

Somerset
Townhome
Condominiums

Declaration & By-Laws

DECLARATION

Establishing Somerset Townhomes, City of Rochester, New York, Pursuant to Article 9-B of the Real Property Law of the State of New York.

NAME: Somerset Townhomes

SPONSOR: SOMERSET HOMES, LTD.
1739 Ridgeway Avenue
Rochester, New York 14615

DATED: _____, 198__

LAW OFFICES OF GEORGE R. GRASSER

Preparer of Condominium Documents

3350 Marine Midland Center
Buffalo, New York 14203

DECLARATION OF
SOMERSET TOWNHOMES
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DECLARATION

Establishing

SOMERSET TOWNHOMES

For the Premises described on Schedule A attached hereto in the City of Rochester, New York, pursuant to Article 9-B of the Real Property Law of the State of New York.

Somerset Homes, Ltd., a New York corporation with an office at 1739 Ridgeway Avenue, Rochester, New York 14615, hereinafter referred to as the "Sponsor," does hereby declare:

ARTICLE I

SUBMISSION OF PROPERTY

Section 1.01. Submission. The Sponsor hereby submits the land described on Schedule A attached hereto and made a part hereof, together with all improvements thereon erected (hereinafter called the "Property") to the provisions of Article 9-B of the Real Property Law of the State of New York.

ARTICLE II

NAME OF CONDOMINIUM

Section 2.01 Name. This Condominium shall be known as Somerset Townhomes, sometimes hereinafter referred to as the "Condominium". The Condominium shall be comprised of the "Units" (see Section 4.01 below) and the "common elements" (see Section 5.01 below) on the Property.

ARTICLE III

BUILDINGS

Section 3.01. Buildings. The "Buildings" as hereinafter referred to are the structures containing residential dwelling units and known as Somerset Townhomes.

Schedule B attached hereto, and made a part hereof, contains a description of the Buildings including the number of stories and the materials of which each Building is constructed. The Property on which the Buildings are located is more particularly described in Schedule A attached hereto.

ARTICLE IV

UNITS

Section 4.01. Number and Address of Units. There are 44 residential Units (hereinafter sometimes referred to as the "Units"). The Units are designated by Building number and by letter, being commonly known as Somerset Townhomes.

Section 4.02. Designations, Locations, and Plans of Units. Annexed hereto, and made a part hereof as Schedule C, is a list of all Units in the Buildings, their Unit designations, tax lot numbers, approximate areas, number of rooms, percentage of interest in the "common elements" as hereinafter defined, and common elements to which each Unit has immediate access (all except the percentage interests in the common elements as shown on the floor plans of the Buildings, certified by Timothy C. Rock, licensed professional engineer, and filed in the Office of the Monroe County Clerk simultaneously with this Declaration under Map Cover No. _____). If such floor plans do not include a verified statement by such engineer that such plans fully and fairly depict the layout, location, Unit designations, and approximate dimensions of any particular Unit or Units as built, there shall be recorded prior to each first conveyance of such particular Unit or Units an Amendment to this Declaration, to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed, or filed simultaneously with such Amendment, fully and fairly depict the layout, location, Unit designations, and approximate dimensions of those particular Unit(s) as built. Annexed hereto and made a part hereof as Schedule D is a site plan or survey showing the designation and location of the Units within the Buildings.

Section 4.03. Dimensions of Units. Each Unit is measured horizontally from the unexposed faces of the interior drywall affixed to or adjoining the insulating gypsum sheathing or cinder blocks forming the exterior walls of the Building or walls between Units, and vertically from the upper face of the concrete slab or subfloor forming the low-level floor of the Unit up to the upper face of the drywall forming the ceiling on the second floor of the Unit. Doors, windows, and interior walls which abut a Unit are part of the Unit. All pipes, wires, and conduits from the gas and electric meters to the Unit are part of the Unit. Any and all heating units, air conditioners, water heaters, and the like serving only one Unit are part of the Unit.

Section 4.04. Ownership of Units. Each Unit will be sold to one or more parties (hereinafter referred to as the "Unit Owners") with each Unit Owner obtaining fee ownership to the Unit acquired and the appurtenant undivided interest in the "common elements" (see Article V of this Declaration) of the Condominium, as set forth in Schedule C of this Declaration. Upon acquiring title in such manner, such purchaser(s) shall become Unit Owner(s) in the Condominium and will remain such so long as such Unit is owned by such Owner(s).

Section 4.05. Use of Units. Each Unit shall:

- (1) be used for residential purposes only;

- (2) be resided in by not more persons (including children) than two times the number of bedrooms in the Unit, except that this shall not apply to persons who have a child after they have taken occupancy; and
- (3) if resided in by three or more persons (including children) such persons shall be members of the same family (or if the Unit Owner or lessee is a partnership, a corporation or a trust, members of the family of a partner, director, shareholder, or employee of the corporation or of the beneficiary of the trust, as the case may be). "Same family" shall be defined as persons related to one another as husband, wife, mother, father, sister, brother, stepsister, stepbrother, daughter, son, stepdaughter, stepson; together with their children. This restriction requiring three or more residents to be members of the same family may be waived by written consent obtained from the Board of Managers prior to occupancy.

Notwithstanding the above, (i) so long as the Sponsor owns one or more Units, it may use such Units for sales offices, models, and the storage of supplies and equipment. This right shall not be taken away by an amendment to this Declaration without the Sponsor's written consent and (ii) such restrictions shall not be construed to prohibit any occupant of any Unit from entertaining guests of any age including guests who temporarily reside in the Unit for periods of up to two months.

Section 4.06. No Partition of Units. No Unit (including the interest in the common elements appurtenant thereto) shall be subject to partition by the Unit Owner; provided, however, that the foregoing shall not be construed as prohibiting any division or combination of Units as provided in Section 6.01 of this Declaration or any structural alterations or changes in the number of rooms in a Unit upon approval of the Board of Managers as provided for in Article VI of this Declaration.

ARTICLE V

COMMON ELEMENTS

Section 5.01. Definition of Common Elements. The common elements consist of all the Property except the Units, including, but without limitation, the following: (i) the outside walls, roofs, and foundations of all Buildings; (ii) the land and improvements on the Property; (iii) all utility or other pipes, wires, conduits, and other material which are not part of the Units and not owned by public utility companies; (iv) the parking areas, driveways, roadways, grass areas, sidewalks, and fences; (v) patios, stoops, and mailboxes; and (vii) all other apparatus and installations on the Property for common use or which may be necessary or convenient to the existence, maintenance, or safety of the Property.

Section 5.02. Interest in Common Elements. Each Unit Owner shall have such percentage interest in the common elements as is set forth on Schedule C attached hereto and shall bear such percentage of the common expenses of the Condominium.

The percentage of interest of each Unit in the common elements has been determined by the Sponsor in accordance with Section 339-i-1(iii) of the Real Property Law: 2.27273% (1/44th).

The interest in common elements as expressed herein shall have a permanent character and shall not be altered without the consent of all Unit Owners affected, as well as their mortgagees, expressed in a duly recorded amendment hereto.

The undivided interest in the common elements shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

Section 5.03. Eminent Domain. Notwithstanding Section 5.02 above, if a Unit or Units, or the common elements, or any portion thereof is taken by eminent domain, the following shall apply:

- (a) Action to Contest Condemnation. The Board of Managers shall have the exclusive right to contest any condemnation or eminent domain proceeding which is directed at taking any portion of the common elements or which touches upon, concerns, or affects the use of the common elements. No Unit Owner or tenant of a Unit shall impair or prejudice the action of the Board of Managers in contesting such condemnation. Such restriction or prohibition shall not preclude a Unit Owner or tenant of a Unit from contesting the taking in such condemnation or eminent domain proceeding of the Unit owned or rented by such Unit owner or tenant. In any action contesting a taking by condemnation or eminent domain proceeding, the Board of Managers shall request the court to set forth the allocation of the condemnation award among the Unit Owners affected, taking into account the respective percentage interests in the common elements, the effect of the taking on each Unit affected thereby, and any other relevant factors.
- (b) Partition Action in Lieu of Continuation of Condominium After Partial Taking by Condemnation. If any condemnation or eminent domain proceeding results in a partial taking of the Property, then the Property or so much thereof as shall remain shall be subject to an action for partition as provided for by Section 339-t of the Real Property Law, as said Section may be amended from time to time, in which event the net proceeds of sale, together with the net proceeds of the award from the condemnation or eminent domain shall be considered one fund and shall be divided among all the Unit Owners in proportion to their respective common interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of such Owner's share all liens on such Owner's Unit.
- (c) Distribution of Condemnation Awards for Taking of Common Elements. Except as provided in (b) above and except for any award obtained by a Unit Owner for the Unit as further provided in (a) above, in the event that all or part of the common elements are taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to an insurance trustee (bank, trust company, law

firm, or attorney) selected by the Board of Managers if the award is more than \$50,000.00 and to the Board of Managers if the award is \$50,000.00 or less. (This \$50,000.00 limit shall automatically increase each calendar year by 5% over the limit of the previous year.) The Board of Managers or the insurance trustee, as the case may be, shall arrange for the repair, restoration, or replacement of such common elements to the extent reasonably possible, 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 Managers or insurance trustee cannot reasonably repair, restore, or replace the common elements taken, the proceeds shall be distributed among the Unit Owners and the percentage interests in the common elements of the Condominium reallocated among the remaining Units (i) as the court shall have directed, or (ii) as provided in (d) below, (i.e., if there was no direction by the court), taking into account the respective percentage interests in the common elements of the Units affected thereby, the effect of the taking on each Unit affected thereby after the completion of any repair, restoration, or replacement by the Board of Managers or insurance trustee and any other relevant factors. Any court direction as to such distribution shall be final. Any Unit Owner or tenant who wishes to contest a determination by the Board of Managers may do so by submitting the matter to the American Arbitration Association for a determination of a fair and proper distribution or reallocation of percentage interests in the common elements, as the case may be, which shall be binding on the Board of Managers, and on all Unit Owners and tenants. The cost of such arbitration shall be borne solely by the Unit Owner or tenant submitting the matter for arbitration.

After any determination for reallocation of percentage interests in the common elements, the Unit Owners shall promptly prepare, execute, and record an amendment to the Condominium Declaration reflecting such reallocation, which said Amendment need only be executed by Unit Owners affected and by a majority of the Board of Managers.

- (d) Partial or Total Taking of Units. Subject to the direction of any court as described in (c) above, if an entire Unit is so taken, or if part of a Unit is taken such that the remaining portion may not be practically or lawfully used for any purpose permitted by this Declaration, that Unit's entire interest in the common elements shall be automatically reallocated to the remaining Units in proportion to the respective common element interests of those Units before the taking. If part of a Unit is so taken, such that the remaining portion may be practically and lawfully used for a purpose permitted by this Declaration, that Unit's interest in the common elements shall be reduced in proportion to the reduction and size of the Unit in a manner consistent with the manner in which common element interests were originally determined under Section 5.02 above; the portion of the interest in the common elements so divested shall be automatically reallocated to that Unit and to the remaining Units in proportion to the respective common element interests of those Units before the taking, with the partially-taken Unit participating in the reallocation on the basis of its reduced

interest in the common elements.

- (e) Condemnation Provisions Subject to Existing Law. All provisions of this Section 5.03 are subject to interpretation in accordance with the law in effect at the time of any condemnation or eminent domain proceeding. Should all or any portion of the provisions of this Section 5.03 be deemed illegal at such time, the distribution of proceeds, rights with respect to partition, and allocation of percentage interests in the common elements after a partial taking, shall be as a court of law shall determine.

