at any time during the term of the lease or any renewals thereof, cancel upon ninety (90) days notice, in writing, by certified mail or in person, provided he receives written acknowledgment from the Company of his oral cancellation. It is understood and agreed that the New York State Division of Housing and Community Renewal has the right, under its own rules and regulations, to amend the lease terms, at any time, and that both the Landlord and Cooperator agree to be bound by any said changes and/or modifications during the original term of this lease or any renewals thereof.

In the event the Cooperator elects not to renew the Lease, the Cooperator shall, nevertheless, continue to be responsible to the Company for all carrying charges and additional carrying charges of the Apartment until the apartment is assumed by a new Stockholder-cooperator.

2. CARRYING CHARGES

(A) The Cooperator agrees to pay as annual carrying charges, the sum of \$ 12,374.76, in equal monthly installments of \$ 1,031.23, in advance, on the first day of each month; which sum may be modified during the term of this Lease, or of any modification, extension or renewal thereof by:

(1.) An order of the Commissioner of Housing and Community Renewal, hereafter referred to as the "Commissioner" made pursuant to the provisions of Section 85 of the Law; and/or

(2.) An adjustment made necessary by a change in the Company's liability for real estate taxes and assessments and/or charges imposed by any municipality or county, which adjustment shall be determined by the Board of Directors of the Company and approved by the Commissioner. Said payments shall be deemed to be payments on account of the Cooperator's annual obligations which is hereby defined to be the Cooperator's proportionate share of the operating costs of the Company. The annual obligation of the Cooperator for each year of the term hereof shall be finally determined by the Board of Directors of the Company in light of the prior years' operating experience. In the event that the revenues of the Company shall exceed its operating costs, the Company will pay or allow rebates to each Cooperator in the amount of his proportionate share of such excess, such rebates to be paid and allowed in such manner or in such form as from time to time the Board of Directors of the Company, with the written approval of the Commissioner, shall declare and determine. The Company specifically reserves to itself the right, from time to time, to make application to the Commissioner for permission to increase the maximum average carrying charges per month in accordance with the provisions of the Law, or for a pro rata increase in said carrying charges in the event of an increase in real property taxes, assessments, water or sewer charges, and the Cooperator hereby consents thereto. Anything herein contained to the contrary notwithstanding, upon any increase in such maximum average permissible carrying charges, the Cooperator hereby agrees that the carrying charges payable by him hereunder shall be increased as of the effective date of such increase by the amount determined by the Commissioner, and the Cooperator agrees that he will pay such increased carrying charges as determined by the Commissioner; and/or

(3.) Surcharges imposed pursuant to the provisions of Section 85(a) of the Law, such surcharges shall be deemed additional maintenance.

(B) Proportionate share, as used herein, shall mean that proportion which the carrying charges fixed herein bears to the total carrying charges paid by all Cooperators to the Company.

(C) The operating cost of the Company, as used herein shall include all expenses and outlays growing out of or connected with the construction, ownership, maintenance, and operation of the lands and buildings owned by the Company, which sum may include, among other things, tax assessments, water/sewer charges, insurance premiums, operating expenses, professional fees, salaries and wages, the cost of improvements, additions, alterations, replacements, repairs; expenses and liabilities under or by reason of this or other agreements, interest on mortgage indebtedness, mortgage amortization payments, the payment of any other liens or charges, the payment of any deficit remaining from a previous period, the creation of a reserve fund as may be required and established by the Commissioner for depreciation, obsolescence, bad debts or contingent losses or expenses, and for other corporate purposes. The Board of Directors of the Company may include in the operating cost for any year any liabilities or items of expense which accrued or became payable in previous years and also any sums which it may deem necessary or prudent to provide as a reserve against liabilities or expenses then accrued or thereafter to accrue.

(D) The Cooperator acknowledges that carrying charges are due on the 1st day of each month, but not later than the 5th day of each month. The Cooperator will be subject to an Administrative Late Fee, as periodically determined by the Board of Directors, for carrying charges after the 5th of each month. Those charges shall be added as additional carrying charges to the following month's carrying charges.

3. COOPERATOR'S REPRESENTATIONS

(A) The Lease is subject to the powers, rights and privileges, and the restrictions and limitations thereon, of the Company, as a Limited Dividend Housing Company under the supervision and control of the Commissioner pursuant to the Law and to the rights and powers of the Commissioner under the Law or any amendments thereto.

(B) Cooperator represents and warrants the accuracy of all statements made in the application submitted in connection with this Lease and in any report of income made by or on behalf of Cooperator or any statement of family income or family composition and it shall be a substantial default under this Lease if any statement contained therein shall prove inaccurate at any time. Cooperator shall notify the Company promptly of any change in family income or composition, as it occurs, and shall comply promptly with all requests for information thereof, a breach of which obligation shall be deemed a substantial default hereunder. If at any time during the term hereof Cooperator shall be found ineligible for occupancy by reason of excess income or otherwise, and Cooperator is so notified by the Company, then, and in that event, this Lease shall thereupon cease and terminate and Cooperator shall vacate and surrender the Apartment.

Cooperator agrees that the family income and composition and other eligibility requirements are substantial and material obligations of his tenancy and that he will comply promptly with all requests by Company or the Commissioner for information and certification concerning the Cooperator's family income, family composition and other requirements for continued occupancy.

(C) Cooperator further represents that the Apartment shall be occupied for living purposes only by Cooperator and such other persons listed and approved on the application submitted in connection with this Lease. Tenant further represents that neither Tenant, nor any member of Tenant's family, nor guest or other person invited or permitted into the Apartment by tenant, shall use or occupy the premises or any part thereof, including the common areas of the building or buildings of the project, and also including any portion of the grounds of the project, or allow same to be used or occupied for the unlawful trade, manufacture, distribution, storage, and/or sale of marijuana or of any controlled substance as more specifically defined and set forth in Section 3306 of the Public Health Law and Section 220 of the Penal Law of the State of New York or any successor Sections of the Law.

(D) Cooperator acknowledges that any change in the occupancy of Cooperator's apartment requires notice to be given to the Housing Company, in writing, within ninety (90) calendar days of any addition(s) or deletion(s) from tenant's family or otherwise who reside in the housing accommodation, or the person or persons, who for a period of thirty (30) days or more occupy the housing accommodation, and that such change shall be reflected in all subsequent Affidavits of Income submitted by the Cooperator.

