

CERTIFICATE OF INCORPORATION

of

████████████████████ HOUSING COMPANY, INC.

Pursuant to the Limited-Profit Housing Companies Law
of the State of New York

We, the undersigned, for the purpose of forming a corporation pursuant to Article II of the Private Housing Finance Law of the State of New York (which said Article II is hereinafter referred to as the "Act"), hereby certify:

I

The name of the proposed corporation is EAST MIDTOWN PLAZA HOUSING COMPANY, INC. (hereinafter referred to as the "Company").

II

The purposes for which the Company is to be formed are to plan, acquire, construct, own, maintain and operate a municipally-aided project or projects (as defined in subdivision 17 of Section 2 of Article I of the said Private Housing Finance Law), located in the City of New York, pursuant to the terms and provisions of the Act.

III

amended
/25/92

The amount of capital stock of the Company shall be Four Million Five Hundred Thirty-One Thousand Five Hundred Seventy-Five (\$4,531,575.00) Dollars, all of which shall be capital stock.

IV

amended
/25/92

The total number of shares of \$25.00 par value capital stock of the Company shall be one hundred eighty one thousand two hundred sixty-three (181,263) shares of \$25.00 par value each. The three Class A shares of Common Stock having been surrendered and retired all of the shares formerly denominated Class B Common Stock of \$25.00 par value and the shares authorized by this Article IV shall constitute all of the capital stock of the Company. Each and every holder of the capital stock of the Company, by the acceptance of his or her certificate thereof, irrevocably waives and releases any and all rights to subscribe to any increase in such stock or any part thereof and consents to the issuance and disposition of any such increase to such persons and upon such terms and conditions as the Board of Directors, from time to time, may fix and determine, except

as otherwise provided by statute. Each holder of shares of capital stock entitled to vote shall be entitled to one vote at any and all meetings of stockholders for any and all purposes regardless of the number of shares held by such holder, except as otherwise provided by statute. Only one class of stock shall be issued and outstanding at any one time.

V

The principal business office of the Company is to be located in the County of New York, City of New York and State of New York, and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the corporation which may be served upon him is: c/o Gerald D. Roth, Esq., 76 Beaver Street, New York, N. Y. 10005.

VI

The duration of the Company shall be perpetual.

VII

The number of directors of the Company shall be three (3) or as determined by the By-laws, all of whom shall be elected by the stockholders of the Company.

VIII

The names and post-office addresses of the directors of the Company until the first annual meeting of the stockholders are:

<u>Names</u>	<u>Post Office Addresses</u>
ROGER S. SCHAFFER	342 Madison Avenue, New York, N.Y.
ALFRED EISENSTAEDT	140 East 28th Street, New York, N.Y.
GEORGE RAINER	11 Cottontail Lane, Irvington, N.Y.

IX

The names and post office addresses of the subscribers to this Certificate of Incorporation and a statement of the number of shares of stock which each agrees to take in the Company, are:

<u>Names</u>	<u>Post Office Addresses</u>	<u>No. of Shares of Common Stock</u>
ROGER S. SCHAFFER	342 Madison Avenue New York, N.Y.	1
ALFRED EISENSTAEDT	140 East 28th Street New York, N.Y.	1
GEORGE RAINER	11 Cottontail Lane Irvington, N. Y.	1

amended
(1/21/69)

X

The entire amount to be paid in cash or property by the stockholders and income debenture holders shall be at least five per centum (5%) of the project cost.

XI

A. So long as the Act shall remain applicable to any project of the Company, its real property shall not be sold, transferred, encumbered or assigned except as permitted by the terms and provisions of the Act.

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B. Each stockholder of the Corporation shall subscribe for a proportionate number of the 80,000 authorized but hitherto unissued shares of the Corporation provided for in Article IV hereof, at a subscription price per share as provided for in Article III. The number of shares of such 80,000 shares to which each stockholder shall subscribe, shall be equivalent to the percentage of the Corporation's shares owned by the stockholder prior to June 1, 1992. The Board of Directors is authorized to enforce a stockholder's obligation to subscribe and pay for such proportionate number of shares, in the same manner as is provided for enforcement of a stockholders payment of rent charges in the Occupancy Agreement between a stockholder and the Corporation. The Board of Directors is further authorized to determine the time when the subscription price for the stockholder's proportionate number of shares must be paid.