Section 5.04. Common Elements to Remain Undivided. The common elements shall remain undivided and no Unit Owner shall bring any action for partition or division unless otherwise provided by law and unless consented to by all holders of first mortgages on the Units.

Section 5.05 Abandonment or Encumbrance of Common Elements. The common elements shall not be abandoned or encumbered without the consent of all the Unit Owners, who shall vote upon written ballot which shall be sent to every Unit Owner not less than thirty (30) days nor more than fifty (50) days in advance of the canvass thereof. No such abandonment or encumbrance shall be made if any first mortgagee of a Unit advises the Board of Managers in writing, prior to the date set for voting on the proposed abandonment or encumbrance that it is opposed to such abandonment or encumbrance, which opposition shall not be unreasonable. Written notice of any such proposed abandonment or encumbrance shall be sent to all lending institution first mortgagees whose names appear on the records of the Condominium not less than thirty (30) days nor more than fifty (50) days prior to the date set for voting on the proposed abandonment or encumbrance.

Notwithstanding the foregoing, the Condominium Board of Managers shall have the power to grant easements, rights of way, or licenses for utilities or other similar services (e.g. cable television) across the common elements, with or without consideration. Also notwithstanding the foregoing, the Sponsor shall be entitled to exercise the rights reserved in Article VII of this Declaration. This Section may not be amended without the written consent of the Sponsor as long as the Sponsor (or its successors or assigns) owns any Units or any properties adjacent to the Condominium.

Section 5.06. Restricted Common Elements. Subject to the right of the Board of Managers to enter upon any restricted area for maintenance, repair, or improvement of a Unit or common element and subject to the rules of the Board of Managers (see Article VII of By-Laws attached hereto as Schedule E), the following portions of the common elements are restricted in use as specified below:

1. The land which is located directly beneath each Unit is restricted in use to the Owners of such Units located above it.
2. The patio and stoop which are directly adjacent to a Unit are restricted in use to the Owner(s) and occupant(s) of that Unit.
3. The Board of Managers may assign outdoor parking spaces to the Owner(s) of each Unit or Units, and, if such assignment is made, each such space shall, during the time of such assignment, be lim-

ited in use to the Owner(s) and occupant(s) of the Unit to which such space is assigned.

If the Board of Managers chooses to assign particular outdoor parking spaces, the assignment of such spaces shall be as said Board shall determine. Thereafter, the Board of Managers may only change such assignments of outdoor parking spaces on a reasonable basis or eliminate all such assignments. In making such decisions, the Board shall afford all Unit Owners affected written notice and an opportunity to be heard, and the Board shall base its decisions upon all relevant factors (relative sizes of automobiles, disabilities of individual Unit Owners, etc.)

4. Each mailbox is limited in use to the Owners of the Unit to which such mailbox is assigned from time to time by the Board of Managers of the Condominium.

ARTICLE VI

ALTERATION OF UNITS OR COMMON ELEMENTS

Section 6.01. Increases and Decreases in Size and Number of Units. Any Unit Owner or Owners shall have the right to divide or combine Units owned by such Unit Owner or Owners, so long as (i) the common interest appurtenant to such Units after such division or combination shall equal in total the common interest applicable to the Unit or Units divided or combined prior to such division or combination; (ii) the written consent of the Board of Managers is obtained pursuant to Sections 6.04 through 6.08 of this Declaration; (iii) such proposed division or combination is in all respects lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the division or combination, including Section 339-k or any corresponding provision of law which succeeds said Section; and (iv) such division or combination is in compliance with all governmental laws, codes, ordinances, and regulations. Among the factors to be considered by the Board of Managers in determining whether or not to consent to such division or combination are adequacy of the size, shape, and location of all Units after such division or combination, the structural soundness of the Building during and after the performance of the necessary improvements, and any other factors which may affect the appearance or value of the Building, or which are set forth in Section 6.04 hereof. The cost of any such division or combination shall be the sole responsibility of the Owner or Owners of the Units being divided or combined. Any such division or combination shall become effective upon the recording in the Monroe County Clerk's Office of an amendment to this Declaration (which amendment shall include, as appropriate, any necessary changes to the text of this Declaration and any plot plan attached hereto), executed by the Board of Managers and by the Owners and mortgagees of the Unit or Units so divided or combined, together with the filing of floor plans of the Unit or Units as divided or combined with the certification by tax authorities of tax lot numbers conforming to the new Unit or Units. The provisions of this Section shall not apply to a Unit(s) owned by the Sponsor until such Unit is conveyed to a purchaser thereof (as long as any proposed improvements by the Sponsor comply fully with all governmental laws, codes, ordinances, and regulations and the proposed improvements are lawful under the terms and

provisions of the Real Property Law of the State of New York in effect at the time of the improvement), nor shall this Section be amended without the written consent of the Sponsor as long as the Sponsor owns any Units.

Section 6.02. No Other Additions or Structural Alterations to Units. No Unit Owner shall install any major appliance (e.g. washing machine, clothes dryer) without the prior written consent of the Board of Managers, which consent shall not be unreasonably withheld. No structural alterations shall be made to a Unit which would impair the structural soundness of any Unit or Building or which would cause an adverse material effect on the exterior appearance or value of the Building in which the Unit is located without the written approval of the Board of Managers, obtained as provided in Sections 6.04 through 6.08 of this Declaration. This Section 6.02 shall not apply to additions or alterations made by the Sponsor (as long as any proposed improvements by the Sponsor comply fully with all governmental laws, codes, ordinances, and regulations and the proposed improvements are lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the improvement), nor shall this Section be amended without the written consent of the Sponsor as long as the Sponsor owns any Units.

Section 6.03 Alteration and Improvement of Common Elements.

- (a) By Board of Managers: The Board of Managers shall have the right, at its option, to make or cause to be made such alterations and improvements to the common elements as, in its opinion, may be beneficial or necessary or which are requested in writing by a Unit Owner(s) and the holders of first mortgages thereon, subject however to the requirement that, if the alteration or improvement shall cost more than 10% of the then current estimated annual budget (including reserves), such alteration or improvement shall be approved by more than sixty-seven percent (67%) in number and in common interest of the Unit Owners, voting at a meeting duly called pursuant to the By-Laws. Such expenses shall constitute common expenses. Alterations or improvements costing less than 10% of the Condominium's then current estimated annual budget may be made by the Board of Managers and the cost thereof shall constitute a part of the common expenses. Before undertaking such work, the Board may require the consent in writing of such Unit Owners and the holders of first mortgages thereon, whose rights, in the sole opinion of the Board, may be prejudiced by such alteration or improvement. In all cases of alteration or improvement, the Board of Managers shall comply fully with all governmental codes, laws, ordinances, and regulations, including the terms and provisions of the Real Property Law of the State of New York in effect at the time of the proposed alteration or improvement, including Section 339-k or any corresponding provision of law which succeeds said Section. Maintenance, repair, and replacement of existing common elements shall not be construed as additions, alterations, or improvements.
- (b) By Unit Owners: No Unit Owner shall install any appliance in the common elements or make any addition, alteration, or improvement to the common elements (i) which would in any way violate any governmental law, code, ordinance, or regulation (including the terms and provisions of the Real Property Law of the State of New York in

effect at the time of the alteration or improvement, including Section 339-k or any corresponding provision of law which succeeds said Section), or (ii) without the prior written consent of any Unit Owners directly affected, and of the Board of Managers, obtained pursuant to Sections 6.04 through 6.08 of this Declaration. When the alteration or improvement to the common elements is pursuant to a division or combination of Units requested by a Unit Owner(s) it shall be governed by Section 6.01 of this Declaration.

Notwithstanding the foregoing, the provisions of this Section 6.03(b) shall not apply to the Sponsor (as long as any proposed improvements by the Sponsor comply fully with all governmental laws, codes, ordinances and regulations and the proposed improvements are lawful under the terms and provisions of the Real Property Law of the State of New York in effect at the time of the improvement), nor shall this Section 6.03(b) be amended without the written consent of the Sponsor as long as the Sponsor owns any Units.

Section 6.04. Submission of Plans to Board of Managers; Approval. Any addition, alteration, or improvement to the Units or common elements proposed by a Unit Owner(s) (other than the Sponsor) pursuant to Sections 6.01 through 6.03 above shall require that a plan or plans therefor, in such form as the Board of Managers may require, be submitted to, reviewed, and approved by the Board of Managers. The Board of Managers may charge and collect a reasonable fee for the examination of plans submitted for approval, including any fees which may be charged by architects, engineers, or attorneys retained by the Board of Managers in connection with the review of such plans.

The Board of Managers may adopt simplified review procedures for any such additions, alterations, or improvements which it shall deem minor or for which the submission of plans is not necessary.

The Board of Managers may disapprove such plans for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions, and restrictions contained in the Declaration, By-Laws, Rules or Regulations;
- 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, 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, health, or other governmental laws, codes, ordinances, rules, and regulations, including the Real Property Law of the State of New York;

- f. any other matter which in the judgment and sole discretion of the Board of Managers would render the proposed improvements, use, or uses inharmonious or incompatible with the general plan of improvement of the Condominium, including any possible adverse impact on the use and enjoyment of the Property by any other Unit Owner(s).

Upon approval or qualified approval by the Board of Managers of any plans submitted pursuant to this Section, the Board of Managers 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 conditions, if any), and, if requested by the applicant, shall 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 the common elements or to any Unit shall be final as to such alterations, modifications, or improvements 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, By-Laws, or Rules and Regulations, 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, health, or other code or ordinance, including the Real Property Law of the State of New York. Approval of any such plans shall not be deemed a waiver of the right of the Board of Managers to disapprove similar plans or any of the features or elements included therein if such plans, features, or elements are subsequently submitted for use by other Unit Owner(s).

Section 6.05. Written Notification of Disapproval. In any case where the Board of Managers disapproves any plans submitted hereunder, the Board of Managers shall so notify the applicant in writing, together with a statement of the grounds upon which such action was based. In any such case, the Board of Managers 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 6.06. Failure of Board to Act. If any applicant has not received notice from the Board of Managers approving or disapproving any plans within 60 days after submission thereof, said applicant may notify the Board 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 15 days after the date of receipt of such second notice, if no decision is rendered by the Board within said 15 day period.

Section 6.07. Board of Managers' Right to Promulgate Rules and Regulations. The Board of Managers 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 the approval or disapproval of certain types of alterations, modifications, or improvements to the common elements or Units; provided, however, that no such rule or regulation shall be deemed to bind the Board to approve or disapprove any plans submitted for approval, or to waive the exercise of the Board's discretion as to such plans; and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration, By-Laws, or any applicable governmental law, code, ordinance, rule, or regulation.

Section 6.08. Applications for Permits; Insurance. Any application to any governmental authority to make an installation, addition, alteration, or improvement to the common elements or any Unit shall be executed by the Board of Managers only; provided, however, that applications for any such installation, addition, alteration, or improvement proposed by a Unit Owner pursuant to Sections 6.01 through 6.03 above shall be at the sole cost and expense of such Unit Owner; and provided further that this Article VI shall in no case be construed to result in the Board of Managers incurring any liability whatsoever to any Unit Owner, contractor, subcontractor, materialmen, architect, or engineer on account of such installation, addition, alteration, or improvement proposed by a Unit Owner, or to any person having any claim for injury to person or property arising therefrom, and such Unit Owner agrees to indemnify and forever hold the Board harmless for any liability or expenses incurred by the Board in connection therewith, including reasonable attorneys' fees.

In connection with any installation or work done by a Unit Owner, the Board of Managers may require that the Unit Owner obtain such insurance coverages and/or completion bonds, and in such amounts, as the Board of Managers deems proper. In the event that the Board of Managers deems it necessary to expend funds either to complete work previously commenced by a Unit Owner or to otherwise protect the appearance, value, or structural integrity of the Condominium, such amounts shall become a binding personal obligation of the Unit Owner involved and a lien against the Unit.

