

TR NO

BOOK PAGE

REEL FR

NO PAGES

DECLARATION

OF

PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES, AND LIENS - WILLOW POINT TOWNHOUSES  
(THE WILLOW POINT DECLARATION)

AT  
MONROE COUNTY CLERK

MADE BY: WILLOW POINT JOINT VENTURE  
444 1/2 Lake Road  
Webster, New York 14850

DATED: July 23, 1987

-----  
LAW OFFICES OF GEORGE R. GRASSER

Counsel to the Sponsor

3350 Marine Midland Center  
Buffalo, New York 14203

MONROE COUNTY CLERK

87 JUL 30 P 2:37

RECORDED

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES, AND LIENS - WILLOW POINT TOWNHOUSES**

**(THE WILLOW POINT DECLARATION)**

**TABLE OF CONTENTS**

		Page
<b>ARTICLE I</b>	<b>DEFINITIONS</b>	2
Section 1.01	Definitions	2
<b>ARTICLE II</b>	<b>PROPERTY SUBJECT TO THIS DECLARATION</b>	3
Section 2.01	Property	3
Section 2.02	Additional Property and Other Property	3
Section 2.03	Mergers	3
<b>ARTICLE III</b>	<b>THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS</b>	4
Section 3.01	Formation of the Association	4
Section 3.02	Membership	4
Section 3.03	Voting Rights	4
Section 3.04	Lots Owned or Held by More Than One Person or by a Corporation	4
Section 3.05	Holder of Security Interest Not a Member	5
Section 3.06	Assigning Right to Vote	5
Section 3.07	Meeting and Voting Regulations	5
Section 3.08	Selection of Directors	5
Section 3.09	Powers and Duties of Directors	5
Section 3.10	Indemnification of Officers and Directors	5
Section 3.11	Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors	5
<b>ARTICLE IV.</b>	<b>PROPERTY RIGHTS AND EASEMENTS</b>	6
Section 4.01	Dedication of Association Property	6
Section 4.02	Right and Easement of Enjoyment in Association Property	6
Section 4.03	Rights of Association	7
Section 4.04	Rights of Sponsor	7
Section 4.05	Common Utility and Conduit Easement	8
Section 4.06	Common Access Easement	9
Section 4.07	Maintenance of Association Facilities	9
Section 4.08	Right of Association to Contract Duties and Functions; Restriction Against Self-Management	9
Section 4.09	Environmental Considerations	9
Section 4.10	Easements Reserved to Sponsor for Benefit of Additional Property and Other Property	9
Section 4.11	Distribution of Condemnation Awards	10
Section 4.12	Association Easement for Maintenance and Repairs	10

		Page
<b>ARTICLE V</b>	<b>ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW</b>	11
Section 5.01	Imposition, Personal Obligation, Lien	11
Section 5.02	Purpose of Maintenance Assessment	11
Section 5.03	Date of Commencement and Notice of Assessments	11
Section 5.04	Assessments for Specific Lots	12
Section 5.05	Basis for Maintenance Assessment	12
Section 5.06	Change in Basis of Assessments	12
Section 5.07	Special Assessments	12
Section 5.08	Non-Payment of Assessment	13
Section 5.09	Notice of Default	14
Section 5.10	Right to Maintain Surplus	14
Section 5.11	Assessment Certificates	14
Section 5.12	Subordination of Assessment Lien to Mortgages	14
Section 5.13	Right to Borrow and Mortgage	14
Section 5.14	Repayment of Monies Borrowed	15
<b>ARTICLE VI</b>	<b>MAINTENANCE BY THE ASSOCIATION</b>	15
Section 6.01	Maintenance and Repair by the Association	15
Section 6.02	Repairs and Maintenance Which Are Not the Responsibility of the Association	16
Section 6.03	Quality and Frequency of Maintenance and Repairs	17
<b>ARTICLE VII</b>	<b>ARCHITECTURAL CONTROLS</b>	17
Section 7.01	Control by Association	17
Section 7.02	Composition and Function of Architectural Committee	17
Section 7.03	Submission of Plans to Architectural Committee	17
Section 7.04	Basis for Disapproval of Plans by Architectural Committee	17
Section 7.05	Approval of Architectural Committee	18
Section 7.06	Written Notification of Disapproval	18
Section 7.07	Failure of Committee to Act	19
Section 7.08	Committee's Right to Promulgate Rules and Regulations	19
Section 7.09	Delegation of Functions	19
Section 7.10	Liability of Architectural Committee	19
Section 7.11	Architectural Committee Certificate	20
Section 7.12	Restrictions on Change of Architectural Controls, Rules, or Regulations	20
<b>ARTICLE VIII</b>	<b>PARTY WALLS AND ENCRDACHMENTS</b>	20
Section 8.01	Party Walls	20
Section 8.02	Maintenance of Party Walls	20
Section 8.03	Exposure of Wall	21
Section 8.04	Materials Used	21
Section 8.05	Destruction of Party Wall	21
Section 8.06	Encroachments or Projections	21
Section 8.07	Party Wall Rights Run With the Land	21
<b>ARTICLE IX</b>	<b>INSURANCE AND RECONSTRUCTION</b>	21
Section 9.01	Insurance to be Carried	21
Section 9.02	Restoration or Reconstruction After Fire or Other Casualty	25

ARTICLE IX (continued)

		Page
Section 9.03	Insurance Carried by Unit Owners	25
Section 9.04	Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property	26
<b>ARTICLE X</b>	<b>GENERAL COVENANTS AND RESTRICTIONS</b>	<b>26</b>
Section 10.01	Advertising and Signs	26
Section 10.02	Animals Including Birds and Insects	26
Section 10.03	Protective Screening and Fences	26
Section 10.04	Garbage and Refuse Disposal	26
Section 10.05	No Above-Surface Utilities Without Approval	27
Section 10.06	Noxious or Offensive Activities	27
Section 10.07	Dwelling in Other than Residential Units	27
Section 10.08	Television and Radio Antennas	27
Section 10.09	Landscaping	27
Section 10.10	Residential Use Only	27
Section 10.11	Commercial and Professional Activity on Property	27
Section 10.12	Outside Storage	28
Section 10.13	Outdoor Repair Work	28
Section 10.14	Oversized, Commercial, or Unlicensed Vehicles	28
Section 10.15	Clotheslines	28
Section 10.16	Lease of Unit	28
<b>ARTICLE XI</b>	<b>ENFORCEMENT, AMENDMENT, AND DURATION OF DECLARATION</b>	<b>28</b>
Section 11.01	Declaration Runs with the Land	28
Section 11.02	Enforceability	28
Section 11.03	No Waiver by Failure to Enforce	29
Section 11.04	Obligation and Lien for Cost of Enforcement by Association	29
Section 11.05	Inspection and Entry Rights	29
Section 11.06	Notification to Association of Mortgagees and Default Notices to be Sent to Mortgagees	30
Section 11.07	Amending or Rescinding	30
Section 11.08	Owner Responsible for Tenants	31
Section 11.09	When Amendment or Rescission Becomes Effective	31
Section 11.10	Duration	31
Section 11.11	Construction and Interpretation	31
Section 11.12	Conflict with Municipal Laws	31
Section 11.13	Change of Conditions	32
Section 11.14	Invalidity of Provision of Declaration	32
<b>ARTICLE XII</b>	<b>GENERAL</b>	<b>32</b>
Section 12.01	Headings and Captions	32
Section 12.02	Right Reserved to Sponsor to Impose Additional Protective Covenants	32
Section 12.03	Notice	32
Section 12.04	Right of Association to Transfer Interest	32
Section 12.05	Right of Association to Transfer Functions	33
<b>SCHEDULES A, B, &amp; C</b>		<b>34</b>

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS - WILLOW POINT TOWNHOUSES

(THE WILLOW POINT DECLARATION)

THIS DECLARATION, made this 27th day of July, 1987, by Willow Point Joint Venture, having an office at 444 1/2 Lake Road, Webster, New York 14850 being hereafter referred to as "the Sponsor."

W I T N E S S E T H

WHEREAS, the Sponsor is the owner of the real property described in Article 11 of this Declaration which the Sponsor desires to develop into a residential community known or to be known as "Willow Point Townhouses" with open spaces and other common facilities for the benefit of said community; and

WHEREAS, the Sponsor desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in Article 11 to the protective covenants, conditions, restrictions, easements, charges, and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

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

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

WHEREAS, the Sponsor has incorporated WILLOW POINT HOMEOWNERS ASSOCIATION, INC., under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Sponsor, for itself, its successors, and its assigns, declares that the real property described in Section 2.01 hereof and such additional property described in Section 2.02 hereof as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed, and occupied subject to the protective covenants, conditions, restrictions, easements, charges, and liens (sometimes referred to as "covenants, conditions, and restrictions") hereinafter set forth.

## ARTICLE 1

### DEFINITIONS

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

- A. "Association" shall mean and refer to WILLOW POINT HOME-OWNERS ASSOCIATION, INC., its successors, and its assigns.
- B. "Association Property" shall mean and refer to all land, improvements, and other properties heretofore or hereafter owned by the Association.
- C. "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges, and Liens - Willow Point Townhouses as it may from time to time be supplemented, extended, or amended in the manner provided for herein.
- D. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Webster or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- E. "Member" shall mean and refer to an Owner of each Lot (see Section 3.04 of this Declaration).
- F. "Owner" shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot, and provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be deemed an Owner (and therefore not a Member).
- G. "Property" shall mean and refer to all properties as are subject to this Declaration.
- H. "Sponsor" shall mean and refer to Willow Point Joint Venture, its successors, and its assigns.
- I. "Unit" shall mean and refer to each completed dwelling unit (as evidenced by issuance of a Certificate of Occupancy issued by the Town of Webster) situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.

## ARTICLE 11

### PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Town of Webster, County of Monroe, and State of New York, all of which property shall be hereinafter referred to as the "Property". The real property initially subject to this Declaration is known as "Phase I" of the Willow Point Townhouses development and is described in Schedule A attached hereto.

