

**ESSEX PLACE
HOMEOWNERS
ASSOCIATION, Inc.**

DECLARATION

&

BY-LAWS

**Managed by:
WOODBRIIDGE GROUP
271 Marsh Road, Suite 3
Pittsford, NY 14534
585-385-3331**

EXHIBIT "A"

DECLARATION

Establishing Essex Place Homeowners Association, Inc.

NAME: ESSEX PLACE HOMEOWNERS
ASSOCIATION, INC.

SPONSOR: 777 INCORPORATED
2311 Elmwood Avenue
Rochester, New York 14618

DATED: Feb 29, 1988

RECORDED: Feb 29, 1988

WOODS, OVIATT, GILMAN, STURMAN & CLARKE

Attorneys for the Sponsor

44 Exchange Street
Rochester, New York 14614

MONROE COUNTY CLERK

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RECORDED

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	DEFINITIONS.....51
Section 1.01	Definitions.....51
ARTICLE II	PROPERTY SUBJECT TO THIS DECLARATION.....52
Section 2.01	Initial Property.....52
Section 2.02	Mergers.....52
ARTICLE III	THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS.....53
Section 3.01	Formation of the Association.....53
Section 3.02	Membership.....53
Section 3.03	Voting.....53
Section 3.04	Interest in More Than One Lot.....53
Section 3.05	Lots Owned or Held by More Than One Person or by Corporation.....53
Section 3.06	Holder of Security Interest Not a Member.....54
Section 3.07	Assigning Right to Vote.....54
Section 3.08	Meeting and Voting Regulations.....54
Section 3.09	Selection of Directors.....54
Section 3.10	Powers and Duties of Directors.....54
Section 3.11	Indemnification of Officers and Directors.....55
Section 3.12	Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors.....55
ARTICLE IV	PROPERTY RIGHTS AND EASEMENTS.....56
Section 4.01	Dedication of Association Property.....56

Section 4.02	Right and Easement of Enjoyment in Association Property.....	56
Section 4.03	Rights of Association.....	56
Section 4.04	Rights of Sponsor.....	57
Section 4.05	Rights of Individual Lot Owners.....	58
Section 4.06	Common Utility and Conduit Easement.....	59
Section 4.07	Reserved.....	59
Section 4.08	Maintenance of Association Facilities.....	59
Section 4.09	Right of Association to Contract Duties and Functions.....	59
Section 4.10	Environmental Considerations.....	59
Section 4.11	Common Access Easement.....	60
Section 4.12	Distribution of Condemnation Awards.....	60

ARTICLE V ASSESSMENTS.....60

Section 5.01	Imposition, Personal Obligations, Lien.....	60
Section 5.02	Purpose of Maintenance Assessment.....	61
Section 5.03	Date of Commencement and Notice of Assessments.....	61
Section 5.04	Assessments for Specific Lots.....	61
Section 5.05	Basis for Maintenance Assessment.....	62
Section 5.06	Change in Basis of Assessments.....	62
Section 5.07	Special Assessments for Capital Improvements.....	62
Section 5.08	Non-Payment of Assessment.....	63
Section 5.09	Right to Maintain Surplus.....	64
Section 5.10	Assessment Certificates.....	64
Section 5.11	Subordination of Assessment Lien to Mortgages.....	65
Section 5.12	Right to Borrow and Mortgage.....	65
Section 5.13	Repayment of Monies Borrowed.....	65

ARTICLE VI MAINTENANCE BY THE ASSOCIATION.....66

Section 6.01	Maintenance and Repair by the Association.....	66
--------------	---------------------------------------------------	----

Section 6.02	Repairs and Maintenance Which Are Not the Responsibility of the Association.....	67
Section 6.03	Quality and Frequency of Maintenance and Repairs.....	68
Section 6.04	Access for Repairs.....	68
ARTICLE VII	ARCHITECTURAL CONTROLS.....	68
Section 7.01	Control by Association.....	68
Section 7.02	Composition and Function of Architectural Standards Committee.....	68
Section 7.03	Submission of Plans to Architectural Committee.....	69
Section 7.04	Basis for Disapproval of Plans by Architectural Committee.....	69
Section 7.05	Approval of Architectural Committee.....	70
Section 7.06	Written Notification of Disapproval.....	70
Section 7.07	Failure of Committee to Act.....	71
Section 7.08	Committee's Right to Promulgate Rules and Regulations.....	71
Section 7.09	Delegation of Functions.....	71
Section 7.10	Liability of Architectural Committee.....	71
Section 7.11	Architectural Committee Certificate.....	72
ARTICLE VIII	PARTY WALLS AND ENCROACHMENTS.....	72
Section 8.01	Party Walls.....	72
Section 8.02	Maintenance of Party Walls.....	72
Section 8.03	Exposure of Wall.....	73
Section 8.04	Materials Used and Workmanship.....	73
Section 8.05	Destruction of Party Wall.....	73
Section 8.06	Party Wall Rights Run with the Land.....	73
Section 8.07	Encroachments and Projections.....	73
ARTICLE IX	INSURANCE AND RECONSTRUCTION.....	74
Section 9.01	Insurance to be Carried.....	74
	Fire and Casualty.....	74
	Liability.....	76
	Directors' and Officers' Liability.....	76
	Fidelity Bond.....	77

	Other Insurance.....	77
	No Liability for Failure to Obtain Above Coverages.....	77
	Deductible.....	77
	Option to Have Insurance Paid by Lot Owners Directly....	77
Section 9.02	Restoration or Reconstruction After Fire or Other Casualty...	78
Section 9.03	Insurance Carried by Owners.....	78
ARTICLE X	GENERAL COVENANTS AND RESTRICTIONS.....	79
Section 10.01	Advertising and Signs.....	79
Section 10.02	Animals, Birds and Insects.....	79
Section 10.03	Protective Screening and Fences.....	79
Section 10.04	Garbage and Refuse Disposal.....	79
Section 10.05	No Above Surface Utilities Without Approval.....	80
Section 10.06	Noxious or Offensive Activities.....	80
Section 10.07	Oil and Mining Operations.....	80
Section 10.08	Dwelling in Other Than Residential Unit.....	80
Section 10.09	Antennas.....	81
Section 10.10	Trees and Other Natural Features.....	81
Section 10.11	Use and Maintenance of Slope Control Areas.....	81
Section 10.12	Snowmobiles.....	81
Section 10.13	Commercial and Professional Activity on Property.....	81
Section 10.14	Outside Storage.....	82
Section 10.15	Outdoor Repair Work.....	82
Section 10.16	Oversized, Commercial and Unlicensed Vehicles.....	82
Section 10.17	Clotheslines.....	82
Section 10.18	Chain Link Fences.....	82
ARTICLE XI	ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION.....	82
Section 11.01	Declaration Runs with the Land.....	82
Section 11.02	Enforceability.....	83
Section 11.03	No Waiver by Failure to Enforce.....	83
Section 11.04	Obligation and Lien for Cost of Enforcement by Association..	83
Section 11.05	Inspection and Entry Rights.....	84

Section 11.06	Default Notices to be Sent	
Section 11.07	to Mortgagees.....	84
Section 11.08	Amending or Rescinding.....	84
	When Amendment or Rescission	
	Become Effective.....	85
Section 11.09	Duration.....	85
Section 11.10	Construction and	
	Interpretation.....	85
Section 11.11	Conflict with Municipal	
	Laws.....	85
Section 11.12	Change of Conditions.....	85
Section 11.13	Invalidity of Agreement or	
	Declaration.....	85
ARTICLE XII	GENERAL.....	86
Section 12.01	Headings and Captions.....	86
Section 12.02	Right Reserved to Impose	
	Additional Protective	
	Covenants.....	86
Section 12.03	Notice.....	87
Section 12.04	Right of Association to	
	Transfer Interest.....	87
Section 12.05	Right of Association to	
	Transfer Functions.....	87

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS

THIS DECLARATION, made this ___ day of _____, 198_,
by 777 INCORPORATED, a New York corporation, which has offices at
2311 Elmwood Avenue, Rochester, New York, being hereinafter
referred to as "the Sponsor".