XII

All of the subscribers to this Certificate of Incorporation are of full age, at least two-thirds of them are citizens of the United States, and at least one of the persons named as a director of the Company is a citizen of the United States and a resident of the State of New York.

XIII

The Company has been organized to serve a public purpose and it shall be and remain subject to the supervision and control of the Supervising Agency except as otherwise provided in the Act, so long as the Act remains applicable to any project of the Company; and all real and personal property acquired by it, and all structures erected or rehabilitated by it, shall be deemed to be acquired, rehabilitated or created for the proper effectuation of the purposes of the Act. The directors and subscribers of such Company shall be deemed to have agreed that they shall at no time receive or accept from such Company in repayment of their investment in its stock any sums in excess of the par value of the stock, together with such dividends or other compensation as are prescribed by or permitted under the

Act. Upon dissolution of the Company, any surplus remaining after the payment of all its obligations shall be distributed and disposed of and title to the property may be conveyed in fee, only as prescribed by the Act

XIV

The Company is authorized to issue income debentures in such amounts and on such terms as shall be first approved by the Supervising Agency, subject, however, to the limitations of the Act.

XV

The original directors, officers, subscribers and income debenture holders possessing the right to vote, shall be deemed at the time of accepting such offices, or subscribing to the stock or income debentures, to have agreed not to resign from the Company and not to sell their stock or income debentures prior to the completion of the project and the certification of the total actual project cost by the Supervising Agency, except with the consent of the said Supervising Agency.

The shares of stock and the income debentures of the Company shall be issued only in such amounts and form as may be approved by the said Supervising Agency and no stock shall be redeemed, purchased or retired and no income debentures shall be redeemed prior to their dates of maturity or purchased or retired by the Company during the period in which the loan by The City of New York is in force or for which tax exemption is granted pursuant to section thirty-three of said Private Housing Finance Law, except with the consent of the said Supervising Agency.

In the event of a violation by the Company of any provision of the Certificate of Incorporation or of law or of the loan or mortgage contract or of any rules and regulations duly promulgated pursuant to the provisions of the Act, the Supervising Agency may remove any or all of the existing directors of the Company and appoint such person or persons which the Supervising Agency in its sole discretion deems advisable, including officers or employees of the Supervising Agency, as new directors to serve in the places of those removed; that directors so appointed by the Supervising Agency who are officers or employees of the Supervising Agency shall serve in such capacity without compensation; and that any directors so appointed by the Supervising Agency shall serve only for a period coexistent with the duration of such violation or until the Supervising Agency is assured in a manner satisfactory to it against violations of a similar nature. In the absence of fraud or bad faith, the directors so appointed by the Supervising

Agency shall not be personally liable for the debts, obligations or liabilities of the Company.

The said Supervising Agency shall be notified in writing of and shall have the right to designate a representative to attend all meetings of the Board of Directors or of the stockholders and income debenture holders of the Company.

The sale of stock by a stockholder or the Company or the sale of income debentures, the holders of which possess the right to vote, by any such holder or the Company, shall be subject to the consent of the said Supervising Agency.

The Company, subject to the approval of the said Supervising Agency, may borrow funds and secure the repayment thereof by bond or note and mortgage or by an issue of bonds under a trust indenture.

Each mortgage or issue of bonds or notes of the Company shall relate only to a single specified project and shall be secured by mortgage upon all of the real property of which such project consists and upon all fixtures and articles of personal property attached to or used in connection with the operation of the project. Such bonds or notes and mortgages may contain such other clauses and provisions as shall be approved by the said Supervising Agency, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing project in the event of such entry by mortgagee or receiver shall be subject to regulations promulgated by the said Supervising Agency. Provisions for the amortization of the bonded indebtedness of the Company shall be subject to the approval of the said Supervising Agency.