(E) The Cooperator covenants that he will preserve and promote the mutual ownership principles upon which the Company has been founded, abide by the Certificate of Incorporation, By-Laws and Rules and Regulations of the Company, and by his acts of cooperation with its other cooperators bring about for himself and the other cooperators a high standard of home and community conditions.

(F) If the apartment is not surrendered at the end of the term the Cooperator will make good to the Company any damage which the Company may suffer by reason thereof and will indemnify the Company against all claims made by any succeeding Cooperator against the Company founded upon the delay by the Cooperator to deliver possession of the Apartment to the said succeeding Cooperator so far as such delay is occasioned by the failure of the Cooperator to so surrender the Apartment.

4. FAILURE TO GIVE POSSESSION

If the Company is unable to give possession of the Apartment on the date of the commencement of the term, because the occupant refuses to give up possession, or because construction has not been sufficiently completed to make it ready for occupancy or because a certificate of occupancy has not been procured or for any other cause beyond the Company's reasonable control, the Company shall not be subject to any liability for failure to give possession on said date. The validity of the Lease shall not be impaired by reason of the Company's failure to give possession, nor shall the same extend the term of the Lease, but the carrying charges payable hereunder shall be suspended (provided Cooperator is not responsible for the inability to obtain possession) until after the Company shall have given Cooperator written notice that the Apartment is substantially ready for Cooperator's occupancy. After the lapse of a reasonable period to give the Company adequate opportunity to give possession, Cooperator may notify the Company in writing that in the Cooperator's opinion a reasonable period has elapsed as of the date set forth in Cooperator's notification, which will not be less than thirty (30) days from the date of giving such notice and the Lease shall terminate as of the date set forth in Cooperator's written notice without other or further liability as between the Company and Cooperator unless the Company shall give possession prior to such termination. The parties agree to submit any dispute arising out of the interpretation of this paragraph to the Commissioner or Commissioner's designee.

5. CHANGES AND ALTERATIONS

(A) Cooperator shall make no changes, alterations or improvements of any kind in or to the Apartment without the Company's prior written consent.

(B) Cooperator shall not deface any part of the Apartment, nor shall the Cooperator deface the inside or the outside of the building.

(C) Cooperator shall make no alterations, additions or improvements to the balconies or terraces, if any, including but not limited to the painting thereof, the installation of screens or other enclosures or otherwise, without the prior written consent of the Company.

(D) Cooperator shall not install any dish washing, clothes washing or drying machines, electric stoves, freezers or garbage disposal unit or heating equipment, nor place in the Apartment any water-filled furniture without the prior consent of the Company.

(E) Cooperator shall not install individual air conditioning equipment without the Company's prior written consent.

(F) Cooperator shall make no repair or replacement of the lock on the apartment door such that it changes the key until and unless they receive the Company's prior written consent and deliver a key for all locks to the Management Office.

(G) Prior to the expiration or cancellation of the Lease, the Cooperator will, at his own cost and expense, remove any wall covering, bookcases, bookshelves, cabinets, mirrors, painted murals, or any attachments Cooperator may have installed. This provision shall continue in effect and survive after the end of the Lease.

(H) Upon the termination of this Lease, Cooperator shall repay to the Company the actual cost of repairing any and all damage to the Apartment occasioned by the installation or removal of furniture and property and the restoration of the Apartment to its original state. The Board of Directors shall have the right to periodically determine the extent of the restoration necessary. This provision shall continue in effect and survive after the end of the Lease.

6. REPAIRS AND PAINTING

(A) Cooperator shall take good care of the Apartment and shall neither permit or cause any damage to the Apartment. Any repairs to the Apartment or Building resulting from the use or negligence of Cooperator, his servants, visitors, guests or members of Cooperator's family, may be made by the Company at the expense of Cooperator. The cost of such repairs shall be paid by Cooperator to the Company as additional carrying charges within five (5) days after Cooperator's receipt of the Company's bill or statement concerning such costs.

Except as agreed in the Lease, there shall be no allowance to Cooperator and no liability of the Company to Cooperator because of any inconvenience or annoyance arising from the making by the Company of repairs, changes or additions to the Apartment or to the Building.

(B) Cooperators shall redecorate and repaint, with paint of a type and quality reasonably satisfactory to the Company, the Apartment at reasonable periods during the term of this Lease and any extensions or renewals thereof, but not less than once every three (3) years. The Company shall not be required to make any repairs in, or to redecorate the Apartment, except as specifically provided herein.

(C) The Cooperator shall permit the Company to erect, use and maintain pipes and conduits in and through the Apartment and to permit the Company to enter the Apartment to examine the same and to make such decorations, repairs, alterations, improvements, or additions as the Company may deem necessary or desirable and the carrying charges shall not abate while said decorations, repairs, alterations, improvements or additions are being made because of the prosecution of any such work or otherwise.

(D) The Cooperator shall be responsible for the repair, maintenance and replacement of the range and refrigerator, at his own expense, in accordance with the methods and procedures adopted by the Board of Directors, which methods and procedures shall be subject to the prior approval of the Commissioner. It is understood that all replacements made by the Cooperator will remain the property of the Company. The Cooperator may not make a replacement without the prior written approval of the Company and the Company shall have the right to determine when a replacement or repair shall become necessary, and the Cooperator hereby agrees to make replacements when so notified by the Company. The Cooperator shall also keep in good repair and replace when reasonably required all venetian blinds, lighting fixtures and floorings, cabinets and doors, and these shall become the property of the Company.

7. COOPERATOR DUTY TO OBEY LAWS

Cooperator shall obey all present and future City, State and Federal laws and orders and regulations of the New York Board of Fire Underwriters, which affect the Apartment and Building, and shall comply at the Cooperator's expense with all such notices given to the Company or Cooperator which arise from Cooperators' improper use of the Apartment or the Building.

8. ASSIGNMENT, SUBLETTING, ABANDONMENT

(A) Assignment, Subletting - Cooperator shall not assign the Lease, nor Sublet the Apartment. If the Lease is assigned, or if the Apartment is sublet or occupied by any person other than Cooperator or Cooperator's immediate family, as listed on Cooperator's application, the Company may, after default by Cooperator, collect carrying charges from assignee, sub-tenant or occupant and credit the amount collected to the carrying charges due from Cooperator, but no such assignment, subletting, occupancy or collection shall be a waiver by the Company of this paragraph or the acceptance of the assignee, sub-tenant or occupant as tenant, or a release of Cooperator from the further performance by Cooperator of agreements on the part of the Cooperator mentioned in the Lease.