W I T N E S S E T H :

WHEREAS, the Sponsor is the owner of the real property
described in Article II of this Declaration, being Essex Place
Subdivision as the same is shown on a map of said subdivision
recorded in the Monroe County Clerk's Office in Liber _____ of
Maps, at page _____, which the Sponsor desires to develop as a
residential community with open spaces and other common
facilities for the benefit of said community, and

WHEREAS, the Sponsor desires to provide for the
preservation of the values and amenities in said community and
for the maintenance of said open spaces and other common
facilities, and, to this end, desires to subject the real
property described above to the covenants, conditions,
restrictions, easements, charges and liens, hereinafter set
forth, each and all of which is and are for the benefit of said
property and each owner thereof, and

WHEREAS, the Sponsor desires that certain portions of
said real property be subdivided into lots upon which are or will
be constructed residential dwelling units, which lots and units
will be individually owned and the Sponsor desires that such open
spaces and other common facilities shall remain available for the
benefit of all members of the community, and

WHEREAS, the Sponsor has deemed it desirable, for the
efficient preservation of the values and amenities in said
community to create an Association to which should be delegated
and assigned the powers of maintaining and administering the
community property and facilities, and administering and
enforcing the covenants and restrictions, and collecting and
disbursing the assessments and charges hereinafter created, and

WHEREAS, the Sponsor has incorporated the Essex Place
Homeowners Association, Inc. under the Not-for-Profit Corporation
Laws of the State of New York for the purpose of exercising the
aforesaid functions.

NOW THEREFORE, the Sponsor, for itself, its successors
and assigns, declares the real property described in Section 2.01
hereof, is and shall be held, transferred, sold, conveyed and

occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. The following words, phrases or terms when used in this Declaration or in any Supplemental Declaration shall, unless the context otherwise prohibits, have the following meanings:

- A. "ASSOCIATION" shall mean and refer to the ESSEX PLACE HOMEOWNERS ASSOCIATION, INC.
- B. "ASSOCIATION PROPERTY" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by or in possession of the Association.
- C. "DECLARATION" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- D. "LOT" shall mean and refer to any portion of the property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Brighton or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- E. "MEMBER" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III.
- F. "OWNER" shall mean and refer to the holder of record title, whether one (1) or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.
- G. "PROPERTY" shall mean and refer to all properties as are subject to this Declaration.

- H. "SPONSOR" shall mean and refer to 777 Incorporated.
- I. "TOWNHOUSE" shall mean a single family dwelling, and all improvements associated with it, on the Property that is attached to at least one (1) other Townhouse by means of a party wall or otherwise.
- J. "UNIT" shall mean and refer to each completed Townhouse, as evidenced by issuance of a Certificate of Occupancy issued by the Town of Brighton, including garage, situated upon the Property or any such structure or improvement on the Property which is intended to be occupied as a residence or in conjunction with a residence.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Initial Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Brighton, County of Monroe and State of New York, and is more particularly described in Schedule A attached hereto and incorporated by reference herein, all of which property shall be hereinafter referred to as "Initial Property".

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. Any such merger or consolidation, however, may not result in the revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III
THE ASSOCIATION STRUCTURE,
MEMBERSHIP, VOTING RIGHTS AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed the Association, to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and ByLaws of the Association, and as they may be amended from time to time. Subject to the additional limitations provided in this Declaration, the Certificate of Incorporation and the ByLaws, the Association shall have all the powers and be subject to the limitations of a Not-for-Profit Corporation as contained in the Not-for-Profit Corporation Law of New York as it may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners and the Sponsor. All Owners, upon becoming such, shall be deemed automatically to have become Members and there shall be no other qualification for Membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03. Voting. There shall be two (2) classes of Membership. All Owners, with the exception of the Sponsor, shall be Class A Members. The Sponsor shall be a Class B Member. Until two (2) years after the transfer of the first Lot, or until 12 Lots are transferred, whichever shall first occur, the Class B Membership shall be the only Class of Membership entitled to vote. Thereafter, the Sponsor's Class B Membership shall be converted into a Class A Membership, and all Members shall vote equally, i.e., one (1) Member one (1) vote.

Section 3.04. Interest in More Than One Lot. If any person or entity owns or holds more than one (1) Lot, such Member shall be entitled to not more than one (1) vote.

Section 3.05. Lots Owned or Held by More Than One Person or by Corporation. When any Lot is owned or held by more than one (1) person as tenants by the entirety, in joint or common ownership or interest such Owners shall collectively be entitled to only that number of votes prescribed herein for such

Lot and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.06. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot only as security for the performance of an obligation shall not be a Member.

Section 3.07. Assigning Right to Vote. The Sponsor may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may take successive like assignments. All such assignments shall be subject to the provisions of the Offering Plan pursuant to which the Sponsor has offered interests in the Association, including, any duly filed amendments thereof.

Any other Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.10. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.11. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each director or officer may otherwise be entitled.

Section 3.12. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, until three (3) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns 25% or more of the Lots then subject to this Declaration, the Board of Directors may not, without the Sponsor's written consent, which consent will not be unreasonably withheld, (i) make any addition, alteration, or improvement to the Property of the Association costing more than 20% of the then current annual budget, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to 150% of the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses, or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget or (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a Lot, or (v) reduce the quantity or quality of services or maintenance of the Association Property. Until three (3) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns 25% or more of the Lots then subject to this Declaration, this Section of the Declaration shall not be amended without the prior written consent of the Sponsor.

ARTICLE IV
PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Sponsor intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members, which land shall hereinafter be referred to as "Association Property". The Association shall accept any such conveyance made by the Sponsor provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Member (and such Member's guests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association, the Sponsor, and the Lot Owners as set forth herein. Such easements shall be appurtenant to, and shall pass with, the interests of an Owner.

Every Member also shall have an easement for ingress and egress by vehicle or on foot over Association Property and the common utility and conduit easements described in Section 4.06 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein.

Section 4.03. Rights of Association. With respect to the Association Property, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

(a) to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of the facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members;

(b) to grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;

(c) to dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of the total votes of all Members who shall vote upon written ballot which shall

be sent to every Owner not less than 30 days nor more than 60 days in advance of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees, whose names appear on the books or records of the Association, not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance;

(d) to enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than 60 days in advance of the vote on the proposed agreement;

(e) to use water or electricity from outdoor taps or sockets on any Lot, the cost of which shall be reimbursed to the Lot Owner; usage shall be rotated in a fair and equitable manner.