Section 6.09. Liability of Board of Managers. No action taken by the Board of Managers 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 Building or other portion of the Property. Neither the Condominium, nor the Board of Managers, nor any member, subcommittee, employee, or agent thereof shall be liable to anyone submitting plans to them for approval or to any Unit Owner, 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 Board of Managers agrees, by submission of such plans, that no action or suit will be brought against the Condominium or the Board of Managers (or any member, subcommittee, employee, or agent thereof) in connection with such submission.

ARTICLE VII

EASEMENTS

Section 7.01. Utilities, Pipes, and Conduits. Each Unit Owner shall have such easement of access to other Units and to the common elements, and each Unit shall be subject to such easement, as is reasonably necessary for such Unit Owner to maintain, repair, and replace, as necessary, such Owner's Unit including, if any, the pipes, wires, and conduits running from the meters or equipment servicing such Unit to the Unit. Each Unit Owner shall also have an easement in common with the Owners of all other Units to use, in accordance with present use and present available facilities, all pipes, wires, ducts, cables, conduits, public utility lines, and other common elements located in any of the other Units and serving the Unit or Units of such Unit Owner. Each

Unit shall be subject to an easement in favor of the Owners of all other Units to use in accordance with present use and present available facilities the pipes, ducts, cables, wires, conduits, public utility lines, and other common elements serving such other Units and located in such Unit.

Section 7.02 Access of Board of Managers. The Board of Managers, its agents, contractors, and employees, shall have an easement and right of access to each Unit and to the common elements for the purpose of (i) making inspections; (ii) removing violations of the Declaration or By-Laws or Rules and Regulations of the Condominium therefrom; (iii) correcting any condition originating in a Unit and threatening another Unit or a common element; (iv) performing installations, alterations, or repairs to the mechanical or electrical services or other common elements in a Unit or elsewhere; (v) correcting any condition which violates the provisions of any mortgage covering another Unit; (vi) making any maintenance or repair which pursuant to the By-Laws an Owner is required to make and which such Owner has failed to make after 10 days written notice; (vii) complying with any laws, orders, rules, or regulations of any governmental body having jurisdiction thereof; or (viii) maintaining, repairing, or replacing the common elements or any pipe, wire, duct, cable (e.g. coaxial cable for cable television) conduit, or utility line located in any Unit or the common elements and servicing two or more Units. The cost of such maintenance, repairs, improvements, or replacements shall be a common expense. The Board of Managers shall have a right of access to all common elements (irrespective of the restricted nature of such common elements) to remove violations and for inspection, maintenance, repair, or improvement. The rights of access are to be exercised (unless in an emergency) at reasonable hours and upon reasonable notice to the Unit Owner involved. In the case of an emergency, the right of access shall be immediate, regardless of the presence of the Unit Owner involved.

Section 7.03. Sponsor's Easement for Marketing, Development, and Improvement Purposes; Other Rights of Sponsor.

- (a) The Sponsor reserves the right with respect to its marketing and/or construction of Units 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 necessarily limited to, water, gas, electric, telephone, sewer, and cable television to service the Units;
- (b) The Sponsor reserves the right, with respect to its marketing and/or construction of Units to use the common elements for the ingress and egress of itself, those necessary to complete construction, and prospective purchasers, including the right of such parties to park in parking spaces;
- (c) The Sponsor reserves the right 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.

With respect to its exercise of the above rights, the Sponsor agrees (i) to repair within a reasonable time any damage resulting and (ii) to hold the Condominium harmless from all liabilities resulting solely from the Sponsor's acts or omissions.

Section 7.04. Easement for Encroachments. The Unit Owners agree that if any portion of a Unit or the common elements (whether restricted in use to an individual Unit Owner or not) encroaches or shall hereinafter encroach upon another Unit or the common elements as a result of: (i) the original construction or settling or shifting of the Buildings or (ii) any repair or restoration by the Board of Managers of a Building, any Unit, or the common elements, or (iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings, a valid easement for the encroachment and the maintenance of the same shall and does exist. Such easements as provided in this Section shall exist so long as the Building in which any such encroachment exists shall stand.

Section 7.05. Easement of Necessity. Each Unit shall have and each Unit shall be subject to all easements of necessity in favor of such Unit or in favor of other Units and the common elements.

Section 7.06. Sponsor's Consent. No provision of this Article VII may be amended without the written consent of the Sponsor (or its successors or assigns) as long as the Sponsor owns any Units or any lands adjacent to the Condominium Property.

ARTICLE VIII

VOTING RIGHTS

Section 8.01. Voting Rights. For all voting purposes except for amendment to this Declaration as provided below, at any meeting of the Unit Owners, the Owners of Units shall have one (1) vote for each Unit owned.

ARTICLE IX

COMMON CHARGES - ALLOCATION, LIEN, AND LIABILITY

Section 9.01. Allocation and Commencement of Common Charges. Except as otherwise permitted in this Article or the By-Laws, the common expenses shall be charged by the Board of Managers to the Unit Owners according to their respective percentage interests in the common elements. The common profits of the Property, after offsetting the common expenses relating to the common elements and making due allowance for the retention of a reserve to cover future common expenses, shall be distributed among the Unit Owners in the same manner. Common charges shall commence on the date of recording of the first deed transferring title to a Unit.

Section 9.02. Unpaid Common Charges - Personal Obligation of Unit Owner and Lien on Unit. The common charges shall be paid when due. All sums assessed as common charges by the Board of Managers of the Condominium, but unpaid, together with accelerated installments, late charges as may be established by the Condominium By-Laws, interest thereon at such rate as may be fixed by the Board of Managers from time to time, such rate not to exceed the maximum rate of interest then permitted by law, and reasonable attorneys' fees and other

costs and expenses incurred in efforts to collect such past due assessments, shall be the personal obligation of the Unit Owner and to the extent permitted by law shall constitute a lien upon the Unit prior to all other liens except: (a) tax or assessment liens on the Unit by the taxing subdivision of any governmental authority, including but not limited to State, County, City, and School District taxing agencies and (b) all sums unpaid on any first mortgage of record encumbering any Unit.

A purchaser of a Unit shall be liable for the payment of unpaid common charges assessed against such Unit prior to such purchaser's acquisition, except that a mortgagee or other purchaser who acquires title at a foreclosure sale, or an institutional mortgagee who acquires title to a Unit by a deed in lieu of foreclosure, shall not be liable for, and such Unit shall not be subject to, a lien for the payment of common charges against such Unit, and which became due prior to such acquisition of title. In such event, the unpaid balance of common charges shall be charged to all other Units Owners as a common expense. The term "institutional mortgagee" as used in this Article shall mean a bank, savings and loan association, life insurance company, pension trust, trust company, or the Sponsor.

Except as provided above, in the case of any conveyance of a Unit either by voluntary instrument, operation of law, or judicial proceeding in accordance with this Declaration or the By-Laws, the grantee of the Unit shall be jointly and severally liable with the former Unit Owner for any unpaid common charges against the latter assessed and due up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the former Unit Owner the amounts paid by the grantee therefor. "Grantee" as used herein shall not include either the holder of an institutional mortgage of record or a purchaser of a Unit at a foreclosure sale of an institutional mortgage. No Unit Owner shall be liable for the payment of any common charges accruing subsequent to a sale, transfer, or other conveyance by him of such Unit made in accordance with applicable laws or the provisions of this Declaration and the By-Laws.

No Unit owner may be exempt from liability for payment of common charges assessed against such Owner's Unit by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Unit. Dissatisfaction with the quantity or quality of maintenance furnished to the Property shall not be grounds for the withholding or failure to pay any common charge or special assessment.

ARTICLE X

BOARD OF MANAGERS

Section 10.01. Board of Managers. The affairs of the Condominium shall be governed and controlled pursuant to the Condominium By-Laws (attached hereto as Schedule E and made a part hereof) by a Board of Managers who shall be elected or appointed and serve and shall have the duties and powers as provided in the By-Laws.

Section 10.02. Administration. The administration of the Condominium, the Buildings and parcel of land (the Property) described herein shall be in accordance with the provisions of this Declaration and with the provisions of the Condominium By-Laws.

Section 10.03. Power of Attorney to Board of Managers. Each Unit Owner shall grant to the persons who shall from time to time constitute the Board of Managers, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Unit whose Owner desires to surrender, sell, or lease the same, or which may be the subject of a foreclosure or other judicial sale, or any other Unit, in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, and to convey, sell, lease, mortgage, vote the votes appurtenant thereto, or otherwise deal with any such Unit so acquired or to sublease any Unit so leased by the Board of Managers.

Section 10.04. Acquisition of Units by Board of Managers. In the event any Unit Owner shall surrender such Unit Owner's Unit, together with (i) the undivided interest in the common elements appurtenant thereto; (ii) the interest of such Unit Owner in any other Units acquired by the Board of Managers or its designee on behalf of all Unit Owners or the proceeds of the sale, or lease thereof, if any; and (iii) the interest of such Unit Owner in any other assets of the Condominium (hereafter collectively called the "Appurtenant Interests") pursuant to the provisions of Section 339-x of the Real Property Law of the State of New York, or in the event the Board of Managers shall purchase at a foreclosure or other judicial sale, or in any other manner acquire, a Unit together with the Appurtenant Interests, title to any such Unit, together with the Appurtenant Interests shall be held by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective common interests. The lease covering any Unit leased by the Board of Managers, or its designees, on behalf of all Unit Owners, shall be held by the Board, or its designee, on behalf of all Unit Owners in proportion to their respective common interests.

Section 10.05. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Managers. Notwithstanding anything to the contrary contained in this Declaration, until the closing of title to 90% of the Units or until three (3) years after the date of closing of title of the first Unit, whichever is sooner, the Board of Managers may not, without the Sponsor's written consent, (i) except for necessary repairs, make any addition, alteration, or improvement to the common elements or to any Unit owned by the Condominium or (ii) assess any common charges 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 the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Condominium 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 of the Condominium, except as may be necessary to maintain the quantity or quality of services or maintenance, or (iv) enter into any maintenance or service contract for work not provided for in the initial budget of the Condominium, or (v) borrow money on behalf of the Condominium, or (vi) reduce the quantity or quality of services or maintenance of the Property. This Section shall not be amended without the written consent of the Sponsor as long as the Sponsor owns 10% or more of the Units.

ARTICLE XI

OBLIGATIONS, RESPONSIBILITIES,
COVENANTS, AND RESTRICTIONS

Section 11.01. All Owners, Tenants, and Occupants Subject to Condominium Documents Which Run With the Land. All present or future Unit Owners, tenants, occupants, or any other person that might use the Units or the facilities of the Property in any manner, are subject to the provisions of the Declaration, the By-Laws, and the Rules and Regulations of the Condominium as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease, or the entering into of occupancy of any Unit shall signify that the provisions of this Declaration and the By-Laws and Rules and Regulations of the Condominium are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Units, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

Section 11.02. Units to be Properly Maintained. Unit Owners shall maintain their Units in good repair and overall appearance and shall keep porches limited to their use in a clean and neat condition. Garage doors shall be kept closed, except to permit entry or exit from the Garage.

Section 11.03. Mortgages on Units. Any Unit Owner who mortgages his Unit shall promptly provide the Board of Managers with the name and address of the mortgagee.

Section 11.04. No Nuisances. No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents.