(B) Abandonment - If the Apartment is vacated by Cooperator before the end of the Lease without the agreement of Company, the Lease shall not end and Cooperator shall remain responsible for each monthly installment of carrying charges as they become due until the same are assumed by a new stockholder-cooperator.

The character of the occupancy is a special consideration and inducement for the granting of this Lease by the Company to Cooperator, and in the event of violation by Cooperator of the restriction against subletting or assignment, or if the Apartment is not in continuous, bona fide use as the principal residence of Cooperator and persons listed and approved on the application submitted in connection with this Lease, or if Cooperator shall cease to occupy the Apartment or permit the same to be occupied by others or violate any other restriction or condition herein imposed, this Lease may, at the option of the Company, be terminated in the manner hereinafter provided.

9. COOPERATOR'S CONDUCT

Conduct which violates applicable laws or statutes, orders or regulations, or the rules and regulations of the Lease or which renders or tends to render the Apartment or the Building unfit for human habitation, or which results in conditions which are dangerous, hazardous, or detrimental to the proper enjoyment of their Apartment by other cooperators, constitutes objectionable conduct, which actions by Cooperator shall be considered breaches of a material obligation of this Lease and give the Company the right to terminate the Lease. Tenant agrees that objectionable conduct includes but is not limited to: (1) the unlawful trade, manufacture, distribution, storage, and/or sale of marijuana or of any controlled substance as more specifically defined and set forth in Section 3306 of the Public Health Law and Section 220 of the Penal Law of the State of New York or possession of a controlled substance as would constitute a violation of Section 220.16, Section 220.18, or Section 220.21 of the Penal Law of the State of New York in the Apartment or in the common areas of the building or anywhere upon the grounds of the project, by Tenant or a member of Tenant's family or by any guest or other person invited or permitted into the apartment or common areas of the building or onto the grounds of the project by the Tenant or by a member of the Tenant's family in occupancy with Tenant; provided that Tenant or such family member shall have actual knowledge of or shall have permitted such guest or other person to engage in such unlawful trade, manufacture, distribution storage and/or sale; (2) the unlawful possession, use or display of a "weapon" as defined in Section 265.00 of the Penal Law of the State of New York, in the Apartment or in the common areas of the building or anywhere upon the grounds of the project, by Tenant or a member of Tenant's family or by any guest or other person invited or permitted into the Apartment or common areas of the building or onto the grounds of the project by the Tenant or by a member of the Tenant's family in occupancy with Tenant; provided that Tenant or such family member shall have actual knowledge of or shall have permitted such guest or other person to engage in such unlawful possession, use or display.

In case at any time the Lessor shall determine, upon the vote of the Board of Directors of the Lessor that because of objectionable conduct on the part of the Lessee or of a person dwelling in or visiting the Apartment, the tenancy of a Lessee is undesirable and the Lessor shall give the Lessee a notice stating that the terms of this lease will expire at a date not less than thirty (30) days thereafter, then this lease shall expire on the date so fixed in said notice.

10. RULES AND REGULATIONS

The Cooperator shall comply with all of the Rules and Regulations set forth at the end of this Lease, including, but not limited to, Rule 17 relating to the keeping of pets; Rule 20, relating to the unlawful trade, manufacture, distribution, possession, storage and/or sale of marijuana or controlled substances; and Rule 21, relating to the unlawful possession, display or use of a weapon, and other such further rules and regulations as the Board of Directors of the Company may hereafter from time to time deem necessary or desirable and may prescribe for the safety, care, cleanliness and reputation of the Apartment or all or any part of the Building or for the comfort and convenience of Cooperator or other occupants of the Building. Notice of any additional Rules or Regulations shall be given in writing in such manner as the Company may choose. Failure on the part of the Cooperator to observe any such Rules and Regulations which are part of this Lease shall be considered substantial and material obligations of this tenancy, any breach of which shall be a default hereunder.

The Company shall not be liable to Cooperator or any other person for any violation of said Rules and Regulations or any covenant or condition of this or any other Lease by Cooperator or any other person or by reason of the Company's failure to enforce the same.

11. PROPERTY LOSS, DAMAGE

The Company or its Agent shall not be responsible to Cooperator for any loss of property by or injury to Cooperator or any other person resulting from theft or any other crime in the Apartment or elsewhere in the Building including but not limited to the storage areas, nor for the loss of, or damage to property delivered to employees of the Building, nor for any loss or damage for any reason, unless caused by or due

to the negligence or fault of the Company, its agents or employees. The Company shall not be responsible to Cooperator for any damage caused by any other Cooperators or persons in the Building. If the Company shall give Cooperator the use of any storeroom, laundry or any other facility located in the Building, but outside of the apartment, such room or facility may be canceled and ended by the Company at any time without changing Cooperator's responsibility for carrying charges under the Lease.

12. **ENTRY TO APARTMENT AND RÉPAIRS**

During four months prior to the expiration of the term hereby granted, potential Tenants shall be admitted at all reasonable hours of the day to view the Apartment. The Company and its Agent shall be permitted at any time during the term of the Lease to visit and examine the Apartment at any reasonable hour during the day. Workmen, when authorized by the Company or its agent, shall be admitted to the Apartment to install and maintain pipes and conduits in and through the Apartment and to make decorations, repairs, alterations, improvements or additions in any part of the Apartment or the Building whenever deemed necessary or desirable by the Company. If Cooperator shall not be personally present to permit such entry into the Apartment, the Company or its agent may enter same by master key or by force without in any manner affecting the obligations of Cooperator under this Lease and provided the Company shall accord reasonable care to Cooperator's property, without rendering the Company or its Agent liable to claim or cause of action for damages by reason thereof. If, during the last month of the term, Cooperator shall have removed all or substantially all of the Cooperator's property from the Apartment, the Company shall have the right to enter the Apartment for the purpose of cleaning and renovating same and the exercise of such right by the Company shall in no way affect or modify the obligations of Cooperator under this Lease for the remainder of the term hereof.

13. **INDEMNITY**

Cooperator shall indemnify the Company and save it harmless from any and all liability to person or property arising from injury occasioned wholly or in part by an act or omission of the Cooperator or of his family, guest, servants, employees, visitors and licensees.

