

D E C L A R A T I O N

ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP OF PREMISES  
LOCATED AT 83 EAST CHURCH STREET IN THE VILLAGE OF FAIRPORT,  
COUNTY OF MONROE, STATE OF NEW YORK, PURSUANT TO ARTICLE 9-  
B OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.

for

THE RESIDENCES AT CANALSIDE CONDOMINIUM

as restated August 16, 2022 with amendments through 2025

## INDEX TO DECLARATION

Article	Title	Page
I.	SUBMISSION OF PROPERTY	1.
II.	DESCRIPTION OF PROPERTY	1.
III.	DESCRIPTION OF BUILDING	1.
IV.	NAME OF CONDOMINIUM	1.
V.	UNITS	2.
VI.	DIMENSION OF UNITS	2.
VII.	USE OF UNITS	3.
VIII.	COMMON ELEMENTS	3.
IX.	LIMITED COMMON ELEMENTS	3.
X.	DETERMINATION OF PERCENTAGES IN COMMON ELEMENTS	4.
XI.	ENCROACHMENTS	4.
XII.	PIPES, DUCTS, CABLES, WIRES, CONDUITS, PUBLIC UTILITY LINES, AND OTHER COMMON ELEMENTS LOCATED INSIDE THE UNITS	4.
XIII.	EASEMENTS	5.
XIV.	POWER OF ATTORNEY TO BOARD OF MANAGERS	5.
XV.	ACQUISITION OF UNITS BY BOARD OF MANAGERS	5.
XVI.	PERSON TO RECEIVE SERVICE	6.
XVII.	UNITS SUBJECT TO DECLARATION, BY-LAWS, ANDS RULES AND REGULATIONS	6.
XVIII.	BORROWING BY BOARD OF MANAGERS	6.
XIX.	RENTS	7.
XX.	AMENDMENT TO DECLARATION	7.
XXI.	INVALIDITY	7.
XXII.	TERMINATION	7.
XXII.	WAIVER	8.

## RESTATED DECLARATION

MARK 246 LLC with offices at 45 East Avenue, Rochester, New York 14604 (hereinafter referred to as the “Sponsor”), hereby declares:

### **I. SUBMISSION OF PROPERTY**

The land hereinafter described, together with the buildings and improvements erected thereon, owned by the Sponsor in fee simple absolute (the “Property”), is hereby submitted to the provisions of Article 9-B of the Real Property Law of the State of New York.

### **II. DESCRIPTION OF PROPERTY**

The Property owned by Sponsor and which comprises the Condominium is described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Fairport, County of Monroe and State of New York, known as Lot A of The Residences @ Canalside as shown on a map on file in the Monroe County Clerk's Office in Liber 350 of Maps at page 15.

### **III. DESCRIPTION OF BUILDING**

The Building which is located on the land of the Condominium consists of a 5-story building. The first floor of the building is the parking garage containing a total of 65 spaces. The Building contains 48 residential units and is constructed of masonry and wood with brick and vinyl exteriors, and reinforced concrete basement walls and footings. The total Building area is 127,000 square feet, consisting of common areas and 48 residential units with a total of 77,276 square feet.

### **IV. NAME OF CONDOMINIUM**

This Condominium is to be known as THE RESIDENCES AT CANALSIDE CONDOMINIUM.

### **V. UNITS**

Attached as Exhibit A is a list of Units, their designations, locations, areas and percentage of common interest of each in the Common Elements. The Common Elements to which each has immediate access are all as shown on the floor plans filed in the Monroe County Clerk's Office on September 22, 2017.

### **VI. DIMENSION OF UNITS**

Each Unit consists of the area contained within the horizontal boundaries of the exterior surface of the gypsum drywall separating such Unit from other Units or Common Elements, and within the vertical boundaries of the upper surface of the sub flooring plywood sheeting to the

upper surface of the ceiling. The exterior doors, windows, and casings are also a part of the Unit although not within the horizontal boundaries of the same as defined above.