Section 4.04. Rights of Sponsor. With respect to Association Property, the Sponsor shall have the right until the improvement, marketing and sale of all Lots is completed:

- (a) to grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not limited to, water, gas, electric, telephone, cable television and sewer to service the Property;
- (b) to connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of the Property;
- (c) to use the Association Property for ingress and egress to those portions of the Initial Property (as described in Section 2.01 of this Declaration);

- (d) to operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not limited to, the drives and parking spaces;
- (e) to grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of the Property.

All easements, rights-of-way and other rights granted by the Sponsor pursuant to (a), (b), (c) and (e) above, shall be permanent, run with the land and be binding upon and for the benefit of the Association and the Sponsor and their respective successors and assigns. The rights granted to the Sponsor shall remain in effect until the Sponsor completes the improvement, marketing and sale of all Lots or the Sponsor records a written memorandum releasing its rights hereunder.

Section 4.05. Rights of Individual Lot Owners. Each Lot Owner shall have an easement over Association Property and over the property of adjacent Lot Owners for the performance of routine maintenance on a Lot Owner's Townhouse, provided, however, the right of entry shall be exercised upon reasonable notice to the adjoining Lot Owner, except in the case of an emergency, shall be limited to reasonable times, and shall be exercised so as not to impair the enjoyment of the adjacent Lot. The easement area shall be limited to that area reasonably necessary to effect repairs and maintenance of the Owner's Townhouse. The easement area shall be used for actual repairs and maintenance only; the storage of material, supplies and other objects associated with the work to be completed shall not be permitted. The Owner entering upon an adjacent Lot shall perform the contemplated work with dispatch, and shall be responsible for all costs for the repair and restoration of any damage caused to the adjacent Lot, including but not limited to structural repairs, replacement of lawns, bushes and similar objects. An Owner entering upon an adjacent Lot shall indemnify and hold harmless the adjacent Lot Owner against any and all claims which may arise by virtue of the repair or maintenance work performed.

Each Lot Owner shall also have an easement for the exclusive use and enjoyment of the Lot Owner's driveway as constructed by the Sponsor.

Each Lot Owner shall also have an easement for the exclusive use and enjoyment of the Lot Owner's deck or patio, as constructed by the Sponsor, servicing the Owner's Townhouse.

* Section 4.06. Common Utility and Conduit Easement. All pipes, wires, conduits and public utility lines located on each Lot shall be owned by the Owner of such Lot. Every Lot Owner shall have an easement in common with other Lot Owners to maintain and use all pipes, wires, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use the pipes, wires, conduits, drainage areas and public utility lines servicing such other Lot and located on such other Lot. The Association shall have the right of access to each Lot and residential dwelling thereon for maintenance, repair or replacement of any pipes, wires, conduits, drainage areas or public utility lines located on any Lot or within any residential dwelling thereon. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Lot Owner or Owners, it shall be considered a special expense allocable to the Lot Owner or Owners Assessment of such Lot Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or Lots to secure the payment thereof. *

Section 4.07. Reserved.

Section 4.08. Maintenance of Association Facilities. In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition, as set forth in this Declaration.

Section 4.09. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, both within and without the Property.

Section 4.10. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles IX and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of

such activities or take affirmative action to improve the quality of the environment.

Section 4.11. Common Access Easement. The Sponsor and all Owners and their guests, licensees and invitees shall have an easement for ingress and egress in common with one another over all walkways and drives located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of drives and any other property or facilities, the maintenance of which is the responsibility of the Association.

Section 4.12. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of the Association Property not so taken and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the remaining Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of New York.

ARTICLE V ASSESSMENTS

Section 5.01. Imposition, Personal Obligations, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association: (a) annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"); (b) special assessments for capital improvements ("Special Assessments"); hereinafter collectively referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the assessment falls due.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty and liability insurance covering the Association Property obtained pursuant to Article IX of this Declaration, for the maintenance, repair and replacement of all facilities commonly serving the Members, whether on or off the Lots, such as landscaped areas, and of the Townhouse exterior, including roof, gutters, and downspouts repairs and maintenance, exterior siding, including the painting of exterior surface frame and trim of windows and doors, the cost of labor, equipment, materials, management and supervision thereof, and for such other needs as may arise, but excluding the repair or maintenance of any glass surface, door, patio, wood deck, stoop, porch or stair.

Section 5.03. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such other date as determined by the Sponsor. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least 30 days in advance of each annual assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board of Directors for partial annual Assessments as long as said Assessments are established at least 30 days before they are due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special

Assessments, if any, except that, the Maintenance Assessment on Lots owned by the Sponsor shall be no less than an amount calculated in accordance with the following provision: the Sponsor shall be obligated for the differences between the actual Association expenses, including reserves for completed improvements, and the Association charges levied on owners who have closed title to their Lots.

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Section 5.05. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot for which Assessments have commenced pursuant to this Declaration shall be apportioned by multiplying the total annual Maintenance Assessment by one-fifteenth (1/15), thereby assuring that each Lot bears an equal share of the Association expenses.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment provided for above by obtaining the consent of not less than two-thirds (2/3) of the total votes of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Members at least 30 days in advance and shall set forth the purpose of the meeting. Until three (3) years from the date of recording of this Declaration, or until the Sponsor, or its designee, no longer owns 25% or more of the Lots then subject to this Declaration, whichever shall first occur, no change in the basis of Maintenance Assessments which adversely affect the interest of the Sponsor with respect to unsold Lots shall be valid except with the specific consent of the Sponsor in writing. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

Section 5.07. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which

shall be sent to all Lot Owners at least 30 days in advance, setting forth the purpose of the meeting. The Association shall establish one (1) or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first such due date.

non-pay →

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

→ If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed ten percent (10%) of the amount of such overdue Assessment or installment thereof, and, if not paid within 30 days after the due date (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed ten percent (10%) per annum, (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorneys' fees, other costs of collection,

late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

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Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

(The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to the mortgagee whose name and address appears on the Board's records for the particular Lot. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Section 5.09. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

(Section 5.10. Assessment Certificates. Upon written request of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot, as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or lessee of, or lender on, or title insurer of, the property in question.

Section 5.11. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.12. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject to (i) the approval of 2/3 of the Lot Owners entitled to vote at a meeting duly called, and (ii) any consent of the Sponsor as required by Section 3.12 of this Declaration shall be obtained.

Section 5.13. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- (a) to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessment hereunder;
- (b) to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
 - (1) assess the Maintenance Assessment on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;
 - (2) establish such collection, payment and lien enforcement procedures as may be required by the note holders;

- (3) provide for the custody and safeguarding of all funds received by it;
- (4) establish sinking funds and/or other security deposits;
- (5) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection.

ARTICLE VI
MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. All maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair and replacement of all drives, driveways, walkways and parking areas on the Association Property, snow removal from all drives, driveways, walkways and parking areas, and the maintenance of all landscaped areas within Lots, Association Property and the street, (except the maintenance of landscaped area enclosed by a Lot Owner pursuant to Section 4.05) shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines owned by the Association and, for which a utility company or other entity is not responsible (whether such lines and facilities are on individual Lots or Association Property) shall also be the responsibility of, and an expense of the Association. Such cost shall be funded from the Maintenance Assessments.