Section 2.02. Additional Property and Other Property. Other lands, ("Additional Property") in addition to the lands described in Schedule A, may become subject to this Declaration in the following manner:

- a. Lands added by Sponsor without consent of Members.  
The Sponsor may, without the consent of the other Members within fifteen (15) years of the date of recording of this Declaration, bring within the scope of this Declaration all or any portion of the lands described in Schedule B of this Declaration.
- b. Lands added with consent of Members.  
The owner of any lands who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of the Members as provided in its By-Laws and (ii) an amendment to this Declaration.

Such additional lands shall be added to this Declaration by the recording in the Monroe County Clerk's Office of a supplemental extending declaration which shall extend the scope of the covenants and restrictions of this Declaration to such additional lands and thereby subject such additional lands and the owners of such lands to assessments for their fair share of the expenses of the Association. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the provisions of this Declaration. The average unit density per acre shall at no time exceed 15.

The future improvements to be made on any lands which are added to the scope of this Declaration will be consistent in terms of quality of construction with the improvements on lands already covered by the Declaration.

In addition to the Additional Property, the Sponsor is the owner of other lands ("Other Property") described in Schedule C to this Declaration. The Sponsor intends to develop such Other Property at some time in the future.

This Section may not be amended to alter or abridge the Sponsor's right to bring lands within the scope of this Declaration prior to fifteen (15) years from the date of recording of this Declaration without the written consent of the Sponsor.

Section 2.03. Mergers. Upon a merger or consolidation of this Associa-

tion with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions, and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

### ARTICLE III

#### THE ASSOCIATION STRUCTURE, MEMBERSHIP, VOTING RIGHTS, AND DIRECTORS

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed Willow Point Homeowners Association, Inc. (the "Association"), to own, operate, and maintain the Association Property; enforce the covenants, conditions, and restrictions set forth in this Declaration; and to have such other specific rights, obligations, duties, and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as Members only Owners including the Sponsor. All Owners (except for the case of joint ownership as set forth in Section 3.04 of this Declaration) shall, upon becoming such, be deemed automatically to have become Members and there shall be no other qualification for membership. Except as Section 3.04 of this Declaration may be applicable, membership shall be appurtenant to, and shall not be separated from, the ownership of any of the interests described in the definitions of the words "Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03. Voting Rights. The voting rights of the Members shall be as determined in the By-Laws of the Association.

Section 3.04. Lots Owned or Held by More Than One Person or by a Corporation. When any Lot is owned or held by more than one person or entity as joint tenants, tenants by the entirety, or tenants in common, such Owners shall agree among themselves as to which one of such Owners shall be a Member of the Association. The Association shall require a written statement (in such form as the Association may prescribe) to be signed by all of such Owners and which the Association may rely upon as conclusive evidence of such agreement. There shall be no membership in the Association with respect to a jointly owned Lot unless such a written statement with respect to such Lot has been submitted to the Association.



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

Section 3.05. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot or Unit merely as security for the performance of an obligation shall not be a Member.

Section 3.06. Assigning Right to Vote. Subject to the filing of an amendment to the offering plan pursuant to which the Sponsor has offered interests in the Association, the Sponsor may assign its membership in the Association to any person, corporation, association, trust, or other entity, and such assignee, and any future assignee of such membership, may make successive like assignments. Any Member shall be entitled to assign his or her right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.07. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting, and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.08. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.09. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.10. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

Section 3.11. Sponsor's Written Consent Necessary for Certain Actions

Taken by Board of Directors. Notwithstanding anything to the contrary contained in this Declaration, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than fifteen (15) years from the date of recording the Declaration, the Board of Directors may not, without the Sponsor's written consent, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property, (ii) assess any amount for the creation of, addition to, or replacement of all or part of a reserve, contingency, or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses for the Association; or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. So long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration), this Section shall not be amended without the written consent of the Sponsor.

#### ARTICLE IV PROPERTY RIGHTS AND EASEMENTS

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

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Owner (and such Owner's guests, licensees, tenants, and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association as set forth in Sections 4.03 and 4.12 herein and the rights of the Sponsor as set forth in Sections 4.04 and 4.10 herein. Such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article 1, Section 1.01 hereof.

Every Owner shall also have (i) an easement and right of access for himself or herself (and any contractors, employees, and agents) in Association Property to maintain, repair, or replace any property of such Owner which the Association has no obligation to maintain (e.g., glass breakage), (ii) an easement for ingress and egress by vehicle or on foot as described in Section 4.06 hereof, and (iii) the common utility and conduit easements described in Section 4.05 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided, however, that any conveyance or encumbrance referred to in Section 4.03(c) below shall be subject to said easement of each Owner for ingress and egress.

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

- a. to promulgate rules and regulations relating to the use, operation, and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Owners;
- b. to grant easements or rights of way, with or without consideration, to any public or private utility corporation, cable television company, governmental agency, or political subdivision;
- c. to dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or cable television company or for other public purposes, e.g. as set forth in subsection b above, consistent with the intended use of such land by or for the benefit of the Owners, which shall not require the consent of the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two-thirds (2/3) of all Members then entitled to vote (i.e. see Section 3.03 of this Declaration) who shall vote by written ballot which shall be sent to all Members then entitled to vote and lending institution first mortgagees of Lots whose names appear on the records of the Association not less than thirty (30) days nor more than fifty (50) days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable;
- d. to charge reasonable admission and other fees for the use of Association Property;
- e. to enter into agreements, reciprocal or otherwise, with other homeowners and residents associations, condominiums, and cooperatives for the use or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the date or initial date of the canvass thereof; and
- f. to use water from the exterior spigots of the Units for watering the lawns and other common area plantings and for repairs to the exteriors of the Units or to the adjacent common area without reimbursement to the Unit Owner for such use.

Section 4.04. Rights of Sponsor. With respect to Association Property and Other Property in addition to the rights reserved in Section 4.10 below,

so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) or so long as the Sponsor holds title to any portion of the Other Property described in Schedule C to this Declaration, the Sponsor shall have the right to:

- a. grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes, and conduits, including, but not necessarily limited to, water, gas, electric, cable television, telephone, and sewer to service any Additional Property or Other Property as referred to in Section 2.02 of this Declaration;
- b. connect with and make use of utility lines, wires, pipes, conduits, and related facilities located on the Association Property or Other Property for the benefit of any Additional Property;
- c. use the Association Property for ingress and egress to those portions of the Property (as described in Section 2.01 of this Declaration); and any Additional Property; and any Other Property;
- d. operate a sales center with advertising signage and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and
- e. grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of any Additional Property or Other Property.

The easements, rights-of-way, and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Sponsor, and their successors and their assigns. With respect to its exercise of the above rights, the Sponsor agrees (i) to repair any damages resulting from its use within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Sponsor's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Sponsor.

**Section 4.05. Common Utility and Conduit Easement.** All pipes, wires, coaxial cables, conduits, and public utility lines located on each Lot or within any Unit shall be owned by the Owner of such Lot or Unit. Every Owner shall have an easement in common with the Owners of other Lots to maintain and use all pipes, wires, coaxial cables, conduits, drainage areas, and public utility lines located on other Lots or within other Units or on Association Property and servicing such Owner's Unit or Lot. Each Lot and Unit shall be subject to an easement in favor of the Owners of other Lots and Units to maintain and use the pipes, wires, coaxial cables, conduits, drainage areas, and public utility lines servicing, but not located on, such other Unit or Lot. The Association (and its employees, contractors, and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to each Unit and Lot for maintenance, repair, or replace-

ment of any pipes, wires, coaxial cables, conduits, drainage areas, or public utility lines located on any Lot or within any Unit and servicing two or more Units. The cost of such repair, maintenance, or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible and such cost shall be added to the Maintenance Assessment of such Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or Lots of such Owner or Owners to secure the payment thereof.

The Association (and its employees, contractors, and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access over the exterior walls of various Units for the placement, maintenance, repair, and replacement of utility boxes and telephone pedestals.

**Section 4.06. Common Access Easement.** The Sponsor and all Owners and their guests, mortgagees, licensees, and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways, driveways, and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair, and replacement of walkways, driveways, and roadways or any property or facilities, the maintenance of which is the responsibility of the Association.

**Section 4.07. Maintenance of Association Facilities.** In order to preserve and enhance the property values and amenities of the Association Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards.

**Section 4.08. Right of Association to Contract Duties and Functions; Restriction Against Self-Management.** The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums, and cooperatives. The Association shall not establish self-management at any time subsequent to any lending institution which is a first mortgagee of Lots having required professional management.

**Section 4.09. Environmental Considerations.** In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles VII and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

**Section 4.10 Easements Reserved to Sponsor for Benefit of Additional Property and Other Property.** Easements are reserved herein over all Property covered by this Declaration for the benefit of lands described as Additional Property and Other Property in Section 2.02 of this Declaration for the following purposes: a. ingress and egress over roadways; and b. use and connec-

tion with utility lines and related facilities including, but not necessarily limited to: telephone, water, gas, electric, sewer, and cable television. This easement shall not include the right to consume any water, gas, or electricity for which one or more individual Owners are billed directly without the consent of the individual Owners affected except that water may be used by the Association for Association purposes as provided in Section 4.03 of this Declaration.

Upon the connection of lines and/or facilities servicing such land area comprising the Additional Property, should such lands not be added to the scope of this Declaration, and such land area comprising the Other Property, such lands shall be responsible for the payment to the Association of a fair share of the cost of operation, maintenance, repair, and replacement of those lines and facilities (including roadways) servicing such lands, which share shall be determined by the number of dwelling units on such lands as evidenced by occupancy or the issuance of a certificate of occupancy for such unit by the Town of Webster. Five hundred square feet of commercial, business, or professional use of such lands shall be equivalent to one dwelling unit. Unenclosed marina or dock space shall not be required to make any contribution to such expenses. This Section shall not be amended or revised without the written consent of the Sponsor.

Section 4.11 Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

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

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

Section 4.12 Association Easement for Maintenance and Repairs. The Association (and its employees, contractors, and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, including the Lots and Units, to permit the maintenance, repair, or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in any emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, including the Lots and Units, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is responsible to maintain, repair, or replace as provided for in this Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

**ARTICLE V  
ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW**

Section 5.01. Imposition, Personal Obligation, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- a. annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"); and
- b. special assessments ("Special Assessments"); together hereinafter being referred to as "Assessments".