14. **SERVICES**

As long as Cooperator obeys all of the provisions of the Lease, the Company agrees to provide to Cooperator, only insofar as the existing Building equipment and facilities allow, the following services:

(1) elevator service; (2) hot and cold water in reasonable amounts at all times; (3) heat as required by law; (4) air cooling at such times and at such temperatures as the company shall determine; (5) gas for cooking purposes.

15. **NO REPRESENTATIONS BY THE COMPANY**

Cooperator admits that neither the Company nor its agents have made any representations or promises concerning the physical condition of the Building, the land upon which it is erected, or the Apartment, or any other matter or thing concerning the Apartment, except as mentioned in this Lease, or in the floor plans, if such plans were shown to Cooperator.

16. **SPACE RENTED "AS IS"**

Cooperator has inspected the Apartment, has full knowledge of its condition, and agrees to take the Apartment, in its present condition. The taking of occupancy of the Apartment by Cooperator shall be conclusive and final evidence that the Apartment was in good and satisfactory condition at the time such occupancy was taken by Cooperator, except as to any hidden defects.

17. **ORAL AGREEMENTS**

This Lease contains the entire agreement between the parties and any change or termination shall not be effective unless it is in writing and signed by both the Company and Cooperator.

18. **SUBORDINATION CERTIFICATE**

This Lease is and shall be subject and subordinate to all mortgages which may now or hereafter affect such leases or the real property of which the Apartment forms a part and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee. Cooperator shall execute promptly any certificates that the Company may request in confirmation of such subordination.

19. **COOPERATOR'S RIGHT TO POSSESSION**

If and so long as Cooperator pays the carrying charges, additional carrying charges and other charges and performs and observes all of the provisions hereof, Cooperator's rights under this Lease cannot be cutoff or ended before the expiration date, except as provided in the terms of the Lease and mortgages.

20. **DEFAULT**

(A) If, (a) Cooperator fails to keep any of Cooperator's agreements mentioned in this Lease other than Cooperator's agreement to pay carrying charges; or (b) if the Cooperator or any other occupants of the Apartment engage in objectionable conduct; or (c) if the Apartment is vacated by all authorized occupants; or (d) if the Apartment is damaged because of the negligence or misuse of Cooperator, Cooperator's family, servants, or visitors, or guests; or (e) if Cooperator shall sell attempt to or sell, encumber, assign or otherwise lose title to all or any part of the stock of the Company which he shall own; or (f) if any execution or attachment shall be issued against Cooperator or any of the Cooperator's property resulting in the Apartment being taken or occupied by someone other than the Cooperator; or (g) if Cooperator shall fail to move into or take possession of the Apartment within fifteen (15) days after the beginning of the Lease term; or (h) if the Apartment is not in continuous bona fide use as the principal residence of Cooperator, then, in any one or more of such events, the Company may serve upon Cooperator written notice stating the nature of said default, and if such default has not been cured and corrected or objectionable conduct stopped within five (5) days, then at the end of said five (5) days, the Company may serve upon Cooperator three (3) days notice of the Company's election to end the Lease, and upon the end of said three (3) days the Lease shall end as if the end of such three (3) day period were the day stated to be the end of the Lease, and the Cooperator shall then give up the Apartment to the Company, but the Cooperator shall remain responsible to the Company as stated in this agreement, however, where the default involves a violation of Rule 18 or of Rule 19 or otherwise relates to the unlawful trade, manufacture, distribution, storage, use and/or sale of marijuana or controlled substances, or where the conduct constitutes an imminent threat to the viability of the project or the safety of other tenants or occupants of the project, no notice as set forth in this paragraph need be given by the Landlord to the Tenant.

(B) If the notice provided for in (A) above shall have been given, and the term shall end as provided therein or if no notice is required pursuant to subparagraph (A) hereof, or, if Cooperator shall fail to pay the carrying charges or additional carrying charges, and such failure shall continue five (5) days after the statutory personal demand for carrying charges or the giving of the statutory written five (5) days demand for carrying charges, then the Company may evict Cooperator or other occupants and their property by summary proceedings, peaceful reentry or other lawful means.

21. REMEDIES OF THE COMPANY

In the event that the term of this Lease shall terminate and expire pursuant to notice or as the result of summary proceedings, or if the Company shall reenter by summary proceedings or other action or proceeding or recover possession of the Apartment in any other manner herein provided, (a) Cooperator shall pay the Company any carrying charges then due up to the time of the end of the Lease Term and Cooperator shall be responsible for use and occupation until reentry or dispossession together with all expenses of the Company including counsel fees and disbursements incurred in connection with any summary proceedings or other action or proceeding and the removal of the property and effects of Cooperator or other occupants from the Apartment and all expenses incurred by the Company in repairing and redecorating the same for reletting; (b) the Company may without in any way releasing Cooperator re-let the Apartment or any part or parts thereof either in the name of the Company or otherwise for a term or terms which may at the Company's option be more or less than the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free carrying charges; and (c) Cooperator shall remain responsible to the Company for damages including any difference between the carrying charges to be paid under the Lease and the amount, if any, of the carrying charges collected on account of the subsequent lease or leases of the Apartment for each month of the period which would otherwise have constituted the rest of the term of the Lease, after the deduction of concessions, free carrying charges, brokers' commissions and expenses of the Company for repairing, redecorating and otherwise preparing the Apartment for occupancy. The Company, at its option, may make such alterations and/or renovations in the Apartment as it considers advisable and necessary for the purpose of re-letting same and the making of such alterations and/or decorations shall not release Cooperator from any liability hereunder. The Company shall in no event be liable to Cooperator in any way whatsoever for failure or refusal to re-let the Apartment or, in the event the Apartment is re-let, for failure or refusal to collect the carrying charges due under such re-letting and such failure or refusal shall not release or affect Cooperator's liability for damages.

Carrying charges shall be paid in monthly installment by Cooperator on the first day of the month and any legal action brought to collect the amount of the loss for carrying charges for any month shall not prejudice in any way the rights of the Company to collect the loss of carrying charges for any subsequent month by a similar proceeding. Cooperator shall not receive any excess collected over the carrying charges to be paid by Cooperator to the Company under the Lease.