- a. Maintenance of Association Property. With respect to Association Property, the Association shall maintain, repair and replace all improvements, including parking areas, walkways, driveways and landscaped areas within Lots and Association Property. The Association shall also be responsible for snow removal from parking areas, drives and driveways, and refuse collection. Individual Lot Owners are responsible for snow removal from the walks and entryways abutting their dwellings.
- b. Maintenance of Townhouses. With respect to the Townhouses, including garages, the Association shall repair and replace the exterior siding, gutters, downspouts and

roofs; paint the trim, windows and doors, but shall not repair or replace windows, window panes or doors, or maintain, repair or replace porches, patios or wood decks. Exterior items which are vinyl coated and require no or low level maintenance will be maintained in accordance with manufacturers' recommendations.

With respect to the other improvements on a Townhouse Lot, the Association shall stain, repair and replace fences, railings and siding initially installed by the Sponsor, but shall not repair or replace spalling concrete walks, stoops or porches. The water, storm sewer and sanitary sewer laterals serving a Townhouse will be maintained by the Association. Maintenance and repair shall be limited to leakage and structural failure only.

The Board of Directors of the Association may, upon the affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors, provide for additional maintenance with respect to the Lots to be undertaken by the Association or to discontinue the performance of some or all of the maintenance responsibilities of the Association with respect to the Lots.

The cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Except as provided in Section 6.01 above, the Association shall not be responsible for (i) the maintenance, repair or replacement of any buildings or structures not owned by the Association, or (ii) the maintenance, repair or replacement of any sewer lines, water lines or other utility lines which are maintained, repaired and replaced by a municipality, public authority or utility company.

Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above, but which is occasioned by a negligent or willful act or omission of a Lot Owner or the Sponsor shall be made at the cost and expense of such Lot Owner or the Sponsor, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Lot and such cost shall be added to

that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

Section 6.04. Access for Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s), have the right to enter upon any portion of the Property and into and upon any Unit at any reasonable hour to carry out its functions as provided for in this Article, except that in an emergency, the Association shall have the right, without notice, to enter upon any portion of the Property and into any Unit to make necessary repairs or to prevent damage to any Unit or any portion of the Property. The repair of any damage caused in gaining access shall be at the expense of the Association.

ARTICLE VII ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Sponsor to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee (hereinafter referred to as the "Architectural Committee") as provided in Section 7.02 below.

Section 7.02. Composition and Function of Architectural Standards Committee. The Architectural Committee shall be a permanent committee of the Association and shall approve all proposed improvements, additions, modifications or alterations to any existing improvements or any proposed change in the use of a Lot or any other portion of the Property, including Association

Property, after transfer of title to such Lot or other portion of the Property. The Architectural Committee may also assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three (3) or more persons, as determined by the Board of Directors of the Association, for terms of two (2) years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.03. Submission of Plans to Architectural Committee. After transfer of title to any Lot or other portion of the Property by the Sponsor no improvement, exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by the Architectural Committee. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;
- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, or proposed parking;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. failure of proposed improvements to comply

with any zoning, building, preservation, health, or other governmental laws, codes, ordinances, rules and regulations;

- f. any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use or uses inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Committee.

Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record, together with such qualifications, or provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property, and (ii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, preservation, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 45 days after submission thereof, the applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

- a. Fifteen (15) days after the date of receipt of such notice, if such notice is given;
- b. Seventy (70) days after the date the plans were originally submitted.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. The Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Architectural Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Architectural Committee as long as the number and identity of such staff or members, and the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Architectural Committee.

Section 7.10. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent thereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or

the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee, or any member, subcommittee, employee or agent thereof, in connection with such submission.

Section 7.11. Architectural Committee Certificate. Upon written request of any Owner, lessee or any prospective Owner, lessee, mortgagee or title insurer of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing (hereinafter referred to as the "Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Architectural Committee Certificate was issued.

ARTICLE VIII PARTY WALLS AND ENCROACHMENTS

Section 8.01. Party Walls. Each wall which is built as part of the original construction of the Townhouses, whether or not such wall is on the dividing line between two (2) adjacent Lots, and which serves as the exterior limit of the two (2) Townhouses, shall be considered a party wall.

Section 8.02. Maintenance of Party Walls. Each Townhouse Owner whose Townhouse contains a party wall shall have an easement to enter upon the Townhouse with which the party wall is shared to effect necessary repairs or maintenance of said party wall. Each Townhouse Owner shall be responsible for the ordinary maintenance and repair of such Townhouse Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the two (2) Townhouse Owners which share such wall.

In any event where it is necessary for a Townhouse Owner, its authorized employees, contractors or agents, to enter upon a Townhouse owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Townhouse Owner, shall be limited to reasonable times, and shall be exercised so as not to impair enjoyment of said adjacent Townhouse.

Section 8.03. Exposure of Wall. A Townhouse Owner who, by negligent or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements.

Section 8.04. Materials Used and Workmanship. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall. All labor performed shall be performed in a good and workmanlike manner.

Section 8.05. Destruction of Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Townhouse which used the wall may restore it. The Townhouse Owner who undertakes such restoration shall be entitled to a contribution equalling one-half (1/2) the cost of such restoration from the Owner of the other Townhouse which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of a Townhouse Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06. Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors and assigns of each Townhouse Owner.

Section 8.07. Encroachments and Projections. If any Townhouse and all improvements associated with it, including but not limited to patios, porches, walks, decks, and privacy fencing, encroaches or projects upon any other Townhouse Lot or upon any portion of the Association Property as a result of the construction of such Townhouse, or if any such encroachment or

projection shall occur as a result of settling or shifting of such Townhouse or portion thereof, there shall be an easement for such encroachment or projection and for the maintenance of same so long as such encroaching or projecting Townhouse or portion thereof shall stand. In the event one (1) or more Townhouses or portions thereof are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, or Proceedings of similar import and effect, and such Townhouse(s) or portions thereof are thereafter rebuilt, inadvertent encroachments or projections by such Townhouse(s) or portions thereof upon any other Townhouse or Lot, or upon any portion of the Association Property, in excess of any encroachment or projection which existed as a result of initial construction, due to such rebuilding, shall be permitted, and valid easements for such encroachments or projection and the maintenance thereof shall exist so long as such improvements shall stand; provided, however, that any increase in such encroachment or projection shall not be greater than two (2) feet.

ARTICLE IX
INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board of Directors to be appropriate or relevant: (i) fire and casualty insurance on the Association Property, the Townhouses, (ii) liability insurance on the Association Property, (iii) directors and officers' liability insurance, (iv) fidelity bond or surety bond, and (v) such other insurance as the Board of Directors shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage. Coverages shall be as follows:

1. Fire and Casualty. Coverage shall be for the unit value of each Townhouse under the "single entity" concept, i.e. covering the Townhouses as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, built-in appliances, wall coverings and all machinery servicing the Townhouses and common facilities, excluding the land, foundations, the personal property of Owners and occupants, and any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting or lighting fixtures, and wall coverings) made by present or prior Owners or occupants.