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

Section 5.02. Purpose of Maintenance Assessment. The purpose of Maintenance Assessment shall be to fund the maintenance, preservation, operation, and improvement of the Association Property and the promotion of the recreation, safety, and welfare of the Owners, including but not limited to: the payment of taxes on Association Property; any utility services to the Property which are commonly metered or billed; all casualty, liability, and other insurance covering the Association Property, the Units, the Owners and the Association's officers, directors, and employees obtained pursuant to Article IX of this Declaration; the maintenance, repair, and replacement of all facilities commonly servicing the Owners, whether on or off the Lots, such as the private roadways and landscaped areas; and the maintenance, repair, and replacement of the Unit exteriors - siding, roofs, gutters, and walkways placed on the Property and the painting of exterior trim, and the exterior of doors and windows which open from the Unit; the cost of labor, equipment, materials, management, and supervision thereof, and for such other needs as may arise. The amount of any reserves shall be adequate to fund the periodic maintenance, repair, and replacement of property the Association is obligated to maintain and shall be not less than the reasonable requirements of existing or proposed lenders, holders, and insurers of first mortgages on the Lots and Units.

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

Section 5.04. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments, if any, except that the Sponsor will only be obligated for the lesser of (i) the difference between the actual Association expenses (including budgeted amounts for reserves) and the Association charges levied on Owners who have closed title to their Lots as projected in the offering plan filed with the New York State Department of Law pursuant to which interests in the Association were initially offered for sale; or (ii) Maintenance Assessments and Special Assessments on all unsold Lots.

Section 5.05. Basis for Maintenance Assessment. Subject to a lesser amount payable by the Sponsor as permitted by Section 5.04 above, the annual Maintenance Assessment shall be the same for all Lots subject to this Declaration so that the number of assessed Lots divided into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the annual Maintenance Assessment for each Lot.

Section 5.06. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two-thirds (2/3) of the total votes of all Members then entitled to vote (i.e. see Section 3.03 of this Declaration), voting in person or by proxy, written notice of which change shall be sent to all Members then entitled to vote and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than fifteen (15) years after the date of recording the Declaration, any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to unsold dwelling units shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld, and (ii) no such change shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Monroe.

Any change in the basis of Assessments shall be equitable and non-discriminatory within the following classifications: (i) Lots paying full Maintenance Assessments and (ii) Lots paying less than full Maintenance Assessments pursuant to Section 5.04 above.

Section 5.07. Special Assessments. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, unusual expenses including capital improvements, including without limitation, the construction, reconstruction, or replacement of, or repair of a capital nature to, the Association Property or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related



therato, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 100% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Members then entitled to vote (i.e. see Section 3.03 of this Declaration) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members then entitled to vote at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

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

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

If the Assessment or any installment thereof is not paid within thirty (30) days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner and (iii) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the Lot of such Owner, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

If the Assessment or any installment thereof is not paid within sixty (60) days after the due date, the Association shall notify any first mortgage holder, as shown on the records of the Association, on the Lot for which the Assessment or any installment thereof is past due, of such non-payment.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services

furnished by the Association shall, under no circumstances, entitle any Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

Section 5.09. Notice of Default. The Board of Directors, when giving notice to a Unit Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Unit whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Unit Owner's default with respect to the payment of said Assessments.

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates. Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or leases, (or any prospective purchaser, lessee, occupant, mortgagee, or title insurer of such Lot), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee, or title insurer of, or lender on the Lot or Unit on which such certificate has been furnished.

Section 5.12. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot or Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.13. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion of the Board of Directors acting in its absolute discretion, except that (i) any member of the Board of Directors of the Association who has been elected or

appointed by the Sponsor shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Sponsor, and (ii) any consent of the Sponsor as required by Section 3.11 of this Declaration must be obtained.

Section 5.14 Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- a. to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments hereunder;
- b. to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
  - (1) assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.04 hereunder, to assess the same at a particular rate or rates;
  - (2) establish sinking funds and/or other security deposits;
  - (3) apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;
  - (4) establish such collection, payment, and lien enforcement procedures as may be required by the note holders;
  - (5) provide for the custody and safeguarding of all funds received by it.

#### ARTICLE VI MAINTENANCE BY THE ASSOCIATION

Section 6.01. Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair, and replacement of the private roadway and driveways on the Property, snow removal from the private roadway and driveways on the Property, and, except as otherwise provided in this Declaration, the maintenance of all landscaped areas (whether or not such areas are on Association Property) shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair, and replacement of pipes, wires, conduits, and public utility lines servicing more than one Unit and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall also be the responsibility of, and an expense of, the Association.

The Association shall be responsible for the maintenance of all shrubbery and other plantings (except for flower beds) installed by or at the direction of the Sponsor or the Association and for shrubbery, flower beds, or other plantings installed by or at the direction of any Lot Owner or Unit occupant which installation shall only be with the permission of the Architectural Committee.

Units. With respect to the Units, the Association shall repair and replace the exterior siding, gutters and downspouts, roofs, vents, and electrical fixtures excluding doorbells; shall paint or stain the exterior trim and the exterior of windows and doors (excluding storm doors) which open from a Unit; and shall caulk the windows and doors as necessary; but shall not (i) repair or replace window panes; or (ii) maintain, repair, or replace doors; or (iii) maintain or repair foundations of Units.

Other Lot Improvements. With respect to the other improvements on the Lots, the Association shall paint or stain, repair, and replace fences or railings initially installed by the Sponsor, and maintain, repair, and replace all walkways and stoops and exterior stairs.

The Association may increase or decrease its maintenance responsibilities provided (i) such increase or decrease is approved in writing by two-thirds (2/3) of all Members then entitled to vote (i.e. see Section 3.03 of this Declaration) and (ii) if such increase or decrease is proposed while the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) but not longer than fifteen (15) years after the date of recording the Declaration, the written consent of the Sponsor will be required.

Any responsibility for maintenance, repair, or replacement with respect to the Lots and Units which is not the responsibility of the Association is the responsibility and shall be made at the cost and expense of the respective Owner(s).

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repairs as set forth in Section 4.12 of this Declaration.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Any maintenance, repair, or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of an Owner (including (i) any family member, tenant, guest, or invitee of such Owner, (2) any family member, guest, or invitee of the tenant of such Owner, and (3) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner) or the Sponsor shall be made at the cost and expense of such Owner or the Sponsor, as the case may be. If such maintenance, repair, or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such cost shall be added to that Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit or Lot, as the case may be, to secure the

payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair, and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair, and replacement of property which it is obligated to maintain, repair, or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

## ARTICLE VII

### ARCHITECTURAL CONTROLS

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

Section 7.02. Composition and Function of Architectural Committee. The Architectural Committee shall be a permanent committee of the Association and shall (i) review and approve or disapprove all proposed additions, modifications or alterations to any improvements or any proposed change in the use of a Lot or any other portion of the Property (including Association Property) after transfer of title to such Lot or other portion of the Property and (ii) enforce those provisions of the General Covenants and Restrictions set forth in Article X of this Declaration pertaining to the exterior appearance and use of the Property as specifically set forth in Article X. The Architectural Committee may also assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations, and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three or more persons (as determined by the Board of Directors of the Association) for terms of two years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than a majority of the members of the Board of Directors.

Section 7.03. Submission of Plans to Architectural Committee. After transfer of title to any Lot or other portion of the Property by the Sponsor, no exterior addition, modification, or alteration (specifically including but not limited to landscaping) shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by, the Architectural Committee. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee may disapprove any plans submitted pursuant to

Section 7.03 above for any of the following reasons:

- a. failure of such plans to comply with any protective covenants, conditions, and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;
- c. objection to the site plan, exterior design, appearance, or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, 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;
- f. any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use, or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or 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 any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions, or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property, and (iii) 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. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features, or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with

a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 35 days after submission thereof; said applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

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

Section 7.08. Committee's Right to Promulgate Rules and Regulations. Subject to the provisions of Section 7.12 below, the Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions, or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule, or regulation.

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

Section 7.10. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee, or agent thereof, shall entitle any person to rely thereon (i) with respect to conformity with laws, regulations, codes, or ordinances or (ii) with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee, or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member, or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence, or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee (or any member, subcommittee, employee, or agent thereof) in connection with such submission.

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

Section 7.12. Restrictions on Change of Architectural Controls, Rules, or Regulations. The controls set forth in this Article VII and any rules or regulations shall not, by act or omission, be changed, waived, or abandoned, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Members then entitled to vote (i.e. see Section 3.03 of this Declaration) voting in person or by proxy, written notice of which change shall be sent to all Members then entitled to vote and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver, or abandonment shall not be made if lending institutions which together are first mortgagees of 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, waiver, or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

#### ARTICLE VIII PARTY WALLS AND ENCROACHMENTS

Section 8.01. Party Walls. A wall shall be considered a party wall where all of the following conditions are met:

- a. the wall is built as part of the original construction of the Units; and
- b. the wall is an interior wall of a Building; and
- c. the wall serves as a common wall of two adjoining Units, whether or not the wall is on the dividing line between such Units.

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



share such wall.

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

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

Section 8.04. Materials Used. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall.

Section 8.05. Destruction of Party Wall. Except as provided in Section 8.03 above, in the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Unit which used the wall may restore it. The Owner who undertakes such restoration shall be entitled to a contribution (equaling one-half the cost of such restoration) from the Owner of the other Unit which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree the right of an Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06. Encroachments or Projections. If any Unit encroaches or projects up to five feet upon or over any other Unit or Lot or upon or over any portion of the Association Property or if any deck or patio (if any) servicing a Unit encroaches or projects upon or over any portion of the Association Property as a result of: (i) original construction; (ii) settling or shifting; or (iii) replacement as a result of fire, condemnation, eminent domain proceedings, or proceedings of similar import and effect; such encroachments or projections shall be permitted and valid easements for such encroachments or projections and the maintenance thereof shall exist so long as such improvements shall stand. If such encroachment or projection occurs as a result of replacement, the encroachment, or projection must be inadvertent in order for a valid easement to exist.