Section 11.05. No Immoral or Unlawful Use. No immoral, improper, offensive, or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 11.06. Obligation to Maintain Utility Service. Regardless of whether the Unit is occupied, the Owner thereof shall be obligated to maintain sufficient utility service to prevent damage to any Units or to the common elements. If such service is not maintained by the Owner, the Board of Managers shall have the right to immediately arrange for such service, upon such notice to the Owner as is practical under the circumstances and without notice in emergency situations. If such service must be arranged by the Board of Managers, any costs incurred shall be collectible in the same manner as common charges and shall constitute a lien on the Unit involved and a personal obligation of the Unit Owner(s).

Section 11.07. Rules and Regulations. Rules and regulations promulgated by the Board of Managers concerning the use of the Property shall be observed by the Unit Owners, provided, however, that copies of such rules and regulations are furnished to each Unit Owner prior to the time the said rules and regulations become effective.

ARTICLE XII

AMENDMENT AND TERMINATION

Section 12.01. Amendment. Except as otherwise provided in this Declaration, this Declaration may be modified, altered, amended, or added to at any duly called meeting of Unit Owners provided that:

a. A notice of the meeting containing a full statement of the proposed modification, alteration, amendment, or addition has been sent to all Unit Owners and first mortgagees of Units as listed on the books and records of the Condominium at least thirty (30) and not more than fifty (50) days prior to the date set for said meeting; and

b. 67% or more in number and in common interest of all Unit Owners approve the change; and

c. The Board of Managers does not, prior to the date established for voting on the proposed change, receive written notification of opposition to the change from first mortgagees of 51% or more of the number of Units subject to first mortgages as listed on the books and records of the Condominium; and

d. An instrument evidencing the change is duly recorded in the Office of the Monroe County Clerk. Such instrument need not contain the written consent of the required number of Unit Owners, but shall contain a certification by the Board of Managers of the Condominium that the consents required by this Section for such change have been received and filed with the Board of Managers, and

e. So long as the Sponsor (or its successors or assigns) shall continue to own at least one Unit, but in no event later than three (3) years from the date of recording this Declaration, the Board of Managers obtains the Sponsor's written consent to the change.

Section 12.02. Amendment for Filing of Supplemental Floor Plans. Notwithstanding the foregoing, the Sponsor may execute and record Amendment(s) to this Declaration at any time until it no longer owns any Units for the purpose of filing supplemental floor plans of Units, as described in Real Property Law Section 339-p, and Section 4.02 of this Declaration. Such Amendment(s) need only be signed by the Sponsor, and attached thereto shall be the verified statement of a registered architect or licensed professional engineer described in the aforementioned Sections of the Real Property Law and of this Declaration.

Section 12.03 Amendment by Sponsor to Correct Errors. Notwithstanding Section 12.01, the Sponsor, during the time the Sponsor owns any Unit, may make amendments to this Declaration, consistent with the current provisions of the Condominium Act, to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Unit Owner without such Unit Owner's written permission. Such amendment(s) need only be signed by the Sponsor.

Section 12.04. Termination. The Condominium shall not be terminated or abandoned except as provided for by law. In addition to any requirements by law, termination shall require the consent of at least 67% of all Unit Owners

in number (including not less than 67% in number of the Units) and in common interest and the approval of first mortgage holders of at least 51% of the Units in number and common interest of all Units subject to mortgages as listed on the books and records of the Condominium.

Section 12.05 Merger of Condominium with Other Condominiums. Nothing in this Declaration shall preclude the merger of the Condominium with another condominium located on adjacent lands provided such merger is accomplished pursuant to the laws in effect at the time of such merger. Notwithstanding anything to the contrary which may be contained in this Declaration, any merger which results in a single condominium shall mean that all reference herein to Condominium shall be deemed to mean and refer to the condominium after merger and all references to the Board of Managers of the Condominium shall mean and refer to the Board of Managers of the condominium resulting from such merger.

ARTICLE XIII

GENERAL

Section 13.01. Service of Process. Service of process on the Unit Owners in any action with relation to the common elements shall be made upon: Board of Managers of Somerset Townhomes, c/o Redmond & Parinello, 315 Executive Office Building, Rochester, New York, 14614.

Section 13.02. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 13.03. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 13.04. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration nor the intent of any provision hereof.

Section 13.05. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender whenever the context so requires.

SCHEDULE A

LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY

(See Schedule A of this Offering Plan, a part of the Unit Deed)

SCHEDULE B

DESCRIPTION OF THE BUILDINGS

There are 11 two-story buildings, each containing four residential two-story units. The foundations of these buildings are poured concrete pads or concrete block with wood floor joists and plywood subfloors. There are no basements. The exterior walls are vinyl siding over wood stud frame. The roofs are gable-type with asphalt shingles. Finish walls and ceilings are gypsum wallboard.

SCHEDULE C

UNIT DESIGNATIONS/TAX LOT NUMBERS/ROOMS/PERCENTAGE
INTERESTS IN COMMON ELEMENTS/APPROXIMATE SQUARE FOOT AREAS/
ACCESS TO COMMON ELEMENTS

(To Be Completed Prior to Filing)

SCHEDULE D

(See the site plan in Part II of this Offering Plan)

SCHEDULE E OF THE DECLARATION

BY-LAWS
OF
SOMERSET TOWNHOMES

LAW OFFICES OF GEORGE R. GRASSER
Preparer of Condominium Documents
3350 Marine Midland Center
Buffalo, New York 14203

BY-LAWS OF SOMERSET TOWNHOMES

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BY-LAWS OF
SOMERSET TOWNHOMES

ARTICLE I
PLAN OF UNIT OWNERSHIP

1.01. Unit Ownership. The land described in Schedule A of the Declaration recorded or to be recorded in the Office of the Clerk of Monroe County, New York, and the appurtenances thereof, including the buildings and other improvements constructed on said land, (hereinafter collectively called the "Property") have been or prior to conveyance of the first Unit shall be submitted by Somerset Homes, Ltd. (hereinafter referred to as the "Sponsor"), to the provisions of Article 9-B of the Real Property Law of the State of New York by the Declaration and shall be known as "Somerset Townhomes" (hereinafter called the "Condominium").

1.02 Applicability of By-Laws. The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall include the land and all improvements thereon (including the residential dwelling units, hereinafter referred to as the "Units," and the common elements), owned in fee simple absolute, and all easements, rights, and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Article 9-B of the Real Property Law of the State of New York. The term "Building" as hereinafter used shall be defined as the exterior walls and roof of a number of Units all of which are constructed under a continuous roof or the entire interior and exterior of any building or structure which shall form a portion of the Property but which does not contain any of the Units.

1.03 Personal Application. All present and future owners (hereinafter referred to as "Unit Owners") mortgagees, lessees, and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration, and the Rules and Regulations.

The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these By-Laws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

ARTICLE II
UNIT OWNERS-VOTING RIGHTS AND MEETINGS

2.01. Voting. For all voting purposes except for amendment to these By-Laws as provided below, each Owner of a Unit (including the Sponsor and the Board of Managers if the Sponsor or the Board of Managers shall then own or hold title to one or more Units) shall be entitled to cast one vote at all

meetings of Unit Owners for each Unit owned by such Unit Owner, but the Board of Managers shall not cast any of its votes for the election of any member to the Board. If a Unit is owned by more than one person, as joint tenants, tenants by the entirety, or as tenants in common, the persons owning such Unit shall reach agreement as to the matter voted upon and cast their one vote for their Unit. A fiduciary shall be the voting member with respect to any Unit owned in a fiduciary capacity.

2.02. Right to Vote. At any meeting of the Unit Owners, every Unit Owner having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

2.03. Proxies. All proxies shall be in writing and shall be filed with the Secretary prior to or at the commencement of the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

2.04. Annual Meetings; First Election of Board of Managers. The Sponsor will have control of the Board of Managers for three (3) years from the date of the closing of title to the first Unit or until the transfer of title to 90% of the Units (other than to the Sponsor), whichever shall first occur. After the transfer of title to 90% of the Units or the termination of said three year period, the Sponsor shall notify all Unit Owners that the first annual meeting shall be held within thirty (30) days thereafter. At such meeting all Unit Owners, including the Sponsor, shall elect a new five (5) member Board. Annual meetings of the Unit Owners shall be held in the month of February of each succeeding year on such date and at such time and place as shall be designated by the Board of Managers. At such meetings the Board of Managers shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 3.04 of these By-Laws. Members of the Board of Managers appointed or elected by the Sponsor shall serve for terms of one year. All other members of the Board of Managers shall be elected by the Unit Owners and shall serve for the terms prescribed by these By-Laws. The Unit Owners may transact such other business at such annual meeting as may properly come before them.

2.05. Place of Meetings. Meetings of the Unit Owners shall be held at a suitable place convenient to the Unit Owners as may be designated by the Board of Managers.

2.06. Special Meetings. It shall be the duty of the President to call a special meeting of the Unit Owners if so directed by resolution of the Board of Managers or upon a petition signed and presented to the Secretary by not less than 40% in common interest, in the aggregate, of Unit Owners. The notice of any special meeting shall state the time and place of such meeting and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.07. Notice of Meetings. It shall be the duty of the Secretary to mail or cause to be mailed by first-class postage a notice of each annual or special meeting of the Unit Owners at least ten (10) but not more than thirty (30) days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner of record, at the Building in which his Unit is located or at such other address as such Unit

Owner shall have designated by notice in writing to the Secretary, and to all mortgagees of a Unit who have requested the same. If the purpose of any meeting shall be to act upon a proposed amendment to the Declaration or to these By-Laws, the notice of meeting shall be mailed at least thirty (30) days and not more than fifty (50) days prior to such meeting. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

2.08. Waiver and Consent. Whenever the vote of the Unit Owners at a meeting is required or permitted by any provision of the Declaration, Statutes, or of these By-Laws to be taken in connection with any action of the Condominium, the meeting and vote of Unit Owners may be dispensed with if all Unit Owners who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such action being taken.

2.09. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Unit Owners having one-fifth (1/5) of the total authorized votes of all Unit Owners shall constitute a quorum at all meetings of the Unit Owners. If any meeting of Unit Owners cannot be held because a quorum has not attended, a majority in common interest of the Unit Owners who are present at such meeting, 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 forty-eight (48) hours from the time the original meeting was called, and from time to time thereafter, until a quorum shall be present or represented. The quorum required for each reconvened meeting shall be one-half of the quorum required for the previous meeting provided, however, that the quorum in no event shall be less than 10% of the total authorized votes of all Unit Owners.

2.10. Majority Vote. The vote of a majority of Unit Owners at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where in the Declaration or these By-Laws or by law, a higher percentage vote is required. The term "majority of Unit Owners" shall mean those Unit Owners having more than 50% of the total authorized votes of all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners, determined in accordance with the provisions of Section 2.01 of these By-Laws.

2.11. Inspectors of Election. The Board of Managers in advance of any meeting of Unit Owners, may appoint two (2) or more persons, who need not be Unit Owners, to act as inspectors of election at such meeting or any adjournment thereof. If inspectors of election are not so appointed prior to the meeting, the person presiding at such meeting may, and on the request of any Unit Owner entitled to vote thereat, shall appoint two (2) or more inspectors of election. In case any person appointed fails to appear or act, the vacancy may be filled in advance of the meeting by the Board of Managers or at the meeting by the person presiding thereat.

The inspectors of election shall (1) determine the Unit Owners entitled to vote at the meeting; (2) determine the existence of a quorum and the validity and effect of proxies; (3) receive ballots or determine votes or consents; (4) hear and determine any challenges or questions arising in connection with any Unit Owner's right to vote; (5) count and tabulate all votes, ballots, or consents and determine the result thereof, and (6) do such other acts as may be proper to conduct an election or vote with fairness to all Unit

Owners.