XVI

Subject to the limitations of the Act, the Company shall have the powers and be subject to the limitations contained in the Business Corporation Law and shall have the following additional specific powers:

- (a) To make and execute contracts and other instruments necessary or convenient in the exercise of its powers;
- (b) To acquire or contract to acquire from any person, firm, corporation, municipality, federal or state agency, by grant, purchase, condemnation or otherwise, leaseholds, real, personal or mixed property or any interest

therein, and to sell, assign, exchange, transfer, mortgage or encumber the same,

- (c) To own, hold, clear and improve, leasehold, real, personal or mixed property or any interest therein;
- (d) To construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration or repair of any project;
- (e) To lease or rent any of the housing or other accommodations or any of the lands, buildings, structures or facilities embraced in any project and establish and revise the rents or charges therefor; or to purchase or lease a project or a part thereof from an authority, pursuant to the provisions of section 58 of the Public Housing Law or Article Ten of the Act.
- (f) To arrange or contract with the City of New York for the planning, replanning, opening, grading or closing of streets, roads, roadways, alleys or other places or for the furnishing of facilities or for the acquisition by said city of property or property rights or for the furnishing of property or services in connection with a project;
- (g) To insure or provide for the insurance of its property or operations as required by law and also against such other risks as it may deem advisable;
- (h) To limit by contract the exercise of its powers;
- (i) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;
- (j) To sue and be sued;
- (k) To have a seal and alter the same at pleasure;

- (l) To make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with the provisions of the Act;
- (m) To sell, lease or otherwise convey all or any part of a project to an authority upon such terms and conditions as shall have the prior approval of the Supervising Agency;
- (n) To do all other things necessary or convenient to carry out its powers.

XVII

Pursuant to the terms and provisions of said Act, the Company shall not:

1. Acquire any real property or interest therein unless it shall first have obtained from the Supervising Agency a certificate that such acquisition is necessary or convenient for the purpose defined in said Act.
2. Pay interest on its mortgage indebtedness at a rate higher than six per centum per annum or at such higher rates as may be approved by the Supervising Agency, but in no event shall any such rate exceed the rate of interest prescribed by the Banking Board pursuant to Section 14-a of the Banking Law of the State of New York.
3. Issue its stock, income debentures and bonds covering any project in an amount greater in the aggregate than the actual project cost.
4. Without first having obtained the written consent of the Supervising Agency:
 - (a) Construct, reconstruct, rehabilitate, improve or alter any project or enter into any contract thereof.
 - (b) Sell, transfer or assign any real property except that no such consent shall be necessary in any sale in foreclosure as provided in the Act.
 - (c) Except as otherwise provided in the Act, encumber, lease or rent all or any part of its real property.

amended
 (7/72)

- (d) Enter into contracts for the operation of the project.
- (e) Make a guaranty of payment.
- (f) Voluntarily dissolve, except as otherwise provided in said Act.
- (g) Enter into contracts for the payment of salaries to officers or employees.

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- 5. Pay interest on its income debentures at any rate higher than 6 per centum (6%) per annum except as otherwise provided in said Act.

XVIII

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The Company and the Housing and Development Administration shall, subject to the approval of the Commissioner, render all necessary assistance to the New York State Housing Finance Agency ("Agency") in the purchase or contract to purchase from the company, or from any shareholder thereof, the shares of the Company allocated to the dwellings in the project, and if required by the Housing and Development Administration and approved by the Commissioner, sell to the Agency the shares of the Company allocated to the dwellings in the project, to lease such dwellings to the Agency for the purpose of subleasing such dwellings to persons or families eligible therefor in accordance with the provisions of sections thirty-one and forty-one-a of the Private Housing Finance Law, and lease such dwellings to those sublessees of the Agency who are residents in such dwellings, or the designees of the Company and who purchase from the Agency the shares allocated to their respective dwellings, all in accordance with and subject to the provisions of subdivision 20 of section forty-four and section forty-four-a of such law. The shares so purchased or sold by the Agency shall be for the par value thereof. The terms under which such shares may be sold shall be subject to the approval of the Commissioner, shares owned by the Agency may not be voted.

XIX

The Secretary of State is designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served within the State of New York.

XX

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A. The Corporation shall, to the fullest extent permitted by Article 7 of the Business Corporation Law of

the State of New York, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article, from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article, and the indemnification provided herein shall not be deemed exclusive of any other rights to which any person may be entitled under any By-Law, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Article, as to any action in any capacity in which he or she served at the request of the Corporation.

B. The personal liability of the directors of the Corporation is eliminated to the fullest extent permitted by the provisions of paragraph (b) of Section 402 of the Business Corporation Law of the State of New York, as the same may be amended and supplemented.

SUBSCRIBED AND ACKNOWLEDGED AS REQUIRED BY LAW.

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