## **VII. USE OF UNITS**

The Units will be used for residential purposes only. However, no short term leases of fewer than twelve (12) months in duration shall be made in the Units. No more than six (6) Units may be leased at any one time.

## **VIII. COMMON ELEMENTS**

The Common Elements consist of the entire Property, including all parts of the Building other than the Units, and including, without limitation, the following:

- A. The land described in Article II of this Declaration and any easements rights appurtenant thereto;
- B. All foundations, basement, parking garage, columns, girders, beams, and supports;
- C. All portions of the exterior walls beyond the exterior surface of the gypsum drywall; all portions of the walls and partitions separating a Unit from other Units located beyond the exterior surface of the gypsum drywall enclosing the Unit; the space between the lower surface of floor joists and the upper surface of the sub flooring plywood sheeting; and the space between the upper surface of the ceiling of the Units and the roof of the Building;
- D. Roof and truss system supporting the same;
- E. All yards, corridors, parking lots, parking garage, basement, balconies, walks, plaza area with fire pit, grassy area and seating, elevators and other areas used in connection therewith and all green areas, and driveway areas;
- F. All installations for services utilized such as gas, electricity, fire alarm system, telephone, television, hot and cold water (including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located in common areas or in the Units), and any mechanical equipment spaces; and
- G. All other parts of the Property and all apparatus and installations existing in the Building and on the Property for common use or necessary or convenient to the existence, maintenance, or safety of the Property.

## **IX. LIMITED COMMON ELEMENTS**

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- A. Certain portions of the Common Elements are irrevocably limited in use to specific Unit Owners, subject to the right of the Board of Managers to enter upon any Limited Common Elements for maintenance, repair or improvements of a Unit or Common Element. The Limited Common Elements consist of a balcony appurtenant to each Unit, a

rooftop patio appurtenant to the 4th floor units only, privacy fences separating units 403 from 404, 405 from 406, and 409 from 410, an assigned storage room adjacent to each Unit (designated as “primary” on the composite floor plans in Exhibits B-1 to B-5) and one parking space per Unit in the parking garage as shown in Exhibits C-1 and C-2. Some units may have second or third storage room in the Building (designated as “secondary” on the composite floor plans in Exhibit B. Similarly, some units may have a second parking space in the parking garage as shown in Exhibit C.

B. As of August 17, 2015, the following Units have a second storage room as shown on the maps attached hereto as Exhibits B-2, B-3, and B-4:

- Unit 102: Tenant B storage room, first floor;
- Unit 108: Tenant B storage room, second floor;
- Unit 112: Tenant D storage room, first floor;
- Unit 201: Tenant A storage room, second floor;
- Unit 209: Tenant D storage room, second floor;
- Unit 210: Tenant C storage room, second floor;
- Unit 301: Tenant A storage room, third floor;
- Unit 304: Tenant B storage room, third floor;
- Unit 305: Tenant D storage room, third floor;
- Unit 306: Tenant C storage room, third floor;
- Unit 402: Tenant D storage room, first floor;
- Unit 405: Tenant A storage room, fourth floor;
- Unit 406: Tenant D storage room, fourth floor;
- Unit 409: Housekeeping room between Units 404 and 405;
- Unit 412: Tenant A storage room, first floor
- Unit 401: Garage storage room L, behind elevator in garage;
- Unit 412: Garage storage room R, behind elevator in garage.

Neither garage storage room L nor garage storage room R may be alienated independent of the parking spaces to which it is adjacent except to merge it back into the common elements.

C. As of December 31, 2023, the following Units have a second parking space in the parking garage as shown on the map and schedule attached hereto as Exhibit C-2:

- Unit 102: Parking space 28;
- Unit 103: Parking space 34;
- Unit 107: Parking space 40;
- Unit 108: Parking space 37;
- Unit 110: Parking space 33;
- Unit 201: Parking space 41;
- Unit 203: Parking space 35;
- Unit 212: Parking space 30;
- Unit 304: Parking space 32;
- Unit 305: Parking space 39;

Unit 312: Parking space 38;  
Unit 402: Parking space 36;  
Unit 409: Parking space 42;  
Unit 412: Parking space 29.