Section 8.07. Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore, and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors, and assigns of each Owner.

## ARTICLE IX

### INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the

Association shall obtain and maintain (1) fire and casualty insurance, (2) liability insurance for occurrences on the Association Property, (3) directors' and officers' liability insurance covering wrongful acts of officers and directors of the Association, (4) fidelity insurance covering those who handle Association funds, and (5) workers' compensation insurance covering Association employees and those who perform work for the Association, with coverages to be as follows:

1. Fire and Casualty. The policy shall cover the interests of the Association, the Board of Directors, and all Unit Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value (without deduction for depreciation) of at least all improvements on the Property as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings, and all machinery servicing the Units and common facilities, excluding (i) the land and foundations, (ii) the personal property of Unit Owners and occupants; and (iii) any improvements or alterations (including upgrading of appliances, kitchen cabinets, carpeting, or lighting fixtures, built-ins, and wall coverings) made by present or prior Unit Owners or occupants.

The policy shall have the following provisions, endorsements, and coverages: (i) extended coverage, including sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, (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 Association, the officers and directors of the Association, and the managing agent, if any, for the Association, (iv) an exclusion from the "no other insurance" clause of individual Unit Owners' policies which shall provide that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Unit Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors 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 cancelled, invalidated, or suspended because of the act or neglect of someone over whom the insured has no control, (vi) cross-liability giving the Unit Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (vii) a provision that the policy may not be cancelled (including cancellation for non-payment of premium), substantially modified, invalidated, or suspended, without at least thirty (30) days prior written notice to all of the insured, including all mortgagees of Units reported to the insurance carrier or its agent, and (viii) a provision that adjustment of loss shall be made by the Board of Directors.

Flood Insurance. If any portion of the Property is located in an area identified by the federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the Units and other insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program or 100% of the current replacement cost of all such Units and other insurable property, whichever is less.

The proceeds of all policies of physical damage insurance, if \$50,000.00 or less, shall be payable to the Association, and if \$50,000.00 or more, to an insurance trustee (bank, trust company, or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring, or rebuilding unless otherwise determined by the Unit Owners pursuant to Section 9.02 of this Declaration. This \$50,000.00 limitation shall increase automatically by 5% each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Board of Directors. All fees and disbursements of the insurance trustee shall be paid by the Association and shall be a common expense of all Lot Owners.

The policy shall contain the standard mortgagee clause in favor of Unit mortgagees (or the servicer of the mortgagee and its "successors and assigns") which shall provide that any loss shall be payable to a mortgagee as its interest shall appear; subject, however, to the loss payment provisions in favor of the Board of Directors. 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 Association, each Unit Owner, and such Unit Owner's known mortgagee shall be a named insured on the policy, as their interests may appear. Each Unit Owner and such Owner's known mortgagee shall receive, at the time of purchase and at the time a new policy is obtained or an existing policy renewed, a certificate evidencing proof of insurance coverage.

Duplicate originals of the policy, all renewals thereof, and any certificates or endorsements to the policy, together with proof of payment of premiums, shall be furnished to all mortgagees of Units requesting the same.

2. Liability. The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners, but not the liability of Owners arising from occurrences within such Owner's Unit or on such Owner's Lot. 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 rights 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 Lot Owner because of negligent acts of the Association or any other Lot Owner, (vi) contractual liability, (vii) water damage liability, (viii) non-owned vehicle coverage, (ix) liability for the property of others, (x) host liquor liability coverage with respect to events sponsored by the Association, and (xi) deletion of the normal products exclusion with respect to events sponsored by the Association.

Coverage may not be cancelled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least thirty (30) days prior written notice to the insured, including all known mortgagees of Units or Lots as shown on the records of the Association. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Board of Directors shall review such coverage at least once each year.

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 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 director or officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each occurrence and not to each item of damage. The policy shall provide for "participation" by the Association or by the officers or directors of the Association only to the minimum extent permitted by law or applicable government regulations.

4. Fidelity Insurance. The fidelity insurance shall cover all directors, officers, and employees of the Association and the Association's managing agent, if any, who handle Association funds. The insurance shall be in an amount not less than a sum equal to three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the insurance may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association and to all institutional first mortgagees of any Unit(s) whose names appear on the records of the Association.

The Board of Directors shall, at the request of any Lot Owner, Lot mortgagee, or prospective Lot Owner or Lot mortgagee, increase the amount of such insurance to meet the reasonable requirements of any existing or proposed holder or insurer of any mortgage made or to be made on any Lot.

5. Workers' Compensation. To the extent deemed reasonable and necessary by the Board of Directors, worker's compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.

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

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

Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense if the loss involves property for which the Association has maintenance responsibility, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with

interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot Involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Unit or Units, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Unit or Units as indicated on the records of the Association and shall arrange for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if three-fourths (3/4) or more of the Units in a Building are destroyed or substantially damaged and the Owners of 75% or more of all Units do not duly and promptly resolve to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Owners in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property, provided, however, that no payment shall be made to an Owner until there has first been paid off out of such Owner's share of such funds all liens on such Owner's Unit. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a Special Assessment to make up the deficiency against the Owners of the damaged property, which Special Assessment shall be levied in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property.

In the event of damage to or destruction of any common property or facility of the Association, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall (i) promptly send written notice of such damage or destruction to all institutional first mortgagees whose names appear on the records of the Association and to the insurance trustee, if any, and the Board of Directors or the insurance trustee, as the case may be, shall (ii) arrange for the prompt repair and restoration of the damaged property, and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the insurance proceeds exceed the cost of repair and reconstruction of such Association Property, no Unit Owner or any other party shall have priority to receive any portion of such surplus over such Unit Owner's mortgagee.

Section 9.03. Insurance Carried by Unit Owners. Each Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit, including (1) fire, casualty, and theft coverage for Owner's personal property, (2) coverage for such Owner's personal liability within the Owner's Unit and on such Owner's Lot and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit or Lot which may not be covered by fire and casualty insurance obtained by or through the Association, provided, however, that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

Section 9.04. Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property. In the event the Association fails to obtain or maintain fire, casualty, and liability insurance for Association Property as required under this Article IX, such insurance may be obtained by one or more mortgagees of Units, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any amount expended for such insurance, real property taxes, or any other charges with respect to Association Property which are in default and which may become or have become a charge against the Association Property.

#### ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease, or sale of Lots or Units, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of the Property (including temporary signs advertising property for sale or rent) except with the consent of the Architectural Committee.

Section 10.02. Animals Including Birds and Insects. Except for fish or birds kept in a cage, no animals shall be kept or maintained on any Lot or other portion of the Property except with the consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, including birds and insects and (ii) prohibit certain types of animals, including birds or insects entirely. Notwithstanding the above, the Board of Directors of the Association shall have the right to require any Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal, including birds or insects, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal is creating a nuisance because, e.g., the Owner does not clean up after the animal, the animal is too noisy, or the animal is not properly controlled.

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

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash, or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Architectural Committee so as to provide access to persons making such pick-up. The Architectural Committee may, in its discretion,

adopt and promulgate reasonable rules and regulations relating to size, shape, color, and type of containers permitted and the manner of storage of the same on any portion of the Property. All incinerators or other facilities for the storage or disposal of Trash, shall be kept in a clean and sanitary condition.

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

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

Section 10.07. Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction, or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Board of Directors.

Section 10.08. Television and Radio Antennas. No outside television antenna shall be erected on any Lot or other portion of the Property except with the consent of the Architectural Committee.

Section 10.09. Landscaping. After the transfer of title by the Sponsor to a Lot or other portion of the Property, no landscaping (specifically including but not limited to the removal of trees) shall be performed on such Lot or other portion of the Property except with the permission of the Architectural Committee. The Architectural Committee in its discretion may adopt and promulgate rules and regulations regarding landscaping of the Property and the preservation of trees and other natural resources and wildlife upon the Property. The Architectural Committee may designate certain trees, regardless of size, as not removable without written authorization. This Section shall not apply to the Sponsor.

Section 10.10. Residential Use Only. Except as provided in Section 10.11 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto except that so long as the Sponsor holds for sale any lot or dwelling unit located on the Property or on the Additional Property (whether or not subject to the Declaration) the Sponsor may use one or more Lots or other portions of the Property for model homes and/or a real estate office.

Section 10.11. Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home

Industry, or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors, except (i) by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots and Units and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 10.12. Outside Storage. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats, and trailers shall be allowed for no more than two (2) consecutive days in any 30 day period, except as may be otherwise permitted by the Association's Board of Directors, (unless prohibited altogether by the applicable zoning requirements).

Section 10.13. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no work on any motor vehicles, boats, or machines of any kind shall be permitted outdoors on the Property, except with the consent of the Association's Board of Directors.

Section 10.14. Oversized, Commercial, or Unlicensed Vehicles. Unless used in connection with the construction or sale of Units by the Sponsor, or maintenance of the Property, or unless otherwise consented to by the Board of Directors, the following shall not be permitted to remain overnight on the Property:

- a. commercial vehicles of a weight of two (2) tons or more;
- b. unlicensed motor vehicles of any type.

Section 10.15. Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted within the Property unless authorized by the Architectural Committee.

Section 10.16. Lease of Unit. Any lease of a Unit shall be (i) in writing, (ii) for an initial term of not less than 6 months, and (iii) for the entire Unit.

#### ARTICLE XI ENFORCEMENT, AMENDMENT, AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease, or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her, or its heirs, successors, and assigns, to observe, perform, and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges that may become liens against his, her, or its property and which become due while he, she, or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease, or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability.

- a. Actions at Law or Suits in Equity. The provisions of the Declara-



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

b. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or rules and regulations of the Association or of any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or 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 Lot Owner or Unit occupant shall be deemed a Special Assessment against the Lot of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

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

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Owner, or (2) any family member, tenant, guest, or invitee of the Owner, or (3) a family member or guest or invitee of the tenant of the Owner, or (4) a guest or invitee of (i) any member of such Owner's family or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot, Unit, or other portion of the Property owned by such Owner, if any.