2.12. Order of Business at Meetings. The order of business at all meetings of the Unit Owners shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meetings.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Report of Board of Managers.
- (f) Reports of committees.
- (g) Election of inspectors of election (when so required).
- (h) Election of members of the Board of Managers (when so required).
- (i) Unfinished business.
- (j) New business.

ARTICLE III

BOARD OF MANAGERS

3.01. Number and Qualification. The affairs of the Condominium shall be governed by a Board of Managers. The Board of Managers shall initially consist of three (3) persons designated by the Sponsor. Within 30 days after the initial transfer of title to 50% of the Units, or one year after the recording of the Condominium Declaration, whichever first occurs, a fourth (4th) person shall be elected by the Unit Owners other than the Sponsor, and within 30 days after the initial transfer of title to 90% of the Units or three years after the recording of the Condominium Declaration, whichever first occurs, the first meeting of Unit Owners shall be held pursuant to Section 2.04 of these By-Laws for the purpose of electing a new Board of Managers. Thereafter the Board of Managers shall be composed of five (5) persons, all of whom shall be Owners, spouses of Owners, tenants of Owners, or mortgagees of Units or, in the case of partnership Owners or mortgagees, shall be members or employees of such partnership, or, in the case of corporate Owners or mortgagees, shall be officers, directors, shareholders, employees, or agents of such corporations or, in the case of fiduciary Owners or mortgagees, shall be the fiduciaries or officers, agents, or employees of such fiduciaries or, in the case of the Sponsor, shall be designees of the Sponsor.

3.02. Powers and Duties. The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Managers by the Unit Owners. Such powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

a. Determination and levying of annual assessments ("common charges") payable in monthly installments to cover the cost of common expenses required for the affairs of the Condominium, including without limitation, the operation and maintenance of the Property. The Board of Managers may increase the annual assessments or vote a special assessment in excess of that amount, if required, to meet any additional expenses, but said increases can only be

assessed among the Unit Owners pro rata according to their respective common interest.

b. Collection, use, and expending the assessments collected to maintain, care for, and preserve the Units, Buildings, and common elements.

c. Operation, care, upkeep, and maintenance of the common elements.

d. Making of repairs, additions, and improvements to, or alterations of, the Property and making of repairs to and restoration of the Property in accordance with the other provisions of these By-Laws after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

e. Entering into and upon the Units when necessary and with as little inconvenience to the Unit Owners as possible in connection with the maintenance, care, and preservation of the Property.

f. Purchasing or leasing or otherwise acquiring in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners, Units offered for sale or lease or surrendered by their Owners to the Board of Managers.

g. Obtaining and maintaining insurance for the Property, including the Units, pursuant to the provisions of Section 8.01 hereof.

h. Purchasing of Units at foreclosure or other judicial sales in the name of the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners.

i. Selling, leasing, mortgaging, repairing, maintaining, voting the votes appurtenant to (other than the election of members of the Board of Managers), or otherwise dealing with Units acquired by, and subleasing Units leased by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners.

j. Organizing corporations to act as designees of the Board of Managers in acquiring title to or leasing of Units on behalf of all Unit Owners.

k. Leasing of portions of the common elements and granting of licenses for vending machines.

l. Bringing and defending actions against Unit Owner(s) which are pertinent to the operation of the Condominium, and bringing actions on behalf of Unit Owners as provided for in Section 339-dd of the Real Property Law or in the Condominium Declaration.

m. Borrowing money on behalf of the Condominium in connection with the operation, care, upkeep, and maintenance of the common elements, provided, however that (i) the consent of at least 67% in number and in common interest of all Unit Owners, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of any sum in excess of 200% of the amount of the then current annual budget of the Condominium and (ii) no lien to directly secure repayment of any sum borrowed may be created on any Unit or its appurtenant

interest in the common elements without the consent of the Unit Owner.

If any sum borrowed by the Board of Managers on behalf of the Condominium pursuant to the authority contained in this paragraph (m) is not repaid by the Board, a Unit Owner who pays to the creditor such proportion thereof as his interest in the common elements bears to the interest of all the Unit Owners in the common elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against the Unit Owner's Unit.

n. Adoption and amendment of reasonable rules and regulations covering the details of operation and use of the Property. Such rules and regulations and amendments shall be binding upon the Unit Owner when the Board has approved them in writing. A copy of such rules and all amendments shall be mailed or otherwise delivered to each Unit.

o. Collection of delinquent assessments by suit or otherwise, abatement of nuisances, and the enjoinder and/or seeking of damages from the Unit Owners for violations of the rules and regulations referred to herein.

p. Employing and terminating the employment of employees and independent contractors, purchasing supplies and equipment, entering into contracts, and generally having the powers of manager in connection with the matters hereinabove set forth.

q. Establishing of reserves for the repair and replacement of the common elements. The amount of such reserves shall be as the Board of Managers deems to be appropriate, shall be adequate to fund the projected cost of specified repairs and replacement, and shall be sufficient to meet the reasonable requirements of existing or proposed lenders, holders, and insurers of first mortgages on the Units.

r. Complying with New York laws including any changes made from time to time as they may affect the Condominium.

s. Assigning, in its discretion, the use of mailboxes and, as it deems appropriate or necessary, the use of parking spaces, to the various Unit Owners.

t. Granting, with or without consideration, easements, rights of way, or licenses for utilities or other similar services (e.g. cable television) across the common elements.

u. Reviewing and rendering decisions on the applications submitted pursuant to Article VI of the Declaration for proposed alterations of the Units or common elements.

Notwithstanding anything to the contrary contained in these By-Laws, until the closing of title to 90% of the Units or until 3 years after the date of closing of title of the first Unit, whichever is sooner, the Board of Managers may not, without the Sponsor's prior written consent, (i) except for necessary repairs, make any addition, alteration, or improvement to the common elements or to any Unit owned by the Condominium, or (ii) assess any common charges 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 the

proportion to the then-existing budget which the amount of reserves in the initial budget of estimated expenses 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 of the Condominium, except as may be necessary to maintain the quantity or quality of maintenance or services, or (iv) enter into any maintenance or service contract for work not provided for in the initial budget of estimated expenses, or (v) borrow money on behalf of the Condominium, or (vi) reduce the quantity or quality of services or maintenance of the Property.

3.03. Committees Acting on Behalf of Board of Managers. Except as limited by this Section 3.03, the Board of Managers may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, each of such committees to consist of at least three (3) Unit Owners, at least one of whom shall be a member of the Board of Managers, which to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Managers in the management of the business and affairs of the Condominium and may have power to sign all papers which may be required, provided the said resolution or resolutions, shall specifically so provide. However, no such committee shall have or be given the power to (a) determine the common charges and expenses required for the affairs of the Condominium, (b) determine the common charges payable by the Unit Owners to meet the common charges and expenses of the Condominium, or (c) adopt or amend the rules and regulations covering the details of the operation and use of the Property. Such committee or committees shall have such name or names as may be determined from time to time by resolution of the Board of Managers. Committees established by resolution of the Board of Managers shall keep regular minutes of their proceedings and shall report the same to the Board as required.

3.04. Nomination, Election, and Term of Office. Nominations for election to the Board of Managers shall be made by a Nominating Committee which shall be appointed by the Board of Managers. Nominations may also be made from the floor at the annual meeting of the Condominium Unit Owners. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its sole discretion, determine but not less than the number of vacancies as are to be filled as provided below.

Except as provided in Section 2.04 of these By-Laws which gives the Sponsor certain rights to elect members of the Board of Managers so long as it owns 10% or more of the Units:

a. At the first annual meeting of the Unit Owners the term of office of two (2) members of the Board of Managers shall be fixed at three (3) years, the term of office of two (2) members of the Board of Managers shall be fixed at two (2) years, and the term of office of one (1) member of the Board of Managers shall be fixed at one (1) year;

b. At the expiration of the initial term of office of each respective member of the Board of Managers, a successor shall be elected to serve for a term of three (3) years; and

c. The members of the Board of Managers shall hold office until their respective successors shall have been elected by the Unit Owners or appointed by the Sponsor.

3.05. Removal of Members of the Board of Managers. Subject to the limitations set forth below, at any regular or special meeting of Unit Owners, any one or more of the members of the Board of Managers elected by the Unit Owners may be removed with or without cause by a majority of the Unit Owners other than the Sponsor and a successor may then and there or thereafter be elected to fill the vacancy thus created. Any member of the Board of Managers whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting. Members of the Board of Managers elected or appointed by the Sponsor may be removed without cause only by the Sponsor, but may be removed for cause by the Unit Owners in the same manner as any other member of the Board of Managers may be removed for cause. The successor to such member of the Board of Managers removed by the Unit Owners other than the Sponsor shall be appointed by the Sponsor.

3.06. Resignation of Members of the Board of Managers. A member of the Board of Managers may resign at any time by giving written notice to the Board, or to the President or Secretary of the Condominium. Unless otherwise specified in the letter of resignation, the resignation shall take effect immediately upon receipt thereof by the Board, President, or Secretary as the case may be, and acceptance of the resignation shall not be necessary to make it effective.

3.07. Vacancies. Vacancies in the Board of Managers caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by vote of a majority of the remaining members at a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Managers until the next annual meeting of the Unit Owners or until a successor is elected. Notwithstanding the above, if the vacancy occurs with respect to any member of the Board of Managers not designated by the Sponsor, the successor shall be a Unit Owner independent of the Sponsor. If the vacancy occurs with respect to any member of the initial Board of Managers as designated by the Sponsor, the Sponsor shall have the sole right to choose the successor to fill the unexpired portion of the term of such Manager.

3.08. Meetings. Organizational, regular, and special meetings of the Board of Managers shall be held as follows:

- a. Organizational Meeting. The first organizational meeting of the Board shall be held within thirty days after the closing of title to the first Unit conveyed by the Sponsor. The first meeting of each Board newly elected by the Unit Owners shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter at such date, time, and place, as may be practicable.
- b. Regular Meetings. Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Managers, but at least four (4) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Managers shall be given to each member of the Board of Managers personally, by mail, or by telegram, at least two (2) days prior to the day set for such

meeting.

- c. Special Meetings. Special meetings of the Board may be called by the President on two (2) days notice to each member of the Board of Managers either personally or by mail or telegram, which notice shall state the time, place, and purpose of the meeting. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) members of the Board of Managers.

Any member of the Board of Managers may at any time waive notice of any meeting of the Board of Managers in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Managers at any meeting of the Board shall constitute a waiver of notice by such member of the time and place thereof. If all the members of the Board of Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

3.09. Quorum of Board of Managers. At all meetings of the Board of Managers, a majority of the members thereof shall constitute a quorum for the transaction of business, and, except as may be otherwise specifically provided by statute or by the Declaration or by these By-Laws, the votes of a majority of the members of the Board of Managers present at a meeting at which a quorum is present shall constitute the decision of the Board of Managers. If at any meeting of the Board of Managers there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.10. No Compensation. No member of the Board of Managers shall receive any compensation from the Condominium for acting as such.

3.11. Liability of the Board of Managers. The members of the Board of Managers shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the members of the Board of Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers or out of the aforesaid indemnity in favor of the members of the Board of Managers shall be limited to such proportion of the total liability thereunder as his interest in the common element bears to the interests of all the Unit Owners in the common elements. Every agreement made by the Board of Managers or by the managing agent or the manager, on behalf of the Condominium, shall provide that the members of the Board of Managers, or the managing agent, or the manager as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability

ity thereunder as his interest in the common elements bears to the interest of all Unit Owners in the common elements.