D. All of the above parking spaces and storage rooms shall be Limited Common Elements appurtenant to the Units listed. When and if a second parking space or a second or third storage unit is sold by a unit owner to the owner of a different unit, the board of managers may amend any exhibit to this section to reflect a change in ownership. Such amendment is not required to comply with Article XX. When and if the storage room described in paragraph B as appurtenant to unit 409 is offered for sale, the seller must first afford the Board of Managers the opportunity to purchase it for return to the common elements.

## **X. DETERMINATION OF PERCENTAGES IN COMMON ELEMENTS**

The percentages of interest of the respective Units in the Common Elements will be equal, subject to rounding. In accordance with New York Real Property Law §339-m, special allocations of common expenses may be made based on special or exclusive use or availability or exclusive control of particular units or common areas by particular unit owners in a manner different from common expenses.

## **XI. ENCROACHMENTS**

If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction of any other Unit, or as a result of the construction of the Building, or if any such encroachment shall occur hereafter as a result of settling or shifting of the Building or by reason of the repair and/or restoration by the Board of Managers of the Building, any Unit, or the Common Elements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the Building shall stand. In the event the Building, a Unit, any adjoining Unit, or any adjoining Common Element shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

## **XII. PIPES, DUCTS, CABLES, WIRES, CONDUITS, PUBLIC UTILITY LINES, AND OTHER COMMON ELEMENTS LOCATED INSIDE THE UNITS**

A. Each Unit Owner shall have an easement in common with the owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines, and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of all other Units to use lines and other Common Elements serving such other Units and located in such Unit.

B. The Board of Managers shall have a right of access to each Unit to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the Common Elements contained therein or elsewhere in the Building.

### **XIII. EASEMENTS**

Sponsor, during construction and marketing of the Property, reserves the rights to:

- 1) grant utility easements to others affecting the Property;
- 2) use the Common Elements for ingress and egress for itself, its agents and prospective purchasers;
- 3) connect to any utility lines on the Property to service adjacent lands it may own; and
- 4) to grant to itself or others easements needed for the development of the Property. Sponsor shall repair any damage to the Property caused by the exercise of these rights and shall indemnify the Condominium for any liabilities arising from Sponsor's acts.

The above Section cannot be amended without Sponsor's consent so long as Sponsor owns any Unit held for sale.

### **XIV. POWER OF ATTORNEY TO BOARD OF MANAGERS**

Each Unit Owner shall grant to the persons who shall, from time to time, constitute the Board of Managers an irrevocable power of attorney, coupled with an interest, to acquire title to any Unit whose owner desires to surrender the same, or which may be the subject of a foreclosure or other judicial sale, in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, and to convey, sell, lease, mortgage, vote the votes appurtenant thereto (other than for the election of members of the Board of Managers), or otherwise deal with any such Unit so acquired by the Board of Managers. Such power of attorney shall also permit certain amendments of the Declaration and By-Laws as may be required by lenders, municipal agencies or title companies.

### **XV. ACQUISITION OF UNITS BY BOARD OF MANAGERS**

In the event any Unit Owner shall surrender his Unit, together with (a) the undivided interest in the Common Elements appurtenant thereto; (b) the interest of such Unit Owner in any other Units acquired by the Board of Managers, or its designees on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any; and (c) the interest of such owner in any other assets of the Condominium (hereinafter collectively called the "Appurtenant Interests") pursuant to the provisions of Section 339-x of the Real Property Law of the State of New York, or in the event the Board of Managers shall purchase at a foreclosure or other judicial sale a Unit, together with the Appurtenant Interests, title to such Unit, together with the Appurtenant Interests, shall be held by

the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective Common Interests.