Section 11.05. Inspection and Entry Rights. Any agent of the Association (or the Architectural Committee) may at any reasonable time or times, upon not less than 24 hours written notice to the Owner, enter upon a Lot or other portion of the Property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction, or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association

nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

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

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

Section 11.07. Amending or Rescinding. The Sponsor, during the time the Sponsor owns any Lot, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent. In the event that New York law is changed to permit Members to cast the same amount of votes as the number of Lots such Member owns, the Sponsor reserves the right to amend such provisions of this Declaration as are necessary to allow Members to cast the same amount of votes as the number of Lots owned, pursuant to the provisions of such law. All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of not less than 67% of the Members then entitled to vote. In addition, and notwithstanding the above, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A, B, or C to this Declaration (whether or not subject to this Declaration) but not longer than fifteen (15) years after the date of recording the Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld.

The Members then entitled to vote shall receive written notice of every proposed amendment or rescission at least thirty (30) days prior to the date or initial date set for voting on said proposed amendment or rescission.

In addition to the approval of the Owners and Sponsor as provided for herein, no amendment or rescission of a material nature shall be effective if lending institutions which together are first mortgagees on 51% or more of the Lots on which there are mortgages as shown on the records of the Association, advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least

thirty (30) days prior to the date or initial date set for voting on the proposed amendment or rescission.

Section 11.08. Owner Responsible for Tenants. Any lease of a Unit shall provide that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws, or rules and regulations, the Board of Directors shall so notify the Owner of the Unit which such tenant occupies in writing by certified 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, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

Section 11.09. When Amendment or Rescission Becomes Effective. Any amendment or rescission to this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County of Monroe. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.10. Duration. The provisions of this Declaration shall, unless amended or rescinded as hereinbefore provided, continue with full force and effect against both the Property and the Owners thereof until December 31, 2020, and shall, as then in force, be automatically, and without further notice, extended for successive periods of ten (10) years.

Section 11.11. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation, and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling, or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules, or regulations, the Association shall take into consideration the best interests of the Owners and residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

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

Section 11.12. Conflict with Municipal Laws. The protective covenants, conditions, and restrictions set forth herein shall not be taken as permitting

any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.13. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.14. Invalidity of Provision of Declaration. The determination by any court that any provision hereof is unenforceable, invalid, or void shall not affect the enforceability or validity of any other provision hereof.

## ARTICLE XII

### GENERAL

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

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

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

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

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

(SEAL)

WILLOW POINT JOINT VENTURE  
By: WILLOW POINT DEVELOPMENT CORPORATION

By: Hubert J. Orioli

WILLOW POINT HOMEOWNERS ASSOCIATION, INC.

By: Hubert J. Orioli

STATE OF NEW YORK ) ss.:  
COUNTY OF MONROE )

On this 23 day of July, 1987, before me personally came Hubert J. Orioli, to me personally known, who, being by me duly sworn, did depose and say that he resides in the Town of Webster and that he is the President of WILLOW POINT DEVELOPMENT CORPORATION, a Partner in WILLOW POINT JOINT VENTURE, described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereby by like order.

STATE OF NEW YORK ) ss.:  
COUNTY OF MONROE )

Julie M. Gotsik  
JULIE M. GOTSIK

NOTARY PUBLIC, State of New York  
Qualified in Monroe County  
My Commission Expires March 21

On this 23 day of July, 1987, before me personally came Hubert J. Orioli, to me personally known, who, being by me duly sworn, did depose and say that he resides in the Town of Webster and that he is the President of WILLOW POINT HOMEOWNERS ASSOCIATION, INC., the corporation described in, and which executed the above instrument; that said corporation has no seal, never having adopted any seal, and that the foregoing instrument was executed without corporate seal by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Julie M. Gotsik  
JULIE M. GOTSIK

NOTARY PUBLIC, State of New York  
Qualified in Monroe County  
My Commission Expires March 21

SCHEDULE A  
WILLOW POINT DEVELOPMENT  
SECTION I DESCRIPTION

All that tract or parcel of land situate in the Town of Webster, County of Monroe, and State of New York, being part of Town Lots 34 and 22, Township 14, Range 7 in the Gore tract, more particularly described as follows:

Commencing at a point in the centerline of Bay Road, which point is 350.50 feet, more or less, north of the Webster-Penfield town line, which point of beginning is also the north line of the premises formerly owned by one Mahen Stewart; thence (1) westerly at an interior angle of  $66^{\circ} 49' 30''$  with the centerline of Bay Road a distance of 524.01 feet along the southerly boundary line of Willow Point Development, to an angle point; thence, (2) at an interior angle with course (1) of  $90^{\circ} 00' 00''$ , a distance of 90.00 feet, to an angle point; thence, (3) at an interior angle with course (2) of  $203^{\circ} 10' 30''$  a distance of 200.00 feet to an angle point; thence (4) at an interior angle with course (3) of  $156^{\circ} 15' 25''$  a distance of 52.00 feet to an angle point; thence (5) at an interior angle with course (4) of  $226^{\circ} 52' 17''$  a distance of 62.51 feet to an angle point; thence (6) at an interior angle with course (5) of  $107^{\circ} 07' 18''$  a distance of 29.38 feet to an angle point; thence (7) at an interior angle with course (6) of  $270^{\circ} 00' 00''$  a distance of 86.72 feet to an angle point; thence (8) at an interior angle with course (7) of  $116^{\circ} 13' 30''$  a distance of 350.00 feet to an angle point; thence (9) at an interior angle with course (8) of  $90^{\circ} 00' 00''$  a distance of 375.00 feet along the northerly boundary line of Willow Point Development, to a PK nail in the centerline of Bay Road; thence, (10) southerly at an interior angle of  $113^{\circ} 31' 30''$  with course (9) and along the centerline of Bay Road a distance of 850.44 feet to the point and place of beginning.

SCHEDULE B

DESCRIPTION OF WILLOW POINT FUTURE  
HOME OWNER'S ASSOCIATION PROPERTY

All that tract or parcel of land situate in the Town of Webster, County of Monroe, and State of New York, being part of Town Lots 34 and 22, Township 14, Range 7 in the Gore tract, more particularly described as follows:

Commencing at a point in the centerline of Bay Road, which point is 350.50 feet, more or less, north of the Webster-Penfield town line, which is also on the north line of the premises formerly owned by one Mahen Stewart; thence, S 87° 23' 44" W, a distance of 524.01 feet along the southerly boundary line of Willow Point Development, to the point of beginning; thence, along the following courses & distances:

1. At an interior angle with the said southerly boundary line of Willow Point Development of 90° 00' 00" a distance of 90.00 feet to an angle point; thence,
2. At an interior angle with course (1) of 156° 49' 30" a distance of 200.00 feet to an angle point; thence,
3. At an interior angle with course (2) of 203° 44' 35" a distance of 52.00 feet to an angle point; thence,
4. At an interior angle with course (3) of 133° 07' 43" a distance of 62.51 feet to an angle point; thence,
5. At an interior angle with course (4) of 252° 52' 42" a distance of 29.38 feet to an angle point; thence,
6. At an interior angle with course (5) of 90° 00' 00" a distance of 86.72 feet to an angle point; thence,
7. At an interior angle with course (6) of 243° 46' 30" a distance of 350.00 feet to an angle point; thence,
8. At an interior angle with course (7) of 90° 00' 00" a distance of 327.14 feet along the northerly boundary line of Willow Point Development to an angle point; thence,
9. At an interior angle with course (8) of 90° 00' 00" a distance of 318.79 feet to a point; thence,
10. On an arc to the right, having a radius of 32.13 feet, a distance of 50.47 feet, to a point; thence,
11. On an arc to the left, having a radius of 162.50 feet, a distance of 59.56 feet, to a point; thence,
12. S 66° 44' 44" W, a distance of 116.35 feet, to a point; thence,

SCHEDULE B

13. On an arc to the right, having a radius of 137.50 feet, a distance of 211.19 feet to a point; thence,
14. N 25° 15' 16" W, a distance of 214.85 feet, to a point; thence,
15. On an arc to the right, having a radius of 107.50 feet, a distance of 148.00 feet, to a point on the northerly boundary line of Willow Point Development; thence,
16. S 87° 44' 44" W, a distance of 120.76 feet, along the northerly boundary line of Willow Point Development, to an angle point; thence,
17. At an interior angle with course (16) of 180° 24' 00", a distance of 144.67 feet, along the northerly boundary of Willow Point Development, to an angle point; thence,
18. At an interior angle with course (17) of 90° 00' 00" a distance of 212.50 feet to an angle point; thence,
19. At an interior angle with course (18) of 90° 00' 00" a distance of 217.90 feet, to a point; thence,
20. On an arc to the right, having a radius of 27.50 feet, a distance of 31.97 feet to a point; thence,
21. S 25° 15' 16" E, a distance of 118.17 feet, to a point; thence,
22. On an arc to the left, having a radius of 162.50 feet, a distance of 70.12 feet, to a point; thence,
23. On an arc to the right, having a radius of 32.50 feet, a distance of 43.51 feet, to a point; thence,
24. S 26° 43' 53" W, a distance of 26.76 feet, to a point; thence,
25. On an arc to the right, having a radius of 27.50 feet, a distance of 19.53 feet, to a point; thence,
26. S 67° 25' 39" W, a distance of 187.12 feet, to a point; thence,
27. On an arc to the right, having a radius of 27.50 feet, a distance of 9.86 feet, to a point; thence,
28. S 87° 57' 49" W, a distance of 116.26 feet, to an angle point; thence,
29. At an interior angle with course (28) of 90° 00' 00", a distance of 241.55 feet to a point on the southerly boundary line of Willow Point Development; thence,



SCHEDULE B

30. At an interior angle with course (29) of  $90^{\circ} 00' 00''$ , a distance of 1176.34 feet along the southerly boundary line of Willow Point Development to an angle point; thence,
31. At an interior angle with course (30) of  $179^{\circ} 25' 55''$ , a distance of 22.19 feet, to the point of beginning.