3.12. Managing Agent and Manager. The Board of Managers may employ for the Condominium a managing agent and/or a manager at a compensation established by the Board of Managers, to perform such duties and services as the Board of Managers shall authorize, including but not limited to the duties listed in subdivision (b), (c), (d), and (e) of Section 3.02 of these By-Laws. The Board of Managers may delegate to the manager or managing agent all of the powers granted to the Board of Managers by these By-Laws other than the powers set forth in subdivisions (f), (g), (h), (i), (j), (k), (l), (m), (n), (s), (t), and (u) of Section 3.02 of these By-Laws.

Any decision to discontinue such independent and professional management and establish self-management for those duties and services previously delegated to said managing agent and/or manager shall require the prior written consent of 67% of all Unit Owners voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Unit Owners at least forty (40) days in advance and shall set forth the purpose of said meeting. No such decision shall be made if lending institutions which together are first mortgagees of 51% or more of the Units subject to mortgages, as such mortgagees are listed on the books and records of the Condominium, advise the Condominium Board of Managers in writing prior to the date set for voting on the proposed change that they are opposed to such change, which opposition shall not be unreasonable. Written notice of any such proposed change to self-management shall be sent to all lending institution first mortgagees of Units whose names appear on the records of the Condominium at least forty (40) days prior to said meeting.

ARTICLE IV

OFFICERS

4.01. Designation. The principal officers of the Condominium shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint an assistant treasurer, an assistant secretary, and such other officers as in its judgment may be necessary. The President, but no other officer, must be a member of the Board of Managers.

4.02. Election and Appointment of Officers. The elective officers of the Condominium shall be elected annually by the Board of Managers at the organizational meeting of each new Board of Managers and shall hold office at the pleasure of the Board of Managers. Appointive officers shall be appointed at such time and shall hold their office for such terms as the Board of Managers shall determine from time to time.

4.03. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Managers, any officer may be removed, either with or without cause, and a successor to such officer may be elected at any regular meeting of the Board of Managers, or at any special meeting of the Board of Managers called for such purpose.

4.04. President. The President shall be the chief executive officer of the Condominium. He or she shall preside at all meetings of the Unit Owners and of the Board of Managers. He or she shall have all of the general powers and duties which are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

4.05. Vice President. The Vice President shall take the place of the President and perform his or her duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Managers shall appoint some other member of the Board of Managers to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon such officer by the Board of Managers or by the President.

4.06. Secretary. The Secretary shall keep or cause to be kept the minutes of all meetings of the Unit Owners and of the Board of Managers; shall record or cause to be recorded all votes and the minutes of all proceedings in a book to be kept for that purpose; shall have charge of such books and papers as the Board of Managers may direct; shall give or cause to be given, notice of all meetings of Unit Owners and all special meetings of the Board of Managers; and shall, in general, perform all the duties incident to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York.

4.07. Treasurer. The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping or causing to be kept full and accurate financial records and books of account showing all receipts and disbursements, and for the form of preparation of all required financial data. The Treasurer shall be responsible to review the deposit of all moneys and other valuable effects in the name of the Board of Managers, or the managing agent, in such depositories as may from time to time be designated by the Board of Managers, and shall, in general, perform all the duties incident to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York.

4.08. Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Condominium shall be executed by any officer of the Condominium or by such other person or persons as may be designated by the Board of Managers.

4.09. Compensation of Officers. No officer shall receive any compensation from the Condominium for acting as such.

ARTICLE V

COMMON CHARGES AND ASSESSMENTS -
DETERMINATION, PAYMENT, AND COLLECTION

5.01. Determination of Common Charges. The Board of Managers shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Condominium and shall send a copy of the proposed budget to all Unit Owners at least 15 days prior to the adoption thereof. The Board of Managers shall send a copy of the budget as adopted and any supplement thereto to every Unit Owner and such Unit mortgagees as shall have requested the same. The Board of Managers shall determine the total amount required, including the operational items such as insurance, repairs, reserves, betterments, maintenance of the common elements, and other operating expenses as well as charges to cover any deficits from prior years. The total annual requirements shall be assessed as a single sum against all Units and prorated against each of said Units according to the respective common interests appurtenant to such Units, except that the Board of Managers may elect to specially allocate and apportion expenses, including, but not limited to, maintenance costs of water or other utility charges or insurance costs, among Unit Owners based on the special or exclusive use or availability or exclusive control of particular Units or common elements by a particular Unit Owner or Owners. Said common charges or assessments shall be payable monthly in advance unless the Board of Managers establishes other periods for payment. Special assessments, should such be required, shall be levied and paid in the same manner as hereinabove provided for regular common charges. While the Sponsor is in control of the Board of Managers, monthly common charges may be set at amounts less than set out in the budget and the Unit Owners may be billed monthly for such lower charges.

5.02. Collection of Common Charges and Assessments. The liability of a Unit Owner for common charges is set forth in the Declaration.

If a common charge or assessment or any installment thereof is not paid within 10 days after the due date, the Board of Managers may impose a late charge or charges on such amount or amounts as the Board of Managers deems reasonable not to exceed 8% of the amount of such overdue common charges or assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the common charge or assessment or installment thereof is not paid within 30 days after the due date (i) the common charge or assessment may bear interest from the due date at such rate as may be fixed by the Board of Managers from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (ii) the Board of Managers may accelerate the remaining installments, if any, of such common charges or assessments upon notice thereof to the Unit Owners which notice shall afford the Unit Owner not less than 10 days to pay such installments of common charges; and (iii) the Board of Managers may bring legal action against the Unit Owner personally obligated to pay the same or foreclose the lien on such Unit pursuant to, and in the manner provided by, New York State Law. (In the event the Sponsor controls the Board of Managers, a decision to bring legal action against the Sponsor for failure to pay common charges or other assessments on Units owned by the Sponsor may be made by a majority of those Unit Owners other than the Sponsor.) The cost of any such proceedings and other costs and expenses

incurred in efforts to collect such past due common charges or assessments, including reasonable attorneys' fees, shall be added to the amount of such common charge or assessment, accelerated installments, if any, late charges, and, at the option of the Board, interest. Any amounts collected on past due common charges or assessments shall be applied in the following order: attorneys' fees, other costs of collection, interest, late charges, and then the common charges or assessments beginning with the common charge or assessment past due for the longest period.

5.03. Rights and Obligations Regarding Foreclosure of Liens for Unpaid Common Charges. In any action brought by the Board of Managers to foreclose a lien on a Unit because of unpaid common charges, the Unit Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Managers, acting on behalf of all Unit Owners, shall have power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Unit. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

5.04. Notice of Default. The Board of Managers, when giving notice to a Unit Owner of a default in paying common charges or other default, may, at its option, or shall, at the request of the mortgagee, send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Board of Managers. The mortgagee shall have the right to cure the Unit Owner's default with respect to the payment of common charges or other default of the Unit Owner which could result in a lien against the Unit of such Owner.

5.05. Statement of Common Charges. Upon the written request of a Unit Owner, lessee, or mortgagee with respect to the Unit owned by such Owner, leased by such lessee, or upon which such mortgagee holds a mortgage, or any prospective purchaser, lessee, mortgagee, or title insurer of such Unit, the Board of Managers, the Manager, or the managing agent shall promptly furnish a certificate in writing setting forth with respect to such Unit as of the date of such certificate, (i) whether or not the common charges due have been paid; (ii) the amount of such common charges, including interest and costs, if any, due and payable; and (iii) whether any other amounts or charges are owing to the Condominium, e.g., for a special assessment for the cost of extinguishing a violation of the Declaration or rules and regulations. A reasonable charge, as determined by the Board of Managers, may be made for the issuance of this certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Board of Managers and any bona fide purchaser or lessee of, or lender on, or title insurer of, the Unit with respect to which the request was made.

5.06. Operating Account. There shall be established and maintained a cash deposit account to be known as the "Operating Account", into which shall be deposited all common charges and special assessments as fixed and determined for all Units.

5.07. Other Accounts. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes.

ARTICLE VI

RECORDS AND AUDITS

6.01. Records and Audits. The Board of Managers or the managing agent shall keep detailed records of the actions of the Board of Managers and the managing agent, minutes of the meetings of the Board of Managers, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit which, among other things, shall contain the amount of each assessment of common charges against such Unit, the dates when installments are due, the amounts paid thereon, and the balance remaining unpaid.

6.02. Annual Statement. Annual audited financial statements of the income and expense of the Condominium as well as year-end balance sheets, prepared by an independent certified public accountant, shall be rendered by the Board of Managers to all Unit Owners, and to all mortgagees of Units who have requested the same and, while the Sponsor is still offering Units for sale, to the Department of Law of the State of New York, promptly after the end of each fiscal year. In addition, when called for by a vote of the Unit Owners at any special meeting of the Unit Owners, the Board of Managers shall furnish, to the Unit Owners, a full and clear statement of the business conditions and affairs of the Condominium, including a balance sheet and profit and loss statement verified by a certified public accountant and a statement regarding any taxable income attributable to the Unit Owners.

The cost of the annual report and other services required by this Section 6.02 shall be paid by the Board of Managers as a common expense.

6.03. Inspection of Records. Every Unit Owner or his or her representative and mortgagee shall be entitled to examine the books and records of the Condominium on reasonable notice to the Board but not more often than once a month.

6.04. Availability of Records and Legal Documents. The Board of Managers shall make available for inspection, upon reasonable notice and during normal business hours, to existing and prospective purchasers, tenants, mortgagees, mortgage insurers, and mortgage guarantors, current copies of the Condominium's Declaration, By-Laws, rules and regulations, budget, schedule of assessments, and any other books, records, and financial statements of the Condominium. The Board may furnish copies of such documents to such parties and may charge a reasonable fee to cover the cost of furnishing such copies.

ARTICLE VII

THE CONDOMINIUM PROPERTY -
USE, OPERATION, PRESERVATION, MAINTENANCE, AND REPAIR

7.01. Repairs and Maintenance Which Are the Responsibility of the Board of Managers. All maintenance, repairs, and replacement to the common elements of the Property including but not limited to exterior walls, roof and roof members, utility closets, patios (except that each Unit Owner is responsible

for keeping in a neat and clean condition the patio appurtenant to such Owner's Unit), fences which are part of the common elements, as well as all maintenance, repairs, and replacements to any pipes, wires, conduits, and public utility lines as are located in the common elements but serve two or more Units, shall be made by the Board of Managers. The cost of all such maintenance, repairs, and replacements shall be common expense unless occasioned by a negligent or willful act or omission as provided in Section 7.02 below.

7.02. Repairs and Maintenance Which Are the Responsibility of the Unit Owners. All maintenance (including painting and decorating of the interior of the Units), repairs, and replacements to the Units including windows (including all glass breakage), doors (except painting of the exterior surface of windows and doors which open from a Unit, which painting is the responsibility of the Board of Managers), and repairs to pipes, wires, and conduits which service only one Unit shall be made by the respective Unit Owners at their own expense. Additionally, each Unit Owner is responsible for keeping in a neat and clean condition the patio appurtenant to such Owner's Unit.

Any maintenance, repair, or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 7.01 above but which is occasioned by a negligent or willful act or omission of a Unit Owner, (including any family member, tenant, or employee of such Unit Owner, or any guest or invitee of such Unit Owner, member of such Unit Owner's family, or tenant of such Unit Owner) shall be made at the cost and expense of such Unit Owner. If such maintenance, repair, or replacement is the responsibility of the Board of Managers, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit and such cost shall be added to that Unit Owner's common charges and, as part of those common charges, shall constitute a lien on the Unit to secure the payment thereof.