The policy shall have the following provisions, endorsements and coverages: (i) extended coverage, vandalism and malicious mischief, (ii) inflation guard, (iii) coverage for loss of Maintenance Assessment from Owners forced to vacate because of

fire or other insured against casualty, (iv) waiver of the right of subrogation with respect to individual Owners, their family members, and the officers and directors of the Association, (v) a provision that the policy shall in no event be brought into "contribution" by individual Owners or mortgagees, (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the conduct of someone over whom the Board of Directors has no control, (vii) cross-liability giving the Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (viii) a provision that the policy may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of Lots reported to the insurance carrier or its agent, (ix) a provision requiring periodic review at least every two (2) years to assure the sufficiency of coverage, (x) a provision that adjustment of loss shall be made by the Board of Directors and (xi) a provision that the policy not require the insured to be a co-insurer in the event of loss or claim under the policy.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or otherwise for the purpose of determining the amount of fire insurance to be effected pursuant to this section.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less shall be payable to the Association, and if \$50,000.00 or more, to an Insurance Trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Owners pursuant to Section 9.02 of this Declaration.

This \$50,000.00 limitation may be raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Board of Directors. All fees and disbursements of the Trustee shall be paid by the Association and shall be a common expense of the Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to the mortgagees as its interest shall appear, subject, however to the loss payment provisions in favor of the Association and the Insurance Trustee. The obligation to restore or reconstruct after damage due to fire or other casualty supersedes the customary right of a mortgagee to have the proceeds of insurance coverage applied to the mortgage indebtedness.

Each Owner and such Owner's known mortgagee shall be a named insured on the policy and shall receive, at the time

of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing insurance coverage.

Duplicate originals of the policy and of all renewals of the policy shall be furnished to all known institutional mortgagees of Townhouses.

If the Board of Directors decides not to insure the Townhouses or decides to insure the Townhouses in an amount less than that necessary to provide for the full replacement or reconstruction of the damaged improvements taking into account coinsurance provisions, each Owner shall, at the Owner's sole cost and expense, purchase and maintain fire and extended coverage insurance in such amounts as from time to time may be required by the Board of Directors, from a company licensed to do business in the State of New York. Such insurance shall be in the standard New York State form and shall cover loss and damage to the Lot, Townhouse (including garage), and all other improvements on the Lot. All insurance policies shall cover the interest of the Owner, the Association, and mortgagees, if any, as their interests may appear.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners of Townhouses, but not the liability of Townhouse Owners arising from occurrences within such Owner's Townhouse or on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability, (ii) Personal injury, (iii) medical payments, (iv) cross liability and (v) contractual liability.

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of \$500,000.00 covering all claims for bodily injury and property damage.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. This coverage shall provide for funds to be available to defend suits against officers and directors of the Association and to pay any claims which may result. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors. The policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the directors' and officers' liability coverage shall be in the amount of \$250,000.00.

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and of the Association's managing agent, if any, who handle Association funds. The bond shall be in an amount not less than 50% of the Association's annual budget, but in no event less than the amount of funds, including reserves, owned by or under the control of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$10,000.00 for dishonest acts and \$5,000.00 for forgery.

5. Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

6. No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

7. Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection, including attorney's fees, shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Option to Have Insurance Paid
by Lot Owners Directly

The Board of Directors may, at its option, elect to have any insurance which it obtains, paid for directly by the Owners of the Lots rather than from assessments paid to the Association. However, should any Owner fail to pay such Owner's portion of such insurance premium, the Board of Directors may elect to pay such amount on behalf of such Owner in which event such amount so advanced shall be a charge and continuing lien upon the Lot of such Owner and shall also be the personal obligation of such Owner. Such amount shall bear interest and

shall be collectible in the same manner as a delinquent assessment as set forth in Section 5.08 of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Townhouse, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if the Owners of 75% or more of all Townhouses do not duly and promptly resolve to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Townhouse Owners in proportion to the damage to their insured property in relation to the total damage to all the insured property, provided, however, that no payment shall be made to a Townhouse Owner until there has first been paid out of such Townhouse Owner's share of such funds all liens on such Owner's Townhouse. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against all Owners of the damaged Townhouses in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhouse and any negligence which, in the opinion of the Board, contributed to the damage and loss. In the event that insurance proceeds exceed the cost of repair and reconstruction, such expenses shall be paid over to the respective mortgagees and Townhouse Owners in such proportions as the Board of Directors deems fair and equitable taking into account the damage sustained to each Townhouse and Lot, provided, however, that no part of a distribution that results from an Assessment paid by a Townhouse Owner, shall be made to all Townhouse Owners and their mortgagees as their interest may appear.

Section 9.03. Insurance Carried by Owners. Owners of Townhouses shall not be prohibited from carrying other insurance for their own benefit, provided that such policies contain waivers of subrogation, and further provided, that the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

ARTICLE X
GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property, including but not limited to temporary signs advertising property for sale or rent, except with the consent of the Architectural Committee.

Section 10.02. Animals, Birds and Insects. Except for one (1) dog and one (1) cat belonging to an Owner of a Lot, fish, or birds kept in a cage, no animals, birds or insects shall be kept or maintained on any Lot on which a Townhouse is or will be constructed or other portion of the Property except with the consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations, setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely. In any event, pets may be allowed outdoors only when accompanied by a responsible person and leashed. The Board of Directors of the Association shall have the right to require any Owner, any tenant of any Owner, or any family member or guest of any Owner or tenant to dispose of any animal, bird or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird or insect is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy or the animal is not properly controlled.

Section 10.03. Protective Screening and Fences. Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property not maintained by the Association shall be maintained by the Lot Owner and shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (referred

to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Association so as to provide access to persons making such pick-up. The Association may, in its discretion, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property.

Section 10.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles, antennas, dishes or wires for the transmission of electricity, electronic or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Association.

Section 10.06. Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the area or to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to be detrimental to or endanger the public health, safety, comfort or welfare, be injurious to property, vegetation or animals, adversely affect property values or otherwise produce a public nuisance or hazard or violate any applicable zoning regulations or governmental law, ordinance or code.

Section 10.07. Oil and Mining Operations. No portion of the Property shall be used for the purpose of boring, drilling, refining, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, except soil borings in connection with the improvement of said portion of the Property, and no derrick or other structure designed for use in boring for oil, natural gas or any other mineral shall be erected, maintained or permitted on any portion of the Property, except with the consent of the Association.

Section 10.08. Dwelling in Other Than Residential Unit. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used,

temporarily or permanently, as a dwelling on any Lot or other portion of the Property, except with the consent of the Association.

Section 10.09. Antennas. No outside radio, telegraphic, television or other electronic antenna, dish or other transmitting or receiving device shall be erected on any Lot or other portion of the Property, except with the consent of the Association.

Section 10.10. Trees and Other Natural Features. After the transfer of title by the Sponsor to any Lot or other portion of the Property, no trees shall be removed from any Lot or portion of the Property, except with the permission of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Association may designate certain trees, regardless of size, as not removable without written authorization.

Section 10.11. Use and Maintenance of Slope Control Areas. Within any slope control area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, change the direction or flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where a governmental agent or other public entity or utility company is responsible for such maintenance.

Section 10.12. Snowmobiles. No snowmobile or similar motor vehicle shall be operated on any portion of the Property except with the consent of the Association.

Section 10.13. Commercial and Professional Activity on Property. No wholesale or retail business or service occupation in conflict with applicable municipal laws and ordinances shall be conducted in or on any Lot or other portion of the Property without the consent of the Association, except by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots.

Section 10.14. Outside Storage. Outside storage or parking for more than one 72 consecutive hour period per month of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited except as may be permitted by the Association, (unless prohibited altogether by the applicable zoning requirements).

Section 10.15. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no work on any motor vehicles, boats or machines of any kind, other than minor servicing and maintenance, shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association.