SCHEDULE C

DESCRIPTION OF OTHER PROPERTIES  
HELD BY SPONSOR

All that tract or parcel of land situated in the Town of Webster, County of Monroe, State of New York, being part of Town Lots 34 and 22, Township 14, Range 7 in the Gore tract, more particularly described as follows:

Commencing at a point in the centerline of Bay Road, which point is 1200.94 feet, more or less, north of the Webster-Penfield town line, which is also on the south line of the premises now or formerly owned by one James T. Thygesen; thence, S 87° 44' 44" W, a distance of 702.14 feet along the northerly boundary line of Willow Point Development, to the point of beginning; thence, along the following courses and distances:

1. At an interior angle with the said northerly boundary line of Willow Point Development of 90° 00' 00" a distance of 318.79 feet to a point; thence,
2. On an arc to the right, having a radius of 32.13 feet, a distance of 50.47 feet to a point; thence,
3. On an arc to the left, having a radius of 162.50 feet, a distance of 59.56 feet, to a point; thence,
4. S 66° 44' 44" W, a distance of 116.35 feet, to a point; thence,
5. On an arc to the right, having a radius of 137.50 feet, a distance of 211.19 feet to a point; thence,
6. N 25° 15' 16" W, a distance of 214.85 feet, to a point; thence,
7. On an arc to the right, having a radius of 107.50 feet, a distance of 148.00 feet, to a point on the northerly boundary line of Willow Point Development; thence,
8. N 87° 44' 44" E, a distance of 420.11 feet along said northerly boundary line of Willow Point Development to the point of beginning.

SCHEDULE C

DESCRIPTION OF OTHER PROPERTIES  
HELD BY SPONSOR

All that tract or parcel of land situate in the Town of Webster, County of Monroe, and State of New York, being part of Town Lots 34 and 22, Township 14, Range 7 in the Gore tract, more particularly described as follows:

Commencing at a point in the centerline of Bay Road, which point is 1200.94 feet, more or less, north of the Webster-Penfield town line, which is also on the south line of the premises now or formerly owned by one James T. Thygesen; thence S 87° 44' 44" W, a distance of 1243.02 feet, along the northerly boundary line of Willow Point Development, to a point; thence, S 88° 08' 44" W, a distance of 144.67 feet, along said northerly boundary line, to the point of beginning; thence, along the following courses and distances:

1. At an interior angle with the said northerly boundary line of Willow Point Development of 90° 00' 00", a distance of 212.50 feet, to an angle point; thence,
2. At an interior angle with course (1) of 90° 00' 00", a distance of 217.90 feet, to a point; thence,
3. On an arc to the right, having a radius of 27.50 feet, a distance of 31.97 feet, to a point; thence,
4. S 25° 15' 16" E, a distance of 118.17 feet, to a point; thence,
5. On an arc to the left, having a radius of 162.50 feet, a distance of 70.12 feet, to a point; thence,
6. On an arc to the right, having a radius of 32.50 feet, a distance of 43.51 feet, to a point; thence,
7. S 26° 43' 53" W, a distance of 26.76 feet, to a point; thence,
8. On an arc to the right, having a radius of 27.50 feet, a distance of 19.53 feet, to a point; thence,
9. S 67° 25' 39" W, a distance of 187.12 feet, to a point; thence,
10. On an arc to the right, having a radius of 27.50 feet, a distance of 9.86 feet, to a point; thence,
11. S 87° 57' 49" W, a distance of 116.26 feet, to an angle point; thence,
12. At an interior angle with course (11) of 90° 00' 00", a distance of 241.55 feet, to a point on the southerly boundary line of Willow Point Development; thence,
13. At an interior angle with course (12) of 90° 00' 00", a distance of 861.30 feet, along the southerly boundary line of Willow Point Development, to an angle point; thence,

SCHEDULE C

14. At an interior angle with course (13) of  $133^{\circ} 54' 35''$ , a distance of 156.77 feet, along the westerly boundary line of Willow Point Development, to an angle point; thence,
15. At an interior angle with course (14) of  $150^{\circ} 26' 15''$ , a distance of 229.36 feet, along the westerly boundary line of Willow Point Development, to an angle point; thence,
16. At an interior angle with course (15) of  $192^{\circ} 39' 30''$ , a distance of 265.29 feet, along the westerly boundary line of Willow Point Development, to an angle point; thence,
17. At an interior angle with course (16) of  $153^{\circ} 29' 45''$ , a distance of 211.69 feet, along the westerly boundary line of Willow Point Development, to an angle point; thence,
18. At an interior angle with course (17) of  $89^{\circ} 19' 00''$ , a distance of 1141.59 feet, along the northerly boundary line of Willow Point Development, to the point of beginning.

STATE OF NEW YORK  
MONROE COUNTY, SS.

RECORDED ON  
TIME  
BOOK                      PAGE  
REEL                        FR  
                                 OF

AND EXAMINED  
PATRICIA L. MCCARTHY  
MONROE COUNTY CLERK

---

---

**BY-LAWS**  
**OF**  
**WILLOW POINT HOMEOWNERS ASSOCIATION, INC.**

**SPONSOR:**      **WILLOW POINT JOINT VENTURE**  
                    **444 1/2 Lake Road**  
                    **Webster, New York 14580**

**DATED:**            \_\_\_\_\_

-----  
**LAW OFFICES OF GEORGE R. GRASSER**  
**3350 Marine Midland Center**  
**Buffalo, New York 14203**

---

---

**BY-LAWS OF  
WILLOW POINT HOMEOWNERS ASSOCIATION, INC.**

**TABLE OF CONTENTS**

		Page
<b>ARTICLE I.</b>	<b>NAME AND LOCATION</b>	1
Section 1.01	Name and Location	1
<b>ARTICLE II.</b>	<b>DEFINITIONS</b>	1
Section 2.01	Declaration	1
Section 2.02	Lot	1
Section 2.03	Member	1
Section 2.04	Owner	1
Section 2.05	Property	1
Section 2.06	Sponsor	1
Section 2.07	Unit	1
<b>ARTICLE III.</b>	<b>MEMBERS</b>	2
Section 3.01	Membership in the Association	2
Section 3.02	Right of Sponsor to Assign	2
Section 3.03	Voting Rights	2
Section 3.04	Voting Regulations	2
Section 3.05	Corporate Members	2
Section 3.06	Joint or Common Ownership	2
Section 3.07	Absentee Ballots and Proxy Voting	2
<b>ARTICLE IV.</b>	<b>MEETINGS OF MEMBERS</b>	3
Section 4.01	Annual Meeting	3
Section 4.02	Special Meetings	3
Section 4.03	Notice of Meetings	3
Section 4.04	Quorum	3
Section 4.05	Waiver and Consent	4
<b>ARTICLE V.</b>	<b>BOARD OF DIRECTORS</b>	4
Section 5.01	Number and Qualification of Directors	4
Section 5.02	Nominations	4
Section 5.03	Election and Term	5
Section 5.04	Vacancies	5
Section 5.05	Removal	5
Section 5.06	Compensation	6
Section 5.07	Regular Meetings	6
Section 5.08	Special Meetings	6
Section 5.09	Quorum and Voting	6
Section 5.10	Informal Action by Directors	6
Section 5.11	Powers and Duties	6

TABLE OF CONTENTS (continued)

		Page
ARTICLE VI.	OFFICERS	8
Section 6.01	Officers	8
Section 6.02	Election and Appointment of Officers	8
Section 6.03	Term and Vacancies	8
Section 6.04	Removal of Officers	8
Section 6.05	President	8
Section 6.06	Vice President	9
Section 6.07	Secretary	9
Section 6.08	Treasurer	9
Section 6.09	Other Officers	9
ARTICLE VII.	COMMITTEES	9
Section 7.01	Committees of Directors	9
Section 7.02	Committees of Members	9
Section 7.03	Rules	9
ARTICLE VIII.	FINANCE	10
Section 8.01	Checks	10
Section 8.02	Fiscal Year	10
Section 8.03	Annual Reports	10
Section 8.04	Record Keeping	10
Section 8.05	Separate Accounting for Reserve Fund	10
ARTICLE IX.	BOOKS, RECORDS, AND LEGAL DOCUMENTS	10
Section 9.01	Books, Records, and Legal Documents	10
ARTICLE X.	CORPORATE SEAL OPTIONAL	11
Section 10.01	Corporate Seal Optional	11
ARTICLE XI.	AMENDMENTS	11
Section 11.01	Alteration, Repeal, or Amendment by Members	11
Section 11.02	Alteration, Repeal, or Amendment by Board of Directors	11
Section 11.03	Consent of Sponsor	11
Section 11.04	Amendment by Sponsor	11
ARTICLE XII.	MISCELLANEOUS	12
Section 12.01	Notices	12
Section 12.02	Conflict with Certificate of Incorporation or with Declaration	12
Section 12.03	No Waiver for Failure to Enforce	12
Section 12.04	Gender	12
Section 12.05	Captions	12
Section 12.06	Severability	12

BY-LAWS  
OF  
WILLOW POINT HOMEOWNERS ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION

Section 1.01. Name and Location: The name of the corporation is the Willow Point Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located in the County of Monroe and State of New York.

ARTICLE II  
DEFINITIONS

As used in these By-Laws, the following terms shall be defined as:

Section 2.01. Declaration: The document entitled "Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens - Willow Point Townhouses" imposed by the Sponsor on the "Property," as defined below, as it may from time to time be supplemented or amended in the manner provided for in said Declaration.

Section 2.02. Lot: Any portion of the Property under the scope of the Declaration with the exception of Association Property as defined in the Declaration and identified as a separate parcel on the tax records of the Town of Webster or (ii) shown as a separate Lot on any recorded or filed subdivision map.

Section 2.03. Member: The Owner of a Lot or Unit subject to the Declaration whether the holder of record title of the fee interest in the Lot or Unit or the record holder of any leasehold estate, whether or not such holder actually resides on the part of the Property.

Section 2.04. Owner: The holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot, and provided that any person or entity holding such interest merely as security for the performance of an obligation shall not be deemed an Owner (and therefore not a Member).

Section 2.05. Property: All lands which are subject to the Declaration and improvements thereon.

Section 2.06. Sponsor: Willow Point Joint Venture, its successors, and its assigns.