22. ADDITIONAL REMEDIES

The Company shall have the right of injunction, and the right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings and other remedies were not herein provided. The mention in this Lease of any particular remedy shall not preclude the Company from any other remedy, in law or in equity. Tenant further waives any and all rights of redemption granted by or under any present or future laws in the event of Cooperator being evicted or dispossessed for any cause, or in the event of the Company obtaining possession of the Apartment by reason of the violation of any of the provisions of this Lease by Cooperator or otherwise.

23. FEES AND EXPENSES

If Cooperator shall fail to obey any agreement or promise on Cooperator's part to be performed under the Lease, then the Company may immediately or at any time thereafter and without notice except as mentioned elsewhere in the Lease, perform the agreement of Cooperator under the Lease, and if the Company, in connection with any failure by Cooperator to obey the Lease, spends or becomes obligated to spend money including but not limited to attorney's fees in bringing any legal action or dispossession proceeding, such money so paid or debt incurred with interest and costs shall be considered to be additional carrying charges under the Lease to be paid by Cooperator within five (5) days after service or mailing of a bill statement to Cooperator. If Cooperator's Lease term shall have ended at the time such expenses are paid or incurred by the Company, such sums, including legal expenses of the Company in bringing any dispossession proceedings against Cooperator shall be paid by Cooperator to the Company as damages.

24. FIRE OR CASUALTY

Cooperator shall give immediate notice to the Company in case of fire or accident or other damage or defects in or to the Apartment or the Building and to any of the fixtures or equipment therein. If the Apartment or the Building shall be partially damaged by fire, the damages shall be repaired by and at the expense of the Company as soon as it can reasonably be done under the circumstances, due allowance to be taken into consideration for any delays which may arise by reason of labor troubles, inability to obtain labor or materials, governmental orders, regulations and restrictions, delays in adjusting the insurance loss or other causes beyond the Company's reasonable control. If the Apartment or the Building shall be damaged from such causes or from any of them to such an extent that the same cannot be repaired with reasonable diligence within a period of sixty (60) days, or if the Company shall decide not to repair or rebuild the same or if the Company shall decide to demolish the Building or to convert it to other uses then and in any such event, the Company may within sixty (60) days after such damage occurs give Cooperator notice of such decision and thereupon the term of the Lease shall expire upon the third day after such notice is given, and Cooperator shall thereupon vacate and surrender the Apartment to the Company forthwith, and in such case, the carrying charges shall be paid up to and apportioned as of the date of which Cooperator shall vacate and surrender the Apartment. In the event the Apartment is damaged to such an extent that it is untenable in whole or in part, carrying charges shall be paid up to time of such damage and shall thereafter abate in proportion to the part of the Apartment which may not be usable until such time as the Apartment shall have been repaired. If the Apartment or the Building shall be damaged or destroyed by fire or other cause resulting from any intentional act, negligent act or omission or breach of any provision of this Lease by Cooperator, Cooperator shall be liable to the Company for any damage sustained by the Company as a result thereof and the making of any necessary repairs or rebuilding by the Company shall not constitute a waiver of the claim of the Company or of its insurer by subrogation, against Cooperator for such damages. The Company and Cooperator agree that the agreement contained in this paragraph is an agreement made in place of the provisions of Section 227 of the Real Property Law of the State of New York.

25. PUBLIC TAKING

If the whole or any part of the Apartment be taken or condemned for any public or quasi-public use or purpose, then and in that event, the term of this Lease shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose and without apportionment of the award. If a substantial part of the Building shall be so taken or condemned as to make it uneconomical for the Company, as determined in the Company's sole discretion, to continue the operation of the Apartment then, at the Company's sole option and upon notice to Cooperator from the Company, the term of this Lease shall cease and terminate on the date when possession of the part so taken shall be required for such use or purpose and without apportionment of the award. The carrying charges, however, shall in any such case be apportioned.

26. NO WAIVER OF LEASE TERMS

No act or thing done by the Company or its agents during the term of the Lease shall be deemed an acceptance of a surrender of the Apartment, and no agreement to accept such surrender shall be valid unless in writing signed by the Company.

No employee of the Company or its agent shall have any power to accept the keys for the Apartment prior to the termination of the Lease. The delivery of keys to any employee of the Company or its agents shall not operate as a termination of the Lease or surrender of the Apartment. The failure of the Company to seek redress for violation of, or to insist upon the strict performance of, any condition of this Lease, or any of the Rules and Regulations set forth or hereafter adopted by the Company, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of any original violation. The receipt by the Company of carrying charges with knowledge of the breach of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be

deemed to have been waived by the Company unless such waiver be in writing signed by the Company. No payment by Cooperator or receipt by the Company of a lesser amount than the carrying charges herein stipulated shall be deemed to be other than on account of the earliest stipulated carrying charges, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of carrying charges be deemed an accord and satisfaction, and the Company may accept such check or payment without prejudice to the Company's right to recover the balance of such carrying charges or pursue any other remedy provided in this Lease.

27. INABILITY TO PERFORM

The Lease shall not be ended or in any way affected because the Company is unable to carry out any of the Company's agreements or is unable to supply or is delayed in supplying any service to be supplied or is unable to make or is delayed in making any repair, additions, changes or decorations in the Apartment or building, or is unable to supply or is delayed in supplying any equipment or fixture, if the Company is prevented or delayed from doing so by reason of strike or labor troubles, including strikes by the Company's employees or any other cause beyond the Company's reasonable control.

28. BILLS AND NOTICES

Except as is otherwise herein provided, a bill, statement, notice or communication which the Company may desire or be required to give to Cooperator, including any notice of termination or expiration, shall be deemed sufficiently given or rendered if in writing, delivered to Cooperator personally or sent by mail, addressed to Cooperator at the building, or left at the Apartment addressed to Cooperator. The time of the rendition of such bill or statement and the giving of such notice or communication shall be deemed to be the time when the same is so delivered, mailed or left at the Apartment. Any notice by Cooperator to the Company must be served by mail, addressed to the Company at the address first hereinabove set forth or such other address as the Company shall designate in the manner herein provided for giving notice to Cooperator.

29. WAIVER OF TRIAL BY JURY, NO COUNTERCLAIMS

Both the Company and Cooperator waive trial by jury in any action, proceeding or counterclaim brought by either party against the other (except for personal injury or property damage) on any matters whatsoever concerning the Lease, the relationship of the Company and Cooperator's use or occupancy of the Apartment. It is further agreed that in the event the Company commences any dispossess proceedings against Cooperator, no counterclaim of Cooperator based upon any claim against the Company will be brought by Cooperator in such proceeding.