In the event that a Unit Owner fails to make any maintenance or repair, which maintenance or repair, pursuant to this Section 7.02, the Owner is required to make, the Board of Managers shall have the right to make such maintenance or repair (after the failure of the Unit Owner to do so, weather permitting, after 10 days written notice, or written or oral notice of a shorter duration in the event of an emergency situation) and to charge the Unit Owner for the cost of all such repairs and/or maintenance. In the event that the Board of Managers charges a Unit Owner for repairs or maintenance to such Unit Owner's Unit or for repairs to any common element and which the Unit Owner is obligated to maintain pursuant to these By-Laws or the Declaration or Rules and Regulations, and the Unit Owner fails to make prompt payment, the Board of Managers shall be entitled to bring suit thereon, and, in such event, the Unit Owners shall be liable for reasonable attorneys' fees and costs of such suit or proceeding together with interest on all sums due.

7.03. Quality of Maintenance and Repairs. All repairs, painting, and maintenance, whether made by the Unit Owner or by the Board of Managers to the doors, windows, stoops, or the exterior surface of any Building, including roofs, or to any generally visible portion of the common elements, shall be carried out in such a manner so as to conform to the materials, style, and color initially provided by the Sponsor, unless the Board of Managers authorizes a variance from such standard.

7.04. Right of Access. The Board of Managers, its agents, contractors, and employees shall have such rights of access to the Units and common elements as are set forth in Section 7.02 of the Declaration.

7.05. Restrictions on Use of Units and Common Elements. In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of the Property shall be restricted to and shall be in accordance with the following provisions:

a. Except as allowed in the Declaration, the Unit whether occupied or leased out by the Unit Owner, shall be used for residence purposes only; and shall be resided in by not more persons (including children) than two (2) times the number of bedrooms in the Unit, except that this shall not apply to persons who have a child after they have commenced occupancy. Furthermore, unless determined to be illegal if such Unit is resided in by three (3) or more persons (including children), such persons shall be members of the same family (or if the Unit Owner or lessee is a partnership, a corporation, or a trust, members of the family of a partner, or director, or shareholder or employee of the corporation or of the beneficiary of the trust, as the case may be). "Same family" shall be defined as persons related to one another as husband, wife, mother, father, brother, sister, stepbrother, stepsister, daughter, son, stepdaughter, stepson; together with their children. This restriction requiring three (3) or more residents to be members of the same family may be waived by written consent obtained from the Board of Managers prior to occupancy.

The foregoing occupancy restrictions shall not be construed to prohibit any occupant of any Unit from entertaining guests, of any age, in his or her Unit, including temporary residency, not to exceed two (2) months.

b. The common elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and capable and which are incident to the use and occupancy of the Units.

c. No nuisances shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to its residents or occupants or which interfere with the peaceful possession or proper use of the Property by its residents or occupants.

d. No immoral, improper, offensive, or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with by and at the sole expense of the Unit Owners or the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property.

e. No portion of a Unit (other than the entire Unit) may be rented and no transient tenants, i.e., tenants occupying the premises under an initial lease term of less than six months, may be accommodated therein.

7.06. No Obstruction of Common Elements and Facilities. A Unit Owner shall not obstruct the common elements. The common elements and facilities shall be used only for those purposes for which they are reasonably suited and capable.

7.07. Rules of Conduct. Rules and regulations concerning the use of the Units and the common elements may be promulgated and amended by the Board of Managers. Copies of such rules and regulations shall be furnished by the Board of Managers to each Unit Owner prior to the time when the same shall become effective. Initial rules and regulations, which shall be effective until amended by the Board of Managers, are annexed hereto and made a part hereof as Schedule A to these By-Laws.

7.08. Abatement and Enjoinment of Violations. The violation of any rule or regulation adopted by the Board of Managers, or the breach of any By-Laws contained herein, or the breach of any provision of the Declaration, shall (a) give the Board of Managers and each aggrieved Unit Owner with respect to any violation or breach by any other Unit Owner or by the Board of Managers the right, in addition to any other rights set forth in these By-Laws, to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, and at the expense of the defaulting party, the continuance of any such breach; or (b) give the Board of Managers the right to establish a penalty in accordance with Section 7.10 below. Prior to exercising such right, the Board of Managers or Unit Owner or Owners, as the case may be, shall, if reasonably possible, notify the Owner and mortgagee (if known) of the Unit or Units involved and provide a reasonable amount of time for the cure of such violation or breach. In any case of flagrant or repeated violation by a Unit Owner (or one for whom such Unit Owner is responsible), such Owner may be required by the Board of Managers to give sufficient surety for future compliance.

All rights, remedies, and privileges granted to the Board of Managers and to aggrieved Unit Owners herein shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising such right or rights from exercising such other and additional rights, remedies, or privileges as may be granted by the Condominium Declaration, these By-Laws, or the Rules and Regulations at law or in equity.

7.09. Obligation and Lien for Cost of Enforcement. If an action is successfully brought to extinguish a violation of any rule or regulation adopted by the Board of Managers or to successfully enforce the provisions of the Declaration or By-Laws, the cost of such action, including legal fees, shall become a binding personal obligation of the violator. If such violator is (1) the Unit Owner, or (2) any family member, tenant, guest, or invitee of such Unit Owner, or (3) a family member or guest or invitee of the tenant of such Unit Owner, or (4) a guest or invitee of (i) any member of such Unit Owner's family, or (ii) any family member of the tenant of such Unit Owner, such cost shall also be a lien upon the Unit or Units of such Unit Owner.

7.10. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Managers may, with respect to any violation of the Declaration or of these By-Laws or of any rules and regulations of the Condominium or of any committee of the Condominium, and after affording the alleged violator a reasonable opportunity to appear and be

heard, establish monetary and non-monetary penalties, the amount and severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Unit Owner or occupant shall be deemed an assessment against the Unit of such Owner and, as such, shall be a charge and continuing lien upon such Unit, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as common charges and special assessments under these By-Laws and the Declaration.

7.11. Owner Responsible for Tenants. Any lease of a Unit shall provide for full compliance by the tenant with the Declaration, By-Laws, and Rules and Regulations of the Condominium. Should a tenant be in violation thereof at any time, the Board of Managers of the Condominium may send the Owner of the Unit which said tenant occupies written notice of such violation by certified or registered mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, or if the eviction proceedings are not reasonably diligently pursued thereafter, the Board of Managers may pursue any remedies which it may have under this Article VII.

ARTICLE VIII

INSURANCE AND INSURANCE TRUSTEE

8.01. Insurance. The Board of Managers shall obtain and maintain, to the extent reasonably obtainable and to the extent determined by the Board to be appropriate and relevant, (1) fire and casualty insurance, (2) liability insurance, (3) directors' and officers' liability insurance, (4) a fidelity bond, and (5) workers' compensation insurance.

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

Subject to the foregoing, coverages shall be as follows:

1. Fire and Casualty. The policies shall cover the interests of the Condominium, the Board of Managers, and all Unit Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value of the Units and other improvements (without deduction for depreciation) under the "single entity" concept, i.e., including any wall-to-wall carpeting, lighting fixtures, bathroom fixtures, permanent kitchen appliances, wall coverings (including paint), and all machinery servicing the Units and common facilities, excluding the land, footings, and the personal property of Unit Owners and occupants.

The policy shall have the following provisions, endorsements, and coverages: (i) extended coverage, debris removal, cost of demolition, vandalism, malicious mischief, and windstorm, (ii) "agreed amount" (unless not obtainable), (iii) waiver of any right to claim by way of subrogation against individual Unit Owners and the members of their households and families, the Condominium, the members of Board of Managers, the officers of the Condominium, and the managing agent, if any, for the Condominium, and waiver of any

defenses based on co-insurance or any invalidity based on acts of the insured, (iv) an exclusion from the "no other insurance" clause of individual Unit Owners' policies, so that the insurance purchased by the Board of Managers on behalf of the Condominium shall be deemed primary coverage and any policy obtained by the individual Unit Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Managers on behalf of the Condominium shall in no event be brought into "contribution" with insurance purchased by individual Unit Owners or mortgagees, (v) a provision that the policy cannot be canceled, invalidated, or suspended because of the conduct or neglect of someone over whom the Condominium Board of Managers has no control, or because of any failure to comply with any warranty or condition in the policy regarding any portion of the premises over which the Board of Managers has no control, (vi) cross-liability giving the Unit Owners the right to sue the Board of Managers and vice versa with the insuring company agreeing to defend the defendant, (vii) a provision that the policy may not be canceled (including cancellation for nonpayment of premium) or substantially modified without at least thirty days prior written notice to all of the insured, including all known mortgagees of Units, (viii) a provision that adjustment of loss shall be made by the Board of Managers. Any deductible provision shall apply only to each occurrence rather than to each item of damage.

Prior to obtaining any new fire and casualty insurance policy, the Board of Managers shall obtain an appraisal from an insurance company or from such other source as the Board of Managers shall determine to be acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

The proceeds of all policies of physical damage insurance including flood insurance shall be payable to the Board of Managers if they are \$50,000 or less and, if in excess of \$50,000, to the Insurance Trustee selected by the Board of Managers, to be applied for the purpose of repairing, restoring, or rebuilding unless otherwise determined by the Unit Owners as hereinafter set forth. (This \$50,000 limit shall automatically be increased each calendar year by 5% over the limit of the previous year.) The policy must provide that any right of the insurer to elect to restore damage in lieu of cash settlement may not be exercised without the consent of the Insurance Trustee. The policy shall contain the standard mortgagee clause in favor of each mortgagee (or the servicer of the mortgage and "its successors and assigns") of a Unit which shall provide that any loss shall be payable to the mortgagee as its interest shall appear, subject, however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee as set forth below. 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.

The amount of fire insurance to be maintained until the first meeting of the Board of Managers following the first annual meeting of the Unit Owners shall be in at least the sum of \$1,980,000.00 except that this amount shall be proportionately less until all of the Units have been constructed.

Each Unit Owner and such Unit Owner's known mortgagee shall be a named insured on the policy and shall be entitled to receive at any time, upon request from the insurance carrier(s), a certificate evidencing proof of

insurance coverage.

Duplicate originals of the policy and of all renewals of the policy, together with proof of payment of premiums, shall be furnished to all known institutional mortgagees of Units requesting the same (at a charge to cover mailing and copy expense).

2. Liability. The liability insurance shall cover the Board of Managers, the officers of the Condominium, the managing agent, if any, and all Unit Owners, but not the liability of Unit Owners arising from occurrences within such Owner's Unit or within any common elements exclusive to such Owner's Unit. The policy shall include the following endorsements: (i) comprehensive general liability (including libel, slander, false arrest, and invasion of privacy), (ii) personal injury, (iii) medical payments, (iv) cross liability under which the right of a named insured under the policy shall not be prejudiced with respect to such insured's action against another named insured, (v) "severability of interest" precluding the insurer from denying coverage to a Unit Owner because of negligent acts of the Condominium Board of Managers or any other Unit Owner, (vi) contractual liability, (vii) liability for the property of others, (viii) host liquor liability coverage with respect to events sponsored by the Condominium, and (ix) deletion of any normal products exclusion with respect to events sponsored by the Condominium.

Coverage may not be cancelled or suspended (including cancellation for non-payment of premium) or substantially modified without at least thirty (30) days' prior written notice to the insured, including all known mortgagees of Units as shown on the records of the Condominium. Any deductible provision shall apply only to each occurrence rather than to each item of damage.

The Board of Managers shall review such coverage at least once each year. Until the first meeting of the Board of Managers elected by the Unit Owners, this public liability insurance shall be in a combined single limit of not less than \$500,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

3. Directors' and Officers' Liability. The directors' and officers' liability insurance shall cover the "wrongful" acts of a member of the Board of Managers or officer of the Condominium. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Managers, and any deductible provision shall apply only to each occurrence rather than to each item of damage. The policy shall provide for "participation" by the Condominium or by the members of the Board of Managers or officers of the Condominium only to the minimum extent permitted by law or applicable governmental regulation.