Section 2.07. Unit: Any living unit on the Property, as evidenced by issuance of a Certificate of Occupancy issued by the Town of Webster, situated upon the Property or any dwelling unit on the Property which has been occupied as a residence.



ARTICLE III  
MEMBERS

Section 3.01. Membership in the Association: The Members of the Association shall be only Lot Owners including the Sponsor. Except as Section 3.06 of these By-Laws may be applicable, membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Sponsor" as found in Article I of these By-Laws.

Section 3.02. Right of Sponsor to Assign: The Sponsor may, subject to a duly-filed amendment to the offering plan which has been filed with the New York State Department of Law for the offering of interests in the Association together with the Units (hereinafter sometimes referred to as the "Offering Plan"), assign its membership in the Association to any person, corporation, association, trust, or other entity and such assignee and any future assignee of such membership may make successive like assignments. Memberships in the Association shall not otherwise be transferable or assignable.

Section 3.03. Voting Rights: Each Member shall have one vote subject to amendment of this Section by the Sponsor pursuant to Section 11.04 of these By-Laws. Any Member who is in violation of the Declaration, as determined by the Board of Directors of the Association, shall not be entitled to vote during any period in which such violation continues, provided that in no event may a Member's voting rights be suspended for non-payment of assessments.

Section 3.04. Voting Regulations: The Board of Directors of the Association may make such regulations, consistent with the terms of the Declaration, the Certificate of Incorporation, these By-Laws, and the Not-for-Profit Corporation Law of the State of New York, as it deems advisable for any meeting of the Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.05. Corporate Members: Any votes of a corporate Member may be cast by an appropriate officer of such corporation.

Section 3.06. Joint or Common Ownership: If a Lot is owned or held by more than one person or entity as joint tenants, tenants by the entirety, or as tenants in common, such Owners shall agree among themselves as to which one of such Owners shall be a Member of the Association. The Association shall require a written statement (in such form as the Association may prescribe) to be signed by all of such Owners and which the Association may rely upon as conclusive evidence of such agreement. There shall be no membership in the Association with respect to a jointly owned Lot unless such a written statement with respect to such Lot has been submitted to the Association.

Section 3.07. Absentee Ballots and Proxy Voting: On any matter submitted to the Members for vote, other than the election of Directors of the Association, any Member entitled to vote may cast a vote without attending the meeting in question by filing a written statement with the Board of Directors prior to the meeting in question, specifying the issue on which the Member intends to vote and stating that the Member votes for or against the same.

Members unable to attend a meeting at which Directors of the Association are to be elected shall be entitled to file an absentee ballot if so provided by the Board of Directors or may vote by a proxy which shall be in writing and shall be filed with the secretary of the Association.

#### ARTICLE IV MEETINGS OF MEMBERS

Section 4.01. Annual Meeting: The first annual meeting of the Association shall be held within 30 days after the transfer of title to ninety-seven (97) of the Lots or within seven (7) years after the recording of the Declaration, or within three (3) years of the last closing of a Lot, whichever first occurs. The Sponsor shall have the option to relinquish control of the Board of Directors at any earlier time than so-required and to hold the first annual meeting within 30 days. Thereafter, there shall be an Annual Meeting of the Members in February of each year on a day and at a time and place reasonably convenient to the Members as shall be designated by the Board of Directors, which meeting shall be for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. Failure to hold an Annual Meeting at the designated time shall not, however, invalidate the corporate existence or affect otherwise valid corporate acts.

Section 4.02. Special Meetings: Special Meetings of the Members may be called at any time by the President or by the Board of Directors, or at the request in writing of Members of the Association holding not less than one-third (1/3) of the votes entitled to be cast at the meeting.

Section 4.03. Notice of Meetings: Not less than ten (10) days or more than thirty (30) days before the date of any Annual or Special Meeting of Members, the Association shall give to each Member entitled to vote at such meeting written or printed notice stating the time and place of the meeting and, in the case of a Special Meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered either by mail or by presenting it to the Member personally, or by leaving it at such Member's residence as shown on the records of the Association. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the Member at his or her post office address as it appears on the records of the Association. Notwithstanding the foregoing provision, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after such meeting is held, or actual attendance at the meeting in person, shall be deemed equivalent to the giving of such notice to such persons. Any meeting of Members (Annual or Special) may adjourn from time to time to reconvene at the same or some other place and no notice need be given of any such adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 4.04. Quorum: Except as may otherwise be provided in these By-Laws, the presence in person or by proxy of Members having twenty percent (20%) of the total authorized votes of all Members shall constitute a quorum at any meeting of Members. If any meeting of Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may, without notice other than an-

WILLOW POINT OFFERING PLAN

nouncement 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 in person or by proxy. The quorum required in each reconvened meeting shall be one-half of the quorum required for the previous meeting. The act of two-thirds of the Members present at a Meeting at which a quorum was present shall be the act of the Members unless the act of a greater or lesser number is required by law, or by the Certificate of Incorporation of the Association, the Declaration, or these By-Laws.

Section 4.05. Waiver and Consent: Wherever the vote of the membership is required by law or by the Certificate of Incorporation of the Association, the Declaration or these By-Laws, to be taken in connection with any action of the Association, the meeting and vote of the membership may be dispensed with if all Members who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such action being taken.

ARTICLE V  
BOARD OF DIRECTORS

Section 5.01. Number and Qualification of Directors: The business and affairs of the Association shall be managed by the Board of Directors. The Board of Directors shall initially consist of three (3) persons designated by the Sponsor. At the first Annual Meeting the Board shall consist of seven (7) members.

All elected Directors shall be (i) Lot Owners, (ii) spouses of Owners, (iii) mortgagees of Lots or Units, (iv) members or employees of a partnership Owner or mortgagee, (v) officers, directors, shareholders, employees, or agents of a corporate Owner or mortgagee, (vi) fiduciaries or officers, agents, or employees of such fiduciaries, or (vii) designees of the Sponsor. Except for the initial three (3) Directors designated by the Sponsor, at least four Directors shall be resident Owners.

Section 5.02. Nominations: Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall consist of a chairman, who may or may not be a Director, and two (2) or more other Members of the Association, at least one of whom shall be a resident Lot Owner. Nominations may also be made from the floor at the annual meeting of the Association. The members of the Nominating Committee shall be appointed by the Board of Directors at least thirty (30) days prior to each Annual Meeting of the Members and shall serve only to make the nominations for Directors to be elected at that meeting.

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

The first two (2) paragraphs of this Section shall only apply to elections at such times as all the Members have full voting rights pursuant to Section 3.03 of these By-Laws. At all other times no Nominating Committee shall be required, and nominations may be made from the floor at the annual meeting of the Association.

Section 5.03. Election and Term: The members of the original three-member Board shall be appointed by the Sponsor to serve until replaced pursuant to the terms of these By-Laws.

→ A new Board of Directors consisting of seven (7) members shall be elected by the members of the Association at the first annual meeting after (a) ninety-seven (97) of the Lots have been sold (closed), or (b) seven (7) years have elapsed since the first closing of a Lot, or (c) three (3) years have elapsed since the last closing of a Lot, whichever of these events occurs first. The Sponsor may choose to voluntarily relinquish its right to appoint Directors prior to the occurrence of any of these events, in which case the election of the seven-member Board shall take place at the first annual meeting which shall take place within sixty (60) days of such relinquishment. The terms of the members of this first seven-member Board shall be three years (two members), two years (two members), and one year (three members). The longer terms shall be assigned to the members receiving the greater number of votes. Thereafter, members of the Board of Directors shall be elected to serve three year terms or appointed to complete unexpired terms.

Voting shall be by secret written ballot which shall:

- a. set forth the number of vacancies to be filled;
- b. set forth the names of those nominated by the Nominating Committee to fill such vacancies; and
- c. contain space for a write-in for each vacancy.

The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 5.04. Vacancies: Except for Directors appointed or elected by the Sponsor who shall be replaced by the Sponsor, any vacancy occurring in the Board of Directors may be filled at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining Directors or by a sole remaining Director and, if not previously filled, shall be filled at the next succeeding meeting of the Members of the Association. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose vacancy such person was elected to fill. Any vacancy occurring by reason of an increase in the number of Directors may be filled by action of a majority of the entire Board of Directors and any Director so elected shall hold office until the next meeting of Members or until a successor is elected and qualifies.

Section 5.05. Removal: Subject to the limitations as provided in this Section 5.05, at any regular or special meeting of Members, any one or more of the members of the Board of Directors may be removed with or without cause by the affirmative vote of not less than a majority of the Members and a successor may then and there or thereafter be elected by the Members to fill the vacancy thus created. Any member of the Board of Directors whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. Members of the Board of Directors elected or appointed by the Sponsor may be removed with or without cause only by the Sponsor. Successors to such removed members of the Board shall be appointed by the Sponsor. In addition, the other Directors may, by the affirmative vote of not less than

two-thirds of the other Directors, declare the position of the Director vacant in the event the person filling such position shall be absent from three (3) consecutive meetings.

Section 5.06. Compensation: Directors shall not receive any compensation or salary for their services as Directors. Any Director may be reimbursed for his actual expenses incurred in the performance of his duties. Neither Directors nor the employers of Directors may enter into any business relationship with the Association.

Section 5.07. Regular Meetings: Regular meetings of the Board of Directors shall be held monthly without notice at such places and at such times convenient to the Directors as may be designated from time to time by resolution of the Board of Directors. Should such meeting date fall on a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 5.08. Special Meetings: Special Meetings of the Board of Directors may be called at any time at the request of the President or any two Directors after not less than two (2) days notice to each Director. The person or persons authorized to call such Special Meeting of the Board may fix any place convenient to the Directors as a place for holding such Special Meeting. Any Director may, in a writing, signed by such Director, before or after the time of the Special Meeting stated therein, waive notice of any Special Meeting. The attendance of a Director at any Special Meeting shall constitute a waiver of notice of such Special Meeting. Neither the business to be transacted at, nor the purpose of, any Special Meeting, need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by the Certificate of Incorporation of the Association, or by these By-Laws.