30. END OF LEASE, SALE OF SHARES, ABANDONED PROPERTY

At the end of this Lease:

(a) The Cooperator agrees to sell to the Company, or such person or corporation as may be designated by the Company, all stock of the Company owned or held by the Cooperator, in the manner and upon the conditions set forth in the By-Laws of the Company, and any indebtedness of the Cooperator to the Company may be applied against the purchase price. Nothing herein contained, however, shall be deemed to constitute an agreement on the part of the Company to purchase said stock, it being the intent hereof that the Company or its designee shall have the option to purchase the same as set forth in the By-Laws of the Company.

(b) Cooperator shall vacate and surrender to the Company the Apartment, broom clean, in good order and in the same condition as it was at the time when Cooperator first occupied the Apartment under the Lease or, a prior Lease, and Cooperator shall remove all of Cooperator's property. If the last day of the term of the Lease or any renewal thereof, falls, on Sunday, the Lease shall end at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day. All property, installations and additions required to be removed by Cooperator at the end of the Lease which remain in the Apartment after Cooperator's removal, shall be considered abandoned and at the option of the Company may either be retained as the Company's property or may be removed by the Company, at Cooperator's expense. Cooperator agrees to pay the Company for all costs and expenses in either removing Cooperator's property or in restoring the damage caused to the Apartment by the removal of the changes or additions made by Cooperator in the Apartment. The provisions of this paragraph shall survive the expiration of the Lease.

31. SUCCESSOR INTEREST

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the Company and Cooperator and, except as otherwise provided in this lease, their respective heirs, distributees, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

M. J. Bon... Oct 1 2012
COOPERATOR, LESSEE DATE

Christie Bowler 10/15/12
COOPERATOR, LESSEE DATE

FOURTH HOUSING COMPANY, INC.

BY: [Signature] 10/17/12
COMPANY, LESSOR DATE

RULES AND REGULATIONS ATTACHED TO AND MADE A PART
OF THE LEASE IN ACCORDANCE WITH SECTION 10

1. The sidewalks, entrances, driveways, elevators, stairways, or halls shall not be blocked by any Cooperator or used for any purpose other than for entering and leaving the Apartment and for deliveries in a fast and proper manner using elevators and passageways chosen for such deliveries by the Company. Neither Cooperator, member of Cooperator's family, guests or visitors shall loiter in the public halls or areas of the buildings, outside or in front of the buildings or the stairwells. Those persons asked to move by Public Safety Personnel and who refuse to do so are subject to fine, administrative charge and/ or eviction for repeated occurrences.
2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or built and no sweeping, rubbish bags, acid or other substances shall be placed in them. Cooperator shall be responsible to the Company for any breakage, or stoppage and any damage resulting from the disobedience of this rule by Cooperator.
3. No baby carriage, bicycles, tricycles, shoes or any other similar articles shall be allowed to stand in the halls, passageways, areas or courts of the building.
4. Children shall not play in the lobbies, public halls, stairways, elevator or any of the exterior landscaped areas, including the grass areas.
5. The laundry and drying apparatus of the Company shall be used in such manner and at such times as the Company may direct. Cooperator shall not dry or air clothes on the exterior of windows, window sills or on the roof, balcony, terraces, fire escapes and in hallways.
6. No garbage cans, ice, milk bottles, mats, shoes or other articles shall be placed in the halls or on the staircase landings, nor shall anything be hung from the windows, terraces or balconies, or placed upon the window sills. Nor shall any linens, cloths, clothing, curtains, rugs or mops be shaken or hung from or on any of the windows, doors, balconies or terraces.
7. No employees of the Company shall be sent out of the building by any Cooperator at any time for any purpose. No employee of the Company shall be solicited or employed to do any work for any Cooperator during such employees working hours.
8. Supplies, goods and packages of every kind shall be delivered only at the entrance provided therefore, to the Cooperator or Cooperator's family, servants or agents, or in such manner as the company may provide and the company shall not be responsible for the loss or damage to any such property.
9. No Cooperator shall allow anything whatsoever to fall from the windows or doors of the leased premises, nor shall he sweep or throw from the leased premises any dirt or other substance into any of the corridors, halls, elevators, ventilators or elsewhere in the building.
10. No door-to-door sales and/or solicitations shall be permitted.
11. The Cooperator agrees to indemnify and save harmless the Company for any damage or injury to trees, shrubs, plants, street furniture and play equipment on the premises, caused by any member of his family, servants, employees, agents, visitors and licensees.
12. No person, other than employees of the Company, shall enter upon or use the roofs of the building, except in case of emergency.
13. If a storeroom or storerooms are provided for the storage of carriages, bicycles, luggage or other property of the Cooperators, such storeroom or storerooms shall be used only for the storage of items specified by the Company and not prohibited by the Fire Department, Health Department, or other Governmental Agencies or by the Company's insurance carrier or carriers. In no event shall any Cooperator be permitted to store bedding or other inflammable items or material in such storeroom or storerooms. All items placed in such storeroom or storerooms by the Cooperator shall be packaged and labeled in accordance with rules established by the Company. The Cooperator shall have access to such storeroom or storerooms only at such times as shall be specified by the Company. The Company accepts no obligation or responsibility with respect to any property stored in such storeroom or storerooms and shall not be liable for any loss of such property or damage or injury to person or property therein, unless caused by the negligence of the Company, its agents, servants or employees. The Cooperators shall place such property in such storeroom or storerooms at their own risk.
14. Cooperator will be charged for retrieval, either by the Company or by the Elevator Maintenance Company for keys or articles dropped down the elevator shaft on a time and materials basis.
15. The Company may retain a pass key to the Apartment. No Cooperator may install any lock or knocker on any door or window of the Apartment except to the extent and in the manner allowed by law and approved by the Company and immediately upon making any such installation, Cooperator shall notify the Company or its agent thereof and shall give the Company or its agent a duplicate key thereto. No changes shall subsequently be made to the locks or mechanism thereof without consent of the Company and delivery of duplicate key thereto. Each Cooperator must, upon the termination of the tenancy, return to the Company all keys, either furnished to, or otherwise obtained by such Cooperator, and in the event of the loss of any keys so furnished, Cooperator shall pay to the Company the cost of replacing them.
16. No awnings, or other projections shall be attached to the outside walls of the building or to the balconies or terraces and no blinds, shades, or guards, shall be attached to or hung in, or used in connection with any window or door of the demised premises without the prior written consent of the Company.
17. No dogs, cats or animals of any kind shall be kept or harbored in the Apartment, unless in each instance it be expressly permitted in writing by the Company, and such consent, if given, shall be revocable by the Company at any time for good cause. In no event shall any dog or cat be permitted on any passenger elevator or in any public portion of the building unless carried or on a leash, nor on any grass or garden plot under any condition. BECAUSE OF THE HEALTH HAZARD AND POSSIBLE DISTURBANCE OF OTHER TENANTS WHICH ARISE FROM THE UNCONTROLLED PRESENCE OF ANIMALS, ESPECIALLY DOGS, IN THE BUILDING, THE STRICT ADHERENCE TO THE PROVISIONS OF THIS RULE BY EACH COOPERATOR IS A MATERIAL REQUIREMENT OF EACH LEASE AGREEMENT. ANY FAILURE OF COOPERATOR TO OBEY THIS RULE AND REGULATION SHALL BE DEEMED A SERIOUS VIOLATION OF AN IMPORTANT OBLIGATION OF THE COMPANY UNDER THIS AGREEMENT, AND THE COMPANY MAY ELECT TO END THIS LEASE BASED UPON SUCH VIOLATION.
18. No outside radio, CB, satellite or television aerial or satellite installation shall be made without the prior written consent of the Company. Any aerial erected on the roof, balcony, terrace or exterior walls of the building without the consent of the Company in writing, may be removed by the Company without notice at the expense of Cooperator.
19. No Cooperator shall make or permit any disturbing noise or odor in the building by himself, his family, guests, employees, or visitors, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Cooperators. No Cooperator shall play upon, or allow to be played upon, any musical instrument or operate or allow to be operated a phonograph or radio, television receiver or any instrument in the Apartment if it shall disturb or annoy any other occupant of the building. Cooperator shall not give vocal or instrumental instructions in the Apartment at any time.