Section 10.16. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Sponsor, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property:

- a. any vehicle which cannot fit into a garage of the size constructed by the Sponsor with the Units;
- b. commercial vehicles of a weight of two (2) tons or more, unless garaged;
- c. unlicensed motor vehicles of any type, unless garaged.

Section 10.17. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted on the Property unless authorized by the Association.

Section 10.18. Chain Link Fences. Unless otherwise consented to by the Association, no chain link fence shall be erected anywhere on the Property.

ARTICLE XI
ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property, whether or not the deed, lease or any other instrument incorporates or refers to the Declaration, covenants and agrees

for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration, including personal responsibility for the payment of all charges which may become liens against his property and which become due while he is the owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability. The provisions of the Declaration shall bind the Property, shall be construed as running with the land and shall inure to the benefit of the Association, which shall be deemed the agent for all of its Members, and may be enforced by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior to or subsequent thereto. No liability shall attach to the Sponsor, the Association, or any officer, director, employee, Member, agent, committee or committee member thereof, or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (i) the Owner, (ii) any family member, tenant, guest or invitee of the Owner, (iii) a family member or guest or invitee of the tenant of the Owner, or (iv) a guest or invitee of (1) any member of such Owner's family or (2) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the Property owned by such Owner, if any.

Section 11.05. Inspection and Entry Rights. Any agent of the Association or the Architectural Committee may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which, or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property, obscures the view of street traffic, or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 11.06. Default Notices to be Sent to Mortgagees. Each Owner shall notify the Association of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation by such Owner of any provision of this Declaration.

Section 11.07. Amending or Rescinding. Unless otherwise specifically provided for herein, this Declaration may be amended or rescinded upon the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots which are subject to this Declaration. In addition, until three (3) years from the date of recording of this Declaration, or so long as the Sponsor owns 25% or more of the Property then subject to this Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects the interest of the Sponsor.

In voting for such amendment or rescission, the Members voting rights shall be as set forth in Article III hereof.

The Owners of every Lot shall receive written notice of every proposed amendment or rescission at least 30 days prior to the date set for voting on said proposed amendment or rescission.

In addition to the approval of the Lot Owners and Sponsor, as provided for herein, no amendment or rescission which substantially affects the interest of any lending institutions shall become effective if lending institutions, which together are mortgagees on one-third (1/3) or more of the Lots, advise the Association in writing, prior to the date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date set for voting on the proposed amendment or rescission.

Section 11.08. When Amendment or Rescission Become Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Monroe County Clerk. Such instrument need not contain the written consent of the required number of Owners, but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.09. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until December 31, 2006, and shall, as then in force, be automatically, and without further notice, extended for successive periods of ten (10) years, except as otherwise set forth herein.

Section 11.10. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so

adopting and promulgating such rules and regulations, and making and finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners and other residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization or approval, as herein provided, the Association may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the consideration set forth in the immediately preceding paragraph hereof.

Section 11.11. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.12. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.13. Invalidity of Agreement or Declaration. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XII GENERAL

Section 12.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 12.02. Right Reserved to Impose Additional Protective Covenants. The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 12.03. Notice. Any notice required to be sent to the Sponsor, Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Sponsor, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 12.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust, and upon such assignment the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors or Trustees of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If the Association, for any reason, shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 12.05. Right of Association To Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners or residents association or similar entity.

777 INCORPORATED

By: _____
Susan Luxenberg

(SEAL)

ESSEX PLACE HOMEOWNERS
ASSOCIATION, INC.

By: _____

(SEAL)

STATE OF NEW YORK)
) SS:
COUNTY OF MONROE)

On this ___ day of _____, 1987 before me personally came SUSAN LUXENBERG, to me personally known, who, being by me duly sworn, did depose and say that she resides at Rochester, New York; that she is the _____ of 777 INCORPORATED, the corporation described in and which executed the within Instrument; and that she signed her name thereto by order of the Board of Directors.

STATE OF NEW YORK)
) SS:
COUNTY OF MONROE)

On this ___ day of _____, 1987, before me personally came _____, to me personally known, who, being by me duly sworn, did depose and say that he resides at Rochester, New York; that he is the _____ of ESSEX PLACE HOMEOWNERS ASSOCIATION, INC., the corporation described in and which executed the within Instrument; and that he signed his name thereto by order of the Board of Directors.

SCHEDULE "A"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of
Brighton, Monroe County, New York, known as Essex Place
Subdivision, as shown on a map filed in the Monroe County Clerk's
Office in Liber 244 of Maps, at Page 53.

EXHIBIT "B"

CERTIFICATE OF INCORPORATION
OF
ESSEX PLACE HOMEOWNERS ASSOCIATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, being of the age of 18 years or older, under Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the Corporation is ESSEX PLACE HOMEOWNERS ASSOCIATION, INC.

2. The Corporation has not been formed for pecuniary profit or financial gain and no part of the assets, income or profit of the Corporation is distributable to or inures to the benefit of its members, directors or officers. The Corporation shall be a Type A Corporation under Section 201 of the Not-for-Profit Corporation Law.

3. The purposes for which the Corporation is formed are to acquire, construct upon, manage, maintain, care for, preserve, protect and enhance the value of that certain tract of property known as Essex Place Subdivision in the Town of Brighton, County of Monroe, State of New York, and such additions thereto as may hereafter be brought within the jurisdiction of this Corporation and structures, fixtures and improvements thereon, and community facilities and rights, privileges and easements benefiting such property (the "Property") and being initially the premises described in that certain Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens of Essex Place Homeowners Association, Inc. recorded in the Monroe County Clerk's Office and any supplements or additions thereto (the "Declaration") and to promote the health, safety and welfare of the owners of interests in the Property.

4. In furtherance of, and not in limitation of, the purposes of the Corporation, the Corporation shall have all the powers now or hereafter granted to corporations of its type under the Not-for-Profit Corporation Law of the State of New York and any successor statute, including, without limiting the generality of the foregoing, the power to acquire, invest in, hold, sell, exchange and dispose of real and personal property of all kinds and varieties and interests, including security interests and mortgages therein.

5. Nothing herein contained shall authorize the Corporation to undertake or carry on any of the activities specified in Section 404(a)-(u) of the Not-for-Profit Corporation Law of the

State of New York, to operate a hospital, drug maintenance program, certified home health agency, health maintenance organization or to provide hospital or health related services, or to offer a comprehensive health services plan as any of the foregoing are respectively defined in Articles 28, 33, 36, and 44 of the Public Health Law.

6. The office of the Corporation will be located in the County of Monroe, State of New York.

7. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is 2311 Elmwood Avenue, Rochester, New York 14618.

8. Every person or entity who is a record owner of a fee interest in any lot in the Property which is subject by covenants of record to assessments by the Corporation, including contract vendors and, in addition, the Sponsor so long as it shall be the record owner of a fee interest in any lot in the Property, whether or not subject to assessments by the Corporation, shall be a member of the Corporation. The Corporation shall have two (2) classes of membership. No person shall be a member of the Corporation solely on account of ownership of an interest in a Lot in the Property solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot in the Property subject to assessment by the Corporation.