Section 5.09. Quorum and Voting: Except as provided in Section 5.13 of the Declaration, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business at all meetings of the Board of Directors. Except in cases in which it is provided otherwise by statute, by the Certificate of Incorporation, or by the By-Laws, a vote of a majority of such quorum at a duly constituted meeting shall be sufficient to elect and pass any measure. In the absence of a quorum, the Directors present may adjourn the meeting from time to time by majority vote of those Directors present, and without further notice, until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted at the meeting which might have been transacted as originally called.

Section 5.10. Informal Action by Directors: Any action required or permitted to be taken at a meeting of the Board of Directors or of any committee thereof may be taken without a meeting, provided a written consent to such action is signed by all members of the Board of Directors or of such committee, as the case may be, and provided further that such written consent is filed with the minutes of proceedings of the Board or committee.

Section 5.11. Powers and Duties: The Board of Directors may exercise all the powers of the Association, except such as are conferred upon or reserved to the Members by statute or by the Certificate of Incorporation or the By-Laws. The powers, duties, and authority of the Board of Directors

shall specifically include, but shall not be limited to the following:

- (1) Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-Laws, the Certificate of Incorporation, or the Declaration.
- (2) Determine, levy, and collect the Maintenance Assessments, Special Assessments, and other charges as provided for in the Declaration.
- (3) Collect, use, and expend the assessments and charges collected for the maintenance, care, and preservation and operation of the property of the Association, and the maintenance, care, and preservation of the Units and other improvements to the Property.
- (4) Establish reserves for the maintenance, repair, and replacement of Association Property and the maintenance, repair, and replacement of the Unit exteriors.
- (5) Enter into agreements for the management of the affairs and operations of the Association provided any such agreements (i) have a term of three (3) years or less, (ii) if entered into at a time when the Sponsor owns 25% or more of the Lots under the Declaration, afford the Association the right to terminate, without cause, without penalty, and on notice of not more than 90 days, at any time after the Sponsor is no longer in control of the Board of Directors.
- (6) To the extent it deems the same necessary and reasonable, procure and maintain adequate liability insurance covering the Association, its directors, officers, agents, and employees and procure and maintain adequate hazard insurance on such of the Association's real and personal property and the Units as it deems appropriate.
- (7) Subject to the provisions of the Declaration, repair, restore, or alter the properties of the Association after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.
- (8) Adopt and publish rules and regulations governing the use of the Property and the personal conduct of the Members, occupants, and guests thereon, and establish fines and other penalties for infractions thereof.
- (9) Collect delinquent assessments by suit or otherwise, abate nuisances, and enjoin or seek damages from or impose penalties on Members for violations of the provisions of the Declaration or of any rules or regulations of the Association.
- (10) Pay all taxes owing by the Association.
- (11) Suspend the voting rights of a Member after notice and hearing for a period not to exceed thirty (30) days for infractions of

published rules or regulations, provided that in no event shall the Board suspend the voting rights of a Member for nonpayment of assessments.

- (12) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board of Directors.
- (13) Keep a complete record of the actions of the Board of Directors and the corporate affairs of the Association and present a statement thereof to the Members at the annual meeting of Members or at any special meeting of Members when such a statement is requested in writing by not less than one-fourth (1/4) of the Members entitled to vote.
- (14) Issue, or cause to be issued, upon demand by any person, an "Assessment Certificate" as provided in the Declaration, setting forth the status of payment of assessments for any Lot.

#### ARTICLE VI OFFICERS

Section 6.01. Officers: The officers of the Association shall be the President (who shall be a Member of the Board of Directors); one or more Vice Presidents (the number thereof to be determined by the Board of Directors), the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint such other officers as it shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors. The President, but no other officer, must be a member of the Board of Directors.

Section 6.02. Election and Appointment of Officers. The elective officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors. Appointive officers shall be appointed at such time and shall hold their office for such terms as the Board of Directors shall determine from time to time.

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

Section 6.04. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor to such office may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 6.05. President: The President shall be the chief executive officer, shall supervise the work of the other officers, shall preside at all meetings of Members, shall, if there is no Chairman of the Board, preside at

all meetings of Directors, and shall perform such other duties and functions as may be assigned to him or her by the Board. He or she may sign, in the name of the Association, any and all contracts or other instruments authorized by the Board or these By-Laws.

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

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

Section 6.08. Treasurer: The Treasurer shall keep or cause to be kept regular books and records of the financial affairs of the Association. He or she shall account to the President and the Board, whenever they may require it, with respect the financial condition of the Association, and shall perform all other duties that are assigned to him or her by the President or the Board.

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

## ARTICLE VII COMMITTEES

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

Section 7.02. Committees of Members: The committees of the Association shall be the Architectural Committee, the Nominating Committee and such other committees as the Board of Directors shall deem desirable. Each committee shall consist of a chair who shall be a Director and two (2) or more members, except that the Nominating Committee need not include a member of the Board of Directors. The Architectural Committee shall have the duties and functions described for such committee in the Declaration.

Section 7.03. Rules: Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Direc-



tors designating the committee or with rules adopted by the Board of Directors.

#### ARTICLE VIII FINANCE

Section 8.01. Checks: All checks, drafts, and orders for the payment of money, notes, and other evidences of indebtedness, issued in the name of the Association shall be signed by the President or Treasurer and countersigned by one Director of the Association, provided that the President or Treasurer and Director so signing are not the same person, unless such signature authority is delegated through contract to a managing agent, which agent shall be properly insured.

Section 8.02. Fiscal Year: The fiscal year of the Association shall be the twelve (12) calendar months ending 30 November of each year, unless otherwise provided by the Board of Directors.

Section 8.03. Annual Reports: There shall be a full and correct audited or reviewed statement of the financial affairs of the Association including a balance sheet and a statement of income and expense for the preceding fiscal year. Such report shall be distributed to all Owners and to all mortgagees of Lots who have requested the same; promptly after the end of each fiscal year. The Association shall be required to undertake an audit (i) if requested by a majority of Unit Owners who are unrelated to the Sponsor, which audit shall be at the expense of the Association, or (ii) if requested by any Lot Owner or any holder, insurer or guarantor of a first mortgage on a Lot, which audit shall be at the expense of the party requesting the audit.

Section 8.04. Record Keeping: The Board of Directors or the managing agent retained by the Board of Directors shall keep detailed records of the actions of the Board of Directors and the managing agent, minutes of the meetings of the Board of Directors, minutes of the meetings of Owners, and financial records and books of account of the Association, including chronological listing of receipts and expenditures, as well as a separate account for each Lot which, among other things, shall contain the amount of each maintenance assessment, special assessment, and other charges, if any, against such Lot, the dates when installments of assessments are due, the amounts paid thereon, and the balance remaining unpaid.

Section 8.05. Separate Accounting for Reserve Fund: Any funds of the Association collected or designated as reserves for the replacement of capital items and for major maintenance and repair shall be accounted for separately from all other funds of the Association. This requirement shall not be construed as requiring the segregation of Funds into separate bank accounts.

#### ARTICLE IX BOOKS, RECORDS, AND LEGAL DOCUMENTS

Section 9.01. Books, Records, and Legal Documents: The Board of Directors shall make available for inspection upon reasonable notice and during normal business hours, to existing and prospective Owners, tenants, title insurers, mortgagees, mortgage insurers, and mortgage guarantors, current

copies of the Declaration, By-Laws, Certificate of Incorporation, rules and regulations, budget, schedule of assessments, balance sheet, and any other books, records, and financial statements of the Association. The Board of Directors may furnish copies of such documents to such parties and may charge a reasonable fee to cover the cost of furnishing such copies.

#### ARTICLE X CORPORATE SEAL OPTIONAL

Section 10.01. Corporate Seal Optional: If decided by the Board of Directors, the Association shall have a seal in circular form having within the circumference thereof the full name of the Association.

#### ARTICLE XI AMENDMENTS

Section 11.01. Alteration, Repeal, or Amendment by Members: These By-Laws may be modified, altered, repealed, amended, or added to at any regular or special meeting of the Members provided that:

- a. a notice of the meeting containing a full statement of the proposed modification, alteration, repeal, amendment, or addition has been sent to all Owners and Lot first mortgagees as listed on the records of the Association, not less than ten (10) nor more than forty (40) days prior to the date or initial date set for the canvass of the vote thereon; and
- b. a majority of a quorum of Members then entitled to vote and present at the meeting in person or by proxy approve the change; except that, if the amendment is of a material nature (i) 67% of the Members must approve the change; and (ii) prior to the date or initial date for the canvass of the vote thereon, the Association has not received written notification of opposition to the change from first mortgagees of 51% or more of the Lots on which there are mortgages as shown on the records of the Association.

Section 11.02. Alteration, Repeal, or Amendment by Board of Directors: These By-Laws may be modified, altered, repealed, amended, or added to at any regular or special meeting of the Board of Directors provided that prior to the date or initial date for the canvass of the vote thereon, the Association has not received written notification of opposition to the change from first mortgagees of 51% or more of the Lots on which there are mortgages as shown on the records of the Association.

Section 11.03. Consent of Sponsor: So long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A or B to the Declaration (whether or not subject to the Declaration) but not longer than fifteen (15) years after the date of recording the Declaration, Sections 3.02, 5.01, 5.03, 5.04, 11.01, 11.02, 11.03, and 11.04 shall not be amended without the consent of the Sponsor.

Section 11.04 Amendment by Sponsor: The Sponsor, during the time the Sponsor owns any Lot, may (i) make amendments to these By-Laws to correct

omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner, without such Lot Owner's written consent; and (ii) make an amendment to these By-Laws to provide that there shall be one vote for each lot if a change in law allows such change.

## ARTICLE XII MISCELLANEOUS

Section 12.01. 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 Directors, at the office of the Board of Directors, and if to go to an Owner or to a Lot mortgagee, to the address of such Owner or mortgagee at such address as appears on the books of the Association. 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 or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 12.02. Conflict with Certificate of Incorporation or with Declaration: In the case of any conflict between the Certificate of Incorporation and these By-Laws, the Certificate of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 12.03. 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.

Section 12.04. 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.

Section 12.05. 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.

Section 12.06. 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.