Until the first meeting of the Board of Managers elected by the Unit Owners, the directors' and officers' liability coverage shall be in the amount of not less than \$500,000.00, provided the Board of Managers can, in its discretion, reasonably obtain such coverage while one or more members of the Board of Managers has been elected or appointed by the Sponsor.

4. Fidelity Bond. The fidelity bond shall name the Condominium as obligee and shall cover all members of the Board of Managers, officers, and employees of the Condominium and of the Condominium's managing agent, if any, who handle Condominium funds. The bond shall be in an amount not less than

the estimated maximum amount of funds, including reserves, in the custody of the Condominium or managing agent at any given time, but in no event less than a sum equal to three months' aggregate common charges on all Units, plus reserves. It shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression and shall provide that the bond shall not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Board of Managers, Insurance Trustee, if any, and all institutional first mortgagees of Units as listed on the books and records of the Condominium.

Until the first meeting of the Board of Managers elected by the Unit Owners, the coverage shall be at least \$10,000.00 for dishonest acts and \$5,000.00 for forgery. Notwithstanding the limitation set forth herein, the Board of Managers shall, upon the request of any Unit Owner, Unit mortgagee, or prospective Unit Owner or mortgagee increase the amount of such bond to meet the reasonable requirements of any existing or proposed purchaser or insurer of any mortgage made or to be made on any Unit.

5. Workers' Compensation Insurance. Such insurance shall cover any employees of the Condominium, if any, as well as any other person performing work on behalf of the Condominium.

No Liability for Failure to Obtain Above Coverages. The Board of Managers 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.

Deductible Amounts. The deductible amount, if any, on any insurance policy purchased by the Board of Managers shall be a common expense, provided, however, that the Board of Managers may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of a Unit Owner against such Unit Owner and except that, for losses confined to one (1) Unit, the Unit Owner shall assume the cost of any deductible. The Condominium may pay the deductible portion for which a Unit Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorneys' fees) shall be a charge and continuing lien upon the Unit involved, shall constitute a personal obligation of the Unit Owner, and shall be collectible in the same manner as common charges and assessments under the Declaration and these By-Laws.

Unit Owners' Insurance. Unit Owners shall not be prohibited from carrying other insurance for their own benefit provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

8.02. Insurance Trustee. The Insurance Trustee shall be any law firm, bank, or trust company located in the State of New York designated by the Board of Managers. All fees and disbursements of the Insurance Trustee shall be paid by the Board of Managers and shall constitute a common expense of the Condominium. In the event the Insurance Trustee resigns or fails to qualify,

the Board of Managers shall designate a new Insurance Trustee which shall be a law firm, bank, or trust company located in the State of New York.

8.03. Repair or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of the Buildings or common elements as a result of fire or other casualty (unless 75% or more of the Units are destroyed or substantially damaged and 75% or more of the Unit Owners do not duly and promptly resolve to proceed with repair and restoration), the insurance proceeds, if any, shall be payable to the Board of Managers if they do not exceed the limit established pursuant to Section 8.01 hereof; and if in excess of such limit, then to the Insurance Trustee as the Board of Managers shall select, subject to the reasonable approval of the mortgagee's representative, if any. The Board of Managers shall notify all mortgagees of such Unit or Units as indicated on the records of the Condominium and shall arrange for the prompt repair and restoration of the Buildings (including any damaged Units, and any kitchen or bathroom fixtures initially installed therein by the Sponsor, but excluding any wall, ceiling, or floor decorations or coverings or other furniture, furnishings, fixtures, appliances, or equipment installed by Unit Owners in the Units), and the Board of Managers 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. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a common expense and the Board of Managers shall assess all the Unit Owners for such deficit and for a completion bond for such deficit as part of the common charges.

In the event of any damage or destruction as hereinabove described, the Board of Managers shall promptly send written notification of the casualty to all institutional first mortgagees of Units as they appear on the books and records of the Condominium.

If there shall have been a repair or restoration pursuant to the first paragraph of this Section, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds shall be divided by the Board of Managers or the Insurance Trustee, as the case may be, among all the Unit Owners, subject to the rights of holders of mortgages encumbering such Units, in proportion to their respective common interests after first paying out of the share due each Unit Owner such amounts as may be required to reduce unpaid liens on such Unit in the order of priority of such liens.

If seventy-five (75%) percent or more of the Units are destroyed or substantially damaged as determined by the Board of Managers and seventy-five (75%) percent or more of the Unit Owners do not duly and promptly resolve to proceed with repair and restoration, the Property shall be subject to an action for partition upon the suit of any Unit Owner or lienor, as if owned in common, in which event, the net proceeds of sale, together with the net proceeds of insurance policies shall be held in escrow by the Board of Managers or the Insurance Trustee, as the case may be, to be divided among all Unit Owners, subject to the rights of holders of mortgages encumbering such Units, in proportion to their respective common interests after first applying the share of the net proceeds of such sale otherwise payable to any Unit Owner to the payment of any liens on his Unit, in the order of the priority of such liens.

Wherever in this Article the words "promptly repair" are used, it shall mean repairs are to begin weather permitting, not more than sixty (60) days from the date the Insurance Trustee notifies the Board of Managers and the Unit Owners that it holds proceeds of insurance sufficient to pay the estimated costs of such work; or not more than ninety (90) days after the Insurance Trustee notifies the Board of Managers and the Unit Owners that such funds are insufficient to pay said estimated costs and advises them of the amount of the required completion bond, if necessary, or in the event there is no Insurance Trustee, not more than sixty (60) days from the date of receipt of insurance funds on account of such damage or destruction, and wherever the words "promptly resolve" are used, it shall also mean not more than sixty (60) days from the date of receipt of said insurance funds.

Any repair or restoration as hereinabove described shall be in substantial accordance with the plans and specifications of the damaged improvements as originally built. Any proposed substantial deviation therefrom shall require the written consent of institutional first mortgagees holding mortgages on Units which have at least 51% of the votes of all Units affected which are subject to institutional first mortgages as indicated on the records of the Condominium.

The Board of Managers shall pay the fees and disbursements of any Insurance Trustee and the same shall constitute a common expense of the Condominium.

8.04. Actions Which May Increase Insurance Rates Prohibited. Under no circumstances shall a Unit Owner permit or suffer anything to be done or left in such Unit Owner's Unit which will increase the insurance rates on such Unit or on any other Unit or on the common elements.

ARTICLE IX

SELLING, MORTGAGING, AND LEASING UNITS

9.01. Selling and Leasing Units. No Unit Owner shall convey, mortgage, pledge, hypothecate, sell, or lease his Unit unless and until all unpaid common charges assessed against his Unit shall have been paid to the Board of Managers. However, such unpaid common charges can be paid out of the proceeds of the sale of a Unit or by the grantee. Further, a Unit Owner may convey his Unit and common interest appurtenant thereto to the Board of Managers on behalf of all Unit Owners free of any cost to the Board or the Unit Owners and upon such conveyance such Unit Owner shall not be liable for any common charges thereafter accruing against such Unit. Any sale or lease of any Unit in violation of this Section shall be voidable at the election of the Board of Managers.

No lease of a Unit shall be for an initial term of less than six (6) months.

Any lease of a Unit shall be in writing and shall provide for full compliance by the tenants with the Declaration, By-Laws, and Rules and Regulations of the Condominium. The Owner shall be responsible for violations by such Owner's tenant and shall be subject to actions by the Board of Managers

in accordance with Section 7.11 of these By-Laws.

The above provisions of this Section shall not apply to (i) the Sponsor's lease of any unsold Unit or the Sponsor's lease of any sold Unit to the purchaser thereof; and (ii) the acquisition or sale of a Unit by a mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. Such provisions shall, however, apply to any purchaser from such mortgagee.

9.02. Mortgaging of Units and Notice to Board of Managers. Each Unit Owner shall have the right to mortgage his Unit without restriction. A Unit Owner who mortgages his Unit shall notify the Board of Managers in writing of the name and address of the mortgagee. The Board of Managers shall maintain such information in a book entitled "Mortgagees of Units."

9.03. No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to such Unit Owner's Unit without including therein the appurtenant common interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant common interest of any Unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, transfer, or other disposition of such part of the appurtenant common interests of all Units.

9.04. Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift or to devise his Unit by will, or to pass the same by intestacy, without restriction.

9.05. Waiver of Right of Partition With Respect to Such Units as Are Acquired by the Board of Managers, or its Designee, on Behalf of All Unit Owners as Tenants in Common. In the event that a Unit shall be acquired by the Board of Managers, or its designee, on behalf of all Unit Owners as tenants in common, all such Owners shall be deemed to have waived all rights of partition with respect to such Unit and if the Board should so elect, the Unit Owner shall be deemed to have authorized and empowered the Board of Managers to institute legal proceedings to evict the purported tenant in the name of the said Unit Owner as the purported landlord.

ARTICLE X

AMENDMENT

10.01. Amendments to By-Laws. Except as hereinafter provided otherwise, these By-Laws may be modified, altered, amended, or added to at any duly called meeting of Unit Owners provided that:

- a. a notice of the meeting containing a full statement of the proposed modification, alteration, amendment, or addition has been sent to all Unit Owners and first mortgagees as listed on the records of the Condominium at least thirty (30) and not more than fifty (50) days prior to the date set for said meeting; and
- b. Owners of 67% or more of the Units in number and in common interest approve the change; and
- c. the Board of Managers does not, prior to the date established for voting on the proposed change, receive written notification of opposition to the change from first mortgagees of 51% or more of the number of Units subject to first mortgages (as listed on the books and records of the Condominium); and
- d. the change is set forth as an amendment to the Declaration duly recorded in Monroe County Clerk's Office.

Section 2.01, insofar as it provides that the Sponsor, so long as it is the owner of Units, may vote the votes appurtenant thereto; Section 2.04, insofar as it provides that the Sponsor, so long as it is the owner of Units, shall be entitled to elect specified numbers of members of the Board of Managers; Section 3.02, insofar as it provides that the Board of Managers may not exercise certain powers without the Sponsor's prior written consent so long as the Sponsor shall continue to own 10% or more of the Units; and this Section 10.01, however, may not be amended without the consent in writing of the Sponsor so long as the Sponsor shall be the owner of one or more Units.

ARTICLE XI

MISCELLANEOUS

11.01. Notices. All notices hereunder shall be in writing and sent by mail by depositing same in a post office or letter box in a postpaid sealed wrapper, addressed, if to go to the Board of Managers, at the office of the Board of Managers, and if to go to a Unit Owner or Unit mortgagee, to the address of such Unit Owner or mortgagee at such address as appears on the books of the Condominium. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received. Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person(s) entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

11.02. Conflicts; Compliance with Article 9-B. These By-Laws are set forth to comply with the requirements of Article 9-B of the Real Property Law of the State of New York. In case any of these By-Laws conflict with the provisions of said Statute or of the Declaration, the provisions of the Statute or of the Declaration, whichever the case may be, shall control.

11.03. No Waiver for Failure to Enforce. No restriction, condition, obligation, or provision contained in these By-Laws shall be deemed to have

been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

11.04. Gender. The use of the masculine gender in these By-Laws shall be deemed to include the masculine, feminine, or neuter and the use of the singular shall be deemed to include the plural, whenever the context so requires.

11.05. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

11.06. Severability. Should any part of these By-Laws be deemed void or become unenforceable at law or in equity, the validity, enforceability or effect of the balance of these By-Laws shall not be impaired or affected in any manner.