Each resident shall keep their apartment in a proper and good state of maintenance and cleanliness. Garbage and refuse from

apartments shall be disposed of only at such times and in such manner as the building's management may direct. Rubbish and other materials shall not be allowed to accumulate to the extent that they create a sanitary problem or fire hazard.

All recyclables brought to the AVAC room shall be put into the proper recycle bins. All AVAC garbage shall be deposited in the hopper door and pushed down the chute.

Nothing shall be hung or shaken from the doors, windows, terraces or balconies or placed upon the outer window sills of the building.

Smoking is strictly prohibited in the public areas of the building. In the event that shareholder or other occupants, guests or invitees shall smoke in their apartment, then shareholder will take reasonable precautions to stop any second hand smoke from infiltrating other apartments or common areas.

Residents shall not use or keep or permit to be used or keep any foul or noxious gas or substance in any apartment and shall not allow offensive odors to interfere with the comfort and rights of others.

Shareholders are required to keep their apartments free of insects and vermin. Any exterminator is available free of charge for pest control. Building Management and staff may enter any apartment at any reasonable hour of the day for the purpose of inspecting such apartment to ascertain whether measures are necessary or desirable to control or exterminate any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate such vermin, insects or other pests. The cost of any such action, which is outside the scope of normal services, shall be borne by the shareholder.

20. No Tenant or any member of Tenant's family or any guests or other person invited or permitted into the apartment by tenant shall knowingly use or occupy the premises or any part thereof, including the common areas of the building or buildings of the project, and also including any portion of the grounds of the project, or allow same to be used or occupied for the unlawful use, trade, manufacture, distribution, storage and/or sale of marijuana or of any controlled substance as more specifically defined and set forth in Section 3306 of the Public Health Law and Section 220 the Penal Law of the State of New York, or for possession of a controlled substance such as would constitute a violation of Section 220.16, Section 220.18, or Section 220.21 of the Penal Law of the State of New York.

21. No Tenant, member of Tenant's family, or any guest or other person invited or permitted into the Apartment or common areas of the building or onto the grounds of the project by the Tenant or by a member of the Tenant's family in occupancy with Tenant, shall knowingly engage in conduct which would constitute the unlawful possession of a "weapon" as defined in Article 265.00 of the Penal Law of the State of New York, nor shall such person use or display a "weapon" as defined in Section 265.00 of the Penal Law of the State of New York, either in the Apartment or in the common areas of the building or anywhere upon the grounds of the project.

22. INTENTIONALLY LEFT OUT.

23. The Cooperator, his/her family, guests, and invitees shall faithfully observe the following procedures with respect to the use of the compactor and in conjunction with the recycling program required by the City of New York; a. Wrap dust, floor and powdered waste in compact packages before depositing the same; b. Thoroughly drain in wrapping paper all garbage before depositing the same; c. Refrain from forcing large bundles into the flue; d. Cause all bundles of waste to slide out of the hopper into the flue; e. Refrain from depositing waste of an explosive or inflammable nature or pressurized cans, paint or floor scrapings therein; f. Refrain from leaving any refuse outside of the compactor hopper in the public hallways; g. Stack all newspapers and magazines in the ground floor service hallway in each members section; h. Place empty, rinsed-out glass bottles, metal cans, aluminum foil (wrap or tins) and plastic containers into the blue bucket marked "Department of Sanitation Recycling Program" located next to the newspaper recycling area; i. Otherwise comply with all fire department regulations regarding the use of the compactor; j. Otherwise comply with all future regulations of the City of New York and/or the Company concerning recycling.

24. Cooperator acknowledges that doormats or carpet remnants are not permitted outside of Cooperator's apartment door.

25. A Cooperator whose family, guests, visitors and licensees shall violate these Rules and Regulations is subject to eviction.

26. Chronic Non-Payment Rule

Policy:

The Chronic Non-Payment Rule is a guiding principal of the Board of Directors in which the Board will exercise its fiduciary duty and will bring to bear the cooperative board's powers for the common good and general interest of the corporation. The Chronic Non-Payment Rule will be administered evenly and across the board in fairness to everyone. There will not be adverse selection or favoritism.