9. The initial directors of the corporation until the first annual meeting are as follows:

Geoffrey Kendig	11 Rundel Park Rochester, New York 14607
Benton Kendig	609 Mt. Hope Avenue Rochester, New York 14620
Susan Luxenberg	2311 Elmwood Avenue Rochester, New York 14618

10. Upon dissolution of the Corporation other than incident to a merger or consolidation, no part of the assets of the Corporation nor any of the proceeds thereof shall be distributed to the members, officers or directors of the Corporation as such, but all such property and proceeds shall, subject to the discharge of the Corporation's liabilities, be distributed as directed by the members of the Corporation to a public agency to be used for not-for-profit purposes similar to those for which the Corporation was created or for the general welfare of the

residents of the municipality in which the Property is located or to a corporation, association, trust or other organization not organized for profit and operated exclusively for the promotion of social welfare, subject to the approval of a Justice of the Supreme Court of the State of New York.

11. Neither this Certificate of Incorporation nor the Corporation's By-Laws shall be amended in any manner which conflicts with the Declaration.

IN WITNESS WHEREOF, the undersigned has subscribed and affirmed this Certificate as true under the penalties of perjury this 21st day of January, 1987.

/s/ Louis M. D'Amato
Louis M. D'Amato
44 Exchange Street
Rochester, New York 14614

EXHIBIT "C"

BY-LAWS

Establishing Essex Place Homeowners Association, Inc.

NAME: ESSEX PLACE HOMEOWNERS ASSOCIATION, INC.

SPONSOR: 777 INCORPORATED
2311 Elmwood Avenue
Rochester, New York 14618

DATE OF BY-LAWS: _____, 1987

WOODS, OVIATT, GILMAN, STURMAN & CLARKE

Attorneys for the Sponsor

44 Exchange Street
Rochester, New York 14614

Section 5.12	Duties of the Board.....	104
Section 5.13	Performance of Duties: Conflict of Interests.....	105
ARTICLE VI.	OFFICERS.....	105
Section 6.01	Officers.....	105
Section 6.02	Election.....	106
Section 6.03	Term and Vacancies.....	106
Section 6.04	Resignation and Removal.....	106
Section 6.05	President.....	106
Section 6.06	Vice President.....	106
Section 6.07	Secretary.....	107
Section 6.08	Treasurer.....	107
Section 6.09	Other Officers.....	107
Section 6.10	Compensation.....	107
ARTICLE VII.	COMMITTEES.....	107
Section 7.01	Committees of Directors.....	107
Section 7.02	Committees of the Association.....	107
Section 7.03	Rules.....	108
ARTICLE VIII.	FINANCE.....	108
Section 8.01	Checks.....	108
Section 8.02	Fiscal Year.....	108
Section 8.03	Annual Reports.....	108
ARTICLE IX	BOOKS AND RECORDS.....	108
Section 9.01	Books and Records.....	108
ARTICLE X	CORPORATE SEAL.....	109
Section 10.01	Corporate Seal.....	109
ARTICLE XI	AMENDMENTS.....	109
Section 11.01	Alteration, Repeal or Amendment.....	109
Section 11.02	Conflict with Certificate of Incorporation or with Declaration.....	109
ARTICLE XII	INDEMNIFICATION.....	109
Section 12.01	Indemnification.....	109

person, however, shall be a member of the Association solely on account of ownership of an interest in a Lot solely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from record fee ownership of any Lot subject to assessment by the Association.

SECTION 2.05 Property. All property within Essex Place Townhomes.

SECTION 2.06 Sponsor. 777 Incorporated, its successors and assigns.

SECTION 2.07 Townhouse. A single family dwelling on the property that is attached to at least one (1) or more Townhouses by means of a party wall or otherwise.

ARTICLE III

MEMBERS

SECTION 3.01 Membership in the Association. The Members of the Association shall be the Owners of Lots within the Property, provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be a Member. The Association shall have two (2) classes of Membership. Class A members shall be all Owners of Lots except the Sponsor and the sole Class B member shall be the Sponsor or assignee. The Class B membership shall be the only class of membership entitled to vote for the election of directors, the transaction of any corporate business or any other matter until two (2) years after the sale and transfer by the Sponsor of the first Lot, or until 12 Lots are sold and transferred by the Sponsor. Immediately thereafter, the Sponsor's Class B membership shall be converted into Class A membership without further act or instrument and the Class A membership shall have full voting rights.

SECTION 3.02 Right of Sponsor to Assign; Otherwise No Assignment. Sponsor may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

SECTION 4.04 Voting Rights. The Class B membership shall be the only class of membership entitled to vote for the election of directors, the transaction of any corporate business or any other matter until two (2) years after the sale and transfer by the Sponsor of the first Lot, or until 12 Lots are sold and transferred by the Sponsor. Immediately thereafter, the Sponsor's Class B membership shall be converted into Class A membership without further act or instrument and the Class A membership shall have full voting rights.

SECTION 4.05 Quorum and Vote. The presence in person or by proxy of Members having not less than one-half (1/2) of the total votes of the Membership entitled to vote shall constitute a quorum at any meeting. However, if a meeting cannot be held because a quorum is not present, the majority of the Members present, either in person or by proxy, may, without notice other than announcement to those physically present, adjourn the meeting to a time not less than 48 hours later, until a quorum shall be present in person or by proxy, with the quorum required for each reconvened meeting being one-half (1/2) of the quorum required for the previous meeting, but never less than one-tenth (1/10) of the total votes of the Membership entitled to vote. Directors shall be elected by the affirmative vote of Members entitled to vote and casting a plurality of the vote cast at a meeting of Members. With respect to all acts other than the election of Directors, the act of Members casting a majority of the votes cast at a meeting shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws.

SECTION 4.06 Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

SECTION 4.07 Corporate Members. Any votes of a corporate member may be cast by an appropriate officer of such corporation.

the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. Nominations may also be made from the floor at the Annual Meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

The Nominating Committee shall make as many nominations for election of the Board of Directors as it shall determine, in its sole discretion, but not less than the number of vacancies that are to be filled and such nomination may be made from Members of the Association.

SECTION 5.03 Election. At the first Annual Meeting after 12 Lots have been sold and transferred or two (2) years after the date of selling and transferring the first Lot, whichever first occurs, the Members shall elect three (3) Directors for a term of two (2) years and two (2) Directors for a term of one (1) year. At each Annual Meeting thereafter, the Members shall replace those Directors whose terms have expired and elect such successor Directors for a term of two (2) years. Voting shall be by secret written ballot which shall:

- a. Set forth the number of vacancies to be filled;
- b. Set forth the names of those nominated by the Nominating Committee to fill such vacancies; and
- c. Contain space for a write-in for each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

SECTION 5.04 Vacancies. Any vacancy occurring in the initial or any subsequent Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors (although less than a quorum) or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business, except as otherwise required by law, by the Certificate of Incorporation of the Association or by these By-Laws. Except in cases in which it is provided otherwise by law, by the Certificate of Incorporation or by these By-Laws, a vote of a majority of Directors present at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted as originally called.