#### **XVI. PERSON TO RECEIVE SERVICE**

Each member of the Board of Managers of the Condominium is hereby designated to receive service of process in any action which may be brought against the Condominium. The Board of Managers reserves the right to designate a successor or other party to receive service by duly recorded amendment to this Declaration, which amendment is not required to comply with Article XX. Alternatively, the Secretary of State may be served as agent of the Board of Managers. Such service may be made by personally serving the Secretary of State or deputy or any other person authorized by the Secretary of State to receive such service at the Office of the Department of State in the City of Albany, New York together with the statutory fee, which shall be a taxable disbursement. Service of process in this manner shall be complete when the Secretary of State is so served. The Secretary of State shall promptly send a copy by certified mail, return receipt requested to such Board of Managers at the post office address on file in the Department of State, specified for such purpose.

#### **XVII. UNITS SUBJECT TO DECLARATION, BY-LAWS, AND RULES AND REGULATIONS**

All present and future owners, tenants, and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

#### **XVIII. BORROWING BY BOARD OF MANAGERS**

The Board of Managers, on behalf of the Unit Owners, may incur debt to provide for maintenance, repairs, additions, improvements, replacements, working capital, bad debts, unpaid Common Expenses, depreciation, obsolescence, and similar purposes, provided that (a) no lien to secure repayment of any sum borrowed may be created on any Unit and its appurtenant interest in the Common Elements without the written consent of the owner of said Unit and (b) the incurrence of such debt, if over \$25,000 shall require the consent of a majority in Common Interest of the Unit Owners.

The Board of Managers, in connection of such debt, (a) assigns the rights in and to receive future income and Common Charges, (b) creates a security interest in, pledges, mortgages, or otherwise encumbers funds or other real or personal property that it holds, (c) agrees that, subject to Section 339-1 (2) of the Real Property Law of the State of New York, all Common Charges received and to be received by it and the right to receive such funds shall constitute trust funds for



the purpose of paying such debt and the same shall be expended for such purpose before expending any part of the same for any other purpose; and (d) agrees that at lender's discretion, it will increase Common Charges to the extent necessary to pay any amount when due under any of the provisions of the agreements under which the debt was incurred.

## **XIX. RENTS**

If a non-occupying Unit Owner rents his Unit and then fails to pay Common Charges, assessments, or late fees within sixty (60) days after they are due, upon notice, all rental payments from the tenant shall be directly payable to the Condominium Association. The Board of Managers shall give written notice to the tenant and Unit Owner that all rents are to be made payable to the Board of Managers until all payments for Common Charges, assessments, or late fees are current. Once current, the Board of Managers shall notify the tenant that rents should once again be paid to the Unit Owner. A non-occupying owner who disputes the Board of Managers' claim to rental payments may present facts supporting that position at the next meeting of the Board of Managers, which must be held within thirty (30) days of the date the Board of Managers is notified that the owner disputes such claim.

## **XX. AMENDMENT TO DECLARATION**

A. This Declaration may be amended by the vote of at least sixty six and two -thirds percent (66 2/3%) in number and in Common Interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, provided, however, that the Common Interest appurtenant to each Unit as shall be expressed in an amendment to this Declaration shall not be altered without the consent of all Unit Owners affected. No such amendment shall be effective until recorded in the Office of the Clerk of the County of Monroe.

B. Any proposed amendment which would be materially adverse to first mortgagees of Units must be approved by fifty-one percent (51%) of the mortgagees of the Units with first mortgages. The Board of Managers shall give notice of proposed amendments to those mortgagees appearing in its records by certified mail, return receipt requested. If no response is received within sixty (60) days from the date the notice is received, it shall be assumed that the mortgagee consents to the proposed amendment.

## **XXI. INVALIDITY**

The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect.

## **XXII. TERMINATION**

The Condominium shall not be terminated or abandoned except as provided by law. In addition to requirements of law, if the termination follows substantial destruction or after condemnation, it must have the consent of first mortgagees representing fifty-one percent (51%) of the votes of the Units having first mortgages.

### **XXIII. WAIVER**

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

I attest that the preceding document is an accurate copy of the Restated Declaration of The Residences at Canalside Condominium.

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Jean Van Etten, Secretary

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