The Board of Directors of Fourth Housing Company, Inc. has determined that there are certain actions by the residents of the development that constitute not only breaches of the law, the lease and/or the rules and regulations of the Development, but have constituted and will continue to constitute a substantial loss to the cooperative and the residents of the Development involving their health, safety and the financial ability of the cooperative to maintain itself. The Board of Directors has found that it is in the best position to decide whether or not the actions on the part of the residents are such that should cause the termination of their tenancy. Therefore, the Chronic Non-Payment Rule will be applied to Chronic delinquency in payment of carrying charges and Chronic legal proceedings involving a particular shareholder or his/her apartment involved in non-payment.

In order to maintain a high level of current accounts and keep delinquency to an absolute minimum, we must have a policy and mode of enforcement to deal with chronic late payers of rent that is consistent, fair, swift and certain. We have developed the following guidelines for a system to deal with chronic late payers.

The system is not meant to be punitive. Prior to instituting any action, every effort should be made to help the Cooperator meet his obligation. Where every effort to help the Cooperator fails, after conciliation, the Court process must be permitted to reach its logical conclusion.

It is the policy of Fourth Housing Company, Inc. to promote full and prompt payment from each Cooperator in fairness to all Cooperators. The procedure described below should be carried out consistently in all cases of chronic delinquent accounts or unpaid charges.

Procedures:

Step One. Notice of Objectionable Conduct: Cooperators who fall within the standards as hereinafter set forth by the Board shall receive an initial Notice of Objectionable Conduct, in writing, setting forth a statement of charges from the Management Office relative to the proceedings. If the charge can be cured, a 10 day grace period to cure together with any conditions deemed necessary, shall be included in the initial notice. Failure to meet the conditions and applicable cure period, if any, of the statement of charges will subject the cooperators to potential termination of his or her lease and a written notice of that will be included in the initial notice.

Step Two. Conciliation: Is notification to the cooperator in the form of a 5 Day Call in Letter setting a date, time and place for the cooperator to come into the Management Office. In the event that said cooperator does not respond to the first call in letter, then a second 5 Day Call In Letter shall be sent. The call in letter shall be address to each person on the lease. The letter will state that the Company seeks conciliation and why the cooperator is in danger of losing his/her apartment. It shall set the date and time for the conciliation interview at the Management Office. The cooperator will be advised that if this process fails, the cooperator may be issued a lease termination notice.

Upon failure of the conciliation or failure of the cooperator to attend, the Board of Directors shall be notified by Management that a hearing panel of the Board must be convened to invoke the Chronic Non-Payment Rule by receiving the charges, conducting a hearing, weighing the proof thereon and determining what the disposition of the Board will be.

Step Three: Board Proceedings: Upon notification from Management to the Board to convene a hearing panel, the Board shall send written notice to the shareholder and all of those named on the lease for the apartment, outlining the statement of charges and the date, time and place for hearing. It shall notify the cooperator that he may be represented by counsel or someone of his or her own choice at the hearing. The hearsay rules shall not apply to the Board hearing. The Board will review such documentation as is presented to it by its Management and/or counsel and Management and/or counsel can call whichever witnesses they deem appropriate as to the acts underlying the charges and/or the procedures and the results of the conciliation process. The charged cooperator shall have the right to examine the proofs and question any witnesses. Upon the conclusion of the proof before the Board or the Hearing Panel, the cooperator may then present its own proof and/or witnesses to contradict the charges against him/her or to establish why the Board should not find that the charges were proven or if proven, not to terminate the lease. Such hearing shall be conducted with a stenographer present or by a recording device.

Upon the conclusion of the proof and any responses thereto by the cooperator, the Board or its Hearing ZPanel will make a finding which shall be reduced to writing as to whether the charges were proven and if proven, the disposition or action to be taken in connection therewith.

If the Board or its Hearing Panel determines that the charges have been proven (it is not necessary to prove each charge), then the Board will determine by a majority vote whether to terminate the shareholder's lease for breach of the terms of his/her tenancy. If such determination is made, then counsel shall be authorized to commence proceedings in Landlord/Tenant Court of the Civil Court of the City of New York, County of Queens, or the Supreme Court to remove said shareholder/cooperator and all of the occupants of the apartment.

In the event that the Board of Directors determines to terminate the tenancy, then the Board shall serve a 30 Day Notice of Termination on the cooperator stating that the Board duly voted to terminate his/her lease because of the conduct found by the Board at the hearing and shall include or attach thereto the written findings of the Board.

Standards of Conduct covered by the Board of Directors Under the Chronic Non-Payment Rule:

Chronic Delinquency in payment of carrying charges: The repeated (at least 4 times during a 12 month period) failure or refusal of a cooperator to pay carrying charges within seven (7) days of due date. The cooperator need not be in arrears at the time the action is instituted.

Chronic Legal Proceedings: In the event that the Company is required to bring three (3) separate legal proceedings in a Court of competent jurisdiction within a 24 month period for the late or non-payment of carrying charges, then same shall constitute grounds for the Rule to be applied.

Notice: All notices shall be sent by first class mail to the Coperator at his or her apartment or served personally.

In extraordinary or unusual circumstances, the Board reserves the right to seek a waiver of the Rule from the Division of Housing and Community Renewal.

When a Cooperator is being charged with chronic rent delinquency, Management must complete a Specification of Charges from as shown below. This form will detail the Cooperator's rent payment history for the past twelve (12) months. Rent for this purpose will be considered late on/or after the 7th day of the month.

SPECIFICATION OF CHARGES FORM

- 1. In what month did this Cooperator pay no rent? March, August, September & January
- 2. Should a termination notice be sent based on chronic rent delinquency: Yes
- 3. How many times did Cooperator pay 10 days or more after it was due? Which months? 10
- 4. How many landlord/tenant proceedings were commenced? Dates? 4
- 5. How many final judgments? Dates? 0
- 6. Were any warrants served? Dates? Yes
- 7. Any other appropriate information.

27. Insurance: The Cooperator shall, at the Cooperator's sole cost and expense, shall be obligated to keep in full force and effect personal liability and Cooperative/Condominium and/or Renter's insurance in the minimum amounts of \$25,000.00 personal property coverage, twelve (12) months additional living expenses and \$100,000.00 liability protection or such other amounts as may, in the be directed by the Board of Directors. All such insurance shall name the Housing Company and the Housing Company's managing agent as additional insureds and shall provide coverage for loss due to water damage. The failure of the Cooperator to obtain and maintain, throughout the term of this lease, the insurance required above shall be a default under this lease and in the event of such failure, the Cooperative may, but is not obligated to obtain such insurance at the Cooperator's cost and expense.