Note:
SECTION 5.10 Informal Action by Directors. Any action required or permitted to be taken by a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be. Such written consent shall be filed with the minutes of proceedings of the Board or committee. *follow the rules*

SECTION 5.11 Powers of the Board. The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation or these By-Laws. The powers, duties and authority of the Board of Directors shall specifically include, but shall not be limited to, the following:

a. To determine, levy and collect the assessments and common charges as provided for in the Declaration.

b. To collect, use and expand the assessments and charges collected for the maintenance, care and preservation and operation of the property of the Association and the exteriors of the Townhouses (and other improvements, to the extent now or hereafter required or permitted under the Declaration) as permitted by the Declaration.

c. To procure and maintain adequate liability insurance covering the Association, its Directors, Officers, agents and employees and to procure and maintain adequate hazard insurance on such of the Association's real and personal properties and the Townhouses as it deems appropriate.

d. To repair, restore or alter the properties of the Association and the exteriors of the Townhouses (or such other improvements for which the Association may

now or hereafter have such responsibility under the Declaration, as amended) after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

e. To promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation and use of facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Members and to establish and enforce penalties for infractions thereof.

f. To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.

g. To pay all expenses incurred by the Association and all taxes owing by the Association.

h. To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors.

i. To keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and such other records as it deems appropriate.

j. To issue, or cause to be issued, upon request by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessment for any Lot.

k. To grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration.

l. To dedicate or transfer all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall, however, require the consent of two-thirds (2/3) of the total votes of all Members at any meeting duly called and held or who shall vote upon written ballot which shall be sent to every Member not less than 30 days nor more than 60 days in advance of the canvass thereof. In addition,

need p. 103

no such conveyance shall be made if lending institutions which together are first mortgagees on 33-1/3% or more of the Lots advise the Association in writing, prior to the date set for voting on the proposed conveyance, that they disapprove such conveyance, which disapproval must not be unreasonable. Written notice of any proposed conveyance shall be sent to all lending institution first mortgagees not less than 30 days nor more than 60 days prior to the date set for voting on the proposed conveyance.

m. To enter into agreements, reciprocal or otherwise, with other homeowners and residents associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than 10 days nor more than 60 days in advance of the vote on the proposed agreement.

n. To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation or the Declaration.

SECTION 5.12 Duties of the Board. It shall be the duty of the Board of Directors to:

a. Cause to be kept a complete record of all its acts and corporate affairs and to regularly present a written report thereon in compliance with New York statutes to the Members at the annual Meeting of the Members, or at any Special Meeting to present a written report only when same is requested in writing by at least one-fourth (1/4) of the Members who are entitled to vote.

b. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

c. As more fully provided in the Declaration now or as hereafter amended or supplemented, to:

(1) Fix the amount of Special Assessments and Maintenance Assessments and other assessments to be assessed and levied against each Lot at the time or times and in the manner provided in the Declaration.

(2) Send written notice of each assessment to every owner of a Lot subject thereto at the time and in the manner provided in the Declaration.

(3) Foreclose the lien against any Lot for which assessments are not paid within 30 days after their due date, and to bring an action at law against the Member thereof personally obligated to pay the same.

d. Issue, or cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these Certificates. If a Certificate states an assessment has been paid, such Certificate shall be conclusive evidence of such payment.

e. Procure and maintain adequate liability and hazard insurance for the Townhouses and Association Property.

f. Cause the Association Property and the exteriors of the Townhouses to be maintained.

g. Cause all officers or employees having fiscal responsibilities to be bonded, as the Board of Directors may deem appropriate.

h. Prepare annual finance statements of the Association which are to be mailed to each Member by March 15th of each year.

SECTION 5.13 Performance of Duties: Conflict of Interests. The Directors and Officers of the Association may freely make contracts, enter transactions or otherwise act for and in behalf of the Association relating to or incidental to its operations, notwithstanding the fact that they may also be acting as individuals or as Directors of the Association and as agents for other persons or business concerns or may be interested therein as stockholders of said corporations or business concerns or otherwise, provided, however, that all such dealings shall at all times be at arm's length for and in the best interests of the Association and otherwise lawful.

ARTICLE VI

OFFICERS

SECTION 6.01 Officers. The officers of the

Association shall be the President (who shall be a member of the Board of Directors), one (1) or more Vice Presidents (the number to be determined by the Board of Directors), the Secretary and the Treasurer and shall be appointed by the Board of Directors. The Board of Directors may elect such other officers as it shall deem desirable, such officers to have the authority to perform the duties prescribed from time to time by the Board of Directors. Two (2) or more offices may not be held by the same person.

SECTION 6.02 Election. The election of officers shall take place at the first meeting of the Board of Directors following each Annual Meeting of the Members.

SECTION 6.03 Term and Vacancies. The officers of the Association shall be elected annually by the Board of Directors and each shall hold offices until his or her successor shall have been duly elected, unless he or she shall sooner resign, or shall be removed or otherwise be disqualified to serve. The vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

SECTION 6.04 Resignation and Removal. Any officer may be removed by the Board of Directors, with or without cause, whenever, in the judgment of the Board, the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6.05 President. The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, shall preside at all meetings of Directors and shall perform such other duties and functions as may be assigned him or her. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board or these By-Laws.

SECTION 6.06 Vice President. Any Vice President shall be capable of performing all of the duties of the President. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board and shall perform such other duties and functions as may be assigned to him or her by the President or the Board.

Standards Committee, the Nominating Committee and such other committees as the Board of Directors shall deem desirable. Each committee shall consist of a chairman and two (2) or more members and shall include a member of the Board of Directors. The Architectural Standards Committee shall have the duties and functions described for such committee in the Declaration.

SECTION 7.03 Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

ARTICLE VIII

FINANCE

SECTION 8.01 Checks. All checks, drafts and orders for the payment of money, notes and other evidences of indebtedness issued in the name of the Association shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President or Treasurer and countersigned by one (1) Director of the Association, provided that the President or Treasurer and Director so signing are not the same person.

SECTION 8.02 Fiscal Year. The fiscal year of the Association shall be the twelve (12) calendar months, ending December of each year, unless otherwise provided by the Board of Directors.

SECTION 8.03 Annual Reports. There shall be a full and correct statement of the financial affairs of the Association including a balance sheet and a financial statement of operation for the preceding fiscal year. Such report shall be submitted at the Annual Meeting of the Members and filed within 20 days thereafter at the principal office of the Association.

ARTICLE IX

BOOKS AND RECORDS

SECTION 9.01 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association.

SECTION 6.07 Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these By-Laws, shall record the votes and keep the minutes of all meetings, shall have charge of the seal and corporate records of the Association, and shall perform such other duties as are assigned to him or her by the President or the Board. Any Assistant Secretary shall be capable of performing all of the duties of the Secretary.

SECTION 6.08 Treasurer. The Treasurer shall have the custody of all moneys and securities of the Association and shall keep or cause to be kept regular books and records. He or she shall account to the President and the Board, whenever they may require it, with respect to all of his or her transactions as Treasurer and of the financial condition of the Association, and shall perform all other duties that are assigned to him or her by the President, the Board or these By-Laws.

SECTION 6.09 Other Officers. Such other officers as the Board may appoint shall perform such duties and have such authority as the Board may determine.

SECTION 6.10 Compensation. No executive officers of the Association shall receive any stated salary for their services, provided that nothing herein contained shall preclude any executive officer from serving the Association in any other capacity and receiving compensation therefor.

ARTICLE VII

COMMITTEES

SECTION 7.01 Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one (1) or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in the resolution, shall have and exercise the authority of the Board of Directors in the management of the affairs of the Association provided, however, that no such committee shall have the authority of the Board of Directors to approve an amendment to the Certificate of Incorporation of the Association or to these By-Laws or a plan of merger or consolidation.

SECTION 7.02 Committees of the Association. The committees of the Association shall be the